

Hate Groups Target HLS Librarian Web Site Attracts Wrath of Neo-Nazis, White Supremacists

By Ben Lehrer

Several hate groups have sent death threats to an HLS librarian who created a web site devoted to monitoring cyber-space hate speech.

"The Internet is the greatest thing to ever happen to hate," said the editor of "HateWatch"

(www.hatewatch.org), who for security reasons has requested anonymity. "The days of standing on street corners and passing out leaflets are done."

In October 1995, HateWatch was incorporated in Massachusetts and was removed from the Harvard network. It is funded by small contributions from friends and receives hardware and software support from a local software company, the editor said. The site is not affiliated with the University or the Law School.

HateWatch came into being as a spin-off of a Harvard Law library project to create a bibliographic resource on the First Amendment. While working on the project, the editor came across a number of overtly racist

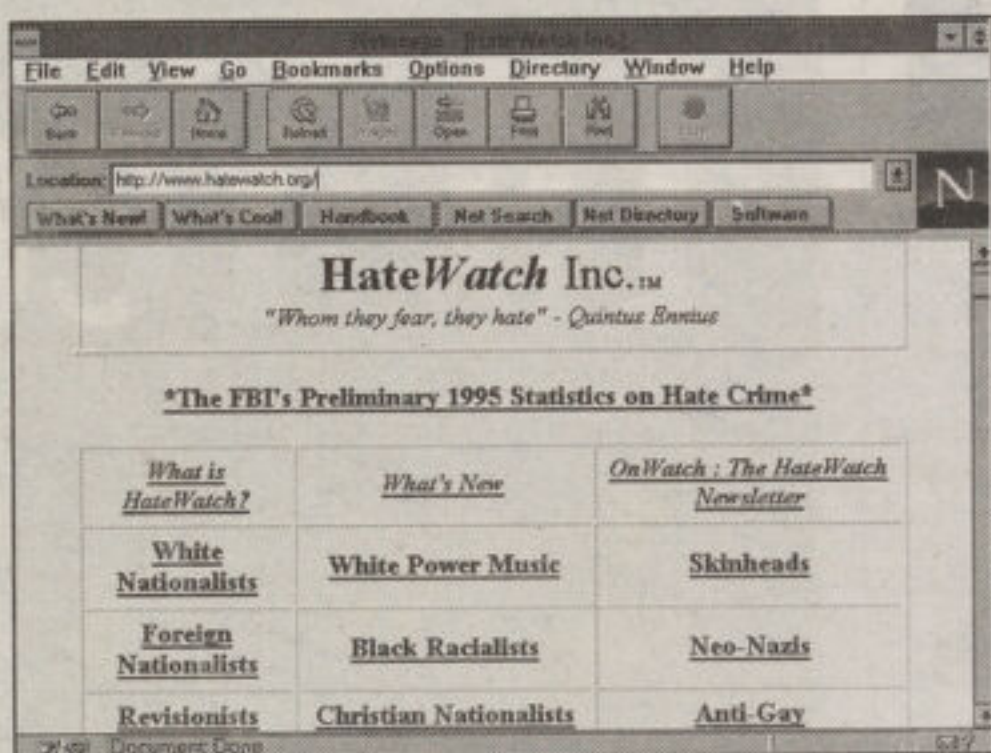
Unlike other groups that focus on a particular topic, such as militia-watch groups or anti-revisionist organizations, HateWatch takes a broader approach in dealing with hate on the Internet.

"If you're a member of an identifiable group, there's probably someone out there that hates you," the editor said.

HateWatch's home page has links to the home pages of various hate groups, organized into ten categories ranging from white supremacists and skinheads to Holocaust deniers, anti-gay, and anti-Christian groups. In addition, there are a number of other links,

including a "Who's who" list of hate group activists, a "White Power Music" link, and "On Watch," the organization's newsletter.

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The HateWatch Home Page

and anti-Semitic sites, and began to catalog them.

"It soon became apparent that this would go beyond the mission of just being a catalog, and I wanted to take it further," said the editor.

Tribe to Argue Assisted-Suicide Case Before Supreme Court January 8 Two Other Cases in High Court Await

By Hal Poret

Continuing his legacy of taking on the most significant and controversial issues facing American society, Prof. Laurence Tribe '66 will argue a case before the United States Supreme Court on January 8th that presents the question of whether the U.S. Constitution allows states to ban competent, terminally-ill adults from committing physician-assisted suicide.

Tribe is representing the respondents, pro bono, in the appeal of the Second Circuit's *Quill v. Vacco* decision. The case, one of a pair commonly referred to as the "right to die" cases, is not simply about a patient's "right" to die, Tribe said of the case's misleading label.

"Everybody dies," Tribe said. "This case is about the constitutional right of people who are about to die to not have states enforce certain kinds of laws against assisted suicide," Tribe said, noting that "[t]here are some enormously excruciating choices to be made" by terminally-ill people and their families.

On October 1st, the Supreme Court granted certiorari in two cases arising from suicide assistance bans in Washington and New York

states. Earlier this year, the Courts of Appeals for the Second and Ninth Circuits both reached the same conclusion — though relying on different constitutional doctrines — that physicians may prescribe life-ending drugs to be self-administered by mentally competent persons in the final stages of terminal illness.

In its decision, the Ninth Circuit wrote that the Supreme Court's decision on the issue "may touch more people more profoundly than any other issue the courts will face in the foreseeable future."

In the Washington case, *Compassion in Dying v. State*, the Ninth Circuit ruled that a Washington law banning physician-assisted suicide violates the Due Process Clause of the Fourteenth Amendment because competent, terminally-ill adults have a fundamental liberty interest in committing physician-assisted suicide. Writing for the majority, Circuit Judge Stephen Reinhardt wrote that a "terminally ill individual's interest in deciding whether to end his agony and suffering by hastening the time of his death with medication prescribed by his physician" outweighs the state's interest in preventing suicide.

In contrast, although the Second Circuit in *Quill v. Vacco* refused to find a fundamental

right to physician-assisted suicide, it invalidated the New York law on Equal Protection grounds. Relying on the fact that New York law recognizes a patient's right to refuse medical treatment, the court held that a ban on assisted suicide impermissibly discriminates against people on life support systems. In so holding, Circuit Judge Robert J. Miner explicitly rejected the argument that there is a meaningful distinction between removing life support and prescribing medication to hasten death.

The Second and Ninth Circuit cases, which are now called *Vacco v. Quill* and *Washington v. Glucksberg*, respectively, are scheduled to be argued in tandem before the Supreme Court on January 8th. Although Tribe will be representing the respondents in the New York case, in which the Second Circuit relied solely on the Equal Protection Clause to decide the issue, he believes that the Second Circuit "incorrectly" ruled that there is no "liberty interest" for the terminally ill to shape the remaining days of their lives. Thus, Tribe will offer both Equal Protection and Due Process arguments to the Court.

"The Court can affirm on any ground," Tribe said.

Twenty States and AMA Among Tribe's Adversaries

In representing the respondents, Tribe must contend with various arguments of at least twenty states and many other

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Prof. Laurence H. Tribe '66

Professors Consider Slashing Student Body, Packaging 2L Basics

By Jaclyn Liu

The Legal Education Committee this week turned its

attention to class size and course selection problems after its participation-based grading proposal failed to muster adequate faculty support.

The Committee's new agenda illustrates the continuing debate among faculty and administrators concerning the best approaches to reducing size of heavily subscribed upper-level courses, improving the registration of such courses, and appointing new professors to ameliorate the problem.

Reduction in Class Size of Upper-level Courses

Although Committee Chair Richard Parker '70 cautioned that the Committee "is nowhere near agreeing on the definition of the problem, much less a proposed solution," he suggested two approaches to reducing the class size of upper-class courses.

"One solution might be to increase the number of sections offered for courses like Constitutional Law, Evidence, Tax, and Corporations," he said.

A second more controversial solution is to reduce the number of students admitted to the Law School. According to statistics compiled by the Registrar's office and obtained by Law School Council treasurer Dina DeFalco '98, the number of J.D. students admitted has remained constant over the past decade while the number of LL.M. students has increased by approximately 67 percent.

During the school year of 1987-1988, there were 1653 J.D.s and 92 LL.M.s. A decade later in 1996-1997, there are 1646 J.D.s and 154 LL.M.s.

"Maybe expanding the number of LL.M.s admitted is a good thing but it also expands the number of students wanting to get into the classes," said Parker.

"The LL.M.s are encouraged to take one basic course. They need a lot of time for one on one with the professors, especially for their written work."

Although Dean Clark '72 agreed with Parker's general concerns and believes that the Law School "can do better with more professors in the basic courses," he suggested that the data of the past 10 years illus-

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Student Complaints of Mail Services Resolved

By Jacob Appel

Student complaints over mail service to HLS dorms have been worked out, according to

Jol Silversmith '98, president of the Civil Liberties Union (CLU). Silversmith had brought complaints to Dormitories Operations Officer Dan Murphy regarding privacy and delivery issues at the private mail center.

"I believe that they should deliver all mail with a student's name on it," Silversmith said, referring to the mail room's policy against delivering third-class mail. The mail room had excluded third-class mail from delivery this year because of budgetary restraints.

As of this year, third-class mass mail order catalogs are not delivered to students but are held at the Holmes Mail Center. The mail center also does not forward newspapers or magazines.

Although the mail center also does not accept outgoing mail, Law School Council (LSC) President Chip Nierlich '97 said he hopes to have a postal scale set up at the student services

center in Harkness Commons soon. Students can currently use postal facilities at 125 Mt. Auburn Street and 1953 Massachusetts Avenue, Nierlich said.

In a compromise worked out with Silversmith, Murphy agreed to continue to deliver all third-class mail except for catalogs delivered to all students. These catalogs, such as J. Crew and Victoria's Secret, will still be held for students at the mail

center. In response to questions about its limited services, Murphy responded that the center does its best with the resources it has, and that it "generally [gets] high marks ... from students." Murphy said that the employees at the mail center "take a great deal of pride in what they do," noting that several weeks ago when mail was not delivered because of heavy rain and flooding, staffer John Lathrop traveled to the Law School to ensure that the mail was picked up and locked away for security.

Silversmith said that the issue of security was serious

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Dean Rakoff '75

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TWENTY CENTS

Attendance Poor At Tenure Talk On Student Input

By Tammy Jacobs

Tenure, says Faculty Appointments Committee Chairman Laurence H. Tribe, is "the main point at which students can have an input."

Still, a well-advertised meeting to discuss the subject Tuesday afternoon drew only five people: Tribe, the invited speaker; Jess Hungate, 3L, the Law School Council member who invited him; one RECORD reporter; one 3L working on a paper relevant to the topic, who left a tape recorder running and went to a class; and one genuine audience member, Scott Weiner, 2L.

"I think it's bad, given the level of dissatisfaction and frustration that seems to exist among students, that when a meeting such as this is called on an issue that relates to teaching, which people seem concerned about, that no one shows up," Hungate commented.

"Unfortunately," he continued, "this is not an isolated instance."

Tribe, who had talked briefly with the RECORD just prior to the abortive meeting, answered questions for a few minutes, then made plans with Hungate to try to schedule a new meeting on student input into tenure, sometime in the early spring.

Two professors are up for tenure this year, said Tribe. They are Constitutional Law Asst. Prof. Richard D. Parker and

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In this year's predictably unusual annual re-enactment of *Erie Railroad Co. v. Tompkins*, Civil Procedure Prof. Arthur Miller appeared as Darth Vader and Laura Bartell, 3L, as Princess Leia, in "Bar Wars." (Related photo, page 8.)

Pre-Christmas Exams OK'd for Next Year

By Terry Keeney

The Harvard Law School faculty voted on Wednesday to adopt a new calendar for the next academic year which features pre-Christmas examinations for 2L's and 3L's and a new three-week winter term during January for intensive courses offered to 2L's and 3L's.

The faculty voted 37-6 to adopt the two unprecedented proposals of the so-called 4-1-4 plan, which had been recommended by the Committee on Legal Education and an ad hoc committee of faculty. The vote came at a meeting in which several faculty members recalled the days of Saturday classes and a total year-long curriculum.

The approved calendar leaves intact the existing schedule for 1L's. However, the fall semester reading period for 1L's will be lengthened to nine or ten days. The break between the last 1L exam and the first day of spring classes may also be increased from a three or four-day weekend to a period of six to nine days.

Under the approved calendar, classes for the 1978 fall semester will begin on Sept. 5, the day after Labor Day. The last day for 2L and 3L

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Profs Vote 4-1-4 Calendar

(Continued from Page 1)

classes will be Dec. 8. The exam period for 2L's and 3L's will end on Dec. 22.

The new winter term will begin on Jan. 3 and continue until Jan. 23. Examinations for winter term courses are scheduled for Jan. 25 and 26. The first day of spring semester classes for 2L's and 3L's is Feb. 1.

The 4-1-4 fall semester has been shortened from 71 teaching days to 65. As a result, fall semester classes under 4-1-4 may have to meet for extended periods. For example, a three credit course which currently meets three times a week for 50 minutes or in two 75-minute sessions might meet for 25 extra minutes per week.

Despite the wide margin of approval, some faculty members expressed reservations about adopting the 4-1-4 plan. Prof. Morton J. Horowitz argued that the faculty was "putting the cart before the horse" by considering calendar reform without re-thinking the entire second- and third-year curriculum.

"At some point we're going to have to talk substantively about the second and third years," said Horowitz. Horowitz echoed statements by Assistant Prof. Elizabeth Bartholet who warned that by voting for the 4-1-4 plan at this time the faculty might be reluctant to consider serious reform later.

Prof. Alan Stone noted that the new calendar might further weaken the collegiality of the faculty and questioned whether the faculty was "tinkering for tinkering's sake" with the calendar.

"I'm not really sure that this type of tinkering is worth a tinker's dam," Stone said.

"I'm not really sure that this type of tinkering is worth a tinker's dam," Stone said.

Prof. David Herwitz noted that one effect of the 4-1-4 plan would be to make the fall shorter and more difficult for students who make interview trips. He noted that classes after Thanksgiving are valuable because most students have completed the interview process and are prepared for class. Under the 4-1-4 plan, the time between Thanksgiving and Christmas now used for catching up will be lost.

By unanimous vote the faculty approved an amendment offered by Prof. David Shapiro which urged the Committee on Legal Education to consider allowing 3L's to write the third-year paper during the winter term or give them the term off. The option of writing the third-year paper during the winter term is not available for next year because of the difficulty of supervising students. Dean Albert M. Sacks noted that because the bar of the State of New York requires law schools to be in session for a specified period of time students may not be able to leave the Law School with official Law School sanction.

Prof. Douglas Ginsburg opened discussion of the 4-1-4 plan by strongly advocating its adoption. Prof. Robert Keeton expressed his enthusiastic support for the intensified instruction because of its opportunities for the advocacy program. Prof. Jerome Cohen cited the fact that the shorter semester would allow the Law School to invite more visitors to teach during that period at a lower cost.

In a memorandum to the faculty, the committee on Legal Education released the findings of its survey

of possible courses to be offered during the winter term. Among them are three-credit courses in *Antitrust*, *Corporate Tax* and the *Trial Advocacy Workshop*; two-credit courses in *Crime and Society*, *Family Law*, *Jurisprudence* and *Legal Profession* and some one-credit options.

Several course offerings have been proposed for the winter term that would be completed in the spring, including *Administrative Law*, *Business Planning*, *Corporations*, *Labor Law* and *Law of the Sea*.

1978-79 Calendar

		Fall
Tu	Sept. 5	First day of Fall classes for all students
F	Dec. 8	Last day 2L-3L classes
F	Dec. 22	Last day 2L-3L exams; last day 1L classes
Sa	Dec. 23	
Th	Jan. 2	Christmas recess
		Winter and Spring
W	Jan. 3	First day 2L-3L classes
F	Jan. 12	Last day of 1L exams
Sa	Jan. 13	
Su	Jan. 21	1L Winter recess
M	Jan. 22	First day 1L classes
Tu	Jan. 23	Last day 2L-3L classes
Th	Jan. 25	
F	Jan. 26	Exams for Winter courses
Sa	Jan. 27	
W	Jan. 31	2L & 3L Winter recess
Th	Feb. 1	First day 2L-3L classes
Sa	Mar. 24	
Su	April 1	Spring recess
W	May 9	Last day 2L-3L classes
F	May 11	Last day 1L classes
Th	May 22	Last day 2L-3L exams
Tu	May 29	Last day 1L exams
Th	June 7	Commencement day

(Note: Six holidays in the above schedule are omitted here, but remain the same as at present.)

19 Years
Ago in
the
RECORD

HLS Librarian Exposes Hate on the Internet

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Within each category, every organization is notated by a graphic and a quote downloaded from its web site.

HateWatch does not make any editorial comments. The editor lets the material speak for itself.

"They can speak better to who they are and what they're about than I ever could," the editor said. "They'll do a better job hanging themselves with their own racist garbage than I ever could."

A scroll through the "White Supremacist" category, which has 32 listings, illustrates the range and depth of the hatred. Next to more well known names like the Klu Klux Klan page and a David Duke home page, one finds endless swastikas and other Nazi emblems, names like the "White Aryan Resistance Hate Page," and the "Nigger Joke Center."

A site in the anti-Christian category under the name of "The Christian Holocaust" calls for the physical eradication of all Christians.

HateWatch seeks to dispel the idea that all information on the Internet has an "implicit neutrality and legitimacy," the editor said.

A Web surfer can jump from page to page without any indication that the information is inaccurate or unreasonable. The editor said that historical revisionists, particularly Holocaust revision-

ists, have been using this "underlying legitimacy that's conferred upon electronic media for their own ends. Going on the 'net' with attractive graphics and reasonable statements with no one there to call them on it allows them an inroad to assault history that they've never had before."

One tactic used by HateWatch is to target service providers that provide service space to hate groups. The editor noted that America On-Line does not allow racist or anti-Semitic material on their server.

"This isn't an act of censorship, it's a

the groups who have found themselves on HateWatch's lists. The editor regularly receives hate mail referring to him as an "enemy," a "holohugger," or, less subtly, a "fucking Jew boy."

A few have sent death threats, prompting an investigation by the FBI. However, no action will be taken unless the FBI perceived an immediate threat.

Putting a positive spin on the situation, the editor said, "The fact that they're aware I exist and that they feel they have to deal with me makes me know I'm doing my job."

A couple of hate group leaders have posted open letters on the Web purporting a sinister cabal between Harvard and HateWatch. Not surprisingly, Prof. Alan Dershowitz's name crops up repeatedly in these postings.

Bradley R. Smith, director of the Committee for Open Dialogue on the Holocaust (in the "Holocaust Denier" category), sent a press release to the RECORD asking rhetorically, "Did Harvard Law prof. Alan Dershowitz have a hand in encouraging the creation of this shadowy group? How can the group continue to exploit the name of Harvard Law without the permission of Mr. Dershowitz?"

The editor of another Holocaust denier page, "Zundelsite," speculated on the source of HateWatch. "Either the Harvard Law Library's 'Guide to Hate Groups on the Internet' was put up by dumb kids who didn't know better, or it was yet another typical in-your-face

intimidation tactic, as in '... here's Hershowitz [sic].'"

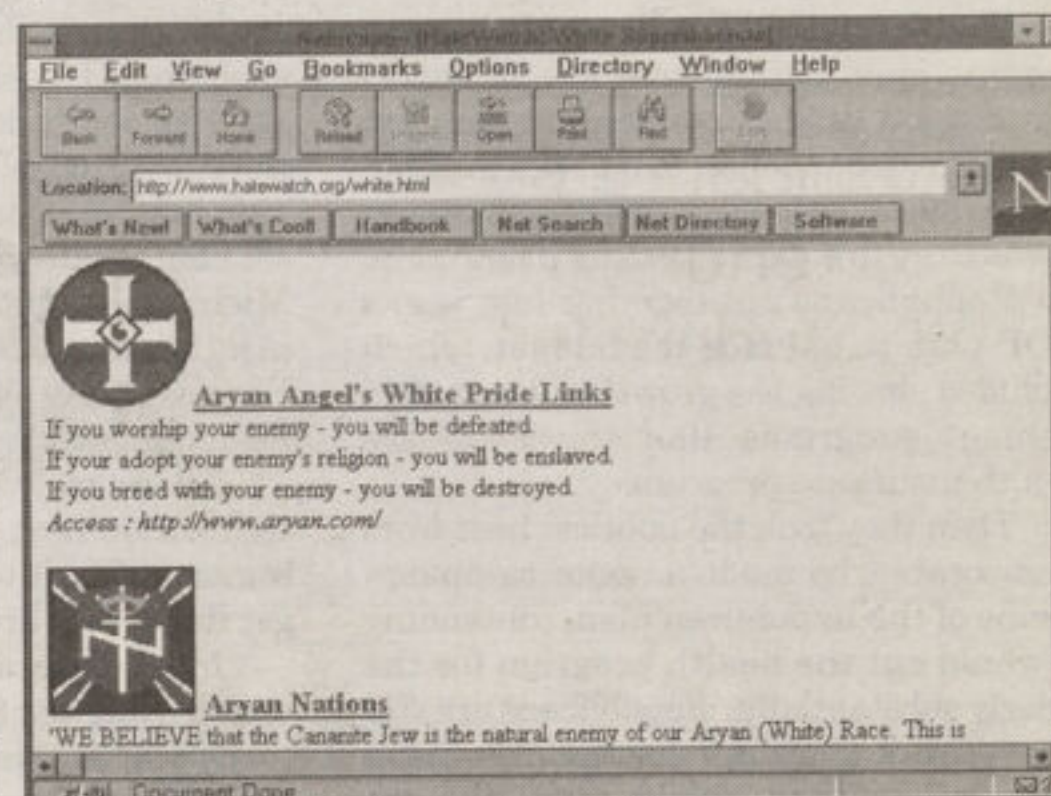
"These people are kooks, racists, and anti-Semites disguising themselves as



The Antipas web site features several photos of people demonstrating against homosexuals

business decision made by a private entity," the editor said, noting that what usually happens is that the hate groups relocate to a server "run by a racist or an anti-Semite or a homophobe."

Naturally, establishing the site has not made the editor a popular figure in



HateWatch features links to a wide array of white supremacist, neo-Nazi, and other hate pages

people with serious ideas," said Dershowitz, who denies that he has anything to do with HateWatch. He added that the hate groups' "conspiracy theories and speculations as to my role are as baseless and absurd as their arguments on the Holocaust."

According to the editor, the next step is to establish a dialogue center for real-time conversation. The editor is also considering creating an on-line magazine with up-to-date information on the "state of hate," as well as biographies of the major players in Internet hate groups.

Eventually, the editor plans to establish a database that would serve as "a library of hate for researchers, academics, and concerned individuals," helping them monitor, track, and expose hate wherever it is found.

Clark: Reducing Admissions Would be "Demoralizing"

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trate that the average class size has gone down.

"Sixty-five percent of the classes outside of first year are less than 50 students; 10 to 20 years ago this would not be true."

Clark argued that the increase in LL.M.s is more than "offset" by the increase in faculty members. However, he conceded that in recent years there have been problems with staffing professors for the basic courses due to the "specialties of core professors."

Despite recent difficulties, Clark disfavored the solution of reducing the number of law school students admitted.

"Reducing the numbers would have tremendous financial consequences," said Clark. "It would mean downsizing, firing a large amount of staff — it would be demoralizing."

"How would we sell it to the outside world?" he asked.

Associate Deans Rakoff '75 and Sander '52 agreed with Clark's assessment.

"I would feel socially irresponsible for cutting down on the attendance size," said Rakoff. "We have all these buildings, all these endowments. A lot of students want to come here. Just because some of us have managed to get in doesn't mean we should keep others out."

"Harvard's size is its curse and its blessing," said Sander. "Harvard can never be like Stanford or Yale; that would mean a dramatic change."

Exacerbating the debate over how to reduce upper-level class size is the skepticism among certain administrators and faculty members about whether class size is a problem, and whether reducing classes by twenty to thirty students is worth the effort.

"There are members of the faculty — and, quite possibly, of the Legal Education Committee — who doubt that

the size of our large classes is even a problem, who ask why popular classes shouldn't be taught to far larger groups of students, into the hundreds, who doubt that a class of 100 is likely to be any better than a class of 140," said Parker.

"The difference between 120 and 150 while focusing on a particular subject does not matter that much according to my experiences as a teacher," said Clark.

"There is a break point in each class. But beyond small classes — above 40-60 — nothing matters much, unless you have 275. But this does not mean we should not add more faculty, we should," Clark said.

Sander said he believes the debate should be cast in a different light.

"You must be aware that there is no such thing as a free lunch," he said. "The question is not do we want smaller classes, it is what are we willing to pay for them."

"In the short term, the basic courses will continue to be the largest. We are trying to get them smaller, but I don't see an easy way to have smaller [classes]. It is a reflection of the fact that there is great demand for them," Clark said.

Appointment of New Professors

Parker believes that increasing the number of sections for popular classes must entail an increase in faculty size, although he admitted that the scope of the issue might be beyond the capacity of the Committee.

"The question is will the Dean hire people who will be committed to teach one heavily subscribed class," said Parker. "There is a presumption that each faculty will teach at least one heavily subscribed course, the question is how often and how easily this requirement is overcome. There is no rule, it is just a practice of the Deans."

In response, Clark said that every

professor presently teaching at the law school "should feel the obligation" to teach a heavily subscribed course. Indeed, Clark suggested that "a major leverage" he uses when he processes professors' research leave requests is to have that professor teach a heavily subscribed course when he returns.

Furthermore, Clark said he is committed to hiring five new professors this year. The emphasis will be to hire professors with specialties in corporations, the environment, intellectual property, commercial business, antitrust, and women and law, Clark said.

In appointing new professors, Clark agreed that hiring professors committed to teaching a heavily subscribed course

is a good idea, but it would be only one of several factors. Moreover, he argued that such a rigid criteria would be "hard to sell to the faculty" because it would not "excite" them.

Associate Dean Rakoff disagreed that new hires should teach basic courses.

"I would rather see professors hired to teach more specialized classes — give students more options."

"It is difficult to say to young people who graduated at the top of Harvard or Yale that they must teach tax. They would probably go to Stanford or Yale where they could teach what they

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Third-Class Mail Delivery Restored to Dorms

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because the mail center is private and not subject to the same requirements as the U.S. Postal Service. For one, should anyone attempt to steal student mail, they are not subject to the same penalties at those who steal correspondence from private mail boxes, Silversmith said.

Persons caught stealing U.S. mail can face 25 years in prison and be fined up to \$100,000. HLS mail thieves, on the other hand, must deal with the Administrative Board, Murphy said.

Another potential threat to student mail is the fact that the private nature of the mail service may permit the University to open student mail under extraordinary services, Silversmith said. Murphy explained that no such action had occurred during his four year tenure and that he

did not even know that such action was possible.

"If I suspected some form of fraudulent activity I would write a letter to the Dean of Students," Murphy said.

Despite complaints, most students seem satisfied with their mail service, said Brian Salsberg '98, chairman of the LSC Facilities Committee. Salsberg said he has not received any complaints concerning mail service this year.

"We've received complaints about classrooms, Hemenway gym, food services ... but not one complaint about the mail room."

While Silversmith said he was pleased with Murphy's prompt response to his concerns, he still believes improvements can be made to improve delivery and security.

"I think that they should behave as if they were actually the Post Office," Silversmith said.

Across the Wire...

Michigan Republicans Looking for Bipartisan Compromise on Budget

WASHINGTON (AP) — Michigan's congressional Republicans see an opportunity next year to reach an agreement with President Clinton to balance the budget by 2002. But they say the president needs to go first in suggesting a new plan.

Republicans put together last year's GOP plan to balance the budget, which included slowing the growth of large entitlement programs like the Medicare health insurance program.

Then they took the political heat from Democrats who made a major campaign theme of the Republican plan, contending it would cut the health program for the elderly substantially. Republicans are still angry over Clinton's campaign-season accusations they would virtually gut Medicare.

"In the last Congress we made a good faith effort to try to address the explosive growth of these programs and were unsuccessful," said Sen. Spencer Abraham, R-Auburn Hills.

Now, he says, it's up to Clinton and his advisers to propose a balanced budget plan. "The president has said he would probably appoint a bipartisan commission to study remedies for the long-term financial problems facing Medicare. The program has been growing by roughly 10 percent annually and is projected to go broke by 2001.

The president said the GOP balanced budget plan would have sliced too deeply into Medicare, the Medicaid health program for the poor, education and the environment.

But Republicans say entitlement programs like Medicare and even Social Security must be restructured to ensure their survival. And the budget cannot be balanced year after year without restructuring them.

"I think you have to put them on the table because they're part of the (balanced budget) equation and we've got to make sure they don't go insolvent," said Rep. Fred Upton, R-St. Joseph, a fiscal conservative.

Trustees predict the pay-as-you-go Social Security system will pay out more to retirees than it takes in through payroll taxes by 2012 and go broke in 2029.

Social Security is the largest federal program, accounting for about 22 percent of the federal budget. Medicare and Medicaid combined are about 17 percent of the budget. All three programs are entitlements — guaranteeing aid to anyone who meets the federal requirements.

Medicare will be tackled first.

"I think everyone recognizes the need to improve Medicare but it has to be bipartisan," said Rep. Fred Upton, R-St. Joseph. Rep. Peter Hoekstra, R-Holland, agreed.

"That's how it gets done. That's the lesson learned from the last election," said Hoekstra, a member of the House Budget Committee.

"If one party decides they're going to demagogue the issue and they don't come to the table, the other party is just going to walk away from it ... because it's easier to

attack than to defend" a plan that limits spending, Hoekstra said.

Rep. David Bonior of Mount Clemens, the No. 2 House Democrat, was not available last week to talk about the budget, said his spokeswoman, Gretchen Kline. A Michigan Democrat who has put a high priority on a balanced budget, Rep. Jim Barcia, D-Bay City, also was unavailable for comment.

There are two programs up for reauthorization next year that will also make it more difficult to freeze spending on budget items that are not entitlements.

Most federal highway funding — worth roughly \$20 billion — is up for renewal along with Section 8 housing subsidies for the poor that cost roughly half that.

An even larger, if more distant, problem is the huge federal debt projections after 2010 if there are no changes in Social Security and Medicare, some Republicans note. After 2010, the large Baby Boom generation starts to retire.

"There's no question that politicians, including the president and members of Congress, are going to have to face up to the reality that (Social Security) is going to be dramatically more expensive after the Baby Boomers start retiring," said Rep. Nick Smith, a member of the House Budget Committee.

Smith, R-Addison, has introduced a bill that would keep Social Security solvent in part by raising the retirement age and channeling some funds into worker retirement accounts invested in the stock market to gain higher interest rates.

Right now, the country's cumulative debt of \$5 trillion is slightly more than half the country's annual gross national product.

If spending grows with inflation and entitlement programs are not changed, by 2025 the country's cumulative debt will be more than 1.5 times its annual gross national product, according to Senate Budget Committee estimates based on data supplied by the Congressional Budget Office.

By 2030, the debt will be nearly triple the annual GDP, and the interest payments alone on the debt will be 31 percent of GDP, the Senate committee data show.

Social Security alone is costing taxpayers \$600,000 a minute today, Smith said. In 2030, it will cost \$6.7 million a minute, he said.

"All the demographics really go against us on entitlement spending," said Hoekstra. "We're going to need structural reform in entitlements if we're going to have a pattern of balancing the budget year after year after year."

But it won't be easy to change Social Security — a politically popular program that has been immune from major change until now.

Abraham suggests a commission might be appropriate.

"There haven't been many congresses willing to take on (Social Security) and try to come up with reductions in growth," he said.

Kantor Defends Attorney General Reno, Slams White House Whispers

WASHINGTON (AP) — Commerce Secretary Mickey Kantor defended Attorney General Janet Reno on Saturday and criticized what he implied was an anonymous White House whispering campaign seeking her ouster.

Kantor did not say Reno was a must for President Clinton's second-term Cabinet. But he said on CNN's "Evans & Novak" the decision about keeping Reno should be made regardless of the Justice Department's role in investigating suspected illegal Democratic campaign activities.

Reno's Justice Department turned down a third request Friday to appoint an independent counsel to investigate Democratic fund-raising by and from people with links to wealthy foreigners.

"Department of Justice has to be seen as something that represents the best interests of the American people. It's really the people's counsel," Kantor said. "It can't ever be seen as political. It can't ever be seen as partisan."

The program's co-host, Robert Novak, asked since Reno appeared to meet those criteria, "Why would the peo-

ple in the Clinton White House want to get rid of her then?"

"Look, I can't speak to people who talk off-the-record or on background, who are never quoted, who criticize a lot of people — sometimes even me — although that's totally unjustified," Kantor said. "The fact is that the president is going to make this decision. I think the attorney general indicated she was willing to stay."

Kantor also said he thinks First Lady Hillary Rodham Clinton should be given a role in Clinton's second term, possible as a chief player in reforming welfare.

"She is one of the most effective and able people I've ever known in my life," said Kantor, a longtime friend of the Clintons. "We ought to use her talents and use them well over the next four years."

A comment by Mrs. Clinton to the newsmagazine Time last week that she expected an "official" position in implementing welfare changes during the second Clinton administration drew sharp rejoinders from Republicans.

Abortion Foes Challenge Montana Ban on Election Day Soliciting

HELENA (AP) — A Montana law that bans soliciting of votes on election day is unconstitutional, a national anti-abortion group says in a lawsuit filed in U.S. District Court here.

The National Right to Life Political Action Committee filed the suit this past week against Montana's Political Practices Commissioner Ed Argenbright and Lewis and Clark County Attorney Mike McGrath.

The group, based in Washington, D.C., was accused of violating state law by telephoning more than 40,000 Montana voters on Nov. 5 and urging them to cast ballots for Republican U.S. Senate candidate Dennis Rehberg and House Candidate Rick Hill, both of whom oppose abortion.

The Montana law says groups or individuals may contact and urge people to vote on election day as long as they do not encourage people to vote for any particular candidate or ballot issue. The law carries a maximum penalty of six months in jail and a \$1,000 fine.

Argenbright and several other state officials contacted the group and asked them to cease the voter solicitation. Argenbright hasn't taken action against the group for breaking the law.

The lawsuit claims the restriction violates the U.S. Constitution because it has a chilling effect on free speech. The group is asking that the law be thrown out, the state be prohibited

from taking action against it and that it be reimbursed for any costs associated with the action.

"The plaintiff believes that ... the official policy of the state against soliciting voters on election days is unconstitutional and cannot be legally enforced," the lawsuit said.

"NRLPAC has suffered, and will continue to suffer, the irreparable loss of rights to free speech, free association and the equal protection of the laws as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States," the suit continued.

McGrath said Friday he didn't know why he is named in the suit, but said the group likely targeted him because he typically prosecutes state political practice violations. He said he plans to refer the case to the state attorney general's office.

Lawyer Clay Smith, solicitor in the attorney general's office, said his office likely will handle the dispute, but has yet to review the allegations.

"We'll have to take a look at the complaint and decide whether we think there are defenses for the statute," he said. "The bottom line, at least for purpose of this election cycle, is I know that Mr. Argenbright felt strongly that we should preserve a level playing field so everyone was working under the same rules."

Civil Rights Groups Add Legal Challenge Against Proposition 209

LOS ANGELES (AP) — With student admission applications due Monday, civil rights groups moved to block University of California campuses from implementing the anti-affirmative action measure Proposition 209.

The legal filing on Friday by the American Civil Liberties Union and other groups was largely symbolic.

A federal judge issued a temporary restraining order on Wednesday barring Gov. Pete Wilson and Attorney General Dan Lungren from implementing the measure until at least Dec. 16, when a hearing is scheduled.

The measure, which prohibits racial and gender preference in public hiring, contracting and education, was approved by nearly 55 percent of voters

Nov. 5.

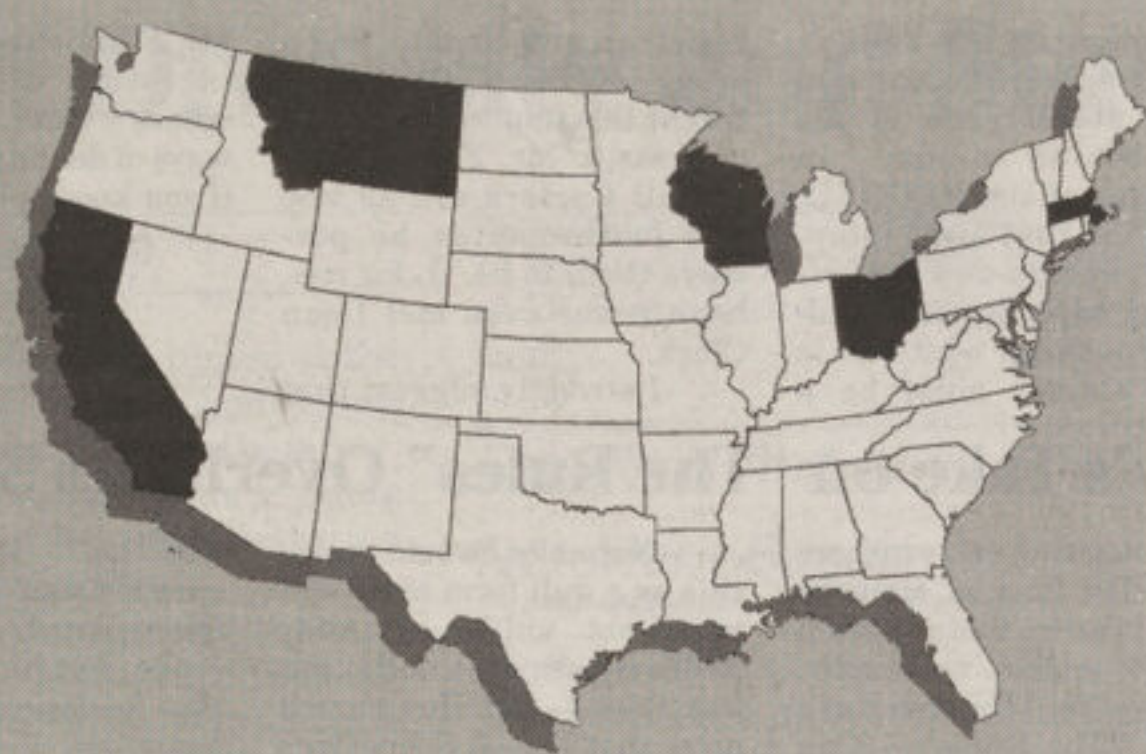
University of California officials have assured Proposition 209 opponents they will not attempt to implement the measure before the hearing.

"With the deadline for UC applications fast approaching, we want to make sure minority applicants understand that Proposition 209 is unconstitutional and cannot be given effect," said ACLU attorney Daniel Tokaji. "The welcome mat is still out for minority students. No one should allow Proposition 209 to discourage them from applying for admission."

The federal judge said there was a "strong probability" the measure would be ruled unconstitutional for violating the rights of women and minorities.



Across the Country



This Week, News From Around the Nation

Salvi's Death Renews Debate About Insanity Defense

BOSTON (AP) — When lawyers for John C. Salvi III decided to argue that their client was insane, they knew they had a tough job. After all, only a tiny percentage of insanity defenses are successful.

So it was no surprise when a jury rejected the argument that Salvi was mentally ill and sent him to prison for life for shootings at two abortion clinics that killed two, including a former Connecticut woman, and wounded five in 1994.

When Salvi died Friday in his tiny prison cell — apparently at his own hand — it raised new questions about the insanity defense. Should the 24-year-old who ranted and raved about anti-Roman-Catholic conspiracies have been locked up in a facility for the mentally insane?

"John Salvi should never have been treated as the ordinary criminal defendant," said Joseph Balliro Sr., a criminal defense attorney who has argued many insanity cases. "There was little question that this man was just totally off the wall."

Guards at the state's maximum-security prison found Salvi's body under his bed with a plastic trash bag tied around his head. Salvi was alone in his cell and left no note. In a preliminary report, the

state medical examiner called the death a suicide.

Salvi was not under any mental health watch at the time of his death because "he was deemed by the court not to be insane," said Ronald Duval, superintendent of the Massachusetts Correctional Institution at Cedar Junction in Walpole.

But correction officials could have sent Salvi to Bridgewater State Hospital for psychiatric treatment if they thought it necessary. The department, for example, transferred admitted child-killer Lewis Lent from Cedar Junction to Bridgewater when he displayed signs of mental disturbance.

"He could have been sent to a place like Bridgewater — and that's the tragedy," said Robert Bloom, a professor of criminal procedure at Boston College Law School. "They have an obligation to protect these people from other inmates and themselves, and they didn't meet the obligation in this case."

Prison spokesman Tony Carnevale said Salvi "displayed nothing that would require any kind of intervention."

Salvi's lawyers, family and other observers, however, said his behavior was anything but rational.

"I think that the suicide showed that Salvi probably was in the wrong place," said Richard Moran, a professor of sociology and criminology at Mount Holyoke College who is writing a book on the insanity defense.

To others, his suicide was yet another sign that he knew what he was doing.

"It may be his really sick concept of seeking revenge. Suicide is the last word in an argument," said Dr. Bruce Danto, a California psychiatrist who co-authored the book "Suicide Behind Bars."

Over the last few years, Massachusetts juries have had to decide several high-profile insanity cases, including that of Richard Rosenthal, the Framingham financier who killed his wife and impaled her heart and lungs on a stake, and Kenneth Seguin, who murdered his wife and children in 1992. In both instances, jurors rejected the insanity argument.

Jurors "continue to focus on the horrors of the crime rather than the motivation that caused the crime," Bloom said. "I think there's a concern among jurors that somehow this person is going to be let off, which is not the case."

Generally speaking, the less serious the crime, the more likely a jury will

agree with an insanity defense, Moran said.

Earlier this year, Gov. William F. Weld proposed abolishing the insanity defense in favor of a "guilty but insane" verdict.

Under the bill, which died in the Legislature, a mentally ill person convicted of a crime could serve time at a prison hospital until found to be mentally competent. He then would serve out the remainder of his sentence in a standard prison.

Salvi was moved to the Walpole facility in July after spending several months in the state prison at Concord after his sentencing. At Cedar Junction, he slept alone in a cell in an East wing unit that housed 44 inmates.

He was a loner, Duval said, and didn't appear to hang around with any individuals or speak of his beliefs. He was disciplined several weeks ago after a "minor altercation" with another inmate.

Salvi's death will undoubtedly renew the debate on the insanity defense, but it probably won't change the outcomes of future cases, Balliro said.

"A lot of people are going to say, 'Good for him. (Salvi) saved us a lot of money.'"

Some are Shelving Potential Law Careers to Head for Business World

CINCINNATI (AP) — Where the jobs are, the college students will follow.

The periodic cycle of employment gluts and needs in certain career fields seems to be encouraging some students to choose business education over law school, educators and trade organizations said last week.

Almost 71,000 people applied to law schools nationwide last year — the fewest in a decade and down 15 percent from the peak year of 1990-91, when 94,000 applied, according to the Law School Admission Council of Philadelphia.

Last year, 213,000 people took the Graduate Management Admission Test, which is required for admission to master's of business administration programs. That's up 8 percent from the year before and up 13 percent in a decade, according to the Graduate Management Admission Council of McLean, Va., which monitors graduate business studies.

"It's just the nature of the economy," said Joseph Alutto, dean of Ohio State University's College of Business Administration. "With a lot of corporate downsizing, people are taking advantage of the time off to retrain and redirect themselves. And with a surplus of people with legal degrees, they realize a better path may be an MBA."

Kathleen Lee, 28, of Cincinnati, obtained degrees in engineering, business and law.

"I started out at the very beginning wanting to have some choices," said Ms. Lee, who now works in management sys-

tems at Procter & Gamble. "But engineering wasn't what I wanted to do — I wasn't a hard techie. And I wasn't cut out for the traditional law firm mold, where you work 80 hours a week."

The University of Cincinnati's MBA program has grown 50 percent since 1994, said James Bast, assistant dean of the university's College of Business Administration. Meanwhile, applications at the university's law school have dropped by a third since 1991 and 17 percent since last year alone, said Al Watson, assistant dean and director of admissions.

At the University of Dayton, applications and new-student enrollment in the MBA program are up 19 percent since last year, said James Dunne, associate dean at the School of Business Administration. About 1,560 people applied to Dayton's law school this year, down 5 percent from last year, Dean Francis Conte said.

At Ohio State, MBA applications have increased 32 percent — from 940 to 1,240 — since last year. In the law school, applications dropped 6 percent since last year and 33 percent since 1991.

Business and law administrators said such trends regularly reverse themselves over time.

The recent shift may be blamed on cost and time, said Philip Shelton, executive director of the Law School Admission Council. Law degrees typically take three years, while MBAs take two years.

"And the job opportunities in law have been very flat," Shelton said.

Judge: University Can't Make Students Support Groups They Oppose

MADISON, Wis. (AP) — The University of Wisconsin-Madison cannot require students to financially support campus political groups whose views they object to, a federal judge says.

The decision by U.S. District Judge John Shabaz would apply to student fees collected at all UW campuses for student groups, unless it is successfully appealed, Peter Anderson, an assistant state attorney general who represented the university, said Saturday.

The UW System has made no decision on an appeal, according to UW Regent President Michael Grebe.

Shabaz's ruling Friday favored three devout Christian students who sued the university for using mandatory student fees to fund groups they find objectionable.

The groups included UW Greens and the Lesbian, Gay and Bisexual Campus Center. Those groups did not immediately respond to telephone messages left at their offices by The Associated Press seeking comment Saturday.

Shabaz said using fees to subsidize groups whose main objective is to advance political or ideological goals violates students' constitutional rights despite the "viewpoint neutral" way in which fees are distributed to student groups.

"This court finds that the balance between the competing interests in this case tips in favor of plaintiffs' First Amendment rights not to be compelled to speak or associate," Shabaz wrote in his 26-page opinion.

Students pay roughly \$330 in fees

each year. Less than 10 percent is used to support student groups and services, according to the university. Any one organization receives from 10 to 30 cents per student.

"We are talking about pennies here," said Associate Dean of Students Roger Howard.

The UW is not required to refund all students' fees, but only those of the three students who sued if they seek a refund, Anderson said.

The judge's decision could reduce the number and diversity of groups on campus, Howard said.

"It will be much more difficult to provide funding to student-run and initiated services," said Howard, adding that the decision "risks eliminating or at least weakening a significant number of services for students."

One of the plaintiffs in the case, Scott Southworth, called the decision a victory for First Amendment rights.

"We're elated in the sense that we believe it's a real victory for all students, regardless of their political or ideological viewpoints," said Southworth, a UW Law School student.

Southworth said that he and co-plaintiffs Amy Schoepke and Keith Bannach sued the university because they are Christians with conservative views who oppose being forced to support liberal causes.

The state argued that the fees funded a forum for groups. "We don't care what you're saying, everybody is eligible to get money," Anderson said.

Harvard Law RECORD

Founded in 1946

Rob Friedman
Editor-In-Chief

Hope Yen
Publisher

Fall Report Card

Dean Clark: B-

"Chainsaw Bob" did regular disappearing act (October in Far East, shuttle to New York), but managed to resist urge to fire someone. The money's good on the road, Bob, but solutions to class size problem not found in Taipei. Parker is waiting.

Prof. Richard Parker: A-

He's trying, which is more than can be said for 43 profs. absent from faculty meeting. Says faculty is incapable of fulfilling obligations. Give 'em hell, Richard.

Dean Rakoff: C+

Cloudy memory a recurring problem. Promised all 2Ls spots in basic courses, then forgot. Problem with 2L basics? What problem?

Dean Richardson: C-

Proven ill-equipped to deal with student concerns. Pointed fingers during e-mail fiasco. "Mad E-mailer" still on the run. Should run for L.A. District Attorney.

Tymothy Macleod: C

Poor guy. Tried to defend himself. Ordered to write embarrassing "apology" letter. Worst part: people still think he's Mad E-mailer.

June Thompson: B

The gal has spunk. Negative marks for forked tongue on LL.M. affair, but with all of that country song-quoting spirit, she's a potential McKinsey recruit.

Prof. Christine Jolls: WD

Too busy clerking for Scalia to fulfill faculty responsibilities. Perhaps she should do traditionalist interpretation of HLS leave policy.

HLS Forum: A

Active bunch proves student groups not just resume-padders. Hunter was a bomb, but Forum keeps campus scene lively.

Law School Council: B

More active than any LSC in recent memory, but that's not saying much. Dream Team endorsed by RECORD running out of steam?

Prof. Miller: C

"Fast Artie" continues great escape. We hope you're not ill, Artie, because RECORD P.I.s are back on case. Seen any good milk cartons lately?

Prof. Tribe: A-

Star con law prof. still on cutting-edge. Unlike Miller, shows up for class, too. With 200 students on wait-list, he'd better.

Prof. Dershowitz: B+

Writes books. Runs down hate mongers. Likens RECORD headlines to NY Post. Will do anything for publicity. Gets the plus for not defending O.J. in civil suit. But, can you say, "appeal?"

— Friedman

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

—First Amendment, US Constitution

• Letters •

Fenno's Stereotypes Don't Fit

I object to Mr. Fenno's use of negative racial and gender stereotypes in his November 15 column. In that issue of the RECORD, he implied that any laptop-toting, button-down-shirt-wearing, superfluous-initial-using Southern white male named Carter must be a

racist, an anti-Semite, and a crony of Dean Clark. I resent this implication, and I suggest to Mr. Fenno that not all Carters are as vile and loathsome as he portrays them to be. I, for one, have never even met Dean Clark.

I strongly suggest that

Mr. Flannel be more careful in future columns, 'cause where I come from we have ways of dealing with his type, if you know what I mean.

H. Carter Hood '98
Selma, Alabama
December 1, 1996

Hoy's Take on "The Rules" Overlooks Sexism

Doing data entry up here on the 7th floor of Holyoke Center I realize that my brain is subject to massive atrophy, but when I read Kristina Hoy's column "The Rules" — Can They Work For You? (RECORD, November 22) my neurons creaked and sputtered but nevertheless arrived at the conclusion that something about this article was terribly wrong. If I've understood Hoy's argument correctly *The Rules* shouldn't be taken too seriously since enlightened folk are immune to the insecurities upon which *The Rules* preys. She claims that Fein & Schneider's book is at least partly "an insult to women" and assumes that "women's goal in life is to get the ring," but even though this may be noxious to right-thinking feminists, "we need to examine the book for its entertainment value ... and consider its implications." Most of her column does not do either thing.

What most of her column does do is Pick-And-Choose which "Rules" are good and which are bad. She likes: not going Dutch, getting romantic gifts on special days, moving on if the lout isn't interested. She dislikes: not calling the man back, not opening up to him, not discussing *The Rules* with one's therapist. All of Hoy's musings on these rules are fine and well, and even genuinely funny at certain moments. But within those middle paragraphs that make up the bulk of her column I see no Heavy Thinking on the precise implications of *The Rules*.

Normally I would regard this as a dull form of cutsey-ness, not unlike an Andy Rooney essay — silly but harmless — but Hoy herself notes that Fein & Schneider's notions are at least theoretically at odds with feminism. Moreover, she quotes the most important line from *The Rules*, which bears repeating: "the purpose of *The Rules* is to make Mr. Right obsessed with having you as his by making yourself seem unattainable. In plain language, we're talking about playing hard to get!" I was stunned that both she and I found that same passage the most telling of the book, since we had different reactions to it. Although she never says it, these two sentences imply that women are objects. I read "obsessed with having you as his" literally, and the book is filled with metaphors of buying, selling, raising retail value and whatnot.

Sad then that Hoy, the self-proclaimed feminist, chooses to pick the "Dutch" example as her first rule to review. She likes the ban on Dutch dating because she "think[s] the old-fashioned rules of dating make things less confusing." Which "things" on such a date are less confusing? A progressive woman might find it insulting that men believe she cannot provide for herself at a dinner or a movie; isn't this exactly what this rule would imply? And doesn't a ban on Dutch dating make a date look more like a business transaction, where a female will requite so-called "romantic gifts" with

affection? What if a man spends a wad of cash on a very fancy date? True, this is crude, but he might assume that he deserves sexual compensation for his financial investment. And if you, the datee, don't believe this to be true, you might have to express your difference of opinion in an uncomfortable scene, and then he might make his views forcefully known, and ...woops! Now we have rape: did our old-fashioned rules imply something less confusing or has it only muddled the situation more?

Having slaved through *The Rules* myself I can agree with Hoy that the book has entertainment value. But I suspect that we have radically different senses of humor. If I find *The Rules* funny it is because I do take it seriously, and because the ideas are so offensive humor is my only coping mechanism. This is humor of a sobering kind, akin to the "humorous" pronouncements of Pat Buchanan and Phyllis Schlafley, or the loud farts of Rush Limbaugh on AM radio. What Fein & Schneider have in common with these charlatans is that they sell cheap, easy answers to serious and complicated problems. Dating *qua* dating may seem an ephemeral and trivial concern, but the role of women (and ultimately of men as well) underlies that concern. Not so funny anymore, is it?

Steven Hatch
Accounts Receivable, Rm. 775
November 25, 1996

Employer Guides Should Not Separate Firms and Public Interest Organizations

Many thanks for [Nick Akers' and Mike Kalt's] fine column in the November 8 RECORD ["Union Busting Law Firms? Explore Other Options"]. I must say I was surprised to learn that there are different employment directories for commercial and public interest law. While I favor including firms

that represent unions and workers (such as Cohen, Weiss and Simon) in the same directory as other law firms, I think the fair and proper solution goes a step further — establishing a single employment directory that does not segregate by types of practice. All firms, public interest organizations, unions, govern-

ment agencies and so forth, if they satisfy minimum standards of fair employment practices, should stand equal before the Law School.

Michael E. Abram '71
Cohen, Weiss and Simon
New York, New York
November 26, 1996

Students Should Stick to Learning the Law

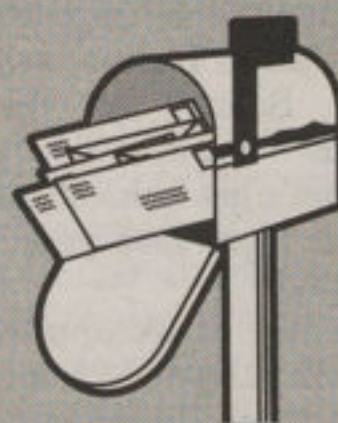
The Harvard Law School has done very well over its many years without so-called "student reforms." I think that it would be far more constructive for students to learn how

to be lawyers rather than reforming the Law School.

Harvard became the world's greatest law school by attracting giants in the law irrespective of the size, shape,

color, ethnic origin, or current disability.

Jesse H. Oppenheimer '42
San Antonio, Texas
November 19, 1996



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Everything Dean Clark Doesn't Want You to Know About Diversity and Student Activism at HLS

By Rafael Mares '99

Some professors have hinted at the skeletons in the Dean's office, but no 1L has really seen them yet. What are the wounds that fear being reopened? Why is the administration not talking about them?

I am in no way suggesting that the following historic facts can be considered secrets. After all, everything of importance that occurs at HLS appears on the national news or gets covered in a book. Even if it does not happen, it still ends up in a movie. But how come nobody informs the green 1Ls about the real HLS history? Why does Dean Clark mislead each entering class by asking whether we have read "One L" and seen "The Paper Chase" or "The Firm?"

Several weeks ago, the RECORD released the results of a student survey on HLS diversity conducted during the spring '96 semester by the Coalition for Civil Rights. And if you could put your casebook aside for a minute (please?), we could discuss the issues raised. But let's remember this case is not on appeal, we are allowed to consider the historic facts:

Pound Hall was Named After a Supporter of Hitler

Roscoe Pound was Dean of HLS from 1916 to 1936. He openly supported Adolf Hitler who he thought could free Central Europe from Communist movements. In 1935, he accepted an honorary degree from the University of Berlin. During his deanship, Pound fiercely fought the appointment of three Jewish tenure candidates.

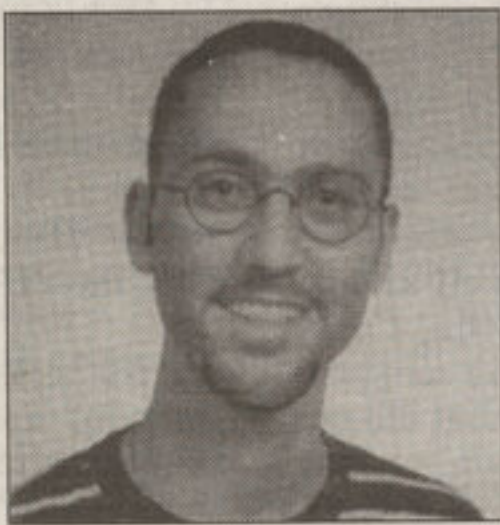
Until 1971 the HLS Faculty Was Composed Exclusively of White Men

HLS was established in 1817. During the following 154 years the HLS faculty was composed exclusively of white men. In 1971, Derrick Bell became the first African American appointed to the full-time faculty. One year later, the first two women faculty members were hired. To date, HLS has still not hired any Latina/o, Asian American, Native American, openly gay, lesbian or bisexual professor, or woman of color for its tenured or

tenure-track faculty. Sixty-eight out of 73 tenured and tenure-track professors at HLS are white and all but 11 are men.

Faculty Hiring at HLS is Not Merit-Based

From 1989 to 1992 HLS was in a hiring deadlock in which Critical Legal Studies and conservative professors could not agree on a politically acceptable candidate for both sides. During the stalemate HLS rejected many qualified candidates for pure political reasons. After two and a half years, Dean Clark negotiated a political deal between the different political factions of the faculty. HLS offered tenure to four professors whose approaches to the law ranged from a Critical Legal Studies bent to a traditional doctrinal approach to a conservative Law and Economics outlook. A first in HLS hiring history, all four were lateral appointments. To make the political deal happen, HLS abandoned its own "year-away rule" that had been used to delay consideration of many other visiting professors. All four professors hired under the deal were white men.



HLS Paid \$1/2 Million To Keep a First Rate Professor Away

One of the many qualified professors affected by the hiring deadlock was Clare Dalton '73, a white woman who had been an Associate Professor at HLS since 1981 and who had received the highest possible ratings by 12 members of a 13-person external committee hired by the Law School to evaluate her scholarship. Nevertheless, HLS denied her tenure. In 1993, HLS settled Dalton's discrimination law suit for \$500,000 which she used for her clinical work on domestic violence at Northeastern University Law School.

How HLS Lost Derrick Bell

In 1969, HLS offered Derrick Bell a two-year tenure track position. Bell was the first African American to join the Law School faculty. When Bell told HLS he did not want to be a token, the School promised Bell would be "the first of a long line."

In 1971, Bell became tenured. Bell was an immensely popular teacher and an innovator in establishing the academic study of racism from a legal perspective. When HLS still had not hired another professor of color in 1974, Bell warned Dean Sacks that he was going to leave unless HLS kept up their side of the bargain and moved faster to hire other African American professors. A short time later, HLS recruited two African American professors (Clarence Clyde Ferguson and Harry Edwards).

In 1987, Bell held a four-day sit-in to protest the denial of a tenure offer to two candidates during the hiring stalemate. After Visiting Professor Regina Austin, an African American professor from the University of Pennsylvania who made a strong impression on the HLS community, was not offered tenure, Bell took an unpaid leave of absence from HLS to protest the absence of women of color faculty members. In response to students disappointment that Bell was not going to be teaching that year, Bell taught a class on Civil Rights, unpaid, during the first year of his leave. Bell filled the class, despite the fact that students did not receive any credit for the course. Bell spent the second year of his leave of absence at New York University Law School. After Harvard University declined to make an exception to its two-year leave policy in the Spring of 1992 (they could have on the grounds that he did teach during his first year of leave), Bell forfeited his tenured position at HLS. He is now a professor at NYU.

HLS Has a Strong History of Student Activism

In 1971, student protests led to the hiring of Professor Bell. In 1981, students protested HLS' failure to increase the number of tenured faculty of color and the administration's decision to have a team of white men teach the only class on racism. HLS students including Kim Crenshaw '84 and Mari Matsuda '83 organized a boycott and created an alternative course. The resulting series of lectures and discussions was one of the defining moments for Critical Race Theory.

Student protests in response to the political "deal" admitting four white men to the faculty included a sit-in in Dean Clark's office that led to a two-day, public prosecution of the "Griswold 9" before the Administrative Board in which the administration tried to expel the students. In 1990, Coalition for Civil Rights students decided to use "the only instrument of power HLS understands," and took Harvard University to court alleging the Law

School's faculty hiring was discriminatory. The students' case ended up in the Supreme Judicial Court of Massachusetts on appeal but the students were not granted standing.

HLS Lets Law Review Students Get Away with Murder

In the spring of 1991, Mary Joe Frug, a law professor at New England Law School and a pioneer in feminist legal jurisprudence, was brutally murdered less than 300 yards from her home in Cambridge. No arrests were made, and the case remains open. Mary Joe Frug was married to HLS Professor Jerry Frug '63.

After her death, Professor Frug asked the Law Review to publish the article Mary Joe Frug was working on at the time of her death. The article examined the ways in which the law subjugated women and included profanity. A bitter debate between politically right and left students on the Law Review broke out. Students fought over whether to delete the words, run a disclaimer stating that the article contained offensive language, or leave it unaltered. Finally the Harvard Law Review editors voted to run the article in its original form as a tribute to the author.

Some students opposed to the article, however, did not let the matter rest. A group of disgruntled editors published an offensive parody of the article in the Law Review's annual April Fool's spoof issue along with other sexist, racist and homophobic pieces. The spoof issue was released exactly on the first anniversary of Mary Joe Frug's death. The administration took no action in a sharp contrast to the way the administration had dealt with the students who had held an overnight sit-in to protest the lack of faculty diversity (Griswold 9).

What Next?

This should be enough historic facts for starters. You can now begin discussing diversity, discrimination, institutional racism, sexism, and course selection at HLS. If I succeeded in turning you into a wanna-be HLS historian, I suggest you start by reading Derrick Bell's "Questioning Authority" and Eleanor Kerlow's "Poisoned Ivy." If for any reason you cannot locate these books at the library, don't worry; I am sure you can find copies tucked away in the closet of the Dean's Office. But do not stay too long — the administration might think you are protesting.



The RECORD will
return in January.

Tribe Prepares for Busy Supreme Court Term

continued from *TRIBE*, page 1

parties that are urging the Supreme Court to reverse the decisions due to perceived negative implications for society. Daniel Lungren, who submitted briefs on behalf of twenty states, argues that there is no way to limit a right to assisted suicide to people who are terminally ill.

Furthermore, opponents argue that doctor-assisted suicide forces society to make a value judgment as to who should live and who should die.

"When there's no absolute right to life anymore, whether it's my own life or someone else's, that changes the foundation of society," said Mimi Eckstein, head of the Respect Life office of the Archdiocese of Denver to the Associated Press.

Arguing that the philosophy underlying a right to doctor-assisted suicide led to the genocidal mass killings in Nazi Germany, a human rights organization called the Schiller Institute, filed for permission to submit an *amicus curiae* brief before the Supreme Court last week. In its brief, the Institute framed the issue as whether the Supreme Court will "uphold the principles of the 1945 Nuremberg Tribunal on Crimes against Humanity." The brief argues that a constitutional right to physician-assisted-suicide "will lead to punishable acts under future Nuremberg-type tribunals established to punish those who commit such crimes against humanity."

The American Medical Association is also arguing for reversal based on its belief that physician-assisted suicide is "fundamentally incompatible with the physician's role as healer."

Others suggest the possibility that frustrated family members and physicians may abuse the situation by pressuring the terminally ill to end their lives.

Regarding the practical realities of the assisted suicide issue, Tribe acknowledges that there are dangers inherent in any potential resolution of the case. However, Tribe believes that, from a public policy perspective, the best way to deal with such a difficult situation is not to ban assisted suicide, but rather to regulate it to eliminate as many of the dangers as possible.

"I recognize that there are important state interests in preventing people from being pressured into dying," Tribe said. "But there are dangers of abuse no matter what one does."

According to Tribe, if physician-assisted suicide remains illegal, then assistance will merely go on "behind the scenes" where they are subject to greater abuses.

"If you are really interested in regulating and controlling abuse," Tribe said, "the easiest way is to allow regulated assisted-suicide by doctors, who are the most knowledgeable to aid patients in such difficult choices."

In addition to these policy considerations, Tribe also believes that the result reached by the circuit courts is well-justified by constitutional doctrine. Regarding the constitutional argument for a right of the terminally ill to shape the remaining days of their lives, Tribe feels that "the abortion cases are among the strongest precedents" in that they recognized a fundamental liberty interest to control one's body.

In finding a previously unrecognized right to assisted suicide, the Ninth Circuit opinion invoked language from the concurrence of Justices Kennedy, O'Connor and Souter in *Planned Parenthood v. Casey*, which reaffirmed the abortion right, that "[a]t the heart of liberty is the right to define one's own concept of existence, of meaning, of the

universe, and of the mystery of human life."

Kevorkian Continues Campaign in Michigan

While Tribe prepares to argue his position to the Supreme Court, the medical community continues to wage its own internal battle over the issue of assisted suicide. Most notably, Dr. Jack Kevorkian, who has assisted over forty



Professor Tribe preparing his successful defense of *Grendel's Den* before the U.S. Supreme Court in October 1982.

suicides, continues to campaign to convince people in Michigan that doctor-assisted suicide is an acceptable solution to a difficult situation.

Attorney Geoffrey Fieger, who has successfully defended Kevorkian against assisted-suicide charges in three high-profile Michigan jury trials, contends that it is important for doctors to take on the responsibility of counselling their terminally ill patients who want to consider suicide.

"If doctors have a duty to help you into this world, they have a duty to help you out of it," the Southfield, Michigan, lawyer said to the Associated Press.

Fieger said he believes the Supreme Court "took the two cases that supported Kevorkian's view so they could overturn them."

The last time the Supreme Court considered an issue closely related to assisted suicide was in the 1990 case of *Cruzan v. Director of Missouri Department of Health*, which held that a competent person has a constitutionally protected liberty interest in refusing unwanted medical treatment. However,

Cruzan, which was decided by a divided Court, did not directly confront the issue of a right to assisted suicide and the Court agreed on the importance of revisiting this area to further define the constitutional doctrine involved.

Scalia Pre-Judges Case in Catholic University Speech

In an incident that has already drawn great criticism from the legal

community, Supreme Court Justice Antonin Scalia has already announced his decision that the Constitution does not include a right to die. In a recent speech to Catholic University's School of Philosophy, Scalia declared that it is "absolutely plain that there is no right to die."

Scalia expressed his already well-known belief that the Court should not find constitutional rights that did not exist when the Constitution was drafted. "It doesn't belong in the Supreme Court as a constitutional question," Scalia said.

Legal ethics experts agree that Scalia's discussion of his position of a case in which the Court had just granted *certiorari* was inappropriate.

It was "very poor form," University of Pennsylvania law professor Geoffrey Hazard told the Associated Press.

In addition, New York University law professor Stephen Gillers said Scalia's statement "will give the public less confidence in the objectivity of his vote."

However, Scalia's views on this issue are already well known from his earlier opinions, including his concurrence in *Cruzan*, in which he asserted that "American law has always accorded the state the power to prevent, by force if necessary, suicide."

"Essentially, he's restating what he already said, but I'd just feel better if he didn't say anything," said University of Michigan Law Professor Yale Kamisar to the Associated Press.

Tribe is no stranger to the task of arguing difficult legal issues and positions before Supreme Court Justices who have strong personal beliefs about

the major issues of the times. In 1986, in *Bowers v. Hardwick*, Tribe nearly convinced the Court that the right of homosexuals to engage in consensual sodomy should fall within the protected zone of privacy. The Court in *Bowers* voted 5-4 to uphold a Georgia statute banning sodomy, but in a speech made after his retirement, Justice Powell admitted that he "probably made a mistake" in voting with the majority.

Earlier this year in *Romer v. Evans*, which struck down an amendment to the Colorado State Constitution that would have weakened the legal position of homosexuals, Justice Kennedy's majority opinion virtually adopted the analysis advanced in an amicus brief written by Tribe.

In his brief, Tribe argued that the amendment was a literal violation of the Equal Protection Clause of the Fourteenth Amendment.

Tribe Has Two Other Cases on Supreme Court's Docket

While Tribe is busy taking on the issue of assisted-suicide, he is also preparing to argue two other Supreme Court cases in the next three months. In one case, Tribe will represent a political party called The New Party in a challenge to the constitutionality of state "fusion bans," which prevent a candidate from running on more than one party ticket.

While anti-fusion laws allegedly attempt to prevent voter confusion and the splintering of major political parties, they seriously hurt the chances of third parties because people are afraid of wasting their vote on a candidate with no realistic chance of winning.

At the same time, Tribe is representing several parties who are challenging a \$1.3 billion dollar class-action settlement involving thousands of people who have been exposed to asbestos. In a case that the Supreme Court has called "one of the great litigation dilemmas of the decade," the Court has agreed to review the 3rd Circuit's decision to throw out the settlement, through which 20 asbestos manufacturers agreed to pay current injury claims if future claims would be limited to the terms of the settlement.

The case "raises the question of how far the judiciary can go in extinguishing the claims and rights of people who are not represented ... as part of a quasi-legislative solution to a social or environmental problem," Tribe said.

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Rakoff Advocates Sections for 2L Basics

continued from PARKER, page 3

want," Sander said.

According to Clark, the dearth of new professors and the slow hiring process are not due to budgetary concerns or lack of talent. He suggests that the problem is two-fold, stemming from the difficulty of getting two-thirds of the faculty to approve new professors, and the problem of working out satisfactory settlements for the professors' spouses.

Parker said he preferred cutting the number of students "substantially" because he believes that "when the number of faculty get larger and larger, any chance of the faculty governing itself diminishes."

Rakoff, however, foresees a greater concern in hiring more professors as a panacea to reducing the class size.

"Although the Dean is committed to appointing more professors, it is not likely to reduce the size of classes in the future," said Rakoff. "We need to appoint a lot of professors to substantially reduce the size, so we need to try other things."

Class Packaging to Improve Course Selection

The class packaging solution, conceived by Rakoff and endorsed by Sander, was first proposed in a memorandum to the Legal Education Committee in mid-November.

Presently, the School recommends that students take constitutional law, corporations, and taxation, and priority is given to the 2Ls registering for these courses. Under the new proposal, stu-

dents would have to take the three recommended courses with pre-assigned professors in a package. Students would still be given an opportunity to choose among various packages, although the selection process would still involve a lottery system.

Outlined by Rakoff in the memorandum, the proposal has at least five distinct advantages. First, much less energy would be spent in the fruitless task of trying to "beat the system" to get the most popular teacher in each of the subjects.

Second, the solution would allow students to pay more attention to selecting other non-basic courses that would individualize each student's education experience. The lack of effort needed to register for the basic courses would ensure that students could pick their first choice for the non-basic courses.

Third, packages would ensure that each student will have a seat in each of the recommended basic courses.

Fourth, the new system would help the Registrar's office in assigning teaching times and rooms.

Finally, class packaging would result in students taking three courses with the same students. Rakoff said he believes the program would create camaraderie among upper-classmen.

In synthesizing class packages, the administration will try to balance professors' "teaching style," not just their popularity, Rakoff said.

"Professors are grown-ups, they can look at the courses evaluations," said Rakoff in response to the possible problem of ego conflicts among professors for packages.

Too Many Martyrs

By Jacob M. Appel '99

RECORD Columnist



I give up! In the good old days — back when life was simple, smoking was nutritious, and yellow fever was pandemic — our enlightened forebears considered giving up to be a virtue. Jesus, for example, wasn't significant because he managed to get himself nailed to a cross at an early age; I once attempted to repeat the feat on my eight year old bother with a staple gun and yet I attracted no media attention, no followers and not even an obscene expression with my name in it. Instead, whether you interpret the Bible as the Gospel Truth or simply a forerunner to tabloid television, it is hard to deny that Christ garnered his popularity by giving up the comfortable life of a middle-class Jewish carpenter in order to change things. The Puritans of New England gave up their joy so we could regale at Thanksgiving; the Veterans of the World wars gave up their lives so we could have a long Veterans Day weekend. Even Herr Hitler himself gave up a burgeoning career as a house painter in order to enact his own vision of the public good. Thus, if I hope to achieve the celebrity status of a Christ or a Hitler, I have reached the inevitable conclusion that I must give up.

Unfortunately, in a era demarcated by the bland leading the bland, giving up has acquired certain negative connotations. The reason the Unabomber is more popular than Ross Perot is not that he graduated from Harvard but that he didn't let the F.B.I. force him to give up. We laud the return of has-been vocalists like Mel Torme and Bobby Vinson and swoon to their middle aged cacophony; we cheer the boxer who rises from the mat to be pummeled down again; we vote for Marion Barry in the

In this country, where former Nazi Philip Johnson is permitted to design synagogues and George Wallace can garner a majority of the Alabama black vote, it seems that all one has to do is read "The Little Engine That Could" every night and eventually you return to the top of the mountain.

belief that he has been rehabilitated. In this country, where former Nazi Philip Johnson is permitted to design synagogues and George Wallace can garner a majority of the Alabama black vote, it seems that all one has to do is read "The Little Engine That Could" every night and eventually you return to the top of the mountain.

Before I proceed any further, it is incumbent upon me to give up my train of thought in order to point out that the one exception to the "giving up" rule is to be found at the Harvard Law School. Many of my classmates have given up everything they have to partake of the Colossus of Cambridge. Some have sacrificed three years of income potential on Wall Street; others have given up \$90,000 of their future earnings; a few have even given up the right to attend an even more prestigious finishing school in New Haven. I have no doubt that if the refugees of Zaire and the disidents of Burma had anything to give up, even they would be incapable of such a large sacrifice. Thus, my readers, I ask you to bear with me in the understanding that my observations do not in any way apply to us, the Mother Teresa's of American jurisprudence.

Most Americans, however, are not nearly as self-sacrificing as my classmates. Instead, locked in a culture of self-propagating want, they refuse to give up or give in or take no for an answer. This trait is best observed in foreign hotels and Peter Finch cameo appearances. However, it can also be noted in the craving for modern conveniences: cellular phones that create billable hours for commuters, automatic check out machines which save the cost of teaching basic mathematics to cashiers, portable televisions designed to help our children face tomorrow. It may be that the world is faster or it may be that the people are slower, but in either case consumer capitalism has demonstrated that Hobbes was right and mankind is wrong. Of course, most of mankind is too busy changing their spellcheckers to "humankind" and asserting their knowledge that Hobbes is a comic strip character to question this progress. (Some people, incidentally, have suggested that I form a Luddite contingency at the law school and throw wrenches at Dean Clark — but I'm generally opposed to such new-fangled ideas).

Emerson observed that consistency is the hob-goblin of little minds; conversely, people with larger heads seem to favor more erratic behavior. Mind you, I do not advocate selling off your portable property and wandering the country side in sack-cloth and ashes: you can give up without contracting pneumonia. But how in God's name can one be a church-going Christian and earn \$100,000 a year? How can one donate to the N.A.A.C.P. and live in an all-white neighborhood? And how can one damn Dupont and live in Dupont Circle? Our only solace seems to be the prospect of our new President, who has found a way to give us everything and yet give up nothing.

It can be argued that if we don't give up, we don't ask others to give up either. We no longer ask middle-aged black people in this country to give up their seats on busses for middle aged white people; we don't demand that women give up their careers to bear children; we don't require poor draftees to give up their lives to protect us. What's good for the goose is good for the gander. Lost in all of these claims, of course, is the hidden truth that rich people don't join the army, men don't bear children, and middle-aged white people no longer ride busses. We — and I include myself — have become so patently indifferent that we are no longer worthy of a Christ or a Hitler.

So I give up, but if you really need to find me, you can either call my cell phone or find me in Harvard Square. I'll be the guy who bears a striking resemblance to a young Eroll Flynn and walks past the homeless reading aloud the book of Job.

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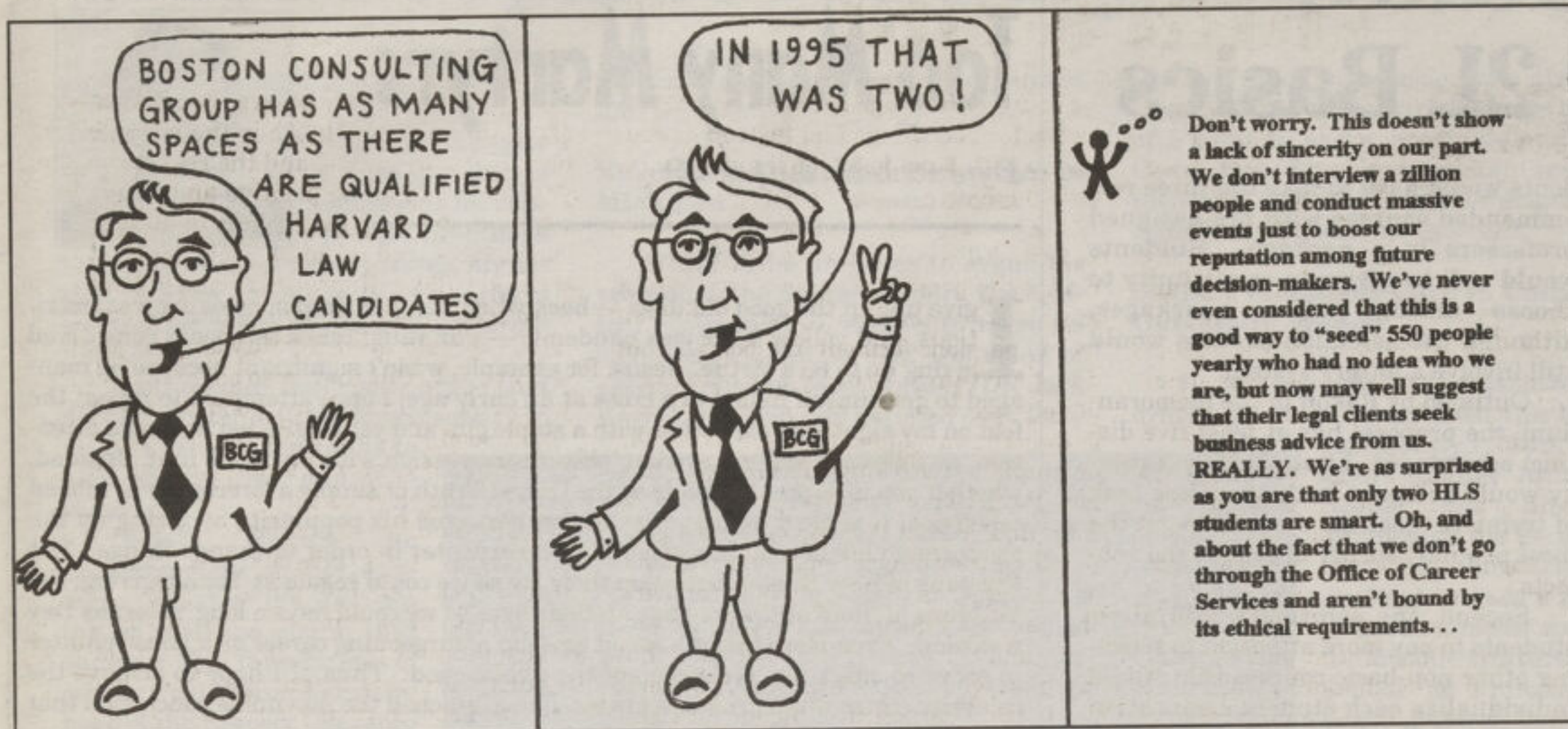
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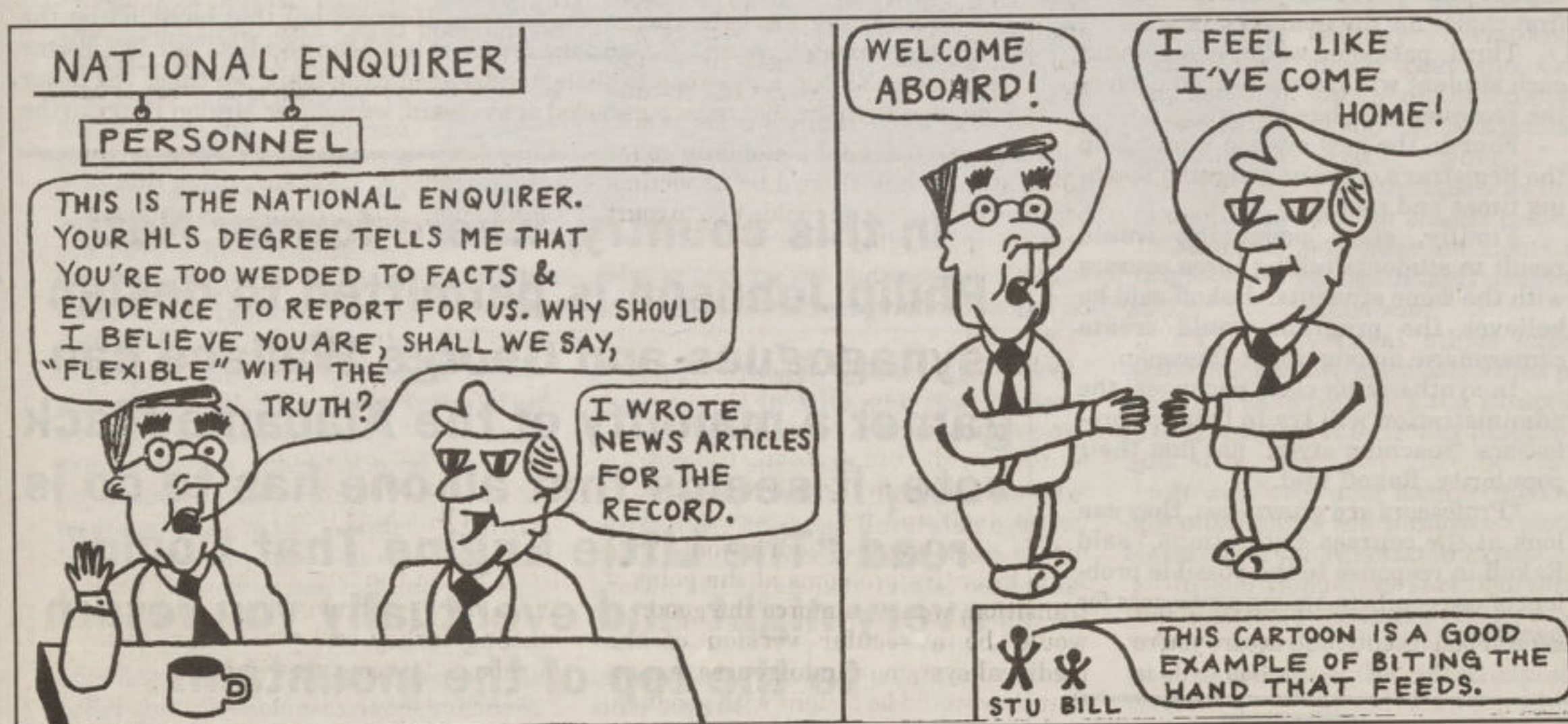
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CALENDAR

By Janie Kim '99

Good-byes (even temporary ones) are loathsome. The sensible bid their farewells with minimal fanfare and make them mercifully short. So, rock your finals and have a peaceful holiday. The Calendar misses you all already. Now, to the business of blowing off steam and how best to do it:

Refuse to pay full price. **BOSTIX** offers half-price, day-of-show tickets to performances all around town. Visit their booths at Copley Square or Fanueil Hall and choose from a rich variety of theatrical events; call 482-BTIX for more info.

The ART's production of **Six Characters in Search of an Author** opens Fri., Dec. 5, at 64 Brattle St., Harvard Sq. It should be a goodie, especially for those of you who yawn at traditional dramatic form.

Get sucked into the action at **Shear Madness**, an audience participation whodunit, now playing at the Charles Playhouse Stage II, 74 Warrenton St., Boston. Help solve the murder of a classical pianist who lived over a hair salon in this, the longest running non-musical in the history of American theatre.

The Just Africa Gallery, 201 Newbury St., Boston, hosts a fashion show Sun., Dec. 8, 6:00 pm., featuring original works by Nigerian designer **Tunji Dada**. Come early and enjoy some complimentary refreshments. Try not to embarrass us by hogging all the hors d'oeuvres. 536-1648

Crafts at the Castle is back for its 11th year. A benefit for the United Way, this humongous crafts fair runs from Thu. Dec. 5 - Sun. Dec. 8. The \$10 admission buys you access to all sorts of stocking stuffer bargains: clay whistles, handmade paper journals, chenille sweaters, walnut cufflinks. At The Park Plaza Castle, Arlington St. at Columbus Ave., Boston. 523-6400.

The Harvard Film Archive devotes their weekend calendar to maverick filmmaker, **Rob Nilsson**. The director will be present at the premiere of his newest work, **Chalk**. Focused on a run-down pool hall, the film highlights the workings of various hustlers and passers-by as they move through the joint. With a cast including several homeless inner-city residents and dollops of hand-held camera-work, the work aims for grit and supposedly delivers. Fri. Dec. 6, 8:00pm, at the Carpenter Center for the Visual Arts, 24 Quincy St. 495-4700.

Aficionados of jazz, go see the **Either/Orchestra** at the Somerville Theater. Their first performance after a several-month hiatus, this group is renowned for an eclectic, flexible style. Their opening act is the **Jazz Mandolin Project**, a trio of gutsy promoters for the underappreciated mandolin. Thu., Dec. 5, 7 pm. 931-2000 for \$15 advance tix.

All you closet Party-of-Five fans, check out the **BoDeans** at Lupo's Heartbreak Hotel, 239 Westminster St. (off exit 22), Provincetown, R.I. 401-272-5876. Yes, Calendar knows this requires crossing state lines.

Reggae at the Western Front! **Island Sign** plays the old, classic stuff, Thu. Dec. 5. On Fri., Dec. 6 & Sat. Dec. 7, **Winston Grennan** funks it up with a drip line of ska. Indulge in a plate of jerk chicken and a bottle of Malta while you're there. 343 Western Ave., Cambridge. 492-7772.

What inspired **Slash** (brave defector of politically unstable **Guns n' Roses**) to name his new group **Blues Ball**? Was it the new smurf-colored M&M's? Probably not. See this new band perform at Mama Kin, 36 Lansdowne St., Boston. \$15 at the door. Fri. Dec. 6 at 9pm. 351-2424.

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Santa's Hat

By Alexander Boldizar '98

It was said of him, that he knew how to keep Christmas well.

— Charles Dickens

There have been columns which could be considered negative. Christmas, however, is on yonder side of exams so it is time for a positive tone. No jokes or time to find quotes about "brotherly shove" or about Santa stuffing stockings and pantyhose. Just good old fashioned positive spirit and lots of coffee, ginseng and guarana.

I wondered a little about how a lawyer gets into the Christmas spirit, so I looked up "positive law" in Blacks Legal Dictionary (at least it proved useful for something). It defined positive law as that body of law "specifically created and enforced by proper authority." Not very Christmasy. So I pulled up my stockings, snapped my suspenders and reconstructed the good/bad distinction (just for Christmas, of course). I rubbed my belly and thought to myself *potentia non est nisi ad bonum*. Well, if power doesn't exist except for good purposes then Black's definition, and what we call "positive law," not only lacks Christmas spirit, but also legitimacy.

Why? Every statute of so-called positive law ends with some kind of punishment, something bad. As the visiting alcoholic Thompson (I have great respect for alcoholics so long as they can still mumble coherently, which Thompson couldn't) said, "we are living in an era of punishment." You kill your roommate and the government kills you. Not very Christmasy.

I propose a new positive law for the Holiday Season. I propose that we do away with punishment. You steal Santa's hat, you get caught, you give Santa back his hat. Everybody's happy. But if you



don't steal his hat, you get a prize. Even more happy.

Although Hobbes has taken many beatings, our present negative system

still functions on basic Hobbesian assumptions that in the state of nature man's life was "solitary, poor, nasty, brutish and short." The strange thing about Hobbes is that he considered children to be the closest to this state of people-as-animals. Even though I don't want any, I would not consider children solitary, poor, nasty and brutish, although many of them are short. In fact, I think that part of what makes people so much more pleasant at Christmas is that they can understand, even if for only a moment, the things that children understand.

Hobbes went on to argue that limited benevolence, as our system could be interpreted, is not an adequate foundation upon which to build a state (or a legal system). He said "though the wicked were fewer than the righteous, yet because we cannot distinguish them, there is a necessity of suspecting, heeding, anticipating, subjugating, self-defending, even incident to the most honest and fairest conditioned." Hobbes always looked at masses and the evil that gets created by them, never at the individual and the potential goodness within.

So we have chosen to base our political philosophy around a collective neurosis, a local version of mutually assured destruction which in the end justifies the phone company asking for our social security numbers and an employer for a drug test. A neurotic might say "what about the bad bad bad incentive structure you're creating if all the bad person has to do is give Santa back his hat?" I have a response, I do, I do, I do! You give prizes

for doing good things rather than punishments for bad things and instead of ending up with a net loss, you'll make everybody happy.

Let us say, for instance, that I really want to kill my roommate or professor. Under the present system, if my fear of the law is greater than my wish to kill, I'll let my passions ferment and boil without doing anything. Ethics have been completely taken out of the equation, except perhaps as an adjunct for those too stupid or utopian to critique them. Under the new Positive law, however, I would go to court and present the reasons for wanting to kill, be they ethical, emotional, rational or whatever, as well as my plan for doing the dastardly deed. The better the reasons, and the greater the likelihood that my plan would have succeeded without my getting caught, the bigger a prize I would get for not going through with it. All those horrible numbered streets in New York, for example, could be named after people who would win such prizes. O.J. for instance, could have gotten the Dream Team to help him get 5th Avenue named after him, whereas some shmoe with a public defender could only go for 157th street. And there'd be no victims because, of course, you couldn't go to court if you actually killed someone.

Of course, either system has people on whom the incentives, whether prizes or punishments, don't work. When the law breaks down, the old system causes pain to two people, whereas the Positive law would cause pain to only one. Moreover, the old system, through its systemic ability to see only wrongs reinforces itself and its own wrongs. The new Positive law, although it would have some incentive problems at the point of transition, would reinforce the good. It would be a secular version of the medieval system of indulgences, except that they would be bought with goodness rather than money. Eventually we could

have an unholy day where we all beat the pulp out of each other the way we now have Christmas, and the rest of the year we could all be positive and happy while we drew up little plans to kill our roommates and greeted every bad act that they did with gratitude and joy, for if we accumulated enough tolerance perhaps we could meet Ed McMahon or get a tax break. But they, also eager for Ed, would try to do as many good things as well. Soon it would be as hard to find a bad act as it is now to find a parking lot or a smiling clerk at Christmas.

Criminal law would become the "law of passions," torts "acts of kindness," contracts "benefits," and property "gifts." If we insist on maintaining institutions which monitor our credit ratings, social security numbers and drug habits, then we could switch them over to monitoring our goodness, part of which, of course, could be *mens benevola* or intent. The bad things we do would be as off limits to them as the good things are now. Then we could really throw out Hobbes. This could be my Christmas gift to Posner, who would be very happy for he could now apply law and economic analysis to "the law of passions." It is surprising that he didn't come up with this idea himself. Coase, after all, proved that regardless of whether rights are allocated with good or with evil, the final amount of bad acts will be identical. The difference is whether we foster a happy and cheerful environment through our laws, or one of repression.

P.S. Write many haiku
Relaxing over Christmas;
Watching your tree fall.

Don't forget the horrible haiku contest. Write lots of bad haiku while studying and stuffing turkey and place them in my harkbox. The contest will be early next semester. Have a Merry Merry! I'll miss you most of all scarecrow!



In this final episode of the semester, Fenno proves that cooperative learning still exists at HLS. Stay tuned for next semester, when our hero stars in the Drama Society's new production, "The Emperor's New Clothes: The Arthur Miller Story."

Crawling through the ventilation shaft into Griswold Hall, Fenno took solace in the rumor that the Faculty Senate met less often than the French Estates-General and less effectively than the Polish Diet. If the faculty couldn't muster the numbers to form a quorum — let alone a tournament bridge team — they would never have the effort to waste bringing him before the Advisory Board. Anyway, cheating remained one of those sacred areas like threatening e-mail sabotage and sexual assault in which the administration maintained a position of leniency.

Jumping down from the ventilation shaft into his professor's office, Fenno recalled the origins of his plan. He was sitting at the new cyber-cafe in the Hark, reading the article on cheating in the National Jurist, when he realized that more than half of all law students cheat!

If that were the case, Fenno belonged to the minority. And Fenno despised minorities of all sorts. In addition, the pea-brained students he'd read about in the National Jurist had demonstrated why they attended second rate law schools like Virginia and N.Y.U. More often than not, they were caught. Only a blue-blooded Harvard student would have the audacity to steal copies

of the examinations in advance.

Fenno also had personal incentive to cheat. In the first place, it was the lynch-pin of his academic record and virtually all of his successful relationships; this was a bond he shared with most Democratic Presidents and Professor Elhauge. For Fenno's transcript from Yale was the product of a community college in Yale, Montana and some white-out left over from a fraternity party.

With these efforts and a photocopy of a thesis pulled from the stacks, Fenno transformed himself into a future-day Martin Luther King or Joseph Biden. Moreover Fenno had yet to purchase the textbooks for any of his classes; he'd been to the distribution center once, under the false impression that it's purpose ranged somewhere between a quartermaster's office and a narcotics den, but the truth had driven him away without so much as one over-priced outline.

Fenno suddenly discovered that he was not the only person in the room. Professors Hay and Wilkins, shirt-sleeves rolled up and sweat dripping from their foreheads, were busy attempting to open a desk-drawer with a silver letter-opener.

"Oh! It's only a student," Hay declared with startled relief. "We thought you might be somebody important."

Fenno lit a cigarette and introduced himself.

"You're here for the exam too, aren't you?" Hay asked, scratching his bald spot.

"Too?" Fenno inquired.

"Wilkins assures me that we do this every year. We make a point not to teach anything — civil procedure isn't a real subject anyway — and then we steal another professor's exam sometime in December. We know it makes thing difficult for you guys, but it's hard to balance our class schedules with the cocktail party circuit and our golf dates. Can

you help us out?"

Fenno immediately withdrew his copy of Arthur Miller's Civil Procedure video and popped it into a VCR. Within thirty seconds, the lock and virtually all the glassware in the office had been shattered.

"Boredom," Fenno explained. "Boredom, if strong enough, can break even an inanimate object. That's how Professor Shavell ended up the way he is."

Wilkins and Hay thanked Fenno immensely and scampered back into the ventilation shaft. Fenno then quickly skimmed the exam. Question #1, an analysis of judicial decisions during the Fillmore Administration, seemed forward enough — a no-brainer that called for the mention of efficiency three times and fairness once. In contrast, Question #2 — "Please State Rule Two of Civil Procedure" called for some basic knowledge. Mercifully, the examination was open book and a sample answer had been stapled to the back of the question sheet.

That Christmas, studying in the brothel in the basement of the faculty club, Fenno copied the sample answers several thousand times. He reproduced them in entirety on the day of the examination. And two months later, as he conspired to steal his spring examinations, Fenno patiently waited with his five-hundred fifty classmates as the registrar raised blooded pressures and distributed grades.

And Fenno's efforts were rewarded with a "B." Shortly thereafter, Professor Hay received tenure and a teaching award from the Association of National Gameshow Hosts and Professor Wilkins was granted a raise on the condition that he enroll in an ESL course. For, as Fenno had known all along, the government may only help colored folk and pointy-headed Jews, but God helps those who help themselves.

Quote of the Week

"Either the Harvard Law Library's 'Guide to Hate Groups on the Internet' was put up by dumb kids who didn't know better, or it was yet another typical in-your-face intimidation tactic, as in '... here's Hershowitz.'"

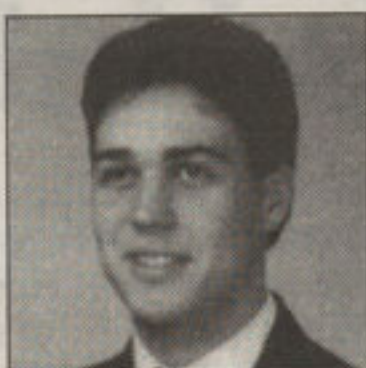
— Editor of Holocaust revisionist home page, on the source of HateWatch website.

SPORTSGUY

The Game?

By Todd Stillerman '97

Sports Editor



For over a century, the two most prestigious universities in the Western World have put aside academics for one Saturday in November. For at least one three-hour block, the gunners have put down the calculators, logged off the network, and sheathed the slide-rules only to wander down to Harvard Stadium or the Yale Bowl for "The Game." Fascinated by the concept of a rivalry so old and so storied, the SPORTSGUY found himself anxiously awaiting The Game to see what this grudge match was all about.

Visions of great football match-ups danced like sugar-plums through the SPORTSGUY's head: the Florida Gators and Georgia Bulldogs flocking to Jacksonville for the World's Largest Cocktail Party; the mass of raw humanity packed into Titan-sized stadiums for Ohio State-Michigan; the East-West showdown between Southern Cal and Notre Dame. Great football rivalries breed bets between governors, week-long pep rallies, and dynamite tail-gate parties. But most of all, they bring that overwhelming hatred for the arch-rival that seethes within the hearts of football fans. A hatred that leads ordinary people to do the unexpected: steal a mascot, paint a face, damage public property, or even kill small animals. Perhaps the SPORTSGUY is not being politically correct, but good football means crazy, crazy people.

A good example are the fine folks in eastern North Carolina that follow the East Carolina Pirates. East Carolina suffered through years of abuse as the bastard step-child of "national universities" like North Carolina-Chapel Hill and N.C. State. Carolina and State received the lion's share of legislative funding, while little E.C.U. struggled to make ends meet. Adding insult to injury, the E.C.U. football team was regularly thrashed by the powerful Wolfpack squad. Carolina showed even less respect for the Greenville campus, refusing even to play its sister school. Years of repressed anger toward the system surfaced about eight years ago in Raleigh in Carter-Finley Stadium as the Pirates upset the Wolfpack on its home field.

The result was pandemonium. Legions of fans clad in purple and gold stormed the field, felling both goal posts and transporting them (piece by piece) in a caravan of cars and vans all the way back to Greenville. Crazy Pirate fans ripped the sod from the field, taking nearly two-thirds of the playing surface as souvenirs. The E.C.U. faithful remained in the stadium for nearly three hours after the game, singing their alma mater and relishing the long-awaited victory.

To its credit, N.C. State officials behaved the only way a true rival knows how — THEY GOT TACKY. The Wolfpack athletic director announced that "due to the unseemly behavior of the East Carolina fans" and the damage rendered to the stadium, N.C. State was immediately canceling its regular series with the Pirates. The chasm that already existed between the two schools grew immediately wider. Four years later, a nationally-ranked E.C.U. squad rallied behind future-N.F.L. quarterback Jeff Blake to humiliate the Wolfpack in the Peach Bowl in Atlanta. But still, the Pirates sought to even the score.

Fortunately for the Pirates, the 1994 elections brought a wave of upsets in the legislative races. A state legislature controlled by Democrats since Reconstruction was

Legions of fans clad in purple and gold stormed the field, felling both goal posts and transporting them . . . back to Greenville.

seized by upstart Republicans, the majority of whom graduated from E.C.U. Vengeance came in the form of a legislative initiative to force State and Carolina to play East Carolina in football every year. The SPORTSGUY is serious on this point, sports fans: in with all the problems in the state that a new political order might address, the first item on the agenda was football revenge! Now that's a rivalry. Last Saturday, the Pirates drubbed the Wolfpack 50-29 in Charlotte at Ericsson Stadium, and despite torrential rains the game attracted the largest crowd ever to see a college football game in the Carolinas.

The SPORTSGUY, basking in the glow of an astounding Thanksgiving spread, commented to his mother he'd never witnessed a grudge quite so severe. But Mamma SPORTSGUY was quick to note that E.C.U.-State was only the most recent Carolina "grudge match." The SPORTSGUY's parents attended Furman University, a small Baptist college in South Carolina that once regularly whipped national powers like Clemson and South Carolina on the gridiron. A liberal arts college where the name Faulkner most certainly referred to William (not Shannon), Furman saved its greatest effort for its arch-rival, a state-run military academy known as The Citadel.

In the 1960s, Furman regularly got the better of the Bulldogs. Mamma SPORTSGUY remembers that the razzing Citadel students and fans endured after each loss reached mammoth proportions. Resentment and agitation boiled in the hearts and minds of Citadel cadets, until a fitting revenge was plotted. The results have become almost mythological, and recently were chronicled by Pat Conroy in his latest novel, "Beach Music." Though Mamma SPORTSGUY says Conroy gets a lot of the details wrong, the fiendish nature of the act shows the bile generated by a great football rivalry.

On the eve of the game, a squadron of cadets left the Charleston campus under the cover of night and drove the hundred miles to Furman in stealth. Dressed in battle fatigues, they crept onto the campus intending to steal the white horse upon which the Furman mascot, the Paladin, rode up and down the sidelines. Not expecting the horse to resist, the cadets accidentally poked out the horse's eyes — or so says Mamma SPORTSGUY. To Paladin faithful, the act was most certainly on purpose. In any case, Paladins today still blame the Citadel for the blinding of their horse, and the rivalry has grown more bitter.

And so it was with these true rivalries in mind that the SPORTSGUY eagerly awaited The Game, only to see his hopes for a glorious grudge match washed out like the Head of the Charles Regatta. This group of Ivy League elites actually behaved themselves and civility ruled the day. The SPORTSGUY met no Harvard alum who had named his dog Brian Dowling so he could kick it. The victorious Crimson faithful rushed the field, but not one alcohol-induced brawl ensued. Would anyone ever mention this little athletic exercise on the Senate floor? The SPORTSGUY doubts it. Perhaps this is how the Nina Totenberg crowd does athletics, but this just ain't football.

THE VERDICT

Star Trek: First Contact

By Michael Bennett '98

Movie Reviewer



Two weeks ago, Star Trek, that strange and wonderful brainchild of the late Gene Roddenberry, spawned its eighth movie installment under the title **Star Trek: First Contact**. The bulk of the film is concerned with the struggle between the crew of the *Enterprise* and an alien species called the Borg. For those among us who didn't watch the "Star Trek: The Next Generation" television show, the Borg may be a novel idea and a brief chronicling is most likely appropriate.

In the 24th century, an omnipotent being called Q sends the crew of the *Enterprise* several gazillion light-years away from home in an attempt to humble them. During this extended visit, the Travelers discovered the Borg. Though brief, the debut was titillating — I remember thinking they looked like lobotomized Tinmen who had been tarred and then poked in one eye.

Trekkers didn't see the Borg again until they decided to visit our own humble orb and acquire it for themselves. In a season finale episode called "The Best of Both Worlds: Part I," fans watched as one gargantuan Borg Ship, a huge cube, cruised into the center of Federation space (home of Captain Kirk, Captain Picard, and the good guys in general) and almost captured earth. Their plan was to incorporate terran technology and enslave humans. "Resistance is futile" was their rallying platform cry.

After kidnapping Picard and turning him into a Borg, they were poised to carry out their threats until Data, the resident android, stopped them.

In the following season's premiere, Data (Brent Spiner) infiltrated their computerized central nervous system and made them fall asleep. In a twist that reeks of Luddite-sympathizing, the synthetic nature of the Borg, their greatest asset, became their most vulnerable component. The late Mrs. Percy Bysshe Shelley would surely delight.

Now, two years after the show was canceled for want of proceeds that only the mov-

[W]e find the Borg returning to Earth again. Same objective, only better rested this time.

ing picture can provide, we find the Borg returning to Earth again. Same objective, only better rested this time.

When their frontal attack on our goodly planet fails, the would-be invaders travel back in time to conquer humanity at a period when it lacks the technological know-how of the 24th century. They decide to pick on the 21st instead.

There, humans are recuperating from WWII, the earth is in shambles, and survival of the species is even money. More importantly though, the Borg know from their intimate access to Picard (Patrick Stewart) that this is a very critical moment for earthlings: for one, Zefram Cochrane (James Cromwell II) is about to invent the warp drive, a device which will allow humans travel faster than light, and thereby change the course of humanity (until then headed down a very steep hill).

Secondly, the by-product of the invention and the use of warp drive is that alien space travelers in our solar system take notice and decide that if humans can travel faster than the speed of light, they can't be all bad. Subsequently, the aliens decide to suspend their survey mission and pay a visit to the planet. This collection of events brings about a planetary rebirth of love, compassion, invention and all that other good stuff. Needless to say, the Borg must be stopped.

Among the numerous plots, subplots and hints of subplots, most of which are of interest only to the hard-core trekker, there is one worth noting to the lay viewer. When Picard was captured by the Borg during the television series, he was not simply interrogated and tortured. He became a Borg through and through. Unable to prevent extraction of vital Federation info due to the collective consciousness shared by all Borg, Picard was instrumental in the destruction of 30-something starships and thousands of lives. So, understandably, more than mere victory, Picard wants revenge.

The screaming parallels between the violated starship Captain Picard and the mutilated sea ship captain Ahab is brought to his attention by Lily Sloane (Alfre Woodard), a friend of Cochrane's. Initially denying the comparison, Picard eventually pierces the rage and regains his composure.

Sloane's character is refreshing. She pokes Picard with reality checks at every opportunity and refuses to be intimidated by his rank. That she is a Black woman whom Picard obviously has romantic interests in is interesting as well, but, perhaps, again only for the trekkers among us. Recall that during the T.V. series when the crew of the *Enterprise* faced the Borg originally, Picard, usually a stoic figure who represses romantic urges, sought advice and comfort from Guinan (Whoopi Goldberg), another Black woman, albeit of another species, in whom Picard seems to be interested. Fetish or coincidence?

The only other character of interest in the film is the Borg queen. The very concept of a Borg matriarch rocks the mind when one considers their nature: interconnected, lacking individuality or any real hierarchy of position — the concept/word "I" had no meaning for the Borg until they met Picard et al. Atop that, the queen also has the ability to feel emotions, unlike the remainder of the Borg. But despite her anomalous nature, the female Borg is portrayed nicely by Alice Krige, most recently and fondly known for her co-starring role in the Brothers Quay film, *Institute Benjamenta* (1995). Krige's efforts are subtle and bring to the film one of only a couple of portrayals worth their mass (don't forget we're in outer space) in salt when compared to Patrick Stewart. The other is Michael Dorn who portrays Worf.

In the end, this one will probably come down to a measure of Start Trek affinity — if you liked the show, it's a must see, else stay home and study. It's that simple. Live long and prosper.

Rating:



UPON REFLECTION

I'm a 3L

By Calvin Gladney '97
Guest Columnist

I'm a 3L. I have classes Monday through Wednesday, none starting before 11 a.m. or ending after 4 p.m. Substantive class held at 9 a.m.? I'm dropping it. Don't they know I'll take Eastern Mongolian Jurisprudence in the 19th Century if it fits my schedule?

No offense to all you 8:30 a.m. professors, but look I'm a 3L.

Ask me if I'm interviewing again this year. I'll nod my head and proceed to mumble something about checking out non-law firm options and the like. But I bet I'll still see you in the firm next year, pal. Hypocritical? No, I'm a 3L.

I work out more, talk on the phone more, and do nothing more than you do. It's questionable whether I'm smarter than you. But I'm over the hump and you're not. So what if I "pass" in class? I'm not here to impress you anyway.

Anonymous grading remember?

As a matter of fact I might pass even though I've done the reading (or at least I've read somebody's outline from like 1992). I just can't be bothered cooking up an answer. Look Professor Whoever, I'm paying YOUR salary!!!

Can't handle that professor?

Sorry,
I'm a 3L.

Firm life sucks. Firm life is great. You can't beat the pay. Well I could make the same salary working two McDonald's managerial jobs and still work less hours...

And have all the Chicken McNuggets I can eat!

I agree with all the above.

Does that make me inconsistent?

Well look,
I'm a 3L.

I'm never around. I'm not in the Hark or the Hark Box Cafe. My Hark box fills up with garbage but I'm too anal to put up a little green tree to save paper. I run by the BarBri table because I'm scared to acknowledge the bitter truth:

I have to take the Bar.

I haven't given a bar review course one dollar worth of down payments even though it would save money.

Discounts are irrelevant my friend — the firm will pay because they remember that yes, I'm a 3L.

I had a "call-back" in Los Angeles during fly-out week.

I HAVE NO INTENTION OF WORKING IN L.A.

You figure it out. If you can't,
you're not a 3L.

I have a third year paper TOPIC. I don't have a third year PAPER. I've promised myself that I would finish the paper this semester yet I haven't done any research. I ignore those registrar notes in my box. Don't they know I don't check my Harkbox? I dodge my sponsoring professor's phone calls. Whose tuition dollars are funding who anyway? Just drop a couple of relevant articles in the mail, thank you. Well, maybe I'll finish it in the spring. Whatever, it will get done.

Change my attitude?

Please,
I'm a 3L.

You hated this article. You loved this article. It has made you cynical about your law school experience. You can't wait until your third year so you can slack off too.

In any case,

I'm on track to graduate,

my third year paper will get done somehow,

I have three shots to pass the MPRE,

and an offer's in the bag.

Your opinion means nothing to me.

Mainly because,

I'm a 3L.

Speaking One's Piece (or Peace)



By Judd Serotta '97

RECORD Columnist

Last month I attended an event which thoroughly embarrassed Harvard University, the speech by Christian Coalition President Ralph Reed at the ARCO Forum of the JFK School of Government. One wonders if such a fiasco could or would happen at the Law School should someone of his ilk choose to speak here, or whether such a disgrace was primarily the result of undergraduate immaturity. Regardless, there are clear lessons Harvard Law students should learn from the event.

For those of you who do not read the Crimson (I don't) and did not attend the event, let me briefly describe the events of the evening. Not surprisingly, the president of the Christian Coalition was poorly received in Cambridge. Before the speech, the Harvard Gay, Lesbian, Bisexual, and Transgendered (call me naive, but I'm still not sure what a transgendered person is) students passed out materials arguing against the Christian Coalition's positions. The materials were, admittedly, fairly informative though one must always view with skepticism leaflets handed out by left-wing opponents at conservative events. Nonetheless, the leafleting was clearly an appropriate response to contrary political views, although I have no idea what the ARCO Forum's policy is on that activity.

Sadly, leafleting was the end of the activists' propriety. In a concerted action, about two minutes into Mr. Reed's speech, about twenty protesters, strategically seated in the center of the auditorium, held high above their heads pleasant signs such as "Faggots go to hell," "Thank G-d for AIDS," and "G-d bless the Christian Coalition." The signs completely misrepresented Reed's views, but, more importantly, they showed a fundamental lack of respect for the speaker and the audience, which out of common decency had the right to hear Ralph Reed, an important figure in America's political life. There is no question that the goal was to divert attention from the speech, and the protesters surely succeeded. When asked to retract their signs out of respect for the other members of the audience attempting to see and hear Mr. Reed, they refused in spite of the allotted question time following the speech. To his credit, Reed continued to speak, missing nary a beat. The protesters held their signs for the entire 30 minute speech, and one must give them credit for their endurance if not their tactics.

Even more inappropriate, when questions began, rather than challenging Reed on his alleged view of homosexuality, the protesters chose to finally put down their signs. They began French kissing for upwards of twenty minutes. While, again, I admire their endurance, the tactics were truly disgraceful. After repeatedly being asked to stop by the event's moderator and refusing, they did the "go limp" routine and were carried away by Harvard security. Unflappable, Reed continued to answer questions, though few in the audience probably paid attention to his answers because of the alternate spectacle.

The display was disgraceful and, at the same time, counterproductive. I am quite certain that the protesters' actions did nothing to further the gay rights movement. Any person of moderation would have been disgusted by the scene and the lack of respect shown to the speaker. Heterosexual kissing in such a venue would have been equally inappropriate. Rather than winning converts, the protesters more likely lost potential sympathizers. Even more damaging, undoubtedly moderate and conservative closeted gays were probably made less likely to open themselves up to the world, fearing (justifiably) that "gay people" are, or at least are viewed, like these rude, tactless people. Thus, if the protesters' ultimate goal was to make homosexuality a more acceptable and accepted lifestyle, their tactics were disastrous.

Finally, there was one questioner of particular note. An English graduate student, she went on a two minute breathless tirade against Reed and "his type." Among other things, she accused him of being a gay-basher, a racist, a hypocrite, and a phony. While I applaud her use of speech to counter other speech, one has to question these tactics as well. For example, when Reed pointed out that Martin Luther King, in his Letters from a Birmingham Jail, noted that laws contrary to the will of G-d should be disobeyed as evidence of King's commitment to religion's centrality to a civil society, the response was "You're a racist."

The event was, in short, an embarrassment to Harvard University. Ralph Reed, I feel safe in saying, will never come back to Harvard. That is truly a loss, whether one agrees with his political agenda or not. I personally share only some of his views; I do not share his view that homosexuality is sinful (although I give him credit for never attacking homosexuals as "bad" people), and I am not a Christian. Nonetheless, his achievements and his thoughtfulness make him worth hearing. And, more importantly, common courtesy makes him worth hearing; he was an invited speaker and therefore entitled to relative silence from the audience and appreciative applause for his time. So of what relevance is this incident to Harvard Law School? Enormous. Very often, especially in first year classes, when students are at their most engaged, controversial comments (usually by conservative students) are accompanied by hissing from other members of the class. The hiss is a replacement for the counter-argument, and that is sad. And, as the RECORD tells us, the conservative population at HLS is growing; I don't think it is a coincidence.

In addition, our classmates deserve respect, however misguided their views. Meaningless epithets like "Racist!" or "Sexist!" or "Classist!" do nothing to further any cause, and they break down the collegiality that should exist between classmates. Contracts class is not a war to be won or lost; it is a forum to express ideas. What could be a more simple-minded idea than a hiss or an epithet.

A larger point is then raised, perhaps a point which will be the subject of a future essay: the breakdown of civil discourse. While the phenomenon has hit Washington with a vengeance only in the post-Ronald Reagan/Tip O'Neill era (the last true dueling statesmen), incivility has been a prominent leftist problem since at least the 1960s. Indeed, it is often ironic that some of the greatest defenders of the First Amendment are the most likely to exercise the "hecklers' veto." My suggestion to them, both from a tactical and a mannerly point of view, is to "Think Globally, Act Locally."

West has WestWeek Some have Rest Week

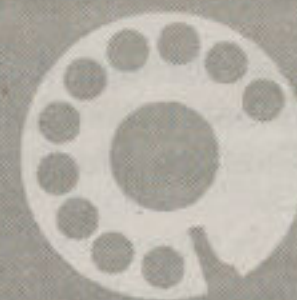
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JUST CAUSE

Gut Reactions

By Carla A. Halpern '97
RECORD Columnist

Welcome to the "holiday season." Now is the time when many of us stumble away from family gatherings stuffed to the proverbial gills with turkey, ham, eggnog, potatoes, sweet potatoes, chocolates, cookies, and four kinds of pie. We end up waddling back and forth between family and friends to stuff or be stuffed with more tons of solid goodies than we have eaten all year. And then we experience the associated guilt. All but the most ascetic or carefree of us will groan at the appearance of our bulging tummies and write "get in shape" or "lose the weight" at the top of a list of New Year's Resolutions. Especially the women.

Why? Being honestly in shape is a noble ideal and probably does make a person feel and function better overall. I do not want to attack the benefits of healthy living. Never having been in shape myself, I can't speak from experience. But I do know that far too often, "being in shape" is associated with not being fat and, for women, with being thin. The (so-called) fitness clubs and weight-loss clinics know this very well and offer all kinds of special deals in December and January. And I'd be willing to bet that sales of diet pills and potions go way up during the early winter.

But it isn't just the "holiday season" when we're told that fat equals ugly. Summer takes its toll too, playing on our embarrassments about what we look like at the beach or even in lighter colors and fabrics. Year-round, fat is the enemy. Nor is it just through the guise of fitness. Sexism takes center stage in the diet industry.

Men are supposed to be large, tough, and solid; women to be small, soft, smooth, and thin thin thin. Even cigarette companies, hardly the peons of fitness, cater to this image: women get Virginia Slims; men get Camel Wides. Think I'm joking? You can walk right into your local GNC (the "N" is supposed to be for "nutrition") and see posters for their miracle pills that will help women reduce and men expand. These posters are not subtle. They proclaim that with GNC products, women can "lose that extra weight" and men can "gain weight fast." You have to wonder whether the pills transfer the weight directly from women to men.

Talk to your female friends and relatives. I used to be proud that I had three female friends who had actually never dieted. Alas, that number is now down to one. The second of the trio is now fretting over the changes in her body since the birth of her two children. And the last — quick, graceful, and athletic — has finally been convinced by her parents that she is too fat. Too fat for what, I have to ask.

Dieting seems to come from two sources. One is obsessive self-hate. In this category are the "extreme" dieters — the bulimics and anorexics who binge and barf in

Too fat for what, I have to ask.

shame on the outer fringes of society. In the other category are the so-called "normal" dieters who reduce their calories for "health" reasons. But one really has to wonder whether these categories are so distinct from one another. Look through a "women's" magazine to see how the extreme has become normalized. You can find delectable recipes a page away from the diet ads and fads. How can we criticize extreme dieters when this kind of bulimic advertising is the norm?

"Dieting," as I use the term here, means significantly reducing calorie intake. Dieting is a form of self-induced (or societally-induced) starvation. One of the most common misconceptions about fat people — again, women especially — is that they could be thin but for a lack of self-control. But this is simply not true. There is no indication that fat people as a group are overeaters. Many of the health problems purported to be the result of obesity can in fact be traced to the act of dieting itself: depression, anxiety, fatigue, even heart trouble and continued gaining of weight. When the body thinks it is starving, it will do all it can to preserve its energy stores, including sapping energy from muscles and organs, and making weight loss as difficult as possible when the "starvation" is over. In other words, once a dieter goes back to a normal eating pattern, the weight climbs right back, higher than before.

Thinness is simply not a natural condition for some people. But fashion is often defined by what is unattainable. We live in a time where the upper classes do not have to worry about physical survival. Being fat no longer proves one's wealth, as it has in the past. Now, power is about being able to afford expensive diet pills and liposuction. Wealth means you can hire your own personal trainer. By contrast, poverty can mean a diet of fast, cheap, starchy, high-fat foods. Poverty is about lack of money, not of will. Dieting is not the solution.

On my wish list for the new year is an end to the obsession with food and thinness. There was once an advertisement for denim jeans which showed a woman struggling without success to get into the pants she loved as an adolescent. She is despondent, thinking she has gotten too fat. Finally, she tries the new brand and find that they fit perfectly. Slogan: "It's not a better body you need, it's a better pair of jeans." That advertisement was at least one step in the right direction. Unfortunately, it was not enough of a step to fix the brand name in my head. If it had, I might have bought a pair of those jeans out of pure gratitude.

Instead, I'll start by appreciating and enjoying this holiday food. Latkes and apple-sauce are first on the agenda.

Same As It Ever Was

By James Zanotti '99
Guest Columnist

Why is the legal profession always in such a big hurry all the time? No time for long explanations or discourses, just the barest facts and out. 'Gotta run. Have a power lunch at 12, tee off at 12:15, due in court 12:30.' It's pretty telling that Law Land's unit of currency is the 'brief.' I mean, we even have to make our abbreviations shorter than the other guys'.

Just imagine how hollow it would ring if society chose to follow our lead. Roe v. Wade is one thing, but Tyson v. Holyfield? Lakers v. Celtics? Sharks v. Jets? Wolverines v. Russians? No way! Somehow we need that "ersus" in there to satiate some latent psychological need for full description of a conflict. And how about N.E.2d? Afraid that keeping the 'n' in there might just make it just a little too understandable for a lay person?

Does this verbal riff sound familiar to you? I mean, sure, there's some originality to the idea, and it might even elicit a few chuckles or half-smiles from you as your eyes glance over it. But the structure is tiredly cliché. It belongs to that subgenre pioneered by Andy Rooney, Jerry Seinfeld, and countless others known as the "Did you ever notice..." category.

Another example. "Did you men ever notice how we naturally space ourselves whenever we use public urinals? It's an unwritten rule that you have choose a stall as far away as possible from whoever else is using the urinals at that time. If there are two people at opposite ends, you split the difference. So when I'm all alone at a urinal, and some guy comes up to the stall right next to me, I have to wonder."

This curse of simply echoing and restating the same basic ideas of those who came before us also applies to the situation that faces most of the people in the "first world" today: spending childhood shaping and honing themselves for that professional pigeonhole that awaits them, called, in the best sense of the word "irony," their career. A tired joke that loses mileage with each repetition. Nowhere does that prospect exist more fully, at least as perceived by virgin 1Ls not yet broken in, than in the legal profession. All of the torturous brain-wrangling of concepts and contradictions, the endless on-line research and writing, and the nerve-racking exam-taking of law school lead not to spiritual and material nirvana, but ... to a job at a firm where you handle someone else's cases from someone else's clients and do someone else's research and writing all for the glorification of ... someone else. Most grads of this school will do brilliant work at these places, and be brimming with originality, but their brilliance and originality will exist within definite bounds.

There is no need for the apologists to come out of the woodwork, I fully understand the financial and other pragmatic reasons for the way it works. However, it feels good to acknowledge the situation once in a while, even though it may be futile. One of the advantages of being a student is that you get to keep up the illusion that you are somehow immune from typecasting, that you exist somewhere outside the margins (1 3/8" and 3/8", for those of you wondering) of societal assimilation. Got some bad news for you. It's called growing up (see, I've already lapsed into my David Spade cliché). Sooner or later, each of us must decide whether they will play it safe, by the other guys' rules, or follow a more idiosyncratic path, with its accompanying risks. To go it alone requires constant focus, energy, and ability to persevere without the security of Status Quo.

Of course, as any good law student should already have been shouting at these inkjetted characters, it's not always black or white (although the characters might aver to that). There are varying degrees along the originality/conformity spectrum. For every failed innovator like Woodrow Wilson, there's a failed automaton like Gerald Ford. But when you combine a forward thinking guy with one who knows how to play by the rules of the game, you get FDR (Presidential analogies cliché). So, like everywhere else, there's something to be said for a happy medium.

Each person gets to decide where they fit in on that spectrum, at least until (insert random W.W.II dictator reference cliché here — Uncle Joe, Il Duce, Mein Fuhrer, or Chairman Mao) gets a hold of this place. The most important thing is for you to stay aware of what your choices mean, and make sure you can reconcile those choices with your self-expectations. Billy Corgan acknowledges that he is somewhat of a sellout, Kurt Cobain never could (alternative rock cliché). Whatever we do once we graduate, whether it's in the public or private sector, there will be forces compelling us to assimilate. By accepting some of the more superficial aspects of those forces, while keeping our internal compasses intact, we can navigate a course through the professional jungle, and maybe even break free from the chains of convention once in a while and help some underdogs while we're at it (mixed metaphors cliché).

Well, I'm about to wind up my pithy, cloying, pedantic law student-facetiously-moralizing-against-the-dangers-of-the-real-world-that-he's-never-seen cliché. Just one more thought: Idiosyncrasy is never idiocy (tip o' the cap to Mr. Christian Andersen).

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QUESTIONS EVERY LAW STUDENT SHOULD ASK

QUESTION 1: *How many years has the bar review course been preparing law students for the bar exam?*

QUESTION 2: *How many students from your law school did the bar review course prepare for the bar exam last year? How about the year before?*

QUESTION 3: *Who are the lecturers and how long have they been teaching in a bar review course?*

QUESTION 4: *How many practice essay questions does the bar review course provide? How many have model answers? How many have only student answers containing incorrect law?*

QUESTION 5: *Does the bar review course provide a simulated multistate exam at the actual test site of the bar exam?*

QUESTION 6: *Does the bar review course provide a written post-course study schedule? If yes, does this schedule prioritize your study for you or does it merely tell you to "Read all your notes-Read all your books"?*

QUESTION 7: *Who are the directors and how long has each been administering a bar review course?*

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