



BLSA's Fourteenth Annual Spring Conference panelists discuss their perspectives on policy and law

See BLSA Conference, page 5

Hanson Joins Tenured Ranks

By Seth Persily and Jaclyn Liu

After a five-year process, Harvard Law School extended an offer of tenure last Friday to Prof. Jon Hanson, the first of seven professors currently eligible for tenure.

Hanson greeted the news with gratitude and relief. "Of course it is a terrific honor to be voted tenure at such a prestigious law school, but more than anything I feel relieved that the process is behind me and grateful to the many people who have been supportive."

While Hanson remained guarded until the end — "... we were cautiously optimistic going into Friday, prepared for the

worst," he said — he admitted to a modicum of elation afterwards.

"[There is] a little of an 'I'm going to Disneyland' feel," confessed Hanson as he prepared for a postponed vacation after the happy news.

The tenureship process begins with the six-member Lateral Appointments Committee compiling a comprehensive file on the candidate. Next, the Committee must give a unanimous recommendation before the entire faculty vote on the candidate.

According to Professor Weiler '65, Chairman of the Lateral Appointments Committee, the decision to grant tenure was unanimous, "not only by the

Please see HANSON, p. 4



Evening Modem Access "Impossible" for Students

Cyber-Cafe Ethernet Connections Remain Inoperable

By Rob Friedman

Despite growing student outrage over the inability to access e-mail and on-line services during the evening hours, Informational Technology Services (ITS) Director Susan Vik has not yet resolved the issue and ITS officials have suggested that the problem is not theirs to remedy.

Several students told the RECORD that they have complained to ITS about the lack of access after encountering more busy signals than connections. Many of them complained that they received busy signals more than 80 percent of the time, and suggested the e-mail system is unusable during the evenings.

"I dial into the Internet server and find this to be absolutely atrocious," said Erik Gerding '98. "It would not be an exaggeration to say that I get through less than five percent of the time."

Other students agreed. "I have my computer set up to dial 10 times in a row if it gets a busy signal, and sometimes it dials all 10 without one success," said Elaine Weiss '98. Neal Potischman '98 said

that it was nearly impossible to get in after 6 p.m. "I need to try 20-plus times to have any hope of getting through."

Ben Wells '98 said the delays interfered with his responsibilities as an undergraduate teaching fellow.

"I often end up not being able to notify [my students] of schedule changes, etc., in a timely manner because I can't connect until the next morning," he said.

Many returning students were confused by the change from last year.

"I'm wondering if they've reduced the size of the modem pool after installing those ethernet connections," said Peter Guy '98. "Last year, I never got a busy signal, even at peak times. This year, I get busy signals all the time, which I suspect is due in part to the current 1Ls using the Internet and e-mail more, but which can't wholly be explained by increased demand. They must have shrunk the pool."

On March 20, Vik sent an e-

Please see E-MAIL, p. 3



Harald Halbhuber LL.M. '97 uses one of the Macintosh terminals at the Cyber-Cafe

Students Seek to Establish Criminal Law Journal

Organizers Must Deal With Moratorium on New Journals

By Eddie Grauman

A group of students is organizing in hopes of forming the Law School's first journal devoted specifically to criminal law. While there appears to be adequate student support for the project, the organizers face an uphill battle to obtain approval for the project over the administration's moratorium on new journals.

About 35 students attended a meeting last week regarding the effort to establish the journal, according to co-organizer Jason Young '99. "We had a lot more interest than we expected," said Young. Prof. Charles Ogletree '78 also attended the meeting in order to discuss the journal and to show his support, according to Young.

Young and Peter Keith '99 began the effort in an attempt to fill what they see as a gaping omission in the subject matter covered by Harvard's numerous journals. "When people come to law school, their conception of law is primarily in the criminal field," said Young. "We feel that as a preeminent law school, HLS

should have a journal devoted to the topic. Given the strong student support and vast amount of publishable material, we think there's a strong possibility of getting a journal."

While the journal is still in its formative stages, Young sketched out a general outline of its proposed format. As with other journals, the main focus

would be on scholarly articles, he said. However, the journal would also place more emphasis on student-written pieces, interdisciplinary articles (from fields such as psychology and economics), and practitioner-written pieces.

Regardless of student and faculty support, the journal still

Please see CRIM, p. 5

Lewis Chosen as 1997 Class Day Speaker

By David Liu

Prefacing their comments with the words "At Last," the 1997 Class Committee announced Monday that Anthony Lewis — New York Times columnist, Pulitzer Prize winner, and former Supreme Court reporter — will speak to HLS graduates on this year's Class Day on June 4.

"It's been a long process and we're really excited about finally having a speaker," said First Class Marshal Shelby Carter '98.

Lewis's ties to Harvard go back to his undergraduate years at Harvard College, from which he graduated in 1948. Lewis then joined The New York Times, where dur-

ing his 49-year career he has risen from desk editor to Supreme Court reporter to chief London correspondent to his present position as columnist.

Lewis's relationship with the Law School goes back to the 1956-57 school year, which he spent at HLS in a special program for journalists. Lewis was then the Times' Supreme Court reporter.

When contacted in London, Lewis said that he still remembered taking Civil Procedure, Constitutional Law, Federal Courts, and a seminar on Constitutional Litigation.

"I had wonderful professors," he said. "Benjamin Kaplan, Albert Sacks '48,

Please see LEWIS, p. 12

Over 500 1Ls Get Their First or Second Choice Bundles

By Seth Persily

Judging by the number of students who were admitted into their top choice classes, the new experimental bundling system seems to have been a success. According to the Registrar's office, 457 students got their first choice bundle, 45 their second choice, 18 their third choice, and 38 their fourth choice.

Many attribute this to the fact that the different bundles were, for the most part,

evenly balanced and equally appealing. The only exception seems to have been Bundle 3, which a disproportionate number of students chose last, thus causing more students to get their fourth choice than their third choice.

Said Registrar Stephen Kane, "I think it was very successful. Profs. Rakoff '75 and Sander '52 really deserve credit for how they packed the bundles. It exceeds my expectations that over 500 students got their first and second choices."

5 Years Ago at the RECORD



Harvard Law RECORD

America's Oldest
Law School
Newspaper

Volume 94, No. 8

Cambridge 02138

Friday, April 17, 1992

Faculty Offer Adds to Hostility on Campus

By Johanna Davis

At the faculty meeting on April 10th, the Appointments Committee voted to offer a White male a tenure track position on the Law School faculty while rejecting a White female candidate for a similar position. The Committee made the decisions oblivious to student protesters engaged in a silent vigil for greater faculty diversity outside of the meeting in Pound Hall.

The Administration and Faculty members have resisted efforts to confirm the story. Professor Paul Weiler, chairman of the Appointments Committee, refused to return five RECORD phone calls. Professor Duncan Kennedy also refused to return RECORD calls. Professor Randall Kennedy was contacted but adamantly stated he had "no comment." Professor Mary Ann Glendon hung up on a RECORD reporter attempting to confirm the story. And Dean Robert C. Clark was "too busy" to talk.

The stonewalling comes in the wake of increased tension and breakdowns in communication between faculty and students urging diversity. Peter Cicchino '92 stated emphatically, "I cannot see why the Administration has refused to comment unless they are ashamed of their actions. This is just part of a growing hostility displayed toward students."

The atmosphere of hostility is infectious, and many perceive the problem as more than mere public relations. Dean Clark's notorious quote in the *Wall Street Journal* which dismissed minority students' protests for diversity as an exercise in "self confidence," enraged students. Keith Boykin '92, who held a press conference yesterday addressing calling for Dean Clark's removal, among other things, claimed Clark's comments "insulted and attacked every minority student concerned about the shocking narrow-mindedness and homogeneity of a 95% White, 90% male tenured faculty."

The hostility is not merely verbal. Last week, David Sanchez '92 who had been observing but not participating in the sit-in outside Dean Clark's office was assaulted by Associate professor Howell Jackson. According to witnesses, the professor shoved Sanchez as the two of them passed on the stairway. When another student followed the professor to his office and asked why he had attacked the student, the professor responded, "He was in my way," and slammed his office door in the inquiring student's face. Sanchez has not yet decided whether to pursue the matter with the Administrative Board.



Students hold silent vigil outside faculty meeting.

Ad Board Moves Against Students

By John Regis

The Administrative Board this week began preliminary proceedings against both the "Fried Four" and the "Griswold 9." Letters informing the students that they had been "tentatively identified as participating in an incident" and that the "Administrative Board will soon be considering whether to issue formal disciplinary charges in connection with [the] incident" were sent by Federal Express to the Griswold 9 on Thursday, April 9 and to the Fried Four on Friday, April 10. The letters informed the students that they had until Monday, April 13, at 5:00PM to submit a statement before the Ad Board proceeded with further action against the students.

The Fried Four allegedly silently protested before Professor Charles Fried's Office on April 7, and the Griswold 9 allegedly took over the Dean's Office for more than 24 hours last week. Both groups acted to protest HLS' poor record on faculty diversity. Students are watching their cases closely, sending "an enormous number of letters" to the Ad Board, according to Dean of Students Sarah Wald. Most of these letters have pled for leniency, and while Wald did not state whether the Ad Board was considering the letters in their deliberations, she noted each Ad Board member read each letter, and that she "appreciated getting the letters."

Barry Langman '93 said more positively, "While campus opinion doesn't factor in directly, we do take it into account to some limited extent. We are getting letters from student organizations and we are considering them."

Please see **AD BOARD**, page 2

Revue Sparks Outrage

Parody 'Vicious and Indefensible'

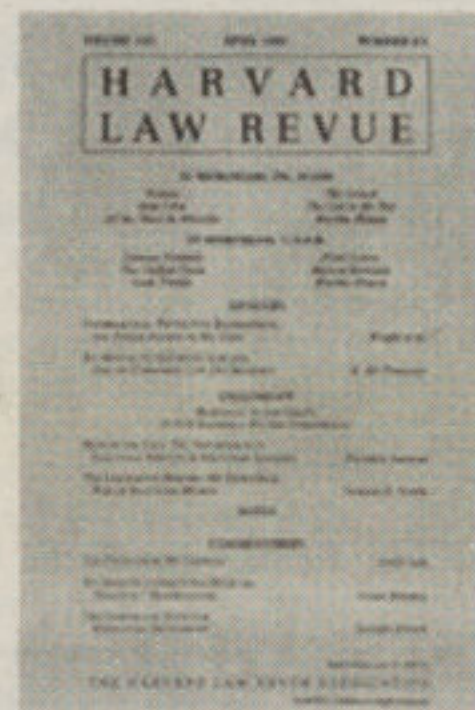
Campus Roiled in Pain and Anger

By Steve Yarian

By Glennis Gill

As we reported last week, Professor Charles Fried's remarks as Toastmaster at the annual *Law Review* banquet generated a lot of heat. However, what we were unaware of at the time, and what has become painfully ubiquitous in the Law School community and beyond, is that the Review's parody issue, the *Revue*, distributed to the limited audience in attendance at the banquet, has made Professor Fried's remarks look like small potatoes on the controversy scale. This year's spoof edition has touched off a major protest, a seemingly endless paper trail, heated exchanges between students and students, and students and faculty members, national media attention, and a call for disciplinary measures against the Review members primarily responsible for writing the parody of an article by the late Professor Mary Joe Frug. Sadly and ironically, the disparaging parody was distributed exactly one year after Professor Frug was murdered.

The controversy started when the *Law Review* began debating in January whether or not to publish an uncompleted article by Frug entitled "A Postmodern Feminist Legal Manifesto." The debate pitted two staunch factions on the Review against one another. One faction won the debate, and the article was published in the March issue of the Review. But it didn't end there.



The fall-out from the *Revue*, the so-called "parody" issue of the *Harvard Law Review*, has been tremendous as any student who has bothered to check their Hark box in the last week can attest. Coming from students, professors, student organizations, and Review members themselves, the outpouring of emotion has been overwhelming.

Although the *Revue* was distributed at the Review's annual banquet on Saturday, April 4, the reaction didn't begin until Tuesday and Wednesday, April 7th and 8th. It was then that a select group of students and professors received three anonymous pages taken from the *Revue*. Page one was the cover of the parody, page two was the banquet program, and the third page was the first page of a commentary by "Mary Doe." Although it is unclear who disseminated these three anonymous pages, it seems likely that the person(s) who did this wanted to make it a public issue.

On Thursday afternoon an *ad hoc* group met and decided that since the faculty already knew about the parody and it was fast becoming a public issue, they would write a response.

Entitled "We Will Not Laugh, We Will Not Be Silent: A Response to the Harvard Law Review's Attack on Professor Mary Joe Frug," the collection of essays written by nine third year students and one staff member demonstrated what an "ugly, hateful piece" the Review had published. Andrea Brenneke '92 wrote that "we are shocked and appalled at the spitefulness and misogyny on many members of the Review and the complicity of others."

The writers succeeded in getting their reaction together before the start of the Crit Networks Conference—a conference of Critical Legal Studies scholars, students, and other interested parties—on Friday afternoon and distributed it to those attending the conference as well as to students through their Hark boxes.

The reaction by those participating in the conference was fast. At about 6PM on Friday evening, a group of roughly 75 people met outside of Pound Hall. According to Marilynn Sager '92, very few of the people there were students. The original idea was to go and stand outside of Gannett House, but word came that the *Law Review* was meeting in Langdell South so the group moved over to Langdell.

One scholar attending the Crit Conference wanted very much to go into the meeting to express her outrage. Before any group decision could be made, the woman went inside to confront Emily Schulman '92, President of the *Law Review*, who was running the meeting.

Please see **TORRES**, page 13

Please see **REVUE**, page 3

Torres Accepts Post at U. of Texas

By Eric Blair

Gerald Torres, the Latino Professor who taught Property and Environmental Law at Harvard Law School during the 1991-1992 school year, recently accepted an endowed professorship at the University of Texas Law School in Austin, Texas. He becomes the first tenured Latino professor at UT. The chair he is to assume is the H. O. Head Centennial Professorship in Real Property Law.

Torres' area of expertise is Environmental Law. He is currently helping Japan and South America deal with their environmental concerns, and is working on an article describing the failure of USDA to curb agriculturally related environmental problems.

Torres has been selected Hispanic Professor of the Year by the National Hispanic Bar every year the award has been in existence, and is currently working on expanding the work he began at the University of Minnesota. There he established the Agricultural Law and Policy Institute which surveys farmers about their agricultural concerns and organizes seminars for state legislators. He plans to broaden the scope of the Institute's work while at the University of

Texas.

During his tenure at HLS, Torres won the support of members of the faculty as well as his students. Professor Frank Michaelman described his conversations with Torres as "enriching and enlightening." He holds Torres "in very high esteem as a legal thinker."

Assistant Professor Charles Ogletree describes Torres as "an outstanding teacher and scholar who is engaged in some ground breaking work in Environmental Law."

Todd Hartman '93 describes his former Property teacher's strong background in Agricultural Property Law as indicative of a diversity of scholarship which Harvard currently lacks. Hartman feels that this diversity of ideas would enhance the Law School curriculum as would the addition of a Latino professor to the faculty.

The third of seven children, Torres was the first in his family to graduate from college. He attended Stanford University where he was nominated for the prestigious Dinkelspiel Award. The award recognizes contributions to undergraduate education. Additionally, he was also only the seventh Mexican-American graduate of Yale Law School.



Prof. Gerald Torres.

Environmental Law Society Pushes For Recycled Paper

By Seth Persily

Members of the Environmental Law Society's Action Committee are attempting to persuade the Law School to use recycled paper as the default paper on campus. Currently, HLS uses non-recycled paper in photocopy machines as well as in the Copy Center.

To date, the Action Committee has collected approximately 275 signatures in a petition drive on behalf of the initiative.

Paul Upson, assistant dean for finance and operations, noted that there have been previous student movements to promote the administration's use of recycled paper. He said that money "is the primary impediment" to making the change.

Currently, HLS gets its paper from two sources, Harvard Printing and Publications Services (HPPS) and Staples Office Supplies.

While HPPS sales representative Peter Hamel explained that "pricing on paper fluctuates with the market," at press time, recycled paper from HPPS would cost the Law School approximately 32 percent more than it currently pays for non-recycled paper.

Upson said that while he needs to look at the figures in more detail, a 32 percent increase in the cost of paper could burden the Law School budget. "If the difference is not very much we would certainly switch. For five-thousand dollars a year we could switch without a problem, for fifty-thousand dollars a year I'm not so sure I would advocate it," he said.

Chris Peters '97, co-chair of the Environmental Law Society's Action Committee, remains unconvinced that HLS lacks the money to purchase recycled paper. Said Peters, "My opinion is certainly that it is not too expensive for the Law School. I understand that resources are scarce, but I think that the money could be found for this somewhere." He added that "with something as important as our environment, I'd like to see the Law School be in the vanguard."

Tanya Bartucz '99, a member of ELS, echoed the statements of many at HPPS by noting that recycled paper may be more expensive at first, but "if enough people use recycled paper, the price will drop."

Bartucz added that while a 32 percent increase in the cost of paper may seem significant, the amount of money the Law School spends on paper constitutes such a small percentage of the total budget that HLS could switch to recycled paper without it having much of an effect on the School.

This idea was echoed by Ted Sichelman '99, who roughly calculated that if 2,000 students each consume 3,000 pieces of paper annually, it would only cost the law school \$8,520 more to use recycled paper (this figure was based on prices supplied to the RECORD by HPPS). Recycling 6 million pieces of paper would also help reduce the price of recycled paper as a whole.

Aside from financial issues, some claim that there is also a difference in quality between virgin and recycled paper. While Hamel assured that "The difference in quality is not significant," Mark Troin, Customer Service Representative of the Law School Copy Center, stated that "[recycled paper] is made of shorter fibers... and that tends to affect the way it goes through machines, it absorbs humidity more readily, and it doesn't tend to hold up under the stresses of printing as well... They're not insurmountable issues, but they are things to keep in mind." Troin said that many of these problems could be abated by using recycled paper with a smaller percentage of recycled fibers.

Upson noted that although HLS does not use recycled paper in its public photocopy machines or in the Copy Center, "some departments within the Law School do use recycled paper within their individual departments for their local copier." He added that "We haven't put out a directive one way or the other that they should or shouldn't [use recycled paper]," and thus these individual departments are currently permitted that choice.

Congressman Hyde, Abortion Opponent, Speaks at Law School

By Timothy Kiefer

U.S. Rep. Henry J. Hyde, one of Congress' foremost abortion opponents, spoke Saturday morning at Ames Courtroom. His speech was part of a symposium on abortion, civil liberties, and the law sponsored by the HLS Society for Law, Life and Religion.

"We are coming to the end of the bloodiest century in recorded history," said Hyde, an Illinois Republican. "You just have to look at the people who have been involved in shaping that history — Hitler, Pol Pot, Idi Amin."

Hyde then compared this history to that of abortion.

"It is estimated by people who have a talent for these things that about a mil-

lion and a half abortions every year have occurred after the adoption of *Roe v. Wade* in 1973. So by the end of the century maybe 45 million abortions."

A rumored protest of Hyde's speech by Harvard College pro-choice activists failed to materialize. The crowd of about 100, made up mostly of non-students, was overwhelmingly sympathetic to Hyde's pro-life views.

The absence of any protest broke a pattern of conservative speakers at Ivy League universities being disrupted by protesters. A few days before Hyde's speech, students at Yale punched and pushed the editor of *National Review* as he left a speech there. The president of Yale's Asian American Students Association was charged with breach of the peace in connection with the incident.

Last November, gay rights activists staged a "kiss-in" during Christian Coalition President Ralph Reed's speech at the Kennedy School. The protestors were removed by Harvard security.

During a question period after the speech, Hyde said that he expects President Clinton to veto the ban on partial-birth abortions recently passed by Congress. Hyde said that there is a veto-proof majority in the House, but that the Senate is believed to be about four votes short of the number needed to override a veto.

In his speech, Hyde criticized the pro-choice movement for "being fraudulent and having been born in lies." Hyde said that the pro-choice movement's claim that "10,000 women a year died from il-

legal, botched abortions" was invented by a pro-choice activist because "it was a nice, round number."

Pro-choice claims that pro-lifers care only about the unborn are also false, Hyde said.

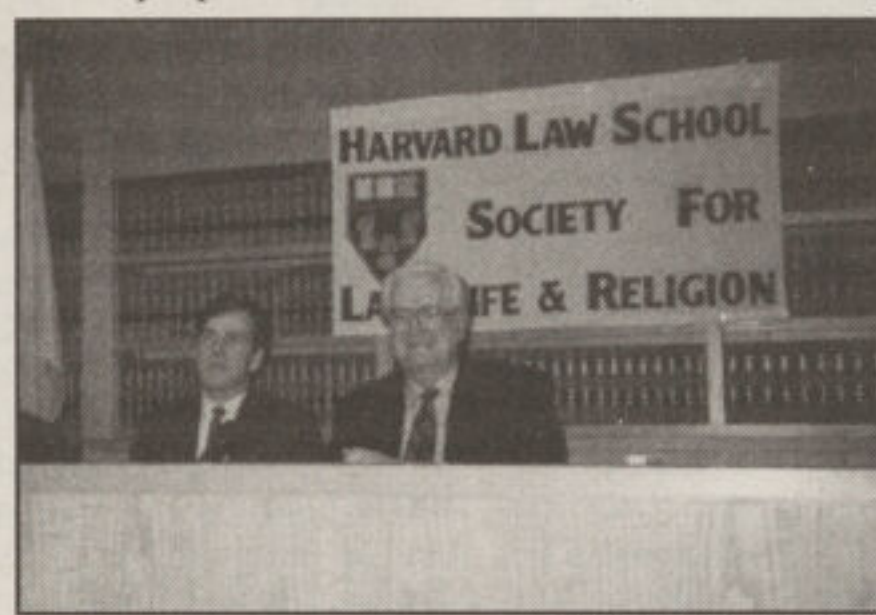
"The most common lie is that we pro-lifers don't care about babies after they're born... There are 3,000 pregnancy centers, care and counseling organizations, at least 3,000, across the country."

There should be no question that a fetus is a human being, Hyde said.

"Everybody knows that's a little member of the human family," Hyde said. "No woman has ever given birth to a guppy or to a goldfish or to a golden retriever."

Hyde is best known nationally for the Hyde Amendments, which prohibit federal government funding of most Medicaid abortions. He represents a district in suburban Chicago and has served in Congress since 1974.

Other speakers at the Saturday symposium were attorney Steven T. McFarland, the director of the Christian Legal Society's Center for Law and Religious Freedom, and Kay Coles James, the dean of Regent University's School of Government. The symposium was moderated by Prof. Mary Ann Glendon.



RECORD Photo/Timothy Kiefer

Henry Hyde speaks on abortion at symposium

Students Frustrated by Continuing Connection Problems

Continued from E-MAIL, p. 1

mail message to all students saying that the problem would be fixed by April 4. The situation failed to improve, and on April 4, Vik published an identical message in the Adviser promising that the problem would be fixed within another two weeks.

Vik did not respond to repeated phone messages seeking comment.

"As many of you already know, usage of the modem pool for off-campus access to the network has grown to the point that obtaining access during the 7 p.m. - 1 a.m. period is difficult and sometimes impossible," Vik wrote in the messages.

Vik stated that the problem would be fixed.

"The equipment is now being tested, results look good, and the new equipment is expected to go into production within a couple of weeks," she wrote.

In the duplicate messages, Vik suggested that off-campus users could travel to the Hark to utilize the Cyber-Cafe. Students who tried this option, however, found that the Cyber-Cafe ethernet connections have been inoperative since the Cyber-Cafe opened last

fall, despite a claim in the Fall 1997 Bulletin that "students grab a bite to eat and pull a stool up to one of several networked computers, or plug in their laptops to check e-mail or surf the Internet."



Susan Vik

"I have never seen anyone plug into the ethernet at the new Cyber-Cafe with their laptop," said Matthew Freedman '99. Freedman said that the ethernet ports were inoperative when he attempted to use them, and was told by employees at ITS that the jacks were currently inoperational and would not be functional until the modem pool problem was fixed.

RECORD attempts to utilize ethernet connections at the Cyber-Cafe were similarly unsuccessful.

"Given that the HLS administration is publicly hyping the Cyber-Cafe to alumni and touting plans to establish ethernet connections around the campus, it is important to note that no such access is available at this time and making the connections work is a low priority for ITS," Freedman said.

Some students resented being told that if they wanted to access their e-mail in the evening, they'd have to make a special trip on-campus. "ITS's sugges-

tion that we use the Cyber-Cafe is practically useless to people who don't have laptops," said Raff Muilenburg '97. "This message sounds like a smokescreen to mask the fact that they're not taking their commitment to providing adequate access to students who live off-campus seriously."

Several students, including Freedman, said that they were told by ITS officials that the problem was not theirs, but one to be fixed by FAS.

"I asked one of the Law School computer technicians about the problem, and he said that the problem is with the FAS modem bank, not with the Law School," said Wells.

Indeed, in an e-mail to Freedman, ITS Systems Administrator Deb Alpert wrote that "there is little we at ITS can do about this because the modem pool is administered by the FAS..." Responding to a RECORD request to speak with Alpert, however, an ITS employee said that "she isn't the person to speak to on this," and referred questions to Vik.

Freedman said that he e-mailed FAS, and was told by Bill Ouchwark of FAS Network Operations that ITS, not FAS, makes "final determination[s]... for any service improvements on behalf of their users."

"Each office is apparently convinced that the other part of Harvard Univer-

sity is responsible," Freedman said.

As administrators pass around accountability for the problem, students are questioning the administration's dedication to integrating technology into the legal education experience.

"[A]n increasing number of professors are using on-line components to their classes," said Potischman. "If the Law School is going to encourage professors to use the web and require students to access it, they need to make it available."

"This lack of accountability is surprising since HLS is moving quickly towards replacing essential course and research materials on-line," Freedman said. "Wouldn't this trend argue for making someone accountable for the technical details?"

David Park '99 said he switched to an Internet service provider after becoming "increasingly frustrated" with Harvard's e-mail service. "It's ironic that this year when we don't have a library and Harvard is pushing people to use electronic communication and research via the Internet that it doesn't provide access for people off campus," Park said.

Park said he uses the Channel One service, and pays about \$10 a month for the extra e-mail service. Other commercial Internet service providers in the area are Netcom and TIAC.

Weiler Defends Limited Scope of Student Involvement in Faculty Hiring Process

Continued from HANSON, p. 1

committee but by the ... faculty present at the vote."

"I think it's great. We are delighted to have offered tenureship both to an outstanding scholar and a committed teacher," said Prof. Elizabeth Warren, expressing the sentiments of many Committee members on the decision.

While the details of the Lateral Appointments Committee's considerations are kept strictly confidential, there are a number of broad factors which go into the final decision, chief among them being teaching ability, scholarship, and citizenship.

Regarding teaching ability, Weiler said that Hanson "[w]as one of the highest ranked teachers in the school."

Dean Todd Rakoff '75 agreed. "[We are] delighted to permanently add to the faculty someone who's teaching is so appreciated by the students. He is clearly a thoughtful teacher who spends a lot of time planning classes and talking to students after class..."

Elaborating on the process for evaluating a professor's scholarship, Committee member Prof. Robert Mnookin '68 said, "[E]very member of the Committee reads every work the person has done. We solicit comments from scholars around the country and other members of the faculty are encouraged to read and comment on their works."

According to Weiler, "[Hanson has] some 700 pages of scholarly articles pub-

lished in his first five years of writing. He's got 5 or 6 other projects at various stages of progress right now. He's very productive. Even though I disagree with some of his conclusions ... I always find the work from pages 1 to 100, at least, very insightful."

As for the third consideration, "citizenship," Mnookin added, "[It] is a shorthand for a person's willingness to do their fair share of governance of the school — [the] variety of committees and activities that the faculty participate in in addition to what they do in the classroom."

The current members of the Committee are Dean Clark '72, and Profs. Weiler, Hal Scott, Duncan Kennedy, Warren and Mnookin.

Many students similarly greeted the news of Hanson's tenure with enthusiasm. "I couldn't be happier because he has a lot of qualities that we need in our faculty in that he is dedicated, approachable and very much in touch with our concerns," said Douglas Kysar '98, a previous student of, and a teaching assistant for, Hanson's Tort class.

"It's great to see that a professor whose office hours are always oversubscribed and is obviously very liked by students get tenure," said Jim Brennan '99.

This reaction of the students differs markedly from past years when many students were dismayed by appointment decisions for what they perceived as the faculty's willingness to sacrifice students' desires for personal and political considerations.

During the mid-1980's, three highly popular liberal professors — Clare Dalton '73, Ziporrah Wiseman and Daniel Tarullo — were denied tenure; another, property expert David Trubek, was denied a lateral appointment when then University President Derek Bok overruled a majority of the faculty. Additionally, in the early-1990's openly gay professor William Eskridge was denied a tenure-track appointment despite his high level of scholarship and commitment to the student body.

This series of faculty decisions led to accusations from many student leaders of gender and sexual orientation-based discrimination as well as political intolerance, and undermined the faith of the student body in the appointments process.

On this subject, Weiler said that the Committee did seriously consider student input. "Students are in a position mainly to give us insight into the teaching side. We not only got bare BSA numbers, but we interviewed about 20 students, selected at random, in depth. I found it was a very good experience to put that kind of perspective into the process."

Weiler, however, expressed wariness at expanding the scope of student involvement. "At the school that I taught in a long time ago, students do directly participate in this decision-making process. Here at HLS, it's solely a faculty decision. On balance now, I find the current Harvard model preferable," he said.

Weiler elaborated, "As for only faculty constituting the Lateral Committee ... ultimately, we have a lot of experience."

"We were students, now, professors. We have some kind of comparative perspective on the classroom experience and overall professional duties. That's the kind of judgment a person needs when dealing with tenure. It's a major-league commitment, a fateful decision ... you're basically offering or denying someone lifetime employment."

Dean Rakoff defended the administration's current position on not allowing student involvement in tenureship decisions by maintaining that students' concerns, such as hiring professors with high caliber teaching ability, are already taken into account throughout the process.

"[You] have my word that teaching really matters — BSA evaluations and student interviews are really taken seriously," Rakoff said. He added that over the last few years a number of visiting faculty would have been hired had they been better teachers.

Hanson's tenure will be official after the Harvard Corporation signals its approval — deemed by many to be an automatic process. The other faculty members to be evaluated within the next two years are Asst. Professors Bruce Hay '88, Christine Desan, Frank Vogel, Carol Steiker '86, Scott Brewer and Reuven Avi-Yonah '89.

Jacob Appel and Janie Kim contributed to this story.

HLS FACULTY APPOINTMENTS 1980-1996

Assistant professor pool above the timeline
Tenureships and resignations below

1980-1981	1981-1982	1982-1983	1983-1984	1984-1985	1985-1986
Elizabeth Bartholet Douglas Ginsburg Todd Rakoff Michael Rosenberg Steve Shavell	Elizabeth Bartholet Clare Dalton Christopher Edley Susan Estrich Martha Minow Todd Rakoff Michael Rosenberg Steve Shavell	Elizabeth Bartholet Clare Dalton Christopher Edley Susan Estrich Richard Fallon Louis Kaplow Daniel Meltzer Martha Minow Todd Rakoff Michael Rosenberg	Clare Dalton Christopher Edley Susan Estrich Richard Fallon Louis Kaplow David Kennedy Daniel Meltzer Martha Minow Daniel Tarullo	David Charny Clare Dalton Christopher Edley Susan Estrich Richard Fallon William Fisher Louis Kaplow David Kennedy Randall Kennedy Daniel Meltzer Martha Minow Kathleen Sullivan Daniel Tarullo	Lucian Bebchuk David Charny Clare Dalton Christopher Edley Susan Estrich Richard Fallon William Fisher Louis Kaplow David Kennedy Randall Kennedy Daniel Meltzer Martha Minow Kathleen Sullivan Daniel Tarullo
	Douglas Ginsburg tenured	Steve Shavell tenured	Elizabeth Bartholet tenured Todd Rakoff tenured Michael Rosenberg tenured		Prof. Douglas Ginsburg resigned
1986-1987	1987-1988	1988-1989	1989-1990	1990-1991	1991-1992
Lucian Bebchuk David Charny Clare Dalton Christopher Edley Richard Fallon William Fisher Louis Kaplow David Kennedy Randall Kennedy Daniel Meltzer Kathleen Sullivan Daniel Tarullo David Wilkins	Susan Estrich tenured Martha Minow tenured	Lucian Bebchuk David Charny Clare Dalton William Fisher Randall Kennedy Kathleen Sullivan David Wilkins	David Charny William Fisher Howell Jackson Charles Ogletree David Wilkins	David Charny Howell Jackson Charles Ogletree David Wilkins	Scott Brewer Howell Jackson Charles Ogletree Frank Vogel David Wilkins
	Christopher Edley tenured Richard Fallon tenured David Kennedy tenured Louis Kaplow tenured Daniel Meltzer tenured Daniel Turello resigned	Lucian Bebchuk tenured Clare Dalton resigned	Randall Kennedy tenured Kathleen Sullivan tenured Prof. Susan Estrich resigned	William Fisher tenured	David Charny tenured
1992-1993	1993-1994	1994-1995	1995-1996	1996-1997	
Scott Brewer Howell Jackson Charles Ogletree Frank Vogel David Wilkins	Scott Brewer Christine Desan Jon Hanson Bruce Hay Howell Jackson Charles Ogletree Carol Steiker Frank Vogel	Reuven Avi-Yonah Scott Brewer Christine Desan Jon Hanson Bruce Hay Carol Steiker Frank Vogel	Reuven Avi-Yonah Scott Brewer Christine Desan Jon Hanson Bruce Hay Howell Jackson Christine Jolls Diane Ring Carol Steiker Frank Vogel	Reuven Avi-Yonah Scott Brewer Christine Desan Jon Hanson Bruce Hay Howell Jackson Christine Jolls Diane Ring Carol Steiker Frank Vogel	
David Wilkins tenured Prof. Kathleen Sullivan resigned	Charles Ogletree tenured	Howell Jackson tenured		Jon Hanson tenured	

ACLU Attorney Speaks on Internet Regulation

By Timothy Kiefer

Chris Hansen, the American Civil Liberties Union's lead attorney in its case challenging the Communications Decency Act (CDA), a law regulating indecent speech on the Internet, spoke at HLS last Thursday.

"We saw it from the very beginning as a landmark case," Hansen said. "It was going to help determine what the rules were going to be for the Internet."

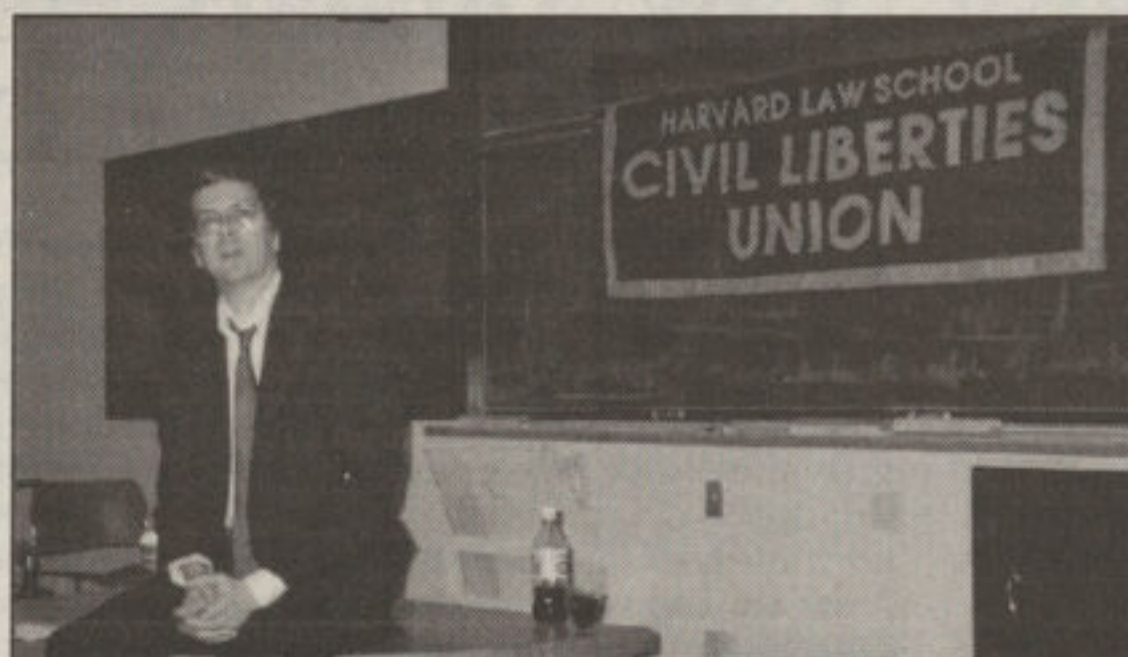
"We saw the Internet, I think rightly, as the most powerful method of communication ever devised in human history. It is a method of communication that allows me the same power to speak to millions and millions of people around the world which previously was held only by the major publishing houses or the major networks."

The case, *ACLU v. Reno*, is currently being considered by the U.S. Supreme Court. Oral arguments were heard about a month ago and a decision is expected in June.

The CDA restricts "indecent" speech on the Internet if that speech may be accessed by children. Although laypersons often speak of pornography in a general sense, Hansen emphasized the difference between indecent speech and

obscurity.

"Obscenity is speech about sex that has no social value," Hansen explained. "Indecent speech is speech about sex that has social value, at least for adults."



Chris Hansen criticizes Communications Decency Act

Under Supreme Court case law, obscenity is not constitutionally protected and thus may be prohibited by the government. Indecent speech, however, is constitutionally protected for adults but may be restricted for children.

According to Hansen, the CDA's supporters blurred the obscenity-indecency distinction. Hansen said that the bill's principal sponsor, Sen. Jim Exon of Nebraska, "circulated around Congress a 'blue book' showing very disgusting pictures downloaded from fairly hard-core porn sites on the net."

"The problem with the 'blue book' of

course is that these were mostly pictures which would be called obscenity. They were bestiality pictures and sadomasochism pictures for the most part ... that stuff is largely already regulated under obscenity laws."

The ACLU itself is a plaintiff in the case because of "indecent" materials on its web site. The ACLU's web site contains a transcript of George Carlin's "seven dirty words" monologue, which had been the centerpiece of an earlier Supreme Court case ruling that the monologue constituted indecent speech. Other plaintiffs include Planned Parenthood, various gay-themed web sites, and Stop Prisoner Rape.

The ACLU prevailed in the lower court, where a three-judge panel unanimously ruled that the CDA was unconstitutional. The ACLU acknowledged that indecent speech could be regulated for children, but argued that the statute was overbroad.

"The principal argument we made was that it restricted speech for adults as well as children," Hansen said, arguing that there is no economically feasible way of constructing a web page which cannot be accessed by children.

Hansen also argued that it is nearly impossible to define indecent speech as

opposed to regular speech. He recalled the testimony offered by a government expert during an evidentiary hearing held by the lower court. The expert was asked whether a photograph of a naked male placing a condom on his erect penis would be indecent speech. The expert answered no.

Then the expert was asked whether Vanity Fair's cover photograph of a naked and pregnant Demi Moore was indecent. The expert answered yes.

Asked to explain the discrepancy, the pornography expert explained that the condom photograph was educational while the Vanity Fair photo was fun.

"It all came down to sex was fun," Hansen said. "I think that at this moment we won the case."

In addition to discussing *ACLU v. Reno*, Hansen also discussed the Internet and the law more generally. He said that it will be hard to predict the future course of Internet litigation.

"In the same way that the Internet will evolve in ways we've never thought of, I'm sure the legal issues will evolve in ways we've never thought of."

However, Hansen said that he expected search and seizure issues relating to computer files and issues relating to library use of the Internet to be topics of future litigation.

Hansen, a graduate of Carleton College and the University of Chicago, has been working for the ACLU since 1973. He is based at the ACLU's national headquarters in New York.

Conference Focuses on "Black Lawyering"

By Cathaleen S. Bryant

Whether to pursue a career in the private or public sector — a question reflective of a crossroad all Harvard law students face — was the predominant issue debated at the Black Law Students Association's (BLSA) Annual Spring Conference. The conference, held last weekend, was entitled Black Lawyering 2000: Developing the Legal Leaders of Tomorrow.

"Take the large firm route," suggested Trevor Bryan '71, co-founder and partner in the New Orleans firm Bryan & Jupiter, during a session entitled "Navigating the Private Sector." "A large firm is a fantastic training ground."

Bryan subsequently gave the New York-based Shearman & Sterling as an example of a large firm with a strong training program. "Shearman & Sterling doesn't have black partners, but they have graduated many outstanding black attorneys who have gone on to be partners in other firms."

New attorneys pursuing large firm jobs are guaranteed significant pay and training, but obtaining the title of "partner" is a different matter. According to Ronald Wilson '73, partner and founder of the leading African-American law firm in Los Angeles, Wilson & Becks, "It is important that you identify a mentor."

"Invariably a committee will discuss who they will name partner and even if you do excellent work, you'll fall by the wayside if there is no one in that room willing to speak up and support you," he said.

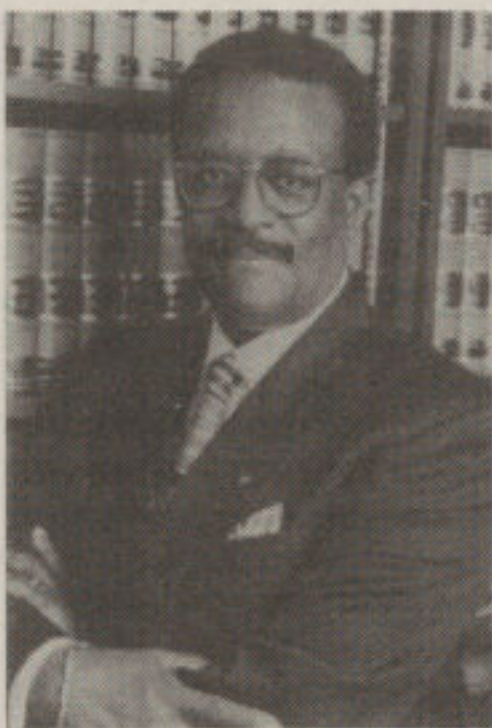
Ruth Fitch '83, partner at the firm of Palmer & Dodge, echoed, "You cannot go to a big firm and assume you will get taken care of. Be aggressive."

Other sentiments were expressed in another session across the hall. "Go into public service where you have something to offer the community directly," advised Deborah Wright '84, president and chief executive officer of the Upper Manhattan Empowerment Zone Development. "I

would encourage everyone to give something back to the community."

Massachusetts State Senator Dianne Wilkerson would not give her advice as to the best career choice for new lawyers, but said, "I think we need to have people in the private sector as well as the public sector. It is important to have colleagues who have the money to contribute and support the work we do."

For many lawyers, public interest work is rewarding and satisfying, but there is another side that "students should be aware of," said Professor Charles Ogletree '78, moderator for a session on alternative career options in the public interest. Many public interest organizations are dependent on private contributions to survive, and there is a "sense that the bottom could fall out at any time."



Johnnie L. Cochran, Jr., one of the featured speakers at the BLSA Conference

"In the public sector, you will face the same type of issues that you face in the private sector. It is a very competitive arena," Ozell Hudson, Jr., forewarned. Hudson serves as Executive Director of the Lawyer's Committee for Civil Rights Under Law of the Boston Bar Association.

"There is a lot of racism as well as sexism within the public interest agencies, and its even more insidious because the people who do the work don't even think they are

capable of ever being racist," Hudson said. "These are just small things that you deal with in comparison with the impact your work has on people who need you," said Gretchen Morales, attorney for the New York City-based HIV Law Project, Inc., who often struggles with fundraising because, "HIV/AIDS is not a topic that a lot of places want to get involved with."

Spring Conference participants were further treated to a special luncheon program featuring celebrated *California v. O.J. Simpson* criminal defense attorney, Johnnie L. Cochran, Jr., who is now co-host of Court TV's "Cochran and Grace."

Other featured speakers included alumni guests Paul Butler '94, General Counsel of Flavor Unit Entertainment, Inc.; Myles Lynk '76, partner of Dewey

Ballantine and president of the District of Columbia Bar; and the Honorable Loretta Collins Argrett '76, Assistant Attorney General of the U.S. Department of Justice, Tax Division.

In addition, guest speaker Ms. Argrett was among five individuals who were recognized as outstanding African American alumni. Other honorees included the late Peter W. Eccles '63, a distinguished international lawyer and investment banker;

Randall Robinson '70, president and founder of TransAfrica, Inc.; Deval L. Patrick '82, former Assistant Attorney General and civil rights lawyer; and Professor Chantal Thomas '95, Fordham University School of Law.

BLSA also provided a series of workshops aimed at post-law school career and financial development.

The Conference was held at the Royal Sonesta Hotel in Cambridge.

Moratorium Stalls Journal's Emergence

Continued from CRIM, p. 1

faces a difficult approval process. The administration is currently operating under a moratorium on the expansion of journal funding, according to Michael Cicone, director of student journals. "Right now, the publications center is operating at maximum capacity," said Cicone.

According to Cicone, neither the funding nor the human resources are available for the Law School to fund a new journal. He did, however, intimate that the possibility existed for the journal to win approval as an independent organization. "If the students were to present a case that this journal is really needed in the legal community, that they had a lot of support from students, that they could find outside funding and a place to work, they'd have an increased chance of approval," he said.

Cicone also suggested that the students might pursue resources through a joint relationship with the Criminal Justice Institute (CJI) similar to that enjoyed by the Negotiation Law Review and the Program on Negotiation.

The current moratorium on journal expansion has been in effect since 1988. In that year, five groups tried to found new journals, and the administration froze funding. The main reasons behind the moratorium, in addition to limited funding, are that the current number of journals spreads the student body too thin, that the journals often compete with each other for readership, and

that starting a journal is a monumental task, according to Cicone.

"Given all of this, they could still put together a proposal," he said. "I won't say we won't consider anything, but the environment is not encouraging."

The journals currently funded by the Law School include the BlackLetter Law Journal, the Civil Rights-Civil Liberties Law Review, the Environmental Law Review, the Human Rights Journal, the International Law Journal, the Journal on Legislation, and the Women's Law Journal. The Journal of Law & Public Policy and the Journal of Law & Technology are independently funded.

Prof. Ogletree, director of CJI, believes strongly that the journal should be approved. "The idea of a criminal law journal at Harvard Law School is one of the most exciting pieces of news I've heard in my many years at Harvard," he said. "I would hope that the school would see the wide appeal of this journal, and support it in any way possible," said Ogletree. He also did not explicitly rule out the possibility of some sort of linkage between the journal and CJI, though he did not make such a commitment either.

As a next step in the approval process, Young and Keith will draft a formal proposal for the journal. The pair is cautiously optimistic about its chances for approval. According to Keith, "Anything worth doing is going to look impossible at the outset. We're committed, and we think we can do it."

Across the Wire...

Repeat Drunk Drivers Avoid Penalties by Using Loopholes

BOSTON (AP) — Chronic drunken drivers in Massachusetts are avoiding mandatory jail and treatment facility terms because of technicalities and court mistakes, a review of records shows.

Statewide, drunken drivers are pleading down to and being convicted of lesser offenses, according to the Boston Herald. "Every judge, every DA needs to look at the big picture when they're letting a drunk driver walk away with a lesser offense," Dick Shire, legislative liaison for Mothers Against Drunk Driving, told the newspaper. "We're talking about life and death."

Many times, a person charged with a second Operating Under the Influence offense pleads to a first-offense OUI. That reduces the sentence from a required 14- to 30-day stay in a residential treatment center to outpatient counseling instead.

"I've seen third offenders treated as second offenders and second offenders treated as first offenders," said Harold Feldman, a vice president at MADD's Plymouth County chapter and the substance abuse services coordinator for a Braintree program that treats second offenders.

Overall, drunk driving accidents are down across the country and in Massachusetts. Last year, 129 people were killed in accidents in which drivers were legally drunk. That's an improvement from 1982, when 213 people died.

But the crashes continue. Authorities say a drunk driver killed two 18-year-old girls last week in Taunton. Days earlier, a Plymouth woman was killed when her car was broad-sided by an alleged drunk driver.

Figures do not detail how many drivers are repeat offenders. But state probation statistics show that 4.1 percent

of first-time offenders were arrested again within a year.

The recidivism rate climbs with each additional offense, with 18 percent of those who had five or more drunken-driving convictions arrested again over the next year.

Critics say drunken drivers and their lawyers have several advantages in court, including restrictive trial rules, sympathetic juries and court backlogs that promote plea bargains.

Prosecutors aren't allowed to say if drivers refused to take a breathalyzer.

"We can't mention that, and the jury goes into the back room and says, 'If the guy was really drunk, they would have had a breath test,'" Norfolk District Attorney Jeffrey Locke said. "A repeat offender knows that and will refuse to talk to the officer when he gets stopped."

Others take advantage of technicalities.

Offenders with back-to-back arrests in different communities sometimes plead guilty to the second offense first. Legally, the first offense cannot be tried as a second offense — which carries a heavier penalty.

In other cases, drunken drivers avoid tougher punishment with the help of the courts.

In a recent case in Brockton District Court, a five-time drunken driver avoided a possible 2-year prison sentence when he was convicted of only a third offense. The reason: His probation officer wasn't available in court to vouch for two of the previous convictions.

"What's happening is a travesty because these people are not dealing with their problems," MADD's Shire said of drunk drivers. "We have to be harsher with them."

Ohio Sexual Predator Law Appears Headed for Constitutional Challenge

COLUMBUS, Ohio (AP) — A new state law labeling certain prison inmates as sexual predators appears to be heading for a constitutional challenge because of conflicting opinions from at least four Franklin County judges.

The law is modeled after a New Jersey law named for Megan Kanka, a 7-year-old girl who was raped and killed by a twice-convicted sex offender. Megan's parents and neighbors learned only after her death that the suspect was a twice-convicted sex offender.

At issue in Ohio is the law's registration and community notification requirement.

Beginning July 1, once a judge classifies an inmate as a sexual predator — the most severe of three labels — the judge is to direct the county sheriff's office to notify the prisoner's neighbors when the inmate is released.

Franklin County Common Pleas Judges Dale Crawford and Beverly Y. Pfeiffer have found that part of the law unconstitutional. They view it as a retroactive punishment, which is outlawed by the Ohio and U.S. Constitutions.

Other judges, including Daniel Hogan and David E. Cain of Franklin County Common Pleas Court, said they believe the notification is a continuing legal requirement applied to an offender, in much the same way convicted felons are prohibited from carrying firearms.

Cases before those four judges are expected to be appealed, Common

Pleas Judge Patrick McGrath said.

"It's not uncommon to have conflicting trial court decisions on constitutional matters when new legislation becomes effective," McGrath told The Columbus Dispatch.

"These issues are going to have to be decided by the appellate and supreme courts. It appears they (higher courts) are going to have a real question of whether this is a substantial matter of punishment or a procedural issue."

More than 20,000 Ohio inmates serving time for sex offenses face a labeling hearing before a judge in the county where they were convicted, as do all people convicted of a sex-related felony after Jan. 1.

Judges are labeling new offenders during sentencing hearings, but the other inmates are being sent back to courtrooms.

McGrath said he expects 2,000 such hearings in Franklin County in the next two years.

Attorney General Betty Montgomery's staff will conduct a public hearing on the issue on May 9. The meeting is designed to obtain comment about implementation of the registration and community notification rules.

State officials have not yet developed a system to notify victims of the status of a sex offender, and law enforcement officials are uncertain which neighbors they must notify.

Christopher Davey, a spokesman for Montgomery's office, said that with public input, the rules will be clarified by July 1.

Reopening King Assassination Case Presents Problems for Prosecutors

MEMPHIS, Tenn. (AP) — Prosecutors taking another look into Martin Luther King Jr.'s 1968 death aren't too thrilled about what they have to work with nearly 30 years later.

"We've been looking for anything we can find that could be halfway credible and there just isn't anything out there," said prosecutor John Campbell. "This cast of characters we're dealing with, all of them have got a little bit of flakiness to them."

They say they need more to work with than a retired businessman's claim he was part of a murder conspiracy.

Bill Gibbons, the chief state prosecutor at Memphis, says he will ask Congress to unseal investigative records of a House committee that investigated the King murder 20 years ago.

Under House rules, those files are sealed until the year 2029.

King was shot at The Lorraine Motel in Memphis on April 4, 1968, and James Earl Ray, then a Missouri prison escapee, pleaded guilty to the murder the following year.

Ray, who avoided a possible death penalty with that plea, has been trying for almost three decades to take it back, but state and federal courts have ruled against him seven times.

Now 69 and suffering from liver disease, Ray is getting help from unlikely supporters, including the King family and former King associates. They say taking Ray to trial might help answer lingering suspicions that the killing was not the work of a lone gunman.

Much of the latest push for a trial surrounds former Memphis businessman Lloyd Jowers who went on ABC-TV's PrimeTime Live in 1993 to claim he hired King's assassin and it wasn't Ray.

Jowers has since refused to talk with authorities, without a promise of immunity from prosecution, and has dropped from sight. The Commercial Appeal of Memphis recently found him living at a fish camp in the Ozarks where he again refused further comment.

Conspiracy theorists say Jowers' claim adds new weight to their suspicion King was the victim of a conspiracy, and Ray's lawyers argue it helps prove their client is innocent.

But authorities say they have found no independent evidence to support Jowers' claim or indicate why he stepped forward after 29 years to make it.

The Rev. Joseph Lowery, president of King's former Southern Christian Leadership Conference, came to Memphis on April 3 asking prosecutor Gibbons to grant Jowers the immunity he seeks.

Gibbons denied that request, saying he remains convinced Ray is guilty.

"This office has continually investigated credible leads that have been brought to our attention," Gibbons said.

In his bid to take back his guilty plea, Ray wants new ballistics tests on the .30-06 hunting rifle authorities identify as the murder weapon. So far, such tests have failed to prove beyond a scientific doubt that it was the one used to kill King.

A state appeals court has cleared the way for the tests Ray wants, and it is now

up to a Memphis judge to decide if they will be conducted. Ray contends the rifle, which was found with his fingerprints on it near the murder scene, was put there to frame him.

Prosecutor Campbell said authorities cannot prosecute Jowers solely on statements he made on TV — or grant him immunity without knowing more about what he claims to know.

"A judge is going to instruct (a jury) that you cannot convict based on such a statement alone. There must be some facts to corroborate it," Campbell said.

The judge and 12-member jury that accepted Ray's guilty plea had numerous pieces of physical evidence to consider as well as a detailed description, agreed to by the defense, of how investigators believed the crime was committed.

"I have a letter on my desk now from someone who says, 'Hey, I killed Martin Luther King.' We get them all the time," Campbell said. "The law recognizes that sometimes people, for whatever reason, will say they did things when they didn't."

Jowers, who once owned a small restaurant near The Lorraine Motel, has claimed at various times to know nothing about the murder or to have had a hand in it, Campbell said.

A former waitress defense lawyers describe as a key witness supporting Jowers' latest account has also given conflicting statements. In one, she said she was told that thousands of dollars in royalties, apparently from books or a movie, rested on her support for Jowers' claim.

"There isn't anything with any substance you can pin down and say, 'Yea, this supports his story,'" Campbell said.

Jowers apparently was interviewed by the FBI shortly after the murder and the House records might help prosecutors better evaluate his current statements, Campbell said.

The House Select Committee on Assassinations concluded in 1978 that Ray was the killer, though he may have had help before or after the assassination. The committee ruled out any direct involvement by the government in the murder.

The committee issued a voluminous report to Congress and reexamining its investigative files, which include FBI working papers, confidential interviews and the like, could well be a waste of time and money, said G. Robert Blakey, the committee's former chief counsel.

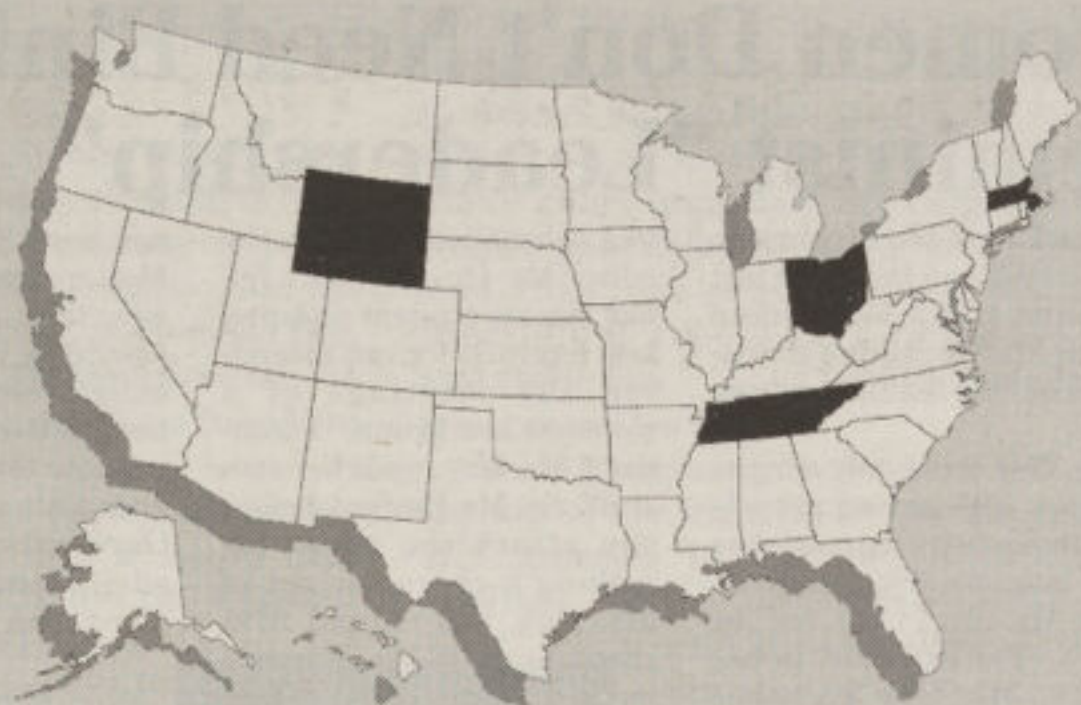
"Anybody who thinks there is a smoking gun in our files is crazy ... You will not find any substantial difference between our final report and our files," Blakey said.

King's sons, Martin Luther III and Dexter, say they believe Ray was a patsy set up to take the fall for the real conspirators.

But Blakey said the committee was convinced of Ray's guilt and so is he.

"Look. Did James Earl Ray do it? Yes. Did he plead guilty? Yes. Was his plea valid? Yes ... Now the question is is there someone else who did. I'm perfectly willing to investigate them, but that's not what Jowers is saying," Blakey said.

Across the Nation



This Week, News From the East and Mid-West

Ohio Implements Gun Checks For Convicted Domestic Abusers

WASHINGTON (AP) — The U.S. military is still trying to figure out how to handle a federal law prohibiting domestic abuse offenders from possessing guns, but Ohio didn't wait for marching orders.

"Why wait? We wanted to make sure that we were doing something in the spirit of compliance," said Ohio National Guard Maj. Jim Boling. "We took immediate action."

A law enacted last year makes it illegal for anyone convicted of a misdemeanor tied to domestic abuse to own, possess or ship firearms or ammunition. The law pertains to past convictions, not just future crimes.

That means the government is required to peek into the past of 1.4 million active military personnel, and disarm any with domestic violence convictions.

The Pentagon says it is implementing the law whenever such information is discovered in a service member's history, but has not started uniformly reviewing backgrounds.

"We're trying to set up some kind of procedures," Pentagon spokeswoman Maj. Monica Aloisio said.

Ohio didn't dally.

"We immediately issued guidelines to the field in early February," Boling said. "Anyone ... who has a daily requirement to carry a firearm we instituted immediate background checks on."

For the rest of the force — roughly 15,000 Army and Air Force guard members — signed, notarized statements were gathered in which the guardsmen and women certified that they had not been convicted of domestic abuse.

Ohio had an advantage; its armed force is relatively small. The number of daily armed personnel requiring background checks was only 38.

All 38 had clean records, Boling said. "Our first priority was to take care of those people who have a daily requirement to handle weapons. Now we're taking care of the thousands of people who are the part-time force," he said.

The March flooding set back the timetable a bit, since guard units were dispatched to southern Ohio, but all 15,000 now are expected to be briefed and notarized by May.

The law also affected police officers and federal agents, and about 10 Treasury Department officers already have lost their gun-carrying rights because of the law.

Rep. Bob Barr, R-Ga., and the Fraternal Order of Police now are seeking to eliminate the law's retroactivity.

Beth Weaver, spokeswoman for the National Association of Police Organizations, said the law has affected at least 200 officers nationwide.

U.S. Society Said to be Ripe for Cult-Like Activity

LARAMIE, Wyo. (AP) — America is ripe for religious movements because of people's vulnerability, the power of things spiritual and a society that champions freedom of thought, speech and religion, a University of Wyoming professor says.

Therefore, Sociology professor Richard Machalek said it is a mistake to assume that those who died in the Heaven's Gate mass suicide were simply brainwashed.

Machalek stressed that he does not defend or advocate for any cult activity — and that in some cases the cults may pose a threat. He added that the outcome of the group in California that believed they would be transported to a UFO trailing the Comet Hale Bopp was shocking and sensational.

But, he said the most interesting part about the Heaven's Gate story is the public's reaction to it.

"What's disheartening to me is the assumption that if you're in a cult, it's because you've been somehow brainwashed, that your normal powers of perception, reasoning and interpretation have been compromised," he said.

In addition, the nation's guarantee of religious freedom, the free enterprise system and the belief that people should have the right to make their own choices creates the framework for cults,

Machalek said.

Cults may use techniques to manipulate followers, but the rhetoric is no more deceptive than techniques used in American marketing, he said.

Machalek said he doesn't think people can take a privileged theological or spiritual stance — because even mainstream culture is saturated with transcendent possibilities.

For example, mainstream Christianity is based on the belief that the savior was born immaculately and then rose from the dead to save his followers.

Machalek said he once tried to explain Christianity to an aboriginal friend in Australia whose people believed the world was created by a rainbow serpent.

"We believe (Jesus) rose from the dead," said Machalek. "That looks weird to the aborigines as (Heaven's Gate founder) Marshall Applewhite looks to us."

Machalek said a person may join a cult because of their sense of vulnerability, a need to feel affiliated with something — especially if that group offers something transcendent, greater than ourselves.

Machalek said society has become "destitute" of that sense of belonging.

"It's probably the same kind of thing that attracts some kids into gangs," he said.

Shrinking Number of People on Welfare Should Ease Reform

WASHINGTON (AP) — States preparing to put in place sweeping new federal welfare laws are beginning a step ahead because the number of people on welfare already is shrinking across the country.

Statistics released last week show reductions in caseloads of 20 percent nationally and an incredible 40-plus percent in some states. That means states will be able to apportion welfare money among fewer people and face less pressure in getting remaining recipients into jobs.

The numbers give reformers reason to cheer. But it's not clear why the rolls are shrinking, where former recipients have gone — or what will happen once changes in welfare programs reach people still deeply entrenched in the system.

Much of the credit goes to the nation's strong economy, which has boasted unemployment below 6 percent for 2 1/2 years. But the country has seen good economic times before without dramatic drops in welfare.

This time, a good economy was combined with a push to change incentives in the welfare system. Before President Clinton signed into law last year's welfare overhaul, 43 states already had permission to change their programs, some dramatically. Politicians began talking tough about moving people off the rolls.

"We were going to expect people to get up in the morning and work — a radical notion," said Republican Gov. Tommy Thompson of Wisconsin, where the caseload has been dropping since 1987. In last week's report, Wisconsin led the nation with a drop of 49 percent since 1993.

In Wisconsin, welfare recipients are required to work or train for work. Checks are reduced proportionately for every hour missed. Wisconsin's rules give county welfare offices powerful incentive to drive down caseloads: Otherwise, they will be privatized.

Three other states — Oregon, Indiana and Oklahoma — saw their caseloads drop by 40 percent or more since 1993. In 17 states, caseloads dropped more than 30 percent.

Just three states and the District of Columbia reported increased caseloads. Alaska, California and the district had small increases, but Hawaii had 20 percent more welfare cases.

The dramatic decreases followed dramatically higher caseloads in the early 1990s. That may explain some of the drop.

Still, this is the first time since national welfare programs began six decades ago that the nation has seen

such marked declines, and they have been gaining steam. Caseloads shrank by 2.5 percent in 1994, 7.5 percent in 1995 and 11.8 percent last year.

"This is truly historic," said Rep. Clay Shaw, R-Fla., who chairs the House Ways and Means subcommittee dealing with welfare.

While much of the decline was under way well before the welfare law passed Congress last year, Shaw credits the debate for pushing people to get off the dole.

No matter what the reason, the drops make it easier for states to implement the law, which replaced the nation's Depression-era guarantee of cash for poor Americans.

The old system increased funding for states as their number of caseloads grew. The new system gives states a chunk of money no matter how many people are receiving help. The amounts are based on spending when caseloads were at their peak, meaning states will see a windfall at least at first.

A Ways and Means analysis says if numbers continue downward the next two years, states will receive \$5,662 per beneficiary, compared with \$3,624 in 1994.

The new law punishes states that don't have at least 25 percent of recipients in work programs this year — with that percentage increasing until it hits 50 percent, a requirement reduced for states with shrunken caseloads.

Still, it remains unclear where former recipients are now. Are they living productive lives in solid jobs? Or have they slipped deeper into poverty?

Wisconsin officials admit they don't know. "Not everybody's going to succeed in the system," allowed Jason Turner, who helped design the Wisconsin reforms.

Sporadic reports are surfacing of people harmed by the changes, said Sharon Parrott of the liberal Center for Budget and Policy Priorities. She said nobody will know the real effect until recipients hit time limits and are kicked off, particularly if the economy turns south.

"If you're thinking long run, that's when the crucial tests are going to happen," she said.

Even Shaw acknowledges the downward trend can't continue forever.

"It will level off as you get down deeper to people who are more firmly entrenched in the welfare system," he said. "A lot of people getting off of welfare should never have been there in the first place."

Harvard Law RECORD

PUBLISHER
Rob Friedman



EDITORS-IN-CHIEF
David Liu
Jaclyn Liu

FOUNDED IN 1946

From the Ground Up

As the School increases the size of faculty to lower the student-faculty ratio to a manageable level, Dean Clark's emphasis on lateral hiring threatens to slow the process of diversification.

Clark's preference for laterals paid off last year with the hiring of two stars — W. Kip Viscusi and Daniel Halperin. But Clark has turned away from hiring assistant professors through the traditional five-year tenure process.

After the current crop of assistant professors (Carol Steiker, Reuven Aviyonah, Diane Ring, Scott Brewer, Bruce Hay, Christine Desan, Frank Vogel, and Christine Jolls) lies a black hole. If you count Christine Jolls, it has been three years since HLS last hired a tenure-track assistant professor. Prof. Howell Jackson is the only assistant professor to receive tenure in the last three years. In the preceding five years, six professors came out of the tenure process, but two — Susan Estrich and Kathleen Sullivan — subsequently resigned.

Clark has said he prefers hiring professors with prior work experience. Some people have suggested that Clark is really trying to avoid hiring younger, inexperienced professors who are more inclined to be left-leaning, such as Clare Dalton and Daniel Tarullo, who were blocked from tenureship in the late-1980s. But the impact of Clark's preference also hinders opportunities to diversify the faculty because it leaves the School to pick out of a pool of older law school graduates who tend to be more white and male.

No matter what Clark's motives, the School should not abandon its tradition of hiring professors through the tenure process. If J. Mark Ramseyer and Lawrence Lessig accept lateral offers as is expected, then the laterals process will have brought in five white males in the last five appointments. All nine lateral appointments since 1992 have been white and heterosexual, although three — Lucie White, Anne-Marie Slaughter, and Elizabeth Warren — have been women.

While the laterals process has been successful in hiring established professors quickly, the School's efforts at diversifying the faculty are being undermined. In 1983, there were two women and two African-American faculty members. Since 1983, 19 professors have been hired through the tenure process, four of whom have been women and four African-American. Including White, Slaughter, and Warren, the School has increased the number of women from two to nine and the number of minorities from two to six. In addition, the recent group of assistant professors up for tenure in the next one or two years promises to add four new women and one additional minority.

The task of diversifying the faculty is formidable given the low starting point in 1983 and the School's problem with retaining women and minorities (such as Derrick Bell, Estrich, and Sullivan). Lateral hires are fine for a quick fix, but Clark's vision of a faculty of established professors must not slow the progress of diversification and signal a return to the old face of Harvard Law School.

— Friedman

Staff

EXECUTIVE EDITOR
Janie Kim

WIRE EDITOR
Hal Poret

STAFF WRITERS
Seth Persily
Eddie Grauman
Timothy Keifer

STAFF COLUMNIST
Alexander Boldizar

COLUMNISTS
Judson Berkey
Todd Stillerman

CONTRIBUTORS
Calvin Gladney
Rob Jancu
Tae-hui Kim
Brendan Lynch

BUSINESS MANAGER
Chih T. Cheung

ADVERTISING MANAGER
Steve P. Chen

OFFICE MANAGER
Michelle A. Jones

SENIOR PRODUCTION MANAGER
Cathaleen Bryant

PRODUCTION MANAGER
Ben Lehrer

PRODUCTION ASSOCIATE
Kristina Jones

CARTOONISTS
Margie McWilliams
Stuart Rees
Alfred Steiner
Bill Zimmerman

Printing By The Harvard Crimson

Editorial/Letters Policy

The Harvard Law RECORD (ISSN 0017-8101) is a publication of the Harvard Law RECORD Corporation, a non-profit, independent, student-owned and run corporation of the Commonwealth of Massachusetts. Harvard Law RECORD, Harvard Law School, Cambridge, MA 02138-9984. Telephone (617) 495-4418. Fax (617) 495-8457.

The RECORD is published weekly on Fridays throughout the academic year and is distributed free of charge to Harvard Law School Students and at a minimal charge to Harvard Law School Alumni. Copy and photo deadlines are 5:00p.m. on the Monday preceding publication. Advertising deadlines are 5:00p.m. on the Tuesday preceding publication.

Submissions may be sent to The RECORD at the above noted address, dropped in the RECORD box located in Harkness Commons, or left in the 2L Hark box of David Liu or Jaclyn Liu. All copy must be typed, double-spaced, and submitted on paper and on a computer disk (Macintosh or IBM). The RECORD reads and appreciates every letter we receive; we reserve the right to edit letters for space as necessary. We will return your disks. Off-campus subscriptions are available. Subscription price: \$45.00 year mailed; \$50.00 year mailed outside U.S. Individual copies: 35 cents at newsstands, 50 cents at the Law School, \$1.00 mailed, \$2.50 for back issues and reprints. Second-class postage paid at Boston, MA and additional mailing offices.

©1997 by the Harvard Law RECORD Corporation and by the contributors.

The RECORD is committed to equality and diversity. We strive to provide a forum for the free exchange of ideas. As a result, the opinions reflected in articles, editorials, and cartoons are those of the authors and do not necessarily reflect the opinions of the RECORD.

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

—First Amendment, US Constitution

• Letters •

Women Don't Need Binford's Feminist "Leadership"

I am writing in response to Mr. [sic] Warren Binford's last column in which Mr. Binford defends Ms. Hoy whom she describes as "the feminist columnist."

Ms. Hoy is not only a hypocrite, her self-serving gospels on women have turned her into a lampoonable character. This is Ms. Hoy's fault, not the paper's. For example, in her column, Ms. Hoy preaches that there is no established way to be a feminist and then

in a subsequent letter to the editor Ms. Hoy derides a fellow female student as being less feminist for not attending the meetings of a women's law group. I wonder if Ms. Hoy reads her own stuff! So, Mr. Binford, before you attack the paper for making a character out of Ms. Hoy, you should first check to see if Ms. Hoy has made a character out of herself.

Additionally, women do

not need your "leadership." Men and women can figure out who they are and who they should be without your moral enlightenment. Finally, it is not fair to men who care about women to be the subject of your male conspiracy theories. Grow up, stop giving so much advice, and learn how to get along with others.

Laura Brown
Boston, Mass.
April 13, 1997

Brister's OJ Analysis "Disturbingly Incomplete"

I found Judge Scott Brister's Feb. 21 Op-Ed article "Why Verdicts Vary" disturbingly incomplete. Judge Brister may have wanted to explore a certain point, and his article certainly provided an examination of reasons why jurors might differ and people see things differently and vote accordingly. However, this almost axiomatic fact does not, in my view, really explain why the verdicts varied in the Simpson civil and criminal cases. More important, contrary to Judge Brister's conclusion, the variance in those two verdicts does not mean, as he suggests, that "they can't both have been right." I, among many attorneys and others, believe that both verdicts were not only "right," but were compelled by the evidence and the standards applicable to the respective trials. In making his point, except to give a passing reference to the fact that some civil trial verdicts do not require unanimity among the jurors, nowhere does Judge Brister note or discuss crucial distinctions which should be self-evident to any attorney. These distinctions were repeatedly stressed by numerous commentators in all versions of the media that covered both Simpson trials. Specifically:

1. The degree of proof differed from one trial to the other — in the criminal case the State had the burden of proof "beyond a reasonable doubt,"

whereas in the civil case the plaintiffs had a burden of proof based on a preponderance of the evidence (e.g. only 50 plus percent certainty); 2. The evidence differed considerably from one trial to the other trial. The two juries were not "viewing" or "re-viewing" the same movie or play. Particularly significant was the absence in the criminal trial of any probative evidence regarding Simpson's ownership or possession of shoes with soles similar to an impression left at the crime. Perhaps most significant, Simpson did not testify in the criminal trial (as was his right) but he did testify (and was his own worst witness for his defense) in the civil trial. 3. A number of evidentiary rulings resulted in considerable variations between the trials in terms of the evidence and witnesses received and heard by the jury, including the entire Mark Fuhrman situation. 4. In addition to the above factors, there is the immeasurable, but certainly relevant, effect upon the two juries of the way in which the attorneys presented the evidence, (their style, demeanor and forcefulness) and the possible differences which might arise from the fact that the criminal jury was sequestered, while the civil jury, despite admonitions to the contrary, may have very well

been exposed to the plethora of speculation and hard facts which permeated all types of media during and subsequent to the criminal case, and prior to and throughout the civil case.

In short, the two juries did not come to varying conclusions based upon the same record. Even the same individual (not just different juries) might find one movie a "classic," but consider its remake a "bomb."

Finally, there is the factor that the civil trial judge accepted as jurors those who during *voir dire* acknowledged an awareness of the criminal trial (who but an alien riding behind the Hale Bopp comet would not have been aware?) and accepted even those who claimed that they could keep an "open mind" but believed that Simpson was guilty in the criminal case.

Yes, verdicts will vary for many or all of the reasons cited by Judge Brister. However, verdicts (especially comparing a verdict in a criminal case to a verdict in a civil case) will vary for the reasons discussed above, and many other reason which I likely have neglected to list or discuss.

It is unfortunate that Judge Brister did not, at least in passing, acknowledge these factors.

Jerrold E. Fink '71
Chicago, Illinois
April 11, 1997

Dean Tells SPORTSGUY to "Eat Crow"

Several weeks ago, when I looked down from the heavens, I saw that the SPORTSGUY wrote: "In perhaps the greatest display of ignorant confidence, the Grizzers (the Law Review entry) requested B-League status after umpteen consecutive second division finishes in the B-League. Notwithstanding the pleasure the rest of the league takes in humiliating the Law Review, blow-outs are not that much

fun. Get off the court, guys, you're holding up traffic!" The next week, the SPORTSGUY continued on his tongue-lashing and referred to the Grizzers as "dribbling nerds." Finally, not to be outdone by his previous attacks, the SPORTSGUY prophesized: "All rumors to the contrary, the SPORTSGUY still expects everyone's favorite Law Review entry, the

Grizzers, to bow out shortly." An early end to the Grizzers' season? All I have to say is: Eat crow, baby! My boys are in the playoffs! My legal career is complete at last.

Dean Erwin "the Grizzer"
Griswold '28

as transmitted through
Jon Cohn '97
April 14, 1997

Cohn Parody "Utterly Offensive"

This letter should have been written a week ago, and I apologize to Sharon Cohn '97 for not writing it earlier. After I glanced at the parody issue and saw what was written with her name, I almost allowed the usual thoughts — I don't have time, what good would it do, why even dignify it with a response — to stop me from doing anything. But this time I can't. I read a friend's full name signed to statements she

finds abhorrent. I read words that portrayed that friend in a way that is utterly offensive to those of us who know her. I read words that mocked what I hold to be most sacred in my life — my faith in Jesus Christ.

Despite what some could assume from reading your newspaper week after week, there are people in this community who still want to treat others with dignity and char-

ity and still hold dear what those words mean.

In the end, God is fully capable of taking care of His interests, and Sharon is a strong person who has already moved on. Given how many people may have been offended and hurt by this parody letter, was it really worth the smirks and chuckles it may have elicited?

Helen H. Kim '97
April 9, 1997

• Corrections •

The April 11 issue of the RECORD erroneously reported that Visiting Prof. Lawrence Lessig is currently affiliated with the Law Faculty at Kobe University. Prof. Lessig is ac-

tually a professor at the University of Chicago Law School.

Also in the April 11 issue of the RECORD, the public interest auction article incor-

rectly ascribed a quote to Gary Collins '98. The actual attribution should have read Gary Culliss '98. The RECORD regrets the errors.

Saved From Itself

By Anthony Lewis '56-'57

Again and again in our history Congress has been saved by the courts from the consequences of a passing folly. We have a fresh and exceptionally clear example now: the decision by Federal District Judge Thomas Penfield Jackson '64 last week holding the new Line Item Veto Act unconstitutional.

Congress approved the legislation last year on the theory that it would help balance the budget. What the Republican majorities in the House and Senate pretended not to notice was that the act would have drastic effects on Congress's constitutional power.

The law provides that the president, after signing a bill into law, may "cancel" any part of it that appropriates money or authorizes entitlement programs.

Congress can re-enact a canceled provision, but that legislation would be subject to the president's veto.

The system would give any president enormous new leverage with Congress. "If you vote for my education bill," he might tell a senator, "I won't veto out your sports museum in Podunk City."

Judge Jackson said the item veto as it works in this act would give the President the power to "unilaterally repeal statutory law." That, he found, conflicted with the process laid-down in the Constitution: Congress passes laws, which are presented to the President for his approval or disapproval as a whole.

The Clinton Administration and

lawyers for the House and Senate defended the new law as an example of Congress delegating power. It often does that, as when it tells agencies to make rules implementing legislation. But no past delegation, Judge Jackson said, "has gone so far as to transfer the function of repealing a provision of statutory law." That "ceded basic legislative authority."

Newt Gingrich put the item veto at the top of his wish list in the Contract With America. In effect he and other Republican leaders persuaded Congress that it could not resist the temptation to spend and therefore had to pass the buck.

"The Line Item Veto hands off to the President authority over fundamental legislative choices," Judge Jackson wrote. "Indeed, that is its reason for being. It spares Congress the burden of making

those vexing choices of which programs to preserve and which to cut."

But why would Congress, usually so jealous of its power, close its eyes to the inevitable loss of power? It was certainly warned of the likely consequences, by among others Democratic Senators Robert C. Byrd of West Virginia and Daniel Patrick Moynihan of New York.

The answer must lie in the current obsession with balancing the budget, which no sensible family or company or country makes an obsessive rule. The same urge pushes the proposed balanced budget amendment to the Constitution, which would supposedly force Congress

to act but would more likely lead to a legal morass.

Judge Jackson will not have the last word, of course. The case will go on to the Supreme Court. But it already demonstrates the wisdom of those who framed the Constitution in giving judges the independence to defend it.

In the 78th Federalist Paper,

lay, untidiness and potential for abuse, we have not yet found a better way to preserve freedom than by making the exercise of power subject to the carefully crafted restraint spelled out in the Constitution."

Senators Byrd and Moynihan, among others, challenged the Line Item Veto Act in a lawsuit. Senator Moynihan had

In effect [Gingrich] and other Republican leaders persuaded Congress that it could not resist the temptation to spend and therefore had to pass the buck.

Alexander Hamilton said judges should be "bulwarks of a limited Constitution against legislative encroachments." They would give "more deliberate reflection," he said, to matters that in legislative chambers might be subject to the passions of the moment.

The item veto case is especially interesting because it concerns not the individual rights protected by the Bill of Rights, such as freedom of speech, but the basic structure of the Constitution. The Framers thought that structure itself was a protection of freedom.

The constitutional system can often be frustratingly slow. But "The Framers ranked other values higher than efficiency," the Supreme Court said in 1983. "With all the obvious flaws of de-

made a prescient comment as it was passed a year ago. "I rise," he said to the Senate, "in the serene confidence that this measure is constitutionally doomed. That speaks to the stability of the American political system, a stability sustained in so many moments of peril by the judiciary."

Anthony Lewis, a columnist for The New York Times and the author of Gideon's Trumpet. He is this year's Class Day speaker.

Copyright © 1997 by The New York Times Company. Reprinted by permission.

Consistency Needed in HLS Exam and Computer Use Policy

By Rob Jancu '98

It is time to re-examine HLS policy which "forbids" computer use on in-class exams. The reason: students with physical disabilities that prevent them from writing longhand or using ergonomic typewriters are already permitted to use computers on their exams. The result: these students can edit and restructure their arguments, which gives them a marked test-taking advantage over handwriters and non-computer typists.

There is no doubt that students with hand and wrist disabilities are entitled to their current option to use computers, just as it is obvious that they are entitled to the extra time they receive on exams. The capacity, however, to revise answers by means of a computer renders exam performances incommensurable. Computer users can rearrange associational sentences into pristine IRAC paragraphs, regroup those paragraphs into a more cogent narrative, and then run a spellcheck.

In autumn of 1995, when Law School Council (LSC) debated whether students with laptops should be able to use them on in-class exams, this editing property of computers was the fatal argument. LSC concluded that it would be fundamentally unfair to students who do not own laptops to have their in-class exam performance measured against those who type-write or write by hand. LSC voted against supporting any initiative by the Legal Education Committee to consider granting laptop users the option to write in-class exams on computer.

Members of LSC suggested that debate on the issue be reopened only once HLS adopted a policy making laptop ownership mandatory, or once the

school bought enough computers for the Hauser Lab to accommodate all laptop-deprived students who wished to take their in-class exams on computer. Now that several members of LSC have learned that, even at the time of our 1995 debate, writing-disabled students very justifiably had the option, the administration should swiftly reexamine its policy of a selective ban on computer use on in-class exams.

To my reckoning, the way to resolve the inequity is a reform which happens to feature an upside of enhancing actual law-practice skills. Specifically, in-class examinations might be replaced

entirely by take-home exams or papers. This has the dual virtue of being the only administratively feasible method to permit computer use by all students, and of actually simulating professional working conditions.

Regarding the administrative feasibility of computer use on in-class exams, it is unrealistic to expect that exam proctors can guard against canned answers on course outlines stored in hard-drives. Moreover, many students will certainly object to effacing their hard drives each semester at exam time; it is a tedious task and might damage programs when performed repeatedly. In addition, not everyone owns a laptop, and lugging large PCs to and from exams, sometimes in inclement weather, and often from off-campus apartments (especially for those who do not own cars) is itself unfair.

Even if all exam proctors could be trained to screen the different makes of computers for documents that might be concealed most anywhere within the hard-drive, it would take an intolerable amount of time to perform such pre-exam inspections. It would also be disruptive and wasteful of more time to have to stop exams at various points to check whether students had surreptitiously inserted disks containing outlines.

Since it is highly unlikely that HLS

will invest in hundreds of special exam-ready computers, only a policy of universal take-home exams and papers offers the administrative possibility that all students will be able to use computers to write their exams.

And this is a good thing, as far as legal education goes. In-class examinations do not enhance skills that we will find particularly useful for anything save taking the bar exam. Of course, in-class examinations do not necessarily have any such ancillary goal as honing legal skills. Take-home examinations and papers, however, do serve this function.

In-class examinations might be replaced ... by take-home exams or papers.

Whether we choose to become litigators or transactional attorneys, we will seldom if ever face a situation in which we will have to belt out a brief or proxy statement in three hours with access to limited resources. Indeed, if we were to practice law in the manner of an in-class examination, we would likely be liable for malpractice. Certainly, in-class examinations do require certain legal skills, including an ability to allot time efficiently and to memorize, but such skills are also tested, and in a more realistic setting, on take-home exams and to a certain extent in paper-writing.

Even more significantly, testing the vital lawyerly skills of logical restructuring, argument refinement, and stylistic editing according to legal writing norms, by administering take-homes and papers in lieu of in-class exams, might well result in a different grade spread among students. Those who abundantly possess these skills will surely score better on their exams; in this manner, not only will students be trained in these skills on

their exams, but grades will also serve as better predictors of professional success, which will enhance the recruiting prospects for many students gifted in these actual lawyerly skills but who struggle with our undergraduate/LSAT-style in-class exams.

Law Review, our meritocracy within a meritocracy, instituted parallel reforms a while back. Realizing that (our predominantly in-class) HLS exams do not necessarily identify those students with the finest legal minds, Law Review introduced its week-long writing competition. Naturally, many students

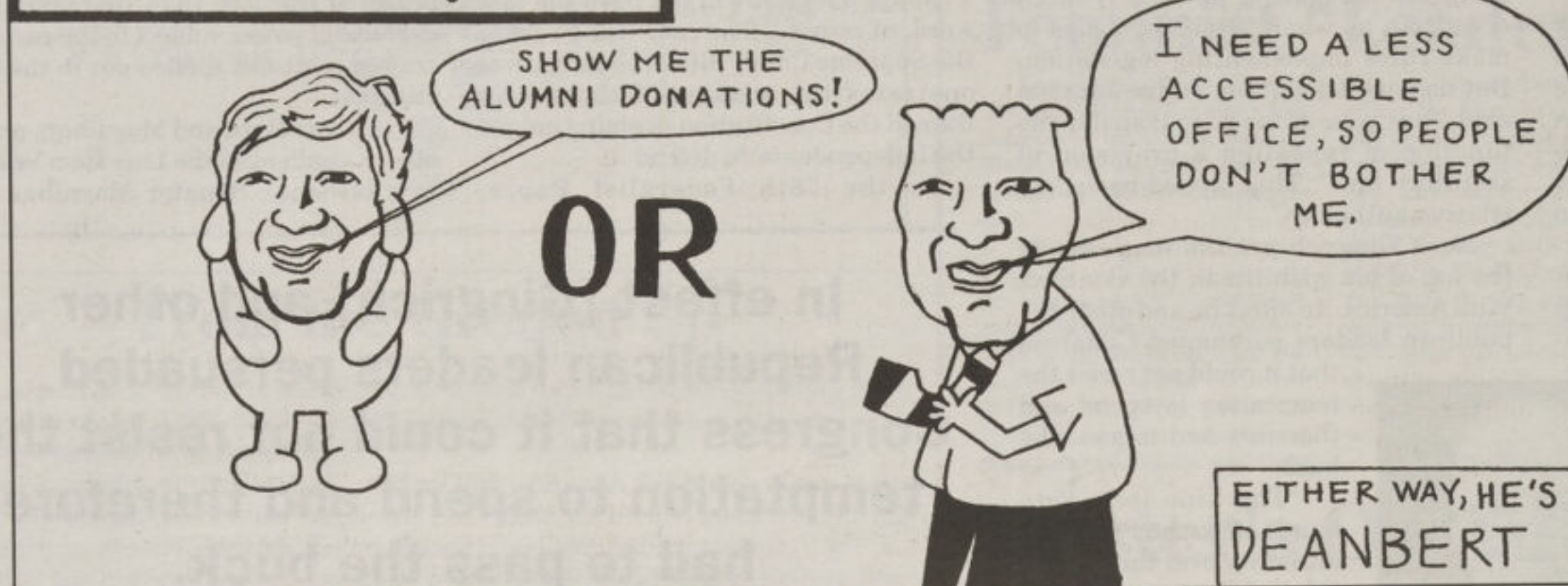
accepted to Law Review based on the writing competition have grade-point averages beneath those who just missed "grading on" to Law Review who did not excel at the writing competition. Yet employers and clerk-seeking judges believe that these winners of the writing competition are more superior lawyerly prospects than many of their peers who possess technically superior grades who are not on Law Review.

Now that the administration's ban has been revealed as porous, the Legal Education Committee ought to consider methods to level the playing field for all exam-takers. Equity concerns should prompt the administration to permit every student to have access to computers for exams. The exigencies of administrative feasibility would then mandate the happy result of a universal take-home exam and paper policy. That way, key lawyerly skills — untested on in-class exams — will finally be exercised and rewarded.

Ad Hominem

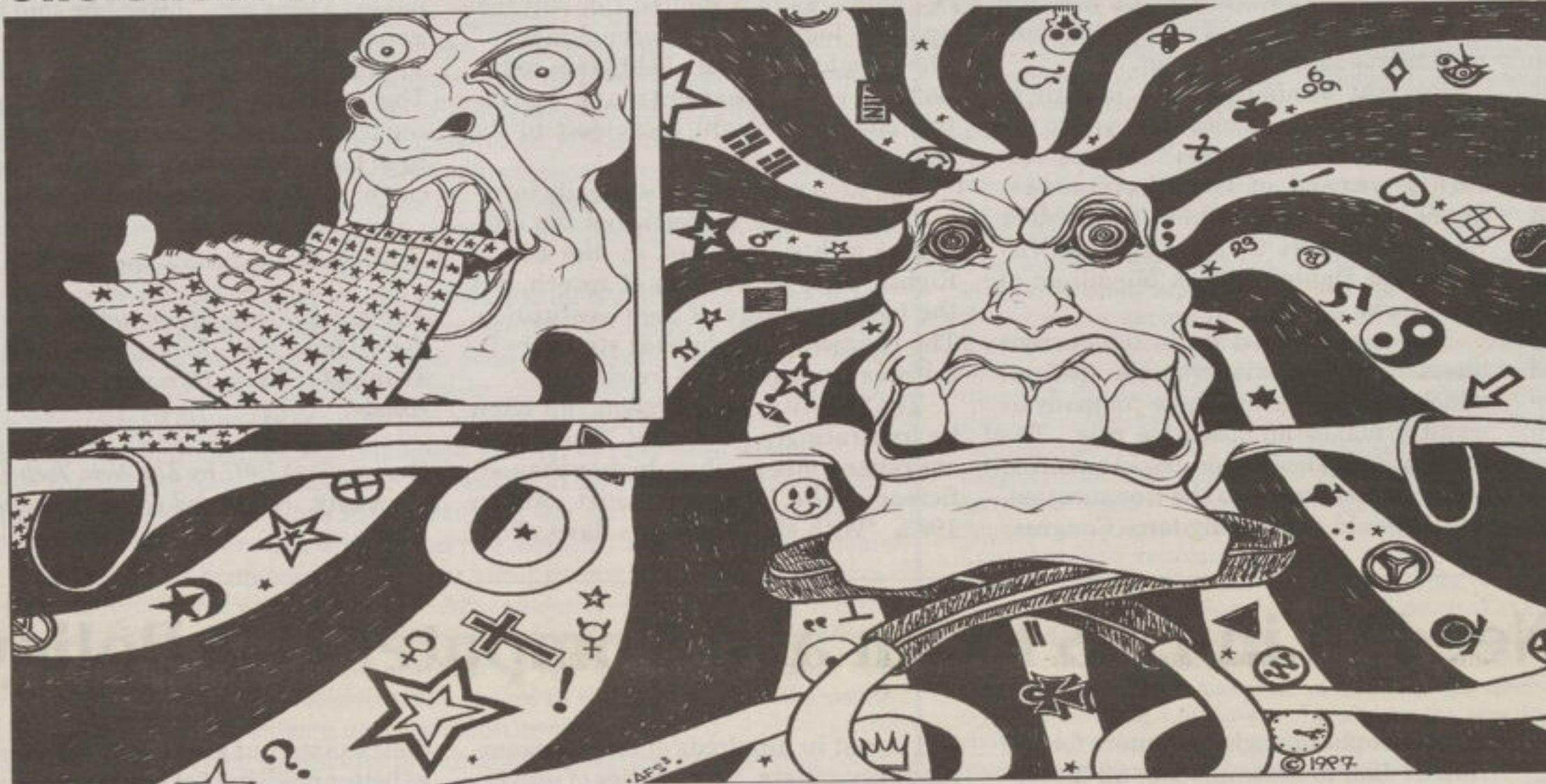
By Stuart Rees and Bill Zimmerman

QUESTION: If Dean Clark were a comic strip character, who would he be?



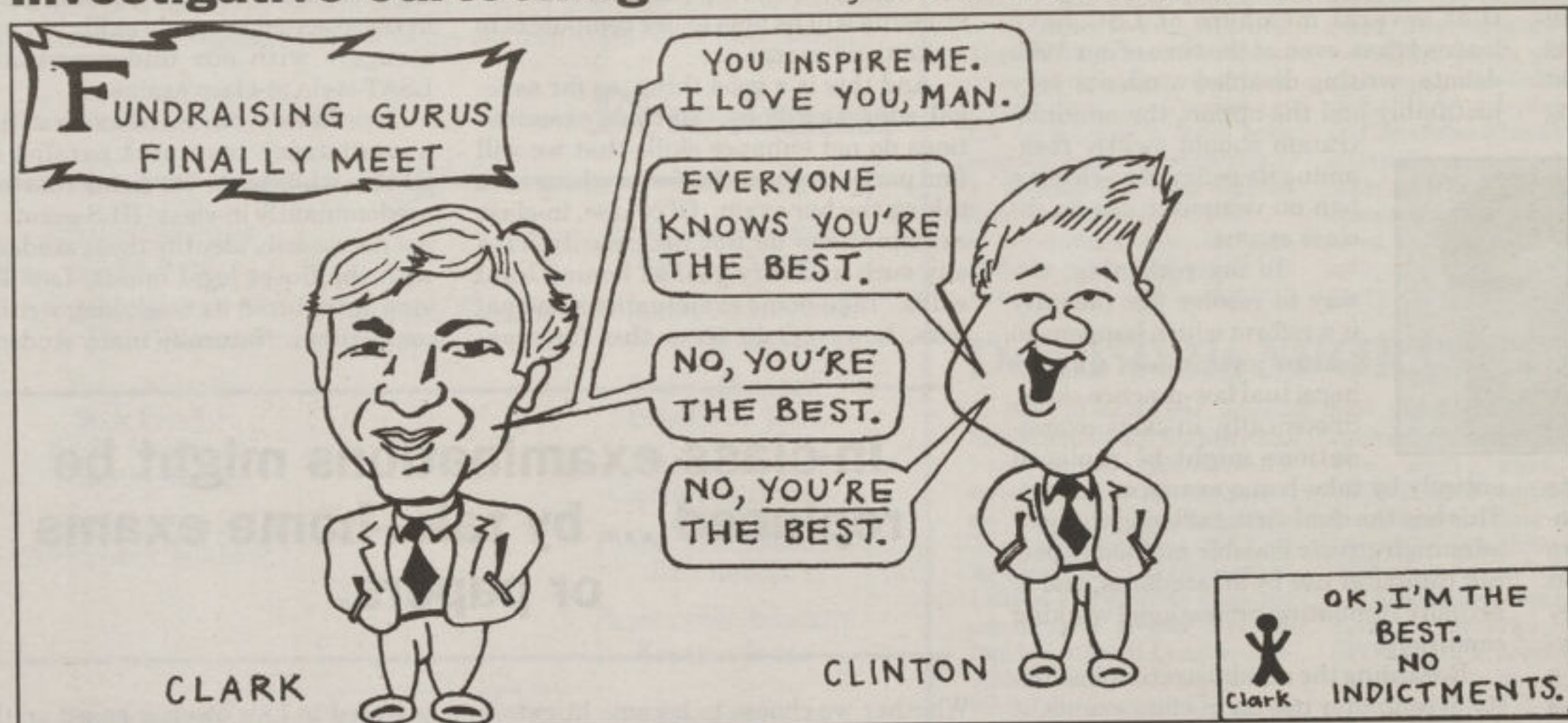
Reasonable Man Throws One Sheet to the Wind

By Alfred Steiner and Mark Torre



Investigative Cartooning

By Stuart Rees and Bill Zimmerman



Spike

By Margie McWilliams



CALENDAR

By Ben Lehrer '99

Ah, the joys of spring. Winter clothes are safely stashed away, third-year papers nearly completed, and a summer of expensive lunches and ludicrous salaries awaits. What better way to celebrate than to see **Pink Flamingos**, the recently re-released John Waters' cult classic from 1972? It ain't Star Wars or The Godfather, but it's vileness *ad absurdum* will help you keep things in perspective. *Playing at the Sony Harvard Square Theater*. 864-4580.

OK, maybe that's not the best way to celebrate the changing of the seasons. For those who prefer to shake their thang, there's plenty of good Latin music happening. Thursday nights feature Latin dancing at **Ryles**, 212 Hampshire St. in Inman Sq. (876-9330). **Mango Blues** is playing at Johnny D's in Davis Square on Friday the 18th. A new club, **Beco**, features Afro-Cuban music on Tuesdays and Brazilian music almost every other night, and has great Brazilian food as well. 1098 Commonwealth Ave. in Brighton, 739-8323. And for those who've wondered what Cuban bar mitzvahs are like, try **Cafe Teatro**, on 45 W. Newton St. (just off Tremont St.) in Boston, where on Saturday the 19th **Tropical Sound** and the **Shirim Klezmer Ensemble** are featured in a Salsa with **Chutzpah** dance night.

Soccer fans: Saturday marks the beginning of the professional soccer season with a great doubleheader at Foxboro stadium. At 2:30, the U.S. plays Mexico in a World Cup qualifying match, followed by the New England Revolution vs. the Tampa Bay Mutiny. It may be sold out by now, but if you're willing to pay scalpers' premiums, it should be quite a scene. Or, wait a week until the 26th when the Revolution take on Colorado. The Revolution stunk last year, but they've got a new coach, a bunch of new players, and anyway nobody could possibly be as bad as the Celtics. Call 931-2222 for tickets.

In the theatrical world, **Groucho: A Life in Revue**, a musical comedy about Groucho Marx (duhhh) runs Thursdays, Saturdays and Sundays thru May 4 at the Leventhal-Sidman Jewish Community Center in Newton. Call 965-5226 for show times. For something more on the cutting-edge, try **Jack the Ripper — The White Chapel Musical** at the Boston Center for the Arts on 539 Tremont St. Thru April 26, call 536-5981.

Laughter liberates us and gives us courage to confront our fears and anxieties. No, really. **Improv Boston**, an improvisational comedy troupe, does weekend shows (Fri. at 8, Sat. at 8 and 10:30) at the Back Alley Theater on 1253 Cambridge St. in Inman Sq. Call 576-1253 for reservations.

There's no shortage of Irish music in Boston, so it may seem odd to pay \$20 to see some. But the **Saw Doctors** have quite a following in countries even colder and more miserable than New England, and they're not U2 or Pogues clones, thank goodness. At the **Roxy** on Sunday the 21st at 8:00 p.m. Tickets should be purchased in advance; call 742-6618.

For jazz fans who like paying lots of money to see artists with recognizable names, **Keith Jarrett** is coming to Symphony Hall with Gary Peacock and Jack DeJohnette. The show's at 8 p.m. on Sunday, and will set you back \$22-35. Call 876-7777 for more info. Great jazz can also be heard every night down the street at **Wally's**, at 427 Mass. Ave. in Boston. Wally's attracts a lot of promising talent from the Berklee School of Music, has great jam sessions, and it's cheap, so if you drop 22 bucks there at the very least you'll have a good buzz to show for it. (617) 424-1408.

... And Then He Piled Them Up In Piles

By Alexander Boldizar '98

Bones. I was going to save them for my last column of the year, but they are not to be denied, not to be naysaid, not to be put off until a more convenient moment or a better thoughtout column. At any rate, they are on my mind, and my mind rests on them.

I have not thought about bones this much since I played rugby. Last night I walked up Massachusetts Avenue in my bones, in a version of what some call Vipassana (insight) meditation, feeling my bones inside my flesh: my femurs, tibias, ribs, vertebrae, skull, the whole mess tugged and pulled along by instrumental muscles, wondering who was carrying whom. Pulling my thigh up, bending my swollen knees, moving the leg forward, down — I put my consciousness into every little movement of every little bone. And there I recognized something looking at itself. It was Pride. The Pride of the bones hung onto them like an aura, or a hyena that's always just out of reach, looking back down at the bones with a certain insecure contempt. Some call this Pride 'the Soul.'

This Pride can never really find itself, though it can reflect on an abstraction of itself. It is only confounded by the endless question of "what is this I that is looking at this I?" This lack of location or essence makes walking in your bones a faintly frightening experience. It also makes me wonder how some current legal thinkers can claim that the law is in a "post-ontological era," when I, pile of bones, seem to have little hope of ever arriving there.

So why the sudden uncontrollable impulse to write about bones? In part, it is another hypocritical symbol (or has

become one somewhere between the beginning of this column and now) as when

I've (often, I'm told) used sex as a symbol of the concrete to argue against symbols and the abstract. Now I finally understand what Prof. Dershowitz meant last year when he quoted Alexander Hamilton, that "hypocrisy is the first step to virtue."

Yet there is something hopeless in arguing against abstractions and symbols, and it goes beyond the problem that language is inherently

symbolic. In defining the non-abstract as a goal, it too becomes as abstracted as Law or virtue. Chang Tzu discussed a similar problem in seeking 'the good.'

"The more 'the good' is objectively analyzed, the more it is treated as something to be attained by special virtuous techniques, the less real it becomes. As it becomes less real, it recedes further into the distance of abstraction, futurity, unattainability. The more, therefore, one concentrates on the means to be used to attain it. And as the end becomes more remote and more difficult, the means become more elaborate and more complex, until finally the mere study of the means becomes so demanding that all one's effort must be concentrated on this, and the end is forgotten. Hence the nobility of the [lawyer] becomes in reality a devotion to the systematic uselessness of practicing means which lead nowhere. This is in fact nothing but organized despair," and the good thus finally becomes an evil.

This organized despair does not inhere in the law, or in law school, but in the legalized mind. Nevertheless, I have

accepted an offer to go dig bones in Niger next year. My mind, which I will be taking with me, screams at itself, arguing to itself that it has abstracted and fetishized dirt, bones and manual labour into an external sword which, being external, the mind knows cannot cut through the Gordian knot of a legalized mind. Or of a legalized Soul.

And yet, when all the symbolism and dirt have been cleared off there is still something of those bones there. Environment too, in the sense of context, does matter. Perhaps even as I dig the

bones I will create representations of them. But perhaps the Saharan sun, the fact that the nearest town is an hour and a half away

and has a population of under one hundred, and the long days of manual labour will burn away some of the alluvium even as I dig through the sedimentary layers with a toothbrush, looking for dinosaur bones.

It's tempting to see parallels, to make some hippie statement about going to dig myself up, along with the bones, out of these newly deposited sediments of legalism and abstraction. Mostly, however, it will just be nice to get a breath of fresh air. After two years of law school, and after being terrified by some of the New York firm partners, looking like Jabba the Hutt with their sickly, pasty-white triple chins, it is hard not to sympathise with Katherine Mansfield: "How idiotic civilization is! Why be given a body if you have to keep it shut up in a case like a rare, rare fiddle?"

But back to my hypocritical symbolism, there is something appropriate about taking a leave of absence from the

law, with its claims of being post-ontological, to join a paleontological (old-ontological) dig for bones, the dynamic source of all our blood and structure, which constantly renovate themselves in a reaction to countless developmental and evolutionary interactions. An endless Parmenidean uncovering of layers. "The past alone changes," says Robert Hunter. "We cannot learn from the past; we are the past."

I am running out of words. The more I think about bones, about going to dig in Africa next year, the more difficult it is to write this column. It is a strange form of writers' block, because my mind is full, but it oscillates between symbols and open-ended ethereal stuff which runs away every time I try to stick it onto the end of the previous line. I have thoughts of Dr. McCoy from Star Trek, thoughts of going off to clerk for Oliver Wendell Bones, and thoughts of penicillin drastically cutting down infant mortality in parts of Africa and so leading to the blind roaming herds of skeletons we have come to associate with the continent. Just keep 'em alive. If they can't get food to keep from starving or Vitamin A to keep from going blind, well that's a shame given the millions of tons of wheat deliberately destroyed every year, but at least we've kept them alive. Have we abstracted even life?

There is a reason why Pride is the deadliest sin. It leads to an abstract Soul. (In fact, all seven of the sins require an abstraction before they can be performed. That is why God did not allow his name, or idols of himself, to be used, and why he started to die with the creation of the Church.) As wise William Blake said, "Man has no Body distinct from his Soul; for that called Body is a portion of Soul discerned by the five Senses, the chief inlets of Soul in this age."

So I am off, to look for a bone and to see in it ... a bone. Woof.

... going off to clerk for Oliver Wendell Bones, ...



Fenno, his heart pounding with fear, stood in the Hauser Hall elevator trembling, too terrified even to push a button. He had to ask his third-year paper advisor for an extension, and he just knew that such an extraordinary request would meet with extreme resistance. On nearly any other day, Fenno would not have been nervous; no, he would have been intoxicated nearly to the point of anesthesia.

But Fenno wasn't drinking today. It wasn't so much a desire to look presentable before groveling before his professor, but the result of a deal he'd made years before: in return for immunity from prosecution and for getting to keep his little finger, Fenno had promised to follow up any future three-week black-outs with a full twenty-four hour's abstinence from alcohol. Fenno had thought nothing much of the deal when Artie was just some punk kid from Brooklyn, but now, with his limitless power and spies everywhere...

So it was an uncharacteristically sober and shaky Fenno who now cowered in the elevator, afraid to move. Oh, how he'd abused the system! Oh, how wise the founders of HLS had been when they'd developed the writing requirement! Fenno pictured how it could have been, if only he'd played by the rules: hours spent in close contact with a wise professor, giving selflessly of his time and counsel for the furtherance of legal knowledge. A silent tear rolled down Fenno's cheek as he imagined himself in his advisor's office late at night, the two of them so rapt in thought, so fervently

in pursuit of the Eternal Truth hidden within the arcane rules of Banking Regulation that they had scarcely noted the passing time.

Remember: Fenno was not drunk, and had therefore completely lost touch with reality.

Fenno sighed deeply, imagining what he was about to face: the righteous indignation of a concerned professor, who would administer a well-deserved tongue-lashing to Fenno for his lackadaisical attitude toward the most important part of the Law School curriculum. The professor would describe the hours that he'd set aside from his busy schedule for conferences that now would never happen, the eager anticipation with which he had awaited manuscript after manuscript that would never appear, the intimate dinner that was to be Fenno's reward for a job well done. Fenno would simply prostrate himself before the advisor, and beg his indulgence.

Don't forget: Fenno was really, really sober.

Alas, Fenno thought, there was no escape. He had to face the music, and the sooner he went up, the sooner it would all be over. He finally pushed the button for the proper floor, and up the elevator went. The doors opened all too soon, and Fenno found himself music, as if impelled by a force that was not his own, to his advisor's secretary's desk. "Can I help you?" asked the secretary.

"I...uh...oh, God," sputtered Fenno, reduced to thrusting the extension form toward the secretary's face.

"Oh, that," said the secretary, "come back in about two hours and it'll be signed. Will there be anything else?" As he spoke, the secretary added Fenno's extension request to an already sizable pile.

Fenno, uncomprehendingly, asked, "Won't the professor want to see me?"

The secretary sighed. "Certainly not

this week, but I can get you fifteen minutes at the end of the month."

Fenno said nothing but walked back toward the elevator. While waiting for it to take him out of this post-modern monument to megalomania, he reached

into his pocket for his flask. Let Artie do his worst, he thought, he cannot debase me more than I have just debased myself.

Next week: Secret Lateral Appointments Committee Documents Revealed!

Quote of the Week

"I wonder if Socrates ever had this problem."

— Prof. David Kennedy '80, after seven consecutive students "passed" when called upon in Contracts.

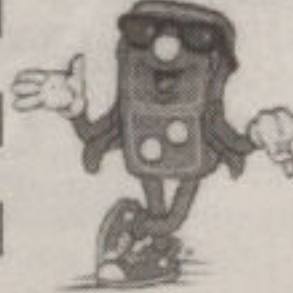


FORGET THE REST,
AND
CALL THE BEST!



629-2929

MEDIUM ONE TOPPING AND 2 SODAS -OR-
-LARGE TWO TOPPING FOR ONLY \$ 7.99
ADD SECOND PIZZA FOR ONLY \$3.99



7 DAYS A WEEK FROM 11:00AM TO 12:00AM
WE TAKE ALL COMPETITORS COUPONS
DRIVERS CARRY LESS THAN \$20.00

"Gideon's Trumpet" to Sound on Class Day

Continued from LEWIS, p. 1

[Henry] Hart '30, [Paul] Freund '31. These were the great men of the day. ... I had a great time."

Lewis returned to HLS in 1975 and for the next 15 years served on the faculty as a lecturer on law. He taught a course entitled "Constitution and the Press."

During his career, Lewis also authored several books, including "Gideon's Trumpet" (1964), "Portrait of a Decade" (1964), and "Make No Law: The Sullivan Case and the First Amendment" (1991).

In "Broken Contract: A Memoir of

Harvard Law School," Lewis's student Richard Kahlenberg '89 articulated the impact of Lewis's writings on a generation of lawyers.

"Lewis was, quite simply, part of the reason I wanted to come to Harvard Law School, and his book 'Gideon's Trumpet' was part of the reason I wanted to become a lawyer," Kahlenberg wrote.

"I was especially intrigued by him because he had successfully combined the world of law and letters in the great tradition of Dickens, Tocqueville, and Kafka."

According to Patrick Rodriguez '98, the third class marshal, the selection process began last semester when "we

sent out flyers that requested names as well as areas and aspects that the class would like to hear on." Rodriguez said that based on the names students had submitted the Class Committee had originally hoped to invite former President Jimmy Carter to speak.

"The initial person we wanted to ask was Jimmy Carter, but the University instructed us that we wouldn't be able to. ... The University wants him to speak at a university-wide graduation in the future," he said.

Rodriguez said the committee eventually focused on finding an individual who fit the attributes desired by the class.

"There was a big part of the class that wanted a non-lawyer to speak and a big part of the class that wanted a lawyer to speak," said Rodriguez. "[Lewis] actually fits both."

Carter noted that Lewis met a number of the criteria suggested by the class.

"Our general desire was to have a dynamic speaker who was also politically charged, someone who had something to say to relate to our legal education. Journalists were often listed [in the initial surveys]," she said.

Members of the Class Committee said concerns had been raised about Lewis's seemingly liberal bent and about whether or not he would speak to whole-class concerns. However, said Rodriguez, who admitted to being one of the less liberal members of the committee, "Ultimately, he has such great credentials. He's been so influential in the world of journalism and law."

Lewis himself seemed amused by the controversy. "I'm a moderate person, hardly far to the left, very much in favor of order and stability," he said.

The marshals were also concerned that the Class Day speaker direct his message to their class specifically.

Said Rodriguez, "He will tailor his speech to our class. It was very important to get someone who would not just speak but speak to us."

The marshals said that Lewis will be able to bridge the generation gap.

"Not only will he speaking to us, he'll be speaking to our families as well," said Rodriguez.

Lewis joins CNN founder Ted Turner, White House Counsel Abner Mikva, Supreme Court Justice Harry Blackmun '32, and Attorney General Janet Reno '63 as Class Day speaker.

Class Day ceremonies will take place June 4, the day before the University-wide commencement exercise. The speech will begin at approximately 2:30 p.m. and is currently scheduled to be held on Holmes Field in front of the Langdell renovations.



**You always knew
that your college education
would pay off someday.**

Plymouth Neon Well, today's the day. If you're a recent college grad or will be soon (cross those fingers), you can get \$1,400 off on a Plymouth Neon or finance one at 3.9 percent APR with a \$400 cash allowance.* Whoa! That's postage for 4,375 resumes. For more info, stop by your friendly Plymouth Dealer, punch in www.plymouthcars.com or call us at 1-800-PLYMOUTH, Ext. 200.

\$1,000 + \$400 = \$1,400
Consumer Incentive College Grad Cash for Those Eligible Total College Grad Savings

or

3.9% + \$400
Annual Percentage Rate College Grad Cash for Those Eligible

One clever idea after another.



That's Plymouth.

*\$1,400 incentive includes \$1,000 cash back on new stock plus \$400 recent college graduate cash allowance (see Dealer for details).



It's better where
it's wetter.

Write
for
the RECORD



Briefs

Hooded Man Throws Firebomb at Judge George Miller '55

A hooded man threw a Molotov cocktail at Circuit Judge George Miller '55 in a Champaign County, Illinois courtroom on April 8. Miller was treated and released for a head wound caused when the bomb struck him.

The courtroom caught fire and was reduced to a blackened hulk. Three jurors were slightly injured in the panicked rush to escape the fire.

"They've evacuated the building, there's lots of people on the street and smoke pouring from the roof," said Kay Clark, chief deputy for the federal courthouse across the street.

John Ewing Jr., 37, was charged with federal arson and bomb charges in connection with the attack. In 1988, Miller dismissed a lawsuit Ewing had filed against the Jewel grocery store chain. Ewing had sought millions of dollars for injuries Ewing claimed he suffered when he slipped and fell.

Miller was presiding over a medical malpractice trial at the time of the attack.

—from the Associated Press

Hausers Donate \$10 Million for Nonprofit Center

Harvard University has received a \$10 million gift from Gustav Hauser '53 and Rita Hauser '55-'56 to study nonprofit organizations.

The new research center will study the country's 1.4 million charities, religious congregations, foundations, hospitals, educational and cultural groups, one of the fastest-growing sectors of the economy.

The Hauser Center for Nonprofit Institutions will be based at the John F. Kennedy School of Government. However, it will involve faculty from other Harvard departments as well, including the business and law schools, spokesman Joe Wrinn said.

—from the Associated Press

B.E.L.L. Foundation to Receive Award at Presidential Summit

The B.E.L.L. Foundation will be honored as a winner of the President's Service Award at the Summit for America's Future to be held in Philadelphia in late April.

The B.E.L.L. Foundation was founded by Earl Martin Phalen '93 and Andrew Carter '94. The foundation helps urban youth through long-term one-on-one relationships between African-American role models and young children.

The foundation is one of 20 organizations selected to receive the award out of a pool of 3,600.

"The greatest reward for the work we do is seeing our children growing intellectually, emotionally, socially, and spiritually," Phalen said.

The Philadelphia summit meeting will be co-chaired by President Bill Clinton and former President George Bush. Colin Powell is the summit's general chairman.

The summit's purpose is to encourage more volunteer work to benefit America's young people. The summit "will be both a celebration of our nation's heritage of volunteer citizen service and a call to action," according to the summit organizers' mission statement.

The summit will be held in Philadelphia from April 27 through April 29. The opening and closing sessions will be held at Independence Hall.

William Y. Brown '77 Appointed Science Advisor to Secretary of Interior Bruce Babbitt '65

U.S. Secretary of the Interior Bruce Babbitt '65 announced the appointment of William Y. Brown '77 as Science Advisor to the Secretary. Brown will work directly with Secretary Babbitt on key scientific and policy issues concerning the Department.

Brown, 48, earned a doctorate in zoology from the University of Hawaii before enrolling at HLS. Brown is a former acting executive director of the Environmental Defense Fund. He has also served as a senior fellow at the World Wildlife Fund, advising on environmental issues.

John Adams Bust Found After Six-Year Disappearance

A bust of John Adams has been found, six years after its disappearance from the Adams House Senior Common Room, according to the Harvard University Police Department.

Adams, who graduated from Harvard College in 1755, was the first Harvard graduate to be elected to the presidency.

The bust of Adams' head and torso, sculpted by J.B. Binon, was given to Harvard in 1819 for the College's Philosophy Room by the Hon. John Davis. It measures approximately 66 cm by 50 cm. The plaster itself is very light, which may have facilitated its removal from Adams House. The bust was recently appraised at about \$5,000.

—from the Harvard Crimson

A Lesson In Free Speech

By Tae-hui Kim '98

Guest Columnist



Two weeks ago, a Con Law classmate of mine was gracious enough to teach me a lesson in the virtues of free speech, that invaluable cornerstone of American democracy. In responding to my comment in class regarding cultural diversity and affirmative action, he/she left an anonymous note in my seat during our mid-class break, aggressively exercising his/her free speech rights in the following manner:

Tae-Hee [sic] — Your thinly-guised ethnocentrism is appalling. To be so brazen as to suggest that you (or anyone else) can identify which 'cultural backgrounds' (i.e., races) are valuable enough to recognize, preserve, and promote, and which aren't, reflects your own feelings that your Asian (Chinese, perhaps?) background belongs to this privileged [sic] cluster of favored races/cultures. I wonder if you would be so charitable toward rural white people from the southeast or northwest. The veneer of sophistication that you have attempted to smear over your own prejudice is one of the most arrogant and insidious deceptions I've ever had the displeasure of encountering. That strikes me as particularly ironic, considering the ethnic violence and turmoil with which your own 4000-year cultural history is replete. What a valuable legacy to preserve.

— Classmate

I am eternally grateful to my classmate for so carefully considering my opinions and engaging me in this enlightening "dialogue," and I could speak at length about the substantive propositions that seem to be implied in this note. Namely, I would object to the idea that affirmative action is about racial favoritism, not anti-discrimination; that fighting racism necessarily means excluding the poor, including poor whites; and that affirmative action for Asians is particularly unjustified, presumably because of our status as a "model minority" that faces no economic disadvantage of any kind. I would remind my classmate that poverty is a reality that people of color and immigrants face to a disproportionate extent; the Asian poverty rate is much higher than that of whites and for some Asian subgroups is as high as 45 percent.

But, quite apart from all this, I respond to my classmate's generous teachings about free speech because I object, quite vehemently, to what his/her conception of this cherished right seems to be. I object because this speech was a clear, intentional attempt to target and harm me on a personal level. In fact, the note makes only implicit references to the class debate on affirmative action and focuses instead on direct, personal attacks on my prejudiced motives, ethnocentrism, and lack of charity towards the poor; it accuses me of deceptively hiding these motives under a "veneer of sophistication." Perhaps more damaging is the fact that my classmate makes this hostile attack anonymously, taking our personal differences out of the realm of public debate and into a context of a private conflict. It is within this one-on-one, private confrontation that my classmate attempts to intimidate and silence me by not identifying him/herself and hence leaving me with a fear that some unknown person in our class harbors hostility or even hatred towards me.

[T]his note is subtly racist ... particularly because it refers to me as "arrogant," "insidious," and deceptive, conjuring up images of the "sneaky" Orientals ...

Moreover, this note is subtly racist. It is racist particularly because it refers to me as "arrogant," "insidious," and deceptive, conjuring up images of the "sneaky" Orientals often depicted in Hollywood films as kung fu masters, seductresses, or science nerds. It makes an attempt to identify my ethnic background ("Chinese, perhaps?") in a way that seems to ask the question, "So, where *exactly* are you from, anyway?" Even the very fact that my classmate feels so free to write me this message reveals to me a sense of superiority and condescension, a feeling that I am an easy prey of intimidation or someone who can easily be "put in her place."

Most certainly, my classmate would be quick to respond that neither racism nor intentional harm is enough to suppress speech. Indeed, our revered Constitution teaches that even a burning cross left anonymously in an African American's front yard cannot be suppressed simply because it is racist, or because it intentionally causes emotional and psychological damage. See *R.A.V. v. St. Paul*. Dispensing with the much-distinguished "fighting words" or "group libel" theories, my classmate would passionately argue that his/her right to the freedom of speech cannot and shall not be restricted. See First Amendment, U.S. Constitution.

Even conceding the point, however, I would challenge my classmate to consider that his/her words, even if protected as "speech," cannot be equated with communication, understanding, or dialogue. Having hurled personal insults and racist imagery at me, my classmate surely cannot expect me to engage in a pleasant dialogue about the important issues that face our society. He/she leaves us only to shout at each other under the protection of our mutual preconceptions and misunderstandings of one another. Indeed, even this could have been stunted had he/she succeeded in silencing my own response.

My classmate uses his/her free speech rights to harm and denigrate, and seems to imply that the answer to such distasteful, insulting, and racist speech is simply more speech. And, so I speak. Should we let the loudest and most obnoxious win?

SPORTSGUY

SPORTSGUY Meets Reinsdorf

By Todd Stillerman '97
Sports Editor

Despite the mystic appeal of Harvard Law School intramurals, the SPORTSGUY occasionally longs for a little extra-curricular sports journalism. When Harvard Law Forum president Joel "M.C." Hammerman '97 offered an hour with Chicago Bulls team owner Jerry Reinsdorf, the SPORTSGUY jumped at the chance to interview someone more interested in Ken Griffey and David Stern than Ken Kloner '98 and Zack Stern '97.

Reinsdorf, who also owns baseball's Chicago White Sox, is himself a graduate of Northwestern Law School, so the SPORTSGUY asked what aspiring law students with dreams of a career in sports might consider. "Lie down until the feeling passes," deadpanned Reinsdorf, who went on to explain that bright young legal minds could find more meaningful and profitable work outside the world of sports. He noted that most professional teams employ no more than one in-house counsel, instead farming most of their significant legal work out to multiple firms, each with the most experience in required fields ranging from labor law to real estate to immigration.

Reinsdorf struck the SPORTSGUY as a team owner with both a love for sports and a realistic perspective on the business of the game. "No owner will tell you that buying a team is the best way to deploy your capital," he explained. "I'm not willing to lose a lot of money to win championships... if I can't break even I'll sell the teams. Still, I'm in it to win, not just make money. I'd much rather break even and win a championship than make \$20 million and finish second."

The SPORTSGUY also managed to glean a few choice tidbits from the man who signs Michael Jordan's paycheck. "The negotiations with Michael [on his \$30 million, one-year contract] took about three hours... because he had all the leverage. Really, the NBA should pay Michael Jordan, since he brings so much to the league." On his highly-criticized signing of slugger Albert Belle, Reinsdorf bluntly stated, "Our signing of Albert proves the league needs a change: the small markets need help." Nonetheless, he adds that Belle definitely took less money to play for the White Sox: "I had Frank Thomas; Albert liked the American League; we had a good relationship with his agent. One of the other big market teams would have paid much, much more for his services."

Reinsdorf expressed genuine frustration with the sports media, calling their coverage of the baseball's labor strife "moronic." He explained that "the sports-writers know absolutely nothing about business matters yet they criticize complex negotiations and revenue projections they cannot possibly understand... The media should have let financial reporters cover the baseball strike." He facetiously argued that Madison and Hamilton never read the sports pages, so they clearly could not have intended to extend First Amendment protection to sports "journalism." Given the SPORTSGUY's proclivity for bending the truth to write a more amusing column, it is a good thing Mr. Reinsdorf was not one of the Founding Fathers.

In the Basketball Leagues This Week Two undefeated teams fell amid a weekend of nonstop basketball excitement leading into the final week of the regular season:

Hogs Feasting at the B-League Trough Led by mid-season all-B-Leaguer Mark "Beefeater" Jensen '97, undefeated Sweathogs III: Ladies' Last Chance For Some Hog swept its three opponents, including previously undefeated The Killing Zone. Behind two quick three-pointers by sharpshooter Mike "West Palm" Beach '97, the Hogs (7-0) staked a 16-0 lead en route to a 75-60 victory. Friday night, the Hogs overcame a Herculean effort from Chris "Why Can't This Be" Lovrien (to whom bystanders attributed at least thirty points and twenty rebounds) to defeat *flagrante delicto*, 67-55. "Chris Lovrien is the best player in B-League, but the Hogs are the best team," noted Commissioner Naim "Affable, Huggable, Love-a" Bulbulia '98. The Hogs also edged a struggling Bye, 72-55, clinching first place in the Langdell Division and a #1 seed in the B-League play-offs.

Danes Defuse Unabomers Overcoming poor first-half shooting, the defending champion Great Danes used a second-half surge to thwart the previously undefeated Unabomers. Brutal defense by the Danes' Chris "Krakow" Neiwoehner '97 kept mid-season league M.V.P. Alan Warfield "Of Dreams" '98 in check as the Danes recaptured first place in the Austin Division. Trailing by eight with five seconds to play in the first half, Dane forward Pat O'Reilly drained a half-court prayer pull the Danes within striking distance. Two free throws by Andy "Kith and" Kincheloe '97 after a key steal gave the Danes the lead for good with seven minutes to play en route to a 40-31 win.

Lil' Penny Can't Cure the Plague Chris "I Feel Good... About" Handy '97 took over the game in the second half as A-League leading Black Plague clinched another regular season championship over Lil' Penny's Nightmare. The Nightmare, bolstered by another superb performance by A-League legends Jake "On Me, Jake Me On" Schwartz '97 and Stephen Rowe "Rowe Rowe Your Boat" '97, led the Plague 50-45 with five minutes to play. The Plague scored the last twelve points of the contest to win 57-45. The two teams should meet again in the first round of the A-League tournament. In other A-action, Alphabet Soup avenged an early season loss to the Nets, whipping their One-L nemesis 67-41. Jesse "King's" Ransom led the way for the Soup, who clinched third place with the win.

Upset of the Week Proving that the loving support of a spouse or significant other can inspire basketball dynamism, the Happy Couples shocked Box-and-One, 27-26, to the cheers of their supportive mates. Box-and-One, a team of single guys, managed only seven points in the first half. Asked to explain his team's poor shooting, Box guard Andrew Wong "And Winding Road" '98 attributed the offensive deficiency to "not gettin' any." Box-and-One still clinched second place in the Gropius Division, behind the undefeated Godfathers of Dunk.

SPORTSGUY'S INTRAMURAL TOP TEN

(last issue's rankings in parentheses)

1. Black Plague (1)	9-0	6. Unabomers (5)	6-1
2. Sweathogs III		7. Alphabet Soup (7)	5-4
3. Ladies Last Chance (3)	7-0	8. Thirsty Scholars (8)	5-1
4. Godfathers of Dunk (3)	7-0	9. Chupacabras (NR)	5-2
5. Rainmakers (4)	7-2	10. Swingers (10)	6-0
6. Great Danes (9)	6-1		

VERITAS IN VINO

Law & Vino, Italian Style

By Judson O. Berkey '98
RECORD Columnist

Having last written about some of the great Italian food found in the North End, it seemed appropriate to provide some help in choosing a wine to match. Italian wine is as varied and fractious as Italian politics. In fact, law and politics are at the forefront of the issues currently facing the Italian wine industry, as it continues to adapt to a new law regulating production methods and labeling requirements. Whoever said statutory drafting was dull probably never drafted a wine law. I, for one, certainly would have loved to do the research necessary — just think of the tasting opportunities — to write the new law.

The new Italian law provides an opportunity to explain the nature of an appellation system. The use of such a system is one of the main differences between the production of wine in Europe and in the newer growing areas such as the U.S., South America, and Australia. An appellation system regulates the grape varieties, grape yields, and minimum alcohol content of the wines produced in a specific geographic area. The purpose of the system is to enforce the traditional connection between a particular terroir (the unique combination of land and climate in a particular place) and the wines that have evolved there over hundreds of years of production. The oldest and prototypical appellation system — closely modeled by the Italians — is that used by France.

While the specific rules of an appellation system are designed for the vintner, the effects of the system are evident to the consumer on the wine label. The system is best visualized as a narrowing pyramid of increasing regulation on the methods used and wines produced by a vintner and a corresponding specificity on the wine label. At the base of the pyramid in Italy is the *vino da tavola* category. When producing a wine in this category, a vintner has great freedom in what grapes are used and how the wine may be produced. Thus, the wine label can only contain a brand name and may not include a vintage, grape variety, or place name.

The next category is called IGT. The production of wines in this category is more regulated (e.g. only certain grapes can be grown in certain regions) and bottles must be labeled with a regional name (e.g. Piedmont) and a varietal name (e.g. Barbera). The next two levels in the system are DOC and DOCG. The production of these wines is even more regulated than IGT (e.g. stricter limits on grape yields per acre). Wines in these two categories must be labeled with a geographic and varietal name (e.g. Dolcetto d'Alba) and may also include a vineyard name. Although there are over 900 types of wines produced within 240 DOC and 18 DOCG zones in Italy, more than a quarter of all the wines produced in these categories come from only five zones — Chianti, Soave, Valpolicella, Bardolino, and Moscato d'Asti.

The important thing to remember about the appellation system is that it does not necessarily ensure quality. There can be very good *vino da tavola* wines and not very good DOCG wines. And if a winemaker wants to experiment with different grape varieties or wine-making styles than those typically used in the region, the resulting wine cannot be bottled under the DOC or DOCG classification. What the appellation system does do is authenticate the connection between a certain geographic area and the wine traditionally (and usually best suited to be) produced there. The following wines come from a mixture of DOCG and DOC zones and represent some of the wide variety of Italian wines.

1995 Dolcetto d'Alba (DOC), Piedmont, Vigneto Sori Paitin (Elia Pasquero), 12.25

Dolcetto is a red grape varietal grown in the Piedmont, the best known of which comes from the DOC around the town of Alba. Dolcetto is often referred to as the Beaujolais of the Piedmont both because of its taste and because there are as many producers of Dolcetto as there are of Beaujolais. This particular wine was produced by Elia Pasquero at the Sori Paitin vineyard. It has a sharp cherry nose with the taste to match and a round full body with surprising lasting power.

1993 Chianti Classico Riserva (DOCG), Tuscany, Villa Cafaggio (Solatio Basilico), 32.00

Solatio Basilico is the brand name of this wine as this is the first year in which the wine has met the requirements to be bottled as a DOCG rather than a *vino da tavola*. Produced from grapes located in the heart of Tuscany, it has a burnt orange tint with a good balance of fruit and spice in the nose. The deep reserved fruit indicates an ability to improve with some age.

1990 Valpolicella Classico (DOC), Veneto, Vigneto Punta di Villa (Roberto Mazzi), 40.00

Valpolicella is the best known red wine from the Veneto region in northeast Italy. It is made from a blend of Corvina, Rondinella, and Molinara grapes and can range in style from a lightweight simple wine with modest cherry flavors to a sweet wine with portlike consistency. This classico is in the middle of that range and features open cranberry fruit with a smooth and elegant finish. It would pair nicely with either rich meats or even not too sweet desserts.

1994 Salice Salentino (DOC), Apulia (Agricola Vallone), 7.95

Salice Salentino is an appellation that lies in the flat hot southern part of Apulia (the heel of Italy's boot). The wine, which usually makes for a good bargain, is made primarily from the Negroarmano grape which provides characteristically dark-toned fruit with hints of chocolate. This wine has all of these attributes and more in the form of a rustic kick in the finish that tasted of spice or soy. A wonderful wine to make your house red at this price.

1994 Orvieto Classico (DOC), Umbria, Terre Vinate (Palazzone-Dubini), 9.95

This wine was included to demonstrate that Italy does produce quality whites also. Orvieto is one of Italy's best selling export DOC whites and has a long and storied history. The best examples are made from a combination of grape varieties too numerous to name or distinguish and has a light peach flavor with hazelnut overtones. Pale and light, it is meant to be drunk young. This wine was a good example of all that Orvieto can be at a nice price.

Where's My Refund?

By Calvin Gladney '97

Guest Columnist



A couple of weeks ago, Professor Randall Kennedy gave us his take on the effects of the valid usage of race in law enforcement and social decision making. He alleged that people of color in America pay a "racial tax" in these situations. This racial tax is paid by people of color in this society who are the victims of heightened suspicion and extra hassles because of the color of their skin or perceived ancestry. More particularly stated, people of color pay a racial tax in all of the situations where legally and socially their race or ancestry can be used as a valid factor in a decision which inures to their legal, social or physical detriment.

An example of this racial tax can be found in the legally-sanctioned heightened suspicion given to someone of "perceived Mexican ancestry" near America's borders. Legally, the simple fact that you *look* Mexican can be a valid factor in a law enforcement decision to stop you at the border. So a person who looks Mexican has the constant potential that he or she will be stopped and asked to answer a multitude of questions which most other people won't have to answer. This stop, and the extra time spent, is tied directly to race. Finally, the person is let through the border, emotionally scarred by the knowledge that they are still judged by the color of their skin and not the content of their character. What would Martin Luther King, Jr. say to that?

African-Americans also pay a racial tax, and Uncle Sam doesn't only make requests for payment near our gated borders. The racial tax check for African-Americans is cut in a myriad of ways. An obvious example is the absolute legality of "Officer Friendly" pulling me over and then later stating that one factor in his stop was the fact that I was African-American. Those heart-pounding moments of fear (Is this fool going to shoot me if I go for my registration?), frustration (Damn, an African-American male can't win whether he's driving an '82 Pinto or a '97 Lexus.), and wasted time ("Yes officer, I *do* live in this neighborhood and this is *my* car.") are the currency of racial taxes paid. My status as an African-American makes me a constant threat and thus less worthy of the benefit of the doubt that (let's say) a white guy in a Lexus might be privileged in his daily routine. It's the price I pay, the tax I pay, for being African-American in this country.

Re: the racial tax — count the amount withheld from a person's life paycheck. The humorous parallel with the usual IRS business ends when analyzed from the perspective of a person of color. So when I think about this racial tax, I begin to ask aloud:

Where's my refund?

Where's my refund for the overpayment of taxes in those moments where I stood on the corner in (pick a city), business suit neatly pressed, briefcase in hand, flailing unsuccessfully for a cab? Do I at least get a deduction for the value of the extra time I spent taking the bus instead?

Where's my refund?

Can I get a deduction for those moments when I'm embarrassed by the amazement of the professor when my response to a question is contractual not cultural, grounded in logic and not emotion? Don't assume my hand is up because I have something to say from an "African-American" point of view, thank you.

Hey, the more that I think about it, the more I look forward to this refund. I've been keeping receipts for 24 years now. My paperwork is definitely in order. Uncle Sam, I've got enough memories to keep your calculators humming for days. So where's my refund? My account has a credit balance and I'm way overdue! As a matter of fact, Uncle Sam is lucky that it's me asking for a refund and not one of my brothers and sisters who live and survive in America's so-called "inner cities." Their refund check would be much larger than mine; just go ask that African-American male who can't find a job because of racially-tinged assumptions. The taxes they pay are much more of a burden than my little taxicab frustrations. Tax professors, where's the line in the tax expenditure budget for middle and upper middle class African-Americans who are exempted from much of the brunt of the racial tax?

I must confess, I don't pay as much racial tax as I used to — I've become a racial tax avoidance expert! And so have you, many of my colleagues of color who are reading this article right now! Think about it! How many times have you tried to avoid the possibility that a white person (or any person, for that matter) will make the wrong assumptions about you? Check your closet for those khaki pants you wore last summer! Is that Harvard Law School sticker plastered on your rear window too?

You know, maybe I'd feel better about this racial tax if I had some say in its operation. But this is taxation without representation! Let's go to the Charles River and have a tea party! We could dump all our khaki pants, button down shirts and unassuming brown shoes (the garb of those taxed without representation) in the water! Admit it! All of those things represent your futile attempts to avoid taxes! I'll meet you at the river.

I say again: Where's my refund? But then I realize that I don't know where to file the forms! And I didn't get any W-2's in the mail. I have nothing to attach to my forms! Well, maybe I'll attach my copy of *The American Dream* by George Washington. Or was that written by the same guys who wrote *The Bell Curve*? Either way, I followed all the American Dream rules (I worked hard, went to school, and avoided trouble) and yet I'm still paying a racial tax. I'm overdue for a refund from this sham! Who made up this racial tax system anyway? Well obviously the Framers started it. But for that matter, who is running its machinery now? I bet those nine white men in black robes who have the last vote on the Constitution have something to do with what's going on!

Luckily, a couple of them have some sense in their head!

But anyway, I guess I'm going to have to take affirmative (I know that's a loaded word but bear with me) steps to get my refund. In the fall, I'll be in D.C. I'll stop by the White House. Maybe the president will take a break from his endeavors and explain to me the rules of this racial tax system and how I can get my refund. It's very possible, however, that he won't have the time. And if he doesn't, and you hear about a man arrested for throwing khaki pants, a blue button-down shirt and unassuming brown shoes in the water of the Washington Monument's Reflecting Pool, you'll know why.

Are you with me?

I'll meet you by the water.

Equal Access to Justice Is This Future Lawyer's Top Priority

By Brendan Lynch '98

Guest Columnist

CLINICALLY SPEAKING



*Won't be asked to do my share when I'm gone,
So I guess I'll have to do it while I'm here.*

— Phil Ochs, 1966

Having been asked to write a guest column giving a perspective on my work at the Harvard Legal Aid Bureau, I had hoped to write a column that was interesting, avoided platitudes and was neither judgmental nor self-righteous. I'm afraid it has proven beyond my capacities, and I beg forgiveness of the recipients of the following gratuitous and self-indulgent grandstanding. This column in no way whatsoever represents the view of HLAB or anyone there besides myself.

Banks and large corporations have enough lawyers already. I work at HLAB because the rich and comfortable will always have access to more lawyers than they need, and I don't want to be an overpaid servant to their needs, now or ever. The powerless and the unpopular have never had enough legal help, and I want to do something about that. There, I said it. I feel nervous at the prospect of actually making a public pronouncement of this, the very reason I came to law school and joined HLAB. I suppose it could be read as self-righteous, platitudinous, and uninteresting all at once, but I hope at least some readers will feel the visceral tug that draws me to clinical work much more than any Hark Box-pamphlet catch-phrase about learning to develop your lawyering skills.

I believe I should suggest why I feel it's necessary to make a big deal out of this. I'm not simply trying to guilt-trip my classmates (indeed I'm not trying that at all, as it will never work), but rather to point out my concern over an aspect of the political and legal atmosphere in which we future lawyers will soon practice. While conservatives on Capitol Hill and elsewhere give lip service to the idea of cutting back the government to enable volunteers in civil society to fill the gap in human needs, most conservatives in law school — and their liberal counterparts as well — have no thought of working to turn the void-for-vagueness-and-inadmissibility slogan Equal Justice Under Law into a reality of Equal Access to Justice. Poor and disadvantaged people in this country don't have access to the legal help they need, and they're clearly not going to get it from

[A]n attorney doesn't have to be stellar or brilliant to make a big difference in someone's life, just dedicated.

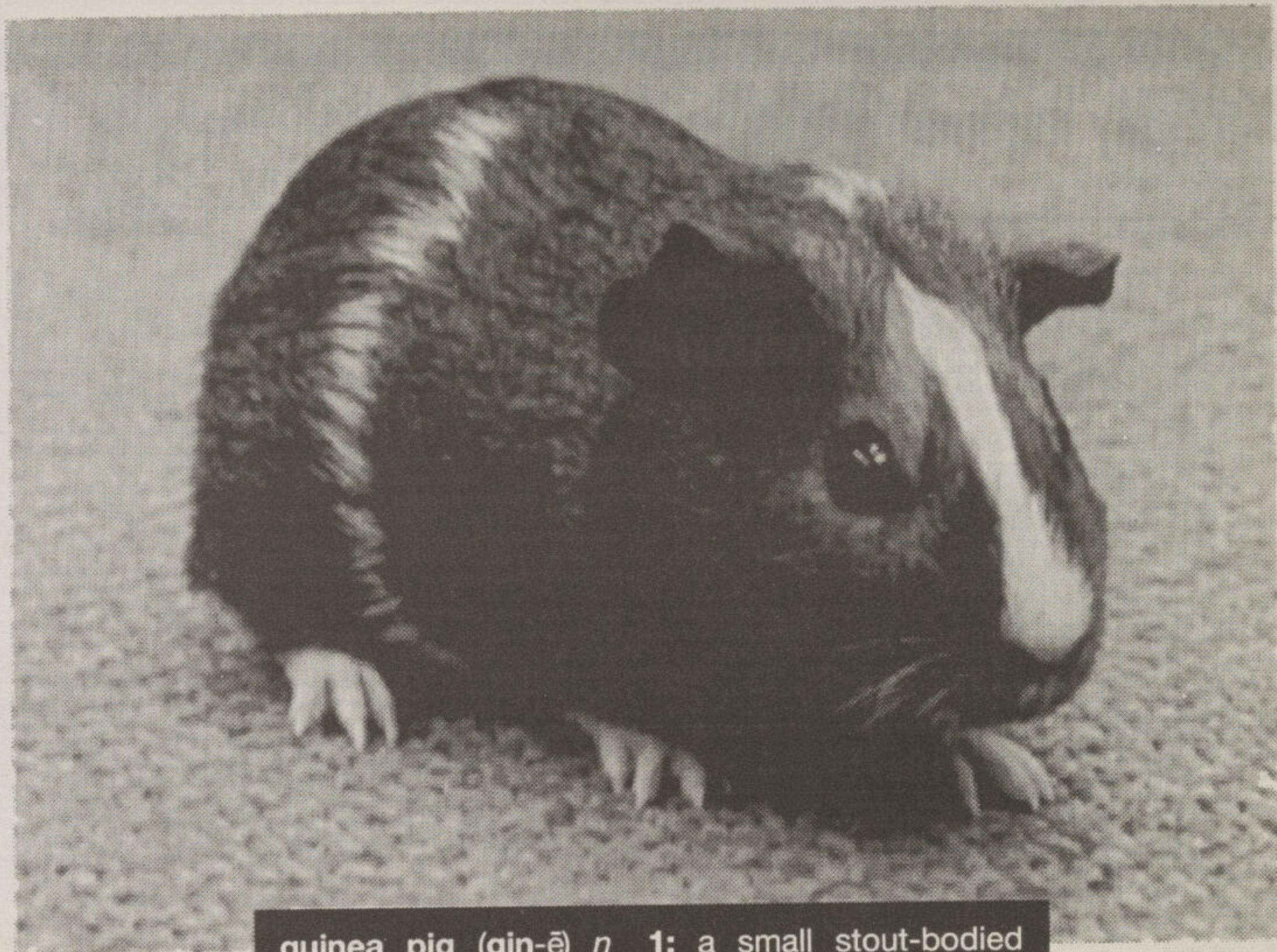
smug blowhards in Congress who throw money at the Pentagon, cut the Legal Services budget, and then make smirking appeals for more pro bono work by the bar, or from corporate attorneys like those in Massachusetts who oppose proposals for mandatory pro bono work and then assuage their conscience by writing biannual \$25 checks to legal services offices. (Okay, that was way harsh, but these people are deeply hypocritical unless they are openly self-centered, neither being an honorable option in my way of thinking.)

My work at HLAB is theoretically doing several things to upset this state of affairs. To be sure, I am developing the rudiments of a trial lawyer's skills; the experience has far more practical benefit to me than the excellent but ephemeral mini-education I received in Trial Advocacy Workshop. Most important, however, from my perspective, is that I am actually helping Boston's less fortunate in the here and now, while preparing to be a more effective counselor to low-income clients after graduation.

My clients at HLAB have mostly been people who were incapable of defending themselves in court, or lacked the legal resources to apply their innate intelligence. In a typical case, I would be asked to defend from eviction a woman who is clearly eligible for protection from that fate by a valid ordinance; yet the opposing counsel would tell me over the phone that I have no case, that my client has no legal protection at all, and that his wealthy institutional client is terribly aggrieved by her failure to surrender her small apartment. Perhaps he would be lazy and uninformed, but more likely he would understand the law and would just be doing his master's bidding by pressing for a judicial order throwing my client out. I can only imagine what sorts of lies about the law he would tell her directly, and how many weeks he would let her linger if she didn't have an attorney.

Another common sort of clients are people who have been fired or forced to quit their jobs, and yet are denied unemployment insurance. Unable to afford a paid attorney, a female client might be ready to tell the hearing officer how she quit her job due to her supervisor's bullying and intimidation, but without advice and assistance from an attorney would be unable to marshal the evidence establishing the elements of a valid claim for unemployment benefits. She would need legal help to see how to present her story, not just compellingly, but effectively. Without me or someone else to coach her testimony and argue the law of "good cause attributable to employer" before an administrator, she'd probably be inventing lame, desperate excuses to the landlord for her absent rent check right about now. That isn't self-congratulatory, it's just realistic — an attorney doesn't have to be stellar or brilliant to make a big difference in someone's life, just dedicated.

By no means does one have to be a liberal to be a devoted and effective legal services lawyer. I completely agree with Jonathan Asher '71, the Director of Legal Services in Denver, who said when he was here several weeks ago that he has little tolerance for lawyers who intend to use their clients to further some left-wing agenda, because poor people don't need your politics — they need and deserve quality legal help, just as everyone else does. There's no ideological litmus test for HLAB membership, and properly so. Conservatives should and (I hope) do feel entirely welcome to lend their skills to the assistance of the disadvantaged. I respect people of any persuasion who work for the public interest in any of the myriad ways, including legal help for the non-poor working class who don't qualify for free help yet can't afford a lawyer. And I hope all readers of this piece will someday do pro bono work, not to build up their skills in a meaningless setting, as one New York lawyer described it to me, but to help people who won't otherwise see equal justice.



guinea pig (gin-ē) *n* **1:** a small stout-bodied short-eared nearly tailless domesticated rodent (*Cavia covaya*) often kept as a pet and widely used in biological research. **2:** a subject of scientific research, experimentation, or testing.

You do have a choice in bar review.
Their Experiment or our Experience.

Choose Experience.
Choose BAR/BRI.

barbri
BAR REVIEW

*Chosen By Over 600,000 Students Nationwide
Over The Past 30 Years*

1-888-3BARBRI