



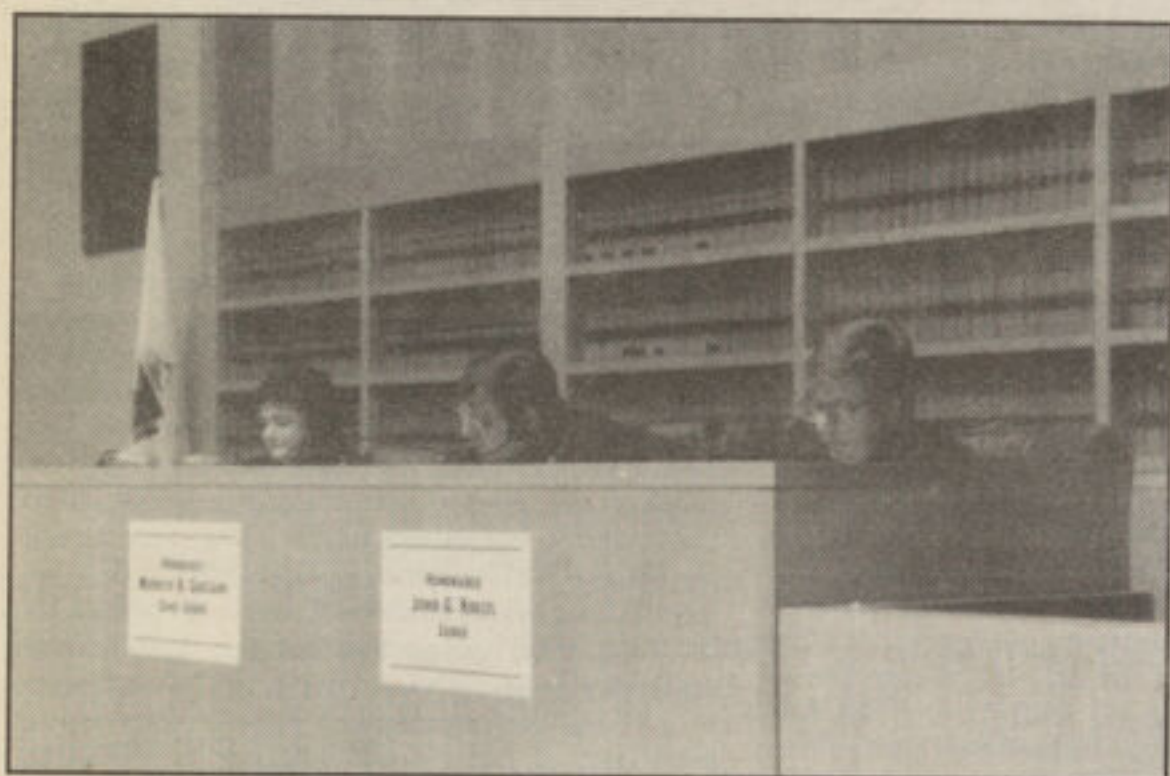
Harvard Law RECORD

America's Oldest
Law School
Newspaper
35 CENTS

Volume 105, No. 9

Cambridge 02138

Friday, November 21, 1997



Hon. Shirley S. Abrahamson, Hon. Merrick B. Garland, and Hon. John G. Koeltl contemplate their briefs during Ames arguments

Final Teams Emerge From Ames Semi-Finals

By Alex Rao

What began as a herd of 20 teams in last year's qualifying round was narrowed to two Wednesday night, as the Charles Hamilton Houston Memorial Team, led by Best Oralists Guhan Subramanian '98, swept the Langdell North Middle Memorial Team, winning Best Brief and Best Team. The Houston team will face the William J. Brennan Jr. Memorial team in the eighty-sixth annual Ames Moot Court finals in March.

Before a packed Ames Courtroom Tuesday night, the William J. Brennan, Jr. team, led by Best Oralists Daniel Pariser '98, successfully persuaded a distinguished panel of judges. Judge Merrick B. Garland '77 of the D.C. Circuit Court of Appeals, Judge John G. Koeltl '71, U.S. District Court for the Southern District of New York, and Wisconsin Supreme Court Chief Judge Shirley S. Abrahamson presided.

Wednesday's argument was heard by Judge Jerry E. Smith of the Fifth Circuit Court of Appeals, Judge Gladys Kessler '62, U.S. District Court for the District of Columbia, and U.S. District Court for the Southern District of New York Judge Jed S. Rakoff '69, brother of Prof. Todd Rakoff '75.

Tuesday's controversy concerned a quasi-hypothetical attorney general's firing of a les-

bian staff attorney who married her female partner during a Jewish Reconstructionist ceremony. Pariser and co-counsel Lara Flint '98 argued that the woman was protected by her constitutional right to intimate association and freedom of religion.

The opposing Robert H. Jackson Memorial Team, led by oralists David Quigley '98 and Jonathon Perry '98, argued for the attorney general-appellee.

The highlight of the night was an exchange between Perry and Chief Judge Garland over whether the court should adopt

Please see *AMES*, p. 6

Faculty Examine Non-Anonymous Grading

By Alyssa Caples

At a faculty meeting last Friday, professors discussed non-anonymous grading but took no definite action on the issue.

The current policy outlined in the faculty handbook outlines different policies for large and small classes. In classes with fewer than 50 students, a professor may adjust grades up but not down on the basis of overall classroom performance — what the faculty refer to as the gestalt factor. The policy regarding classes of more than 50 allows

for adjustments both up and down, but only on an objective basis.

Last year, the Legal Education Committee raised concerns over what constituted acceptable measures to adjust grades in large classes. Out of this discussion came a faculty memo from Dean Clark '72 outlining suggested guidelines. The memo included examples of the kinds of exercises allowed, such as panels and Web site participation. The memo also stated that faculty should inform students at the beginning of the semester that grade adjustments may be given, and that the Board of Student Advisers should survey the practices.

Under the current policy, adjustments are reported to the Curriculum Group, which includes the dean, associate deans, registrar, and head of office of academic affairs.

The Curriculum Group is now studying how the guidelines are working and will conclude the experiment two to three years from now. It is hoped at that time that these suggested guidelines will provide a clear framework within which the faculty can work. In

Please see *GRADING*, p. 3

Poll Shows HLS More Liberal Than America

By Darren Schlanger

The Harvard Law RECORD distributed a survey earlier this month to all HLS J.D. candidates, inquiring on a wide range of political, personal, and religious issues. A total of 306 surveys were returned, out of approximately 1600 surveys distributed. The responses included 130 1Ls, 92 2Ls, and 84 3Ls.

According to the survey results, HLS students have more liberal political viewpoints than Americans generally. HLS students are significantly more likely than Americans as a whole to support gay marriage, the legalization of marijuana, and the abolition of capital punishment.

HLS students responding to the survey are evenly split on the death penalty, with 50 percent in support and 50 percent opposed. Americans as a whole are much more likely to support capital punishment. A May 1996 Gallup Poll showed that 79 percent of Americans support the death penalty for murder.

Seventy-five percent of HLS students responding to the survey said they supported the legalization of gay marriage. Support for gay marriage is 45 percentage points lower among

Americans generally, according to a July 1996 Associated Press poll. That poll showed that 30 percent of Americans supported gay marriage and 67 percent were opposed.

A small majority of HLS students said they supported the legalization of marijuana, compared to less than a quarter of Americans who took that position in a Gallup Poll. The HLS survey showed that 53 percent of HLS students supported legalization and 47 percent were opposed. According to a May 1996 Gallup Poll, 24 percent of Americans supported legalization and 73 percent were opposed.

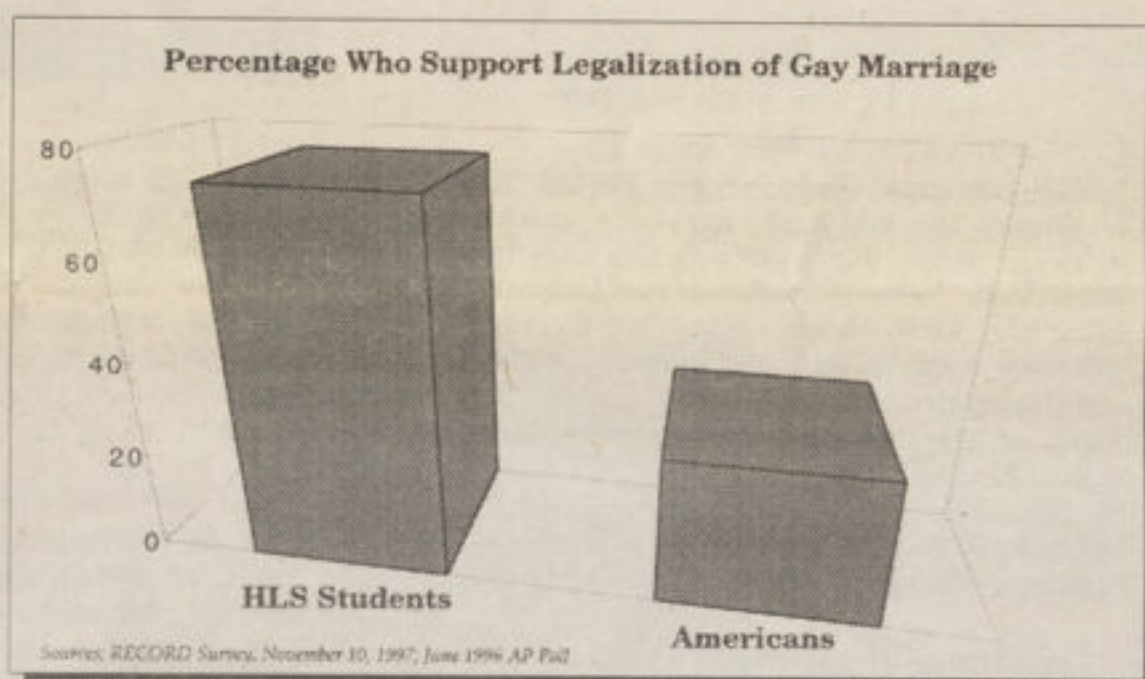
The survey's finding that HLS students are more liberal than America may partially be the result of self-selection of stu-

dents who decided to fill out the questionnaire. The survey's questions regarding illegal drug use and sexual activities caused at least some conservative students to decline to participate.

"I found numerous of the RECORD's poll questions to be inappropriate and irrelevant to any legitimate purpose I can discern and in some cases to be highly offensive," Charles Hokanson '98 wrote in an e-mail message to a RECORD writer. "As a result, I have chosen not to participate in the poll."

The survey's results match closely with the results of a poll conducted by the RECORD in 1988. That survey showed that 60 percent of HLS students described themselves as liberal, 22

Please see *SURVEY*, p. 5



Phone Rates Anger International Students HSTO Lowers Domestic Rates

By Eric Johnson

While students in Harvard housing got a welcome surprise with lower domestic long-distance rates from the Harvard Student Telephone Office, international students at HLS are angry with the high rates they are paying on calls abroad.

Harvard students who live on campus are automatically given service from the Harvard Student Telephone Office, which includes both local and long-distance services. With HSTO service, residents must use HSTO's long distance and are not given a choice of carriers, unlike off-campus Bell Atlantic customers.

Students technically have the choice of switching to Bell Atlantic and gaining the choice of long-distance companies, but students doing so must pay a second installation charge, labor, and a monthly surcharge to HSTO for the use of Harvard's wiring.

Nancy Kinchla, associate director of telecommunications at Harvard and the person directly overseeing the Harvard Student Telephone Office, said the uni-

versity strives for low rates in all categories of service.

"Last year we lowered international rates," she said. "The prices are pretty competitive. You will always be able to find a

Please see *HSTO*, p. 6

INSIDE THIS ISSUE

Steiker Receives
Tenure 3

Full Survey Results
Disclosed 4

Profs Seek Roman
Holiday 5

Parker Reviews Books
on Populism 9

Wong Kar Wai at
the Kendall 14



Winter arrives at HLS

RECORD Photo/Lesley Stone

38 Years Ago in the RECORD

Harvard Law Record

VOL. 29

CAMBRIDGE, MASS., OCTOBER 8, 1959

NO. 2

FEATURES SECTION

The Making of a Supreme Court Justice

William H. Rehnquist possesses B.A. and LL.B. degrees from Stanford University, and an M.A. from the Harvard Graduate School of Arts & Sciences (1949). He was a law clerk to the late Justice Robert H. Jackson of the United States Supreme Court in 1952 and 1953.

This article was written shortly before Mr. Justice Stewart was named to the Supreme Court. It was delayed by the editors, pending his confirmation by the Senate.

by
WILLIAM H. REHNQUIST



The Supreme Court of the United States is now in the midst of one of the storms of criticism which have periodically assailed it. Bills have been introduced in Congress to limit the jurisdiction of the high court, to overrule some of its controversial non-constitutional decisions, and to declare the sentiment of the Senate as to the necessity of judicial background on the part of a nominee to the Court. It has been urged that the "advice" of Senate be sought by the President before any nomination to the Court is made.

Criticism of the Supreme Court can easily become frustrating to the critics, because the individual justices are not accountable in any formal sense to even the strongest current of public opinion. Nonetheless, it ill behooves the critics of the present Court to seek imposition of new curbs on it until such controls as now exist are fully tested and found wanting. Specifically, until the Senate restores its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him, it will have a hard time convincing doubters that it could make effective use of any additional part in the selection process.

As of this writing, the most recent Supreme Court Justice to be confirmed by the Senate was Charles Evans Whittaker. Examination of the Congressional Record for debate relating to his confirmation reveals a startling dearth of inquiry or even concern over the views of the new Justice on constitutional interpretation. Mr. Justice Whittaker was nominated by President Eisenhower in March, 1957. *Brown v. Board of Education* (the Segregation Cases), 347 U. S. 483, had been decided three years before, and implementing decisions had been handed down in the interim. *Slochower v. Board of Higher Education*, 350 U. S. 551, where the Court held by a vote of 5-4 that the New York School Board could not fire a teacher for the reason that he had invoked the Fifth Amendment before a Congressional Committee, had been decided less than a year before. At the moment of Whittaker's nomination, the series of cases involving the rights of Communists to be admitted to practice law in a state and to refuse to answer questions put to them by legislative investigating committees was pending on the docket of the Supreme Court.¹

If any interest in the views of Mr. Justice Whittaker on these cases was manifested by the members of the Senate, it was done either in the cloakroom or in the meeting of the Judiciary Committee. The discussion of the new Justice on the floor of the Senate succeeded in adducing only the following facts: (a) proceeds from skunk trapping in rural Kansas assisted him in obtaining his early education; (b) he was both fair and able in his decisions as a judge of the lower federal courts; (c) he was the first Missourian ever appointed to the Supreme Court; (d) since he had been born in Kansas but now resided in Missouri, his nomination honored two states.

Given in addition the fact that Mr. Justice Whittaker had been an eminently successful courtroom lawyer, the fact that he had been a leader in the activities of the organized bar, and the fact that he had been very highly regarded as a judge of the lower federal courts — all of which he was — the Senators could still have no indication of what Mr. Justice Whittaker thought about the Supreme Court and segregation or about the Supreme Court and Communism.

Less than thirty years before, the Senate had made no bones about its concern with the judicial philosophy of a Supreme Court nominee. Then, too, the Supreme Court was nearing the vortex of a storm — but it was a storm raised by the very groups who are claimed to be the special wards of the Warren court. State and federal laws regulating minimum wages, maximum hours, and other business practices were being struck down by the Court as violative of "freedom of contract," a freedom which, the Court said, was embodied in the phrase "due process of law." The labor injunction, the strike as a conspiracy, and the "yellow-dog" contract were in their heyday. When, in February, 1930, President Hoover sent to the Senate the name of Circuit Judge John J. Parker to be Associate Justice of the Supreme Court, he sparked one of the most remarkable battles over a judicial nomination in the history of the upper chamber.

Objections to Parker's confirmation were at once voiced by two groups: organized labor, and the National Association for the Advancement of Colored People. Labor's objection was based on Parker's opinion, as a judge of the Circuit Court of Appeals for the Fourth Circuit, in the so-called "Red-Jacket" case.² His opinion for that court had upheld an injunction forbidding certain union organizers from attempting to organize a mine, and thereby induce the employees of the mine to breach their "yellow-dog" contracts. The objection of the NAACP stemmed from a campaign speech made by Parker in 1920, while running for governor of North Carolina on the Republican ticket. In this speech he had said:

The Negro, as a class, does not desire to enter into politics. The Republican party of North Carolina does not desire him to do so. We recognize the fact that he has not yet reached the stage in his development where he can share in the burdens and responsibilities of government. This being true and every intelligent man in North Carolina knows that it is true . . . the participation of the Negro in politics is a source of danger to both races.

No very definite issue developed as to the campaign speech. It seemed agreed by most of the participants in the debate that the statements were understandable in the context of North Carolina politics, but that from a hindsight born with Parker's nomination for national office they would much better have been left unsaid.

As to the labor injunction, though, precise battle lines were drawn and the issue was debated in editorial columns, in masses of

letters and telegrams to the Senate Judiciary Committee, and finally on the floor of the Senate. The most surprising fact about this great debate of 1930 was that none of the protagonists on either side doubted that the question should be: What were Parker's views on labor injunctions and yellow dog contracts? *The New York World*, in opposing Parker's confirmation, probably spoke for both sides when it said editorially on April 23, 1930:

. . . The Senate has every right, if it so chooses, to ask the President to maintain on the Supreme Court bench a balance between liberal and conservative opinion in the country as a whole, and every right on this premise to object that the presence of Judge Parker on the bench would increase, rather than lessen, the top heavily conservative bias of the Supreme Court as now constituted.

Most of the participants further agreed that the result reached by the Court of Appeals in the "Red-Jacket" case was undesirable; Parker's antagonists contended that he approved the result, or at least never batted an eye in reaching it, while his defenders claimed that he was bound by controlling decisions of the Supreme Court on the question, and as a judge of an intermediate appellate court had no choice but to follow them.

A few glittering generalities were hurled by each side, but to a remarkable degree editorial writers, members of the bar, and Senators engaged in a case-by-case analysis of the law as Parker found it when he had written the "Red-Jacket" opinion three years previously. The administration stood squarely behind its nominee, and Attorney General Mitchell even prepared a legal memorandum reaching the conclusion that Parker had no choice in writing the opinion that he did. On the Senate floor, the forces in favor of confirmation were nominally led by Senator Overman from the nominee's home state of North Carolina. But though Overman did a prodigious amount of work behind the scenes, he took little part in the debate on the law. The forces opposing confirmation were led by Senator William E. Borah of Idaho.

Senator Borah's principal speech began in the afternoon of one day and concluded the following day. The first part of it, before any requests to yield were made, occupies nine of the full, closely printed pages of the *Congressional Record*. Borah spoke to a question charged with emotion and public interest, and on which most of the demagogic fireworks were in the armory of his side. Yet his speech is anything but rabble rousing. Instead it is a closely reasoned, masterful exposition of the role of the Supreme Court in our system, coupled with an analysis of the precedents in an attempt to show that Parker must have reached his "Red-Jacket" result by choice, since the controlling cases did not compel it.

Almost any reply to Borah would have been anti-climatic, yet Senator Gillett of Massachusetts gave the Idahoan no quarter. He did not quarrel with the propriety of the inquiry, but he took vigorous issue with Borah's interpretation of the state of the law as Parker found it. In what appears to be an even closer reading of the cases than Borah's, Gillett ably defended the proposition that Parker was doing only what the Supreme Court decisions required him to do. After extended debate, the Senate refused to confirm Parker by a vote of 41-39.

Several times during this debate Senator Borah made clear his views as to the nature and scope of the Senate's inquiry into the philosophy of a Supreme Court nominee. In his principal speech, he mentioned that the case of *Hitchman Coal Co. v. Mitchell*, 245 U. S. 229, upholding the legality of "yellow-dog" contracts, had been decided thirteen years earlier by the Supreme Court. At this point he was interrupted by Senator Carter Glass of Virginia:

Glass: "And we have sat here all these years and permitted that to remain the law?"

Borah: "No; we have tried by an Act of Congress to repudiate that principle, but the Supreme Court of the United States said that our action was null and void. Mr. President, that is what makes this matter so very important. They pass upon what we do. Therefore, it is exceedingly important that we pass upon them before they decide upon these matters. I say this in great sincerity. We declare a national policy. They reject it. I feel I am well justified in inquiring of men on their way to the Supreme Court something of their views on these questions."

Again, during the debate on Parker's confirmation, Borah said:

Upon some judicial tribunals it is enough, perhaps, that there be men of integrity and of great learning in the law, but upon this tribunal something more is needed, something more is called for, here the widest, broadest, deepest questions of government and governmental politics are involved.

Surely the first part of this last quotation epitomizes the Senate's attitude, as manifested in discussion on the floor, toward the confirmation of Mr. Justice Whittaker. His integrity, his learning, his success at the bar, would be the only necessary subjects of inquiry in the case of a judge appointed to a lower court. Indeed, perhaps no further

inquiry would be proper in the case of a judge of a lower court. He is not there to apply his own judicial philosophy, willy-nilly, to the litigants before him, but rather to decide the case of those litigants by application of the principles laid down by higher courts. Such a process involves the use of the same ability to reason by analogy as lawyers call on constantly, and therefore the legal ability of an appointee to a trial court is of paramount importance.

Similarly, in the case of the judge who actually tries the case, we do not expect a decision between individual litigants strictly in terms of popular sentiment. The people through their legislative representatives enact what laws they will, subject to constitutional limitations. But once a law is written, neither the people nor their representatives are further consulted as to what was meant by it; the written words, together with relevant background material, are interpreted by a presumably impartial judge. Democracy ends at the courthouse door, and Joe Doaks is not to be imprisoned simply because a majority of the people sitting in the jury box or on the courthouse steps think he should be.

These reasons suggest that the primary concern with an appointee to an inferior federal court should be his ability to apply rules laid down by more authoritative sources, rather than his feeling as to whether this material is right or wrong. But in the case of the Supreme Court, the "something more" which Borah spoke of comes into play. I would prefer to interpret this phrase, not as meaning that it takes more ability to be a Justice of the Supreme Court than a judge of the lower federal courts, but rather that there are additional factors which come into play in the exercise of the function of a Supreme Court Justice.

The Supreme Court, in interpreting the constitution, is the highest authority in the land. Nor is the law of the constitution just "there," waiting to be applied in the same sense that an inferior court may match precedents. There are those who bemoan the absence of *stare decisis* in constitutional law, but of its absence there can be no doubt. And it is no accident that the provisions of the constitution which have been most productive of judicial law-making — the "due process of law" and "equal protection of the laws" clauses — are about the vaguest and most general of any in the instrument. The Court in *Brown v. Board of Education*, supra, held in effect that the framers of the Fourteenth Amendment left it to the Court to decide what "due process" and "equal protection" meant. Whether or not the framers thought this, it is sufficient for this discussion that the present Court thinks the framers thought it.

Given this state of things in March, 1957, what could have been more important to the Senate than Mr. Justice Whittaker's views on equal protection and due process? It is high time that those critical of the present Court recognize with the late Charles Evans Hughes that for one hundred seventy-five years the constitution has been what the judges say it is. If greater judicial self-restraint is desired, or a different interpretation of the phrases "due process of law" or "equal protection of the laws", then men sympathetic to such desires must sit upon the high court. The only way for the Senate to learn of these sympathies is to "inquire of men on their way to the Supreme Court something of their views on these questions."

¹ *Schwartz v. New Mexico Board of Bar Examiners*, 353 U. S. 232; *Konigsberg v. State Bar of California*, 353 U. S. 252; *Watkins v. U. S.*, 354 U. S. 178; *Sweezy v. New Hampshire*, 354 U. S. 234.

² *International Organization, United Mine Workers v. Red Jacket Consolidated Coal & Coke Co.*, 4th Cir., 18 F.2d 839, decided April 18, 1927.

James R. Hoffa to Visit Forum

James R. Hoffa, controversial president of the Teamsters' Union, will be a featured speaker in the first-term series of the Harvard Law School Forum. In releasing tentative plans, Forum president John S. Samuels, 3L, referred to the Hoffa appearance as "one of several provocative and interesting programs we have arranged."

In contrast to the turbulent Hoffa, cartoonists Al Capp and Walt Kelly will appear in a program titled "Sketches of American Life" later in the season.

Shifting from sketches, the Forum expects to present "An Evening with Harry Golden." Sometimes called "The Will Rogers of the 'Fifties,'" Harry Golden will expound perceptive oral essays of the kind known to readers of his widely-circulated publication.

On international topics, plans are under way for a discussion of French President DeGaulle's latest proposal to end strife in Algeria.

While Mr. Samuels expects no cancellations, he stressed that "changed circumstances sometimes require us to omit a previously announced program." In case of change, "we will schedule other programs of equal interest," he declared.

Third-Year Tangles with Alleged Secret Service Agent

By Janie Kim

Interrupting Janet Fisher's '98 day of callback interviews in Washington, D.C. was an awkward exchange with a man claiming to be a Secret Service agent. Fisher was stopped and questioned by the supposed Secret Service agent while window shopping on K Street, Thursday, Nov. 6 at around 12:30 p.m.

"As I left the store," Fisher said, "I was grabbed by the elbow by a man in a long black trenchcoat with an earpiece with a little coil. He whipped out an I.D. and said, 'Secret Service. Ma'am, we need to ask you a few questions.'"

Parked behind the man was an unmarked black sedan with tinted rear windows, she said. In the passenger seat was a similarly outfitted man with sunglasses, said Fisher.

The man then asked her if she had been to the Ritz Carlton in Arlington that morning, she said.

"Remembering my criminal law class vaguely, I told him I did not have to answer," said Fisher, "But he said I needed

to cooperate or they would have to take me in — 'detain me' was the phrase he used."

According to Fisher, the man informed her that they had been following her for the past two days. "I had been seen at several of their 'sites' while they were protecting an individual," she said.

Fisher reported reacting slightly flippantly at first. "I was scared, but naive interest got the better of me for a moment as I said, 'Ooh, like the witness protection program? and what is a 'site'?"

"Then I got serious: scared that I would be late for my next interview, and said that I'd be happy — yes I said 'happy' — to provide I.D."

Fisher showed the man her Harvard I.D. and told him that she was in town looking for jobs. She described the man as "a little dumbfounded" by this revelation.

"And I bet I sounded quite pitiful," she said.

According to Fisher, the man informed her that the individual he was protecting was an Israeli official staying at the Ritz Carlton in Arlington, where she too

was staying during her visit to D.C.

Secret Service agent James Mackin of the Public Affairs Office doubts that the man was in fact an agent of the Secret Service, a federal agency administered by the Treasury Department.

"Our records show that there were no protectees in town during the time of her visit," said Mackin.

Mackin explained that the Secret Service only protects heads of state and heads of government. "If it were an Israeli official that was supposed to be the protectee, it would have had to have been [Prime Minister Benjamin] Netanyahu," he said, "And he was not in Washington D.C. the first week of November."

Mackin hypothesized that the man who approached Fisher was either erroneously identified as a Secret Service agent or the perpetrator of an elaborate hoax.

"Certain officials ranked lower than head of state would be entitled to the State Department's protection," he said. "If there were an Israeli official at the Ritz who was receiving security, it would have been from an agent of the State Department, not the Secret Service."

Andrew Laine, a public affairs officer

at the State Department, declined to comment on the incident.

Mackin described the possibility of a Secret Service impersonator "troubling."

Fisher, however, reasserted that the man who stopped her explicitly represented himself as a Secret Service agent and wondered at the improbability of an impersonator tailing her.

"I distinctly remember hearing him say, 'Secret Service,'" she said, "and the I.D. he flashed had 'Secret Service' written on top."

"Also, it just seems odd that some poser would invest in all these accessories and take on this risk to follow me. I mean, maybe someone worthwhile but not me."

Fisher could understand how her activities in D.C. might arouse suspicion. "It made sense," she said. "Because I have a not-so-good sense of direction, I would often take the metro one stop, realize I was going the wrong way, and get off, go up the stairs and around to the other side to take the opposite metro — just like I was trying to lose someone. When really, I was just lost. I would also walk down, say, G street trying to get from 16th to 17th and wind up on 15th and have to do a double-take."

Clark Suggests Guidelines for Grade Adjustments

Continued from GRADING, p. 1

the meantime, said Clark, professors should "report any doubts [in applying the grade change rules], say for work submitted on the Internet, and discuss these with the associate deans."

Associate Dean Frank Sander '52 reviewed the suggested grading guidelines. Sander said that in classes with more than 50 students, grades normally determined through blind grading could only be revised based on "specific, required exercises for each student, not gestalt assessments."

Clark said that grade changes due to

non-anonymous considerations should be limited "generally to one notch, although there is nothing in the faculty handbook [stating these limits]."

Clark said that he "discourage[s] the practice [of non-anonymous grading] in the 1L classes because there is no need for it in those classes."

Anonymous grading was first implemented at HLS in the early 1970s in response to student concerns about bias against students who voiced unpopular political sentiments during class discussions. To supplement this policy, regulations allowing for adjustments to the blind grading policy were introduced.

Carol Steiker '86 Receives Tenure

By Seth Persily

On Wednesday, November 19, Dean Clark announced the tenure appointment of Carol Steiker '86 as Professor of Law. Steiker, a Criminal Law specialist, has been an assistant professor at the Law School since 1992. The appointment will take effect in July, 1998.

"Carol Steiker is a wonderful addition to the School's permanent faculty," said Dean Clark. "She is an excellent scholar in the area of criminal law and is an immensely popular and effective teacher."

Steiker expressed joy with the decision, "I am delighted to become a full-fledged member of such a vibrant and exciting academic community. I look forward to continuing and expanding my work to better understand and to improve the nature and

quality of our institutions of criminal justice."

Steiker, who grew up outside Philadelphia, attended Harvard-Radcliffe, where she graduated summa cum laude in 1982 with a B.A. in History.



After taking a year off to study poetry in France on a Fulbright Scholarship, Steiker attended Harvard Law, where she served as President of the Law Review.

Steiker was a law clerk for U.S. Supreme Court Justice Thurgood Marshall from 1987 to 1988, and for Judge J. Skelly Wright of the U.S.

Court of Appeals for the District of Columbia Circuit from 1986 to 1987.

Prior to returning to HLS as a professor, Steiker worked as a public defender in Washington, D.C.

Steiker currently teaches first-year Criminal Law, an advanced course in Criminal Procedure, and a seminar on Capital Punishment.

Fancy Fingers

PROFESSIONAL NAIL CARE

1617A Mass. Avenue, Cambridge, MA 02138

**GRAND
OPENING**
10/15/97

The Nails Salon to make your beautiful nails
more fancy looking than ever!!

APPOINTMENT & WALK-INS WELCOME
GIFT CERTIFICATES AVAILABLE

617-876-2294

Mon.-Wed.: 10AM.-8PM.
Thurs.-Sat.: 9AM.-8PM..

FULL SET	FILL-INS	MANICURE	PEDICURE
\$5 OFF	\$2 OFF	\$2 OFF	\$5 OFF
(Regular \$30)	(Regular \$17)	(Regular \$11)	(Regular \$25)

Thin. Strong. Natural Look

Tis the season
to be FREEZIN'!
OR IS IT?

Cheap tickets. Great advice. Nice people.

20% SAVINGS ON CONTIKI HOLIDAY TOURS

London \$287	Phuket \$705
Cancun \$273	Johannesburg \$1018

FARES ARE ROUNDTRIP DO NOT INCLUDE TAXES. SUBJECT TO AVAILABILITY AND OTHER RESTRICTIONS APPLY. FARES ARE SUBJECT TO CHANGE.

Council Travel

CIEE: Council on International Educational Exchange
273 Newbury Street, Boston

(617) 266-1926

12 Eliot Street, 2nd Floor, Cambridge

(617) 497-1497

MIT Student Center W20-024, 84 Massachusetts Ave., Cambridge

(617) 225-2555

HARVARD LAW SCHOOL YEARBOOK

Last Chance to Get Your Picture Taken

December 2-5

9-4 PM Outside the Harkbox Cafe

Please sign up outside the Coop or just stop by

Also:

The Deadline for Ordering an
Engraved Yearbook is December 1

Please fill out an order form in the Hark, or send an E-mail to
Mitrani@law.harvard.edu including your name, ID number, class, whether
or not you want an engraved book, and name you want engraved.

RECORD Survey Results

	1L	2L	3L
1) PARTY ID:			
Democrat	51%	52%	45%
Other	30%	22%	26%
Republican	19%	26%	22%
2) 1996 PRESIDENTIAL ELECTION:			
Clinton	61%	61%	69%
Didn't Vote	18.5%	9%	4%
Dole	17%	22%	22%
Other	3.5%	8%	5%
3) SHOULD DEATH PENALTY BE OUTLAWED?			
Yes	49%	50%	52%
No	51%	50%	48%
4) SHOULD MARIJUANA BE LEGALIZED?			
Yes	50%	57%	51.5%
No	50%	43%	48.5%
5) WAS US JUSTIFIED IN DROPPING AN A-BOMB ON HIROSHIMA?			
Yes	77%	69%	74%
No	33%	31%	26%
6) WHAT ABOUT ON NAGASAKI?			
Yes	36%	42%	54%
No	64%	58%	46%
7) FAVOR OR OPPOSE LEGALIZATION OF GAY MARRIAGE?			
Favor	73%	79%	73%
Oppose	27%	21%	27%
8) WHICH DECADE WOULD YOU PREFER TO LIVE IN?			
90's	72%	73%	74%
80's	10%	15%	11%
70's	10%	7%	7%
60's	5%	4%	5%
50's	3%	1%	6%
9) ARE YOU NOW OR HAVE YOU EVER BEEN A SMOKER?			
Yes	20%	24%	26%
No	80%	76%	74%
10) HAVE YOU ENGAGED IN SEXUAL INTERCOURSE?			
Yes	81%	93%	95%
No	19%	7%	5%
—If No: Why?			
Religious Beliefs	13.5%	60%	n/a
Wait until Marriage	18%	10%	n/a
Both	32%	10%	n/a
Other	36.5%	20%	n/a
—If Yes:			
A) WHAT AGE DID YOU LOSE YOUR VIRGINITY?			
Average	18	17	18
Youngest	14	14	13
Oldest	25	25	24
B) # OF PARTNERS?			
Average	5-6	7	7
Fewest	1	1	1
Most	30	56	33
Only 1	26%	19%	17%
2-5	34%	46%	32%
6-10	25%	24%	28%
>10	16%	11%	23%
C) ENGAGED IN SEX WITH ANOTHER HLS STUDENT?			
Yes	8%	29%	43%
No	92%	71%	57%
D) ENGAGED IN ANAL SEX?			
Yes	30%	35%	31%
No	70%	65%	69%
E) MORE THAN ONE PARTNER AT THE SAME TIME?			
Yes	5%	7.5%	15%
No	95%	92.5%	85%
11) SEXUAL ORIENTATION?			
Heterosexual	98%	91%	90%
Homosexual	0%	3%	3.5%
Bisexual	2%	6%	6.5%
12) WHICH TV SHOW DO YOU PREFER:			
SEINFELD OR THE SIMPSONS?			
Seinfeld	58%	50%	62%
Simpsons	42%	50%	38%

	1L	2L	3L
13) RATE YOUR INTELLIGENCE RELATIVE TO OTHER HLS STUDENTS?			
One of the Smartest	9%	9%	5%
Above Average	27%	37.5%	32%
Average	60%	47%	58%
Below Average	4%	6.5%	5%
14) WHICH DO YOU SEE YOURSELF AS MORE?			
Supreme Court Justice	18%	22%	25%
Senator	40%	34%	42%
Partner in a Firm	42%	44%	33%
15) DO YOU MASTURBATE?			
Yes	68%	77%	83%
No	32%	23%	17%
16) HAVE YOU EVER CONTEMPLATED SUICIDE?			
Yes	30%	34%	33%
No	70%	66%	67%
17) HAVE YOU EVER SMOKED POT?			
Yes	42%	57%	60%
No	58%	43%	40%
% of class that still smokes: 16%	14%	20%	
18) HAVE YOU EVER DONE ANY OTHER ILLEGAL DRUGS?			
Yes	15%	17%	24%
No	85%	83%	76%
MUSHROOMS?			
Yes	14%	15%	18%
% of class that still would:	4%	4.5%	7%
ACID?			
Yes	12.5%	17%	15%
% of class that still would:	3%	4.5%	6%
ECSTASY?			
Yes	7.5%	12.5%	11%
% of class that still would:	5%	8%	6%
COCAINE?			
Yes	4%	8%	11%
% of class that still would:	1.5%	7%	7%
HEROIN?			
Yes	4%	0%	2%
% of class that still would:	1.5%	0%	1%
19) ARE YOU AFRAID OF DEATH?			
Yes	50.5%	51%	49%
No	49.5%	49%	51%
20) FAVORITE GARDEN OF EDEN CHARACTER?			
Eve	47%	40%	38%
Adam	28%	35%	33%
Snake	20%	25%	29%
God	5%	n/a	n/a
21) HAVE YOU EVER CONSULTED A THERAPIST?			
Yes	33%	37%	37%
No	67%	63%	63%
22) IF YOU CONTRACTED A TERMINAL DISEASE AND WERE CERTAIN THAT YOU WOULD DIE WITHIN THE NEXT 5 YEARS, WOULD YOU REMAIN AT HLS?			
Yes	31%	47%	59%
No	69%	53%	41%
23) DO YOU BELIEVE IN GOD?			
Yes	60%	60%	54%
No	15.5%	17%	19%
Agnostic	25.5%	23%	27%
24) DO YOU BELIEVE IN AN AFTERLIFE?			
Yes	58%	57%	54%
No	42%	43%	46%
25) IS IT EVER OKAY TO KILL SOMEONE IN THE NAME OF GOD?			
Yes	11%	15%	7%
No	89%	85%	93%
26) DO YOU BELIEVE HOMOSEXUALITY IS IMMORAL?			
Yes	14%	16%	15%
No	86%	84%	85%
27) DOES THE PHRASE "IN GOD WE TRUST" BELONG ON THE DOLLAR BILL?			
Yes	58%	53%	49%
No	42%	47%	51%
28) IS YOUR FAITH MORE VALID THAN OTHERS?			
Yes	19%	27%	17%
No	81%	73%	83%

INTERESTING FACTS AND CONNECTIONS

% of virgins who:
 Smoked pot 0%
 Want to legalize marijuana 0%
 Masturbate 37%

% of people who want to live in the 80's that are Republicans: 70%

% of people with >5 sexual partners who have done drugs: 80%

% of people who have done Acid that engage in anal sex: 73%

% of people who don't masturbate that believe in God: 92%

% of people who felt that the bombing of Nagasaki was justified that voted for Clinton: 82%

% of people who believe homosexuality to be immoral that have consulted a therapist: 8%

% of people who consider themselves one of the smartest HLS students that voted for Bob Dole in 1996: 71%

% of people who listed Adam as their favorite Garden of Eden character who are opposed to legalizing marijuana 72%

% of people who have ever been a smoker that have contemplated suicide 65%

% of people who see themselves more as a Supreme Court justice (than as a Senator or Partner in a firm) and want to abolish the death penalty 76%

Self-Selected Sample May Skew Survey Results

Continued from page 1

percent as conservative, and 16 percent as moderate.

The RECORD's 1988 survey showed that 73 percent of HLS students planned to vote for Michael Dukakis '60 and 23 percent planned to vote for George Bush. In the actual election Bush garnered 54 percent of the vote and Dukakis got 46 percent.

The 1988 RECORD poll used a different methodology than the 1997 poll. While the 1997 survey was in written form and distributed to all students, the 1988 poll was conducted by telephone and sampled five percent of the student body.

Smoking not an HLS habit

One-fourth of the students surveyed said they are or have been habitual cigarette smokers. That statistic seems to match with a national survey indicating that those with more education are less likely to be smokers. According to a June 1996 Gallup Poll, 17 percent of Americans with post-college education said they had "smoked cigarettes within the past week," while over one-third of Americans with a high school education or less said they were smokers.

Overall, the Gallup Poll said that 27 percent of Americans age 18 and over

currently smoke. However, that statistic is difficult to compare with the HLS survey result. The HLS survey asked if students had ever been smokers, while the Gallup Poll asked only about current smoking habits.

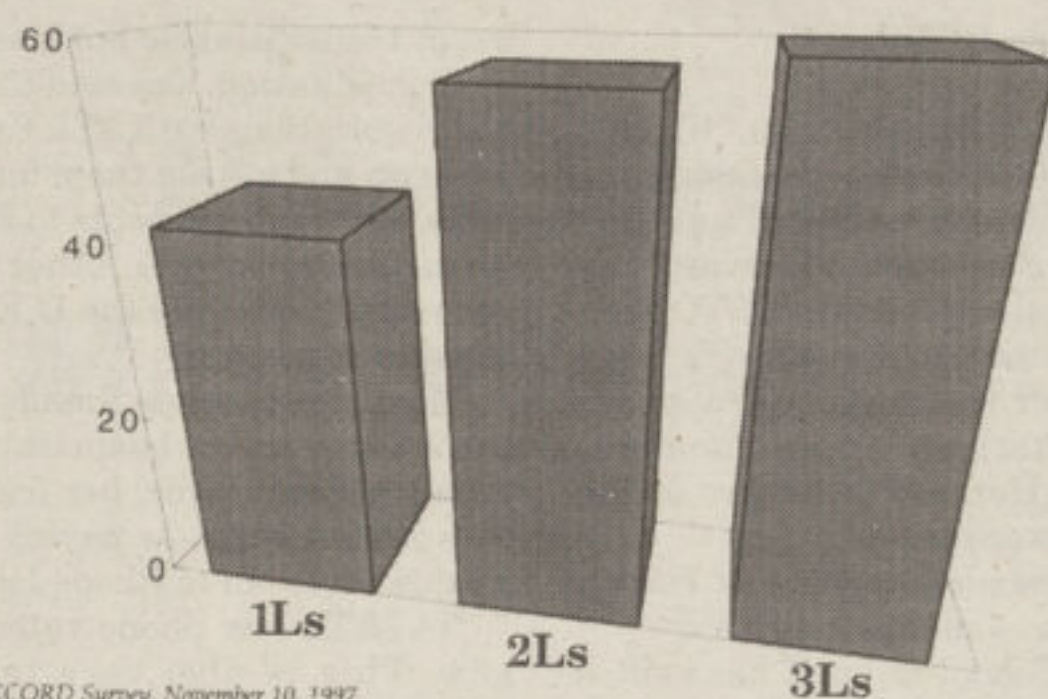
Sixty Percent Believe in God

Many of the answers given by the three different law classes elicited almost identical responses. Half of the respondents from all three classes are not afraid of death, sixty percent of all three classes believe in God, and 15 percent feel that homosexuality is immoral.

The questions regarding the bombing of Hiroshima and Nagasaki reflected an inverse proportion of responses: roughly 70 percent of each class felt the United States was justified in detonating the first bomb over Hiroshima, while approximately 65 percent of each class condemned the United States' bombing of Nagasaki.

Some questions seemed to reflect the changing attitudes and experiences of students as they advanced through law school. While only 31 percent of the 1Ls claim that they would remain at HLS if they contracted a fatal disease and knew they would die in five years, 47 percent of the 2Ls would remain, while as many as 59 percent of the 3L

Percentage of HLS Students Who Have Tried Marijuana



Source: RECORD Survey, November 10, 1997

class would remain enrolled.

The number of students who have engaged in sexual intercourse with fellow students rises after each year: only 8 percent of the 1L class has engaged in sexual intercourse with a fellow law student, in contrast to the 29 percent of 2Ls and 43 percent of 3Ls who have. Drug use also appears to rise after each successive year: 42 percent of 1Ls admit to trying marijuana, while 57 percent of 2Ls and 60 percent of 3Ls have smoked pot in their lifetime.

Some trends stood out rather clearly within each law school class. The first-year class had the highest percentage of virgins of the three classes at 19 percent (compared to 7 percent of 2Ls and 5 percent of 3Ls). Of the people in the 1L class who have refrained from sex, none have tried marijuana, and only 37 percent masturbate (compared to the 68 percent of the overall class who do).

Of the 1Ls who would prefer to live in the 1980s, 70 percent are Republicans (versus 19 percent of the total class). Of the 1Ls that don't masturbate, 92 percent believe in God (versus 60 percent of the total class). Of the 1Ls who have taken acid, 73 percent have engaged in anal sex (compared to 30 percent of the overall class).

Dole Voters Think They're Smart

Of the 2Ls who considered themselves to be the smartest students at the law school, 70 percent voted for Bob Dole in 1996 (versus the 9 percent of the overall respondents). 72 percent of the 2Ls who

named Adam as their favorite Garden of Eden character are opposed to legalizing marijuana (versus the 43 percent of the overall 2L class).

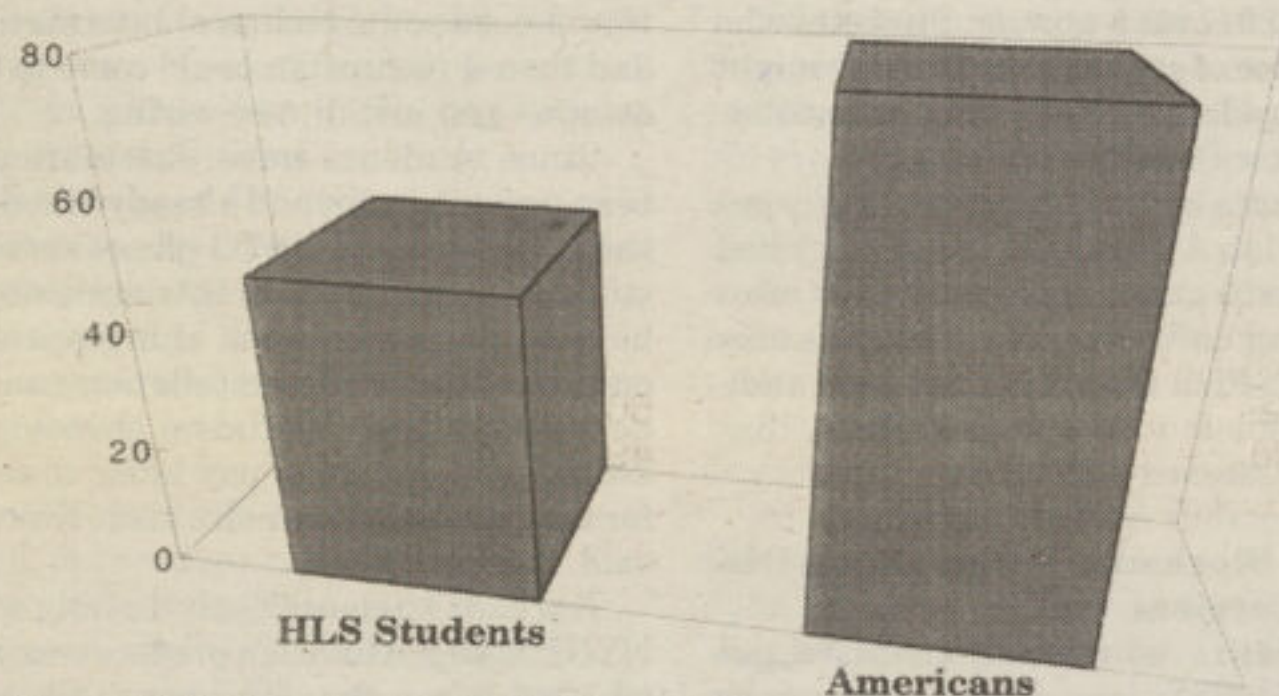
Only 8 percent of the 2Ls who believe that homosexuality is immoral have consulted a therapist (versus the 37 percent of the overall class). 80 percent of the 2Ls who have tried illegal drugs have had more than 5 sexual partners, compared to the 35 percent rest of the 2Ls who have had more than 5 partners.

65 percent of 3Ls who have been a smoker have contemplated suicide (versus 33 percent of the overall class). And of the people who envision themselves more as a Supreme Court justice than as a senator or partner in a firm, 76 percent want to abolish the death penalty (versus 52 percent of the entire class).

Many students wrote in their own answers to the multiple choice questions on the survey. One student, in response to the question, "Who was your favorite Garden of Eden character?" wrote "never read it." Another responded to the question of what age they were when they lost their virginity with "25 - I tried to hold out for marriage, but I couldn't make it."

One 2L jointly answered the questions, "Have you had sex with another member of HLS?" and "Have you had anal sex?" with, "What exactly is the difference?" In response to the question of whether one felt it was ever justified to kill in the name of God, one student wrote, "Only someone who was going to kill me in the name of God."

Percentage Who Support the Death Penalty



Sources: RECORD Survey, November 10, 1997; May 1996 Gallup Poll

Professors Peeved Over Rome Congress Conflict

By RECORD Staff

At a faculty meeting last Friday, Dean Clark '72 drew criticism from professors who said that a scheduling conflict is preventing them from attending an alumni congress scheduled for next June in Rome.

Fifteen faculty members signed a petition complaining about the lack of faculty input in the planning of alumni events. According to the petition, the faculty cannot attend the Rome event because it is scheduled for the same time as the Program of Instruction for Lawyers (PIL).

"There should be somebody who is responsible for representing the faculty position," said Prof. Detlev Vagts '51. "What was it that led to the timing of the Rome trip to conflict with PIL?"

PIL is the law school version of Continuing Legal Education. Each year there is a PIL forum at HLS for two weeks in June. The 1998 PIL program overlaps the HLS Worldwide Alumni Congress in Rome, which is scheduled for June 11-14.

Unlike most alumni events, the Rome trip has a significant eight-to-nine-hour CLE component. Several professors argued that there should be greater faculty involvement with a program that so heavily incorporates le-

gal education workshops.

According to promotional material produced by the HLS alumni association, the Worldwide Alumni Congress will feature "academic presentations on International Tax and Finance, European Law, Islamic Law, East Asian Legal Studies and ADR, a speech by the president of Italy, private tours of museums and architectural treasures including the Vatican Museum and the Palazzo Doria Pamphilj," and an audience with Pope John Paul II.

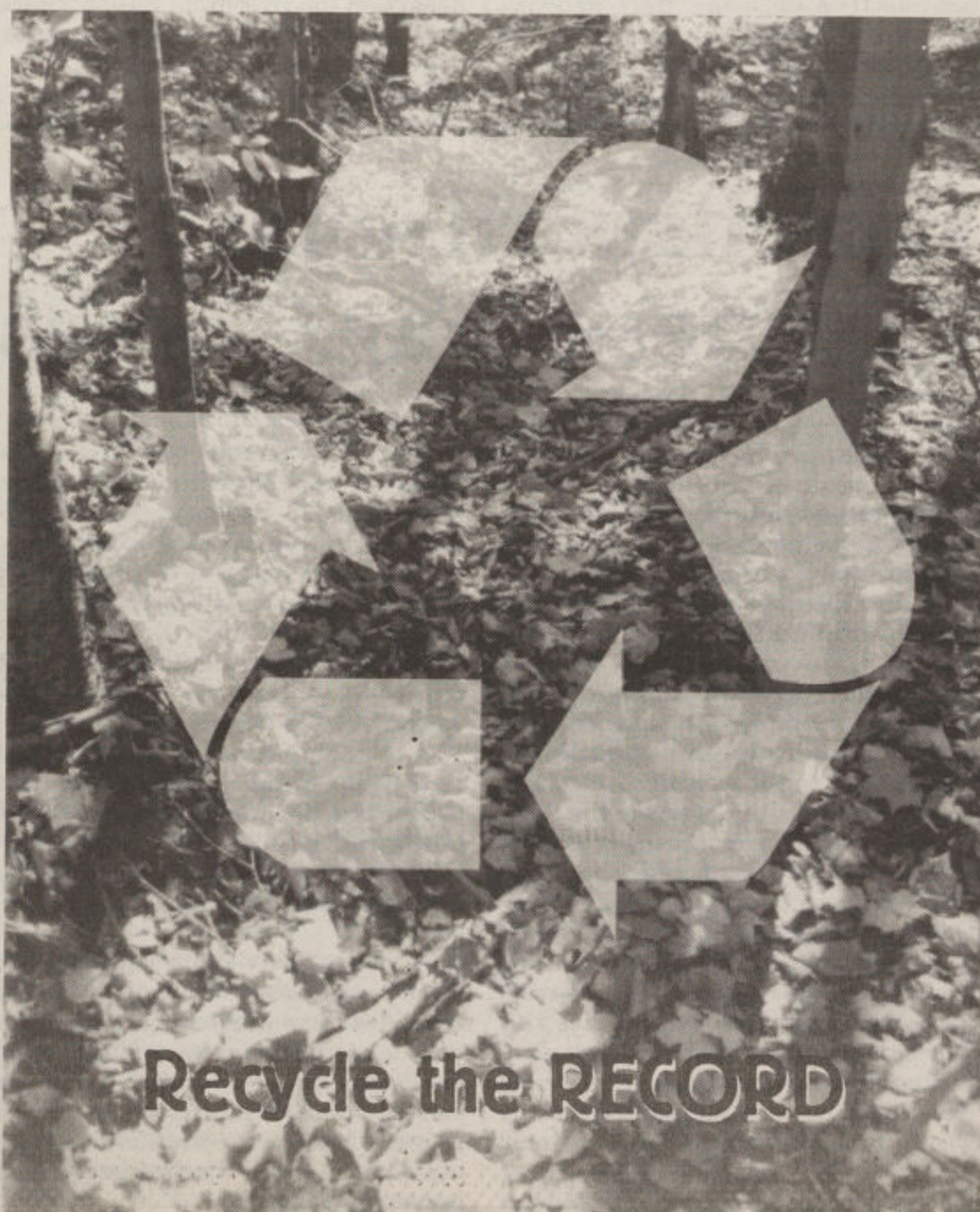
Clark, who is himself already scheduled to go to the Rome event, said that he "was quite surprised about the turn of events this time around."

According to Clark, the professors' interest in the Rome trip marks a shift from the usual lack of enthusiasm about such events.

"At the last second I always have to get Charles Ogletree '78 to lead a panel. Or Alan Dershowitz. Rome has deservedly garnered more interest," said Clark.

In the future, an *ad hoc* committee made up of interested faculty will help to organize similar alumni events.

Clark said that while "this is rather different from PIL because it depends heavily on the leadership of alumni who have social goals to meet as well, . . . events that have as much faculty involvement in panels ought to have more faculty discussion."



HSTO Calls Lower Off-Campus Phone Rates "Temporary Promotional Program"

Continued from HSTO, p. 1

lower price to a particular area," Kinchla said. For overall phone service, taking into account local and national service, Kinchla said she believes Harvard students get a better deal with HSTO than they would with Bell Atlantic.

While lower international rates are not on the horizon at the moment, Kinchla said Harvard is always in the market for lower rates.

"We have vendors in here at least a couple of times a month," she said.

The Law School Council has sent a letter to HSTO to highlight the concerns of on-campus international students. Eric van Gelderen LL.M. '98, the chairman of LSC's Graduate Program Committee, is spearheading the student government's effort to prod HSTO into changing its policies.

Van Gelderen said many LL.M. students only learned how to lower their phone bill through trial-and-error.

"The rates they gave us in the beginning were all wrong," van Gelderen said. "Most had to calculate on the basis of their phone bills."

Van Gelderen copes by calling during Amsterdam's late night when HSTO charges 55 cents a minute. That rate is acceptable for van Gelderen, who said he calls home once a week and talks for only about 20 minutes. Before van Gelderen figured out the right time to call, however, he said he was paying about \$1.20 a minute during Amsterdam's peak calling periods.

When called this week, an operator at HSTO quoted the rates to the Netherlands as \$1 from midnight to noon and 55 cents a minute from noon to midnight and all day on weekends.

But Cecile Menu LL.M. '98, an LSC representative from Paris, spends much more time on the trans-Atlantic lines. Menu lives off campus, however, and is pleased with the flat-rate of 35 cents a minute she gets from AT&T.

"It's very low," said Menu, who spends an average of an hour a day on the phone with her husband in Paris. "I call him between two and five times a day."

Menu's 35-cent rate is effective 24 hours a day, seven days a week, and also applies to other countries on the continent such as Germany, Italy, and the Netherlands. She also pays a flat-rate of 10 cents a minute for calls within the U.S.

While Menu is planning to special-

ize in trans-Atlantic business dealings after graduation, she said the extent of her negotiations with AT&T was calling them up and asking them for their best rates. And while 35 cents to France may seem like a bargain, other countries, such as Canada and the U.K., are even cheaper.

Menu can call her friends in London in the middle of the business day for only 12 cents. Meanwhile, her friends in the dormitories might be paying 29 cents a minute for a call to Rhode Island.

"[AT&T's low phone rates are] very new. This is also very temporary," Harvard's Kinchla said. "Believe me, they're not charging their large customers that. They're charging more ... It is what they call a promotional program."

Depending on the country, students can actually save money with HSTO over AT&T's International One-Rate Plan. An AT&T operator quoted the One-Rate charge to China as \$1.19 per minute. While on-campus HSTO customers will pay \$1.20 to China during the peak hours of 4 a.m. to 4 p.m., they can call Beijing for only 75 cents during off-peak times and weekends.

Comparing HSTO to Bell Atlantic's Local Service

While HSTO's long distance often works out to be more expensive than other carriers, HSTO's local service is generally cheaper than Bell Atlantic. But comparing the two providers is complicated by the different kinds of fees they charge.

HSTO customers get unlimited local calling for their monthly \$20.85 "contiguous service charge." Bell Atlantic's local charges are more difficult to determine.

Bell Atlantic's public affairs office referred price inquiries to their residential service representatives, who in turn refused to discuss local charges without information such as specific street addresses. A Boston Back Bay customer, however, was charged between \$21 and \$22 a month for local service. The charges vary slightly from month to month.

Unlike HSTO, which provides unlimited local service, Bell Atlantic charges separately for local calls that go outside of a customer's local calling zone. Calling across the river from Boston's Back Bay to Harvard Law School, for instance, is 1.6 cents a minute.

Service features also vary. Bell Atlantic's voice-mail service is \$5.95.

HSTO provides voice-mail for \$5 a month. And while Bell Atlantic collects federal taxes from their customers, HSTO customers pay only state taxes. Also, Bell Atlantic customers wishing to keep their name and number out of the public directory service have been assessed a \$1.13 per-month surcharge.

HSTO's Domestic Long-Distance Rates Lowered

While foreign students may be frustrated with international rates, prices were lowered this week on domestic long-distance calls for HSTO customers. Perhaps taking a cue from the national long-distance carriers, HSTO began Wednesday offering students two different long-distance calling plans.

The new "Plan B" gives students a flat rate of 15-cents a minute regardless of what time of day they call. HSTO's "Plan A" option is the familiar three-tier rate structure with rates depending on the time of day. Charges are the same, except that evening rates are down from 18 cents a minute to 13 cents a minute. Evening rates apply from 5 p.m. to 11 p.m. on weekdays.

Plan A's 12-cent night rate is active from 11 p.m. to 8 a.m. on weekdays and all day on weekends and holidays. The 8 a.m.-to-5 p.m. daytime rate remains the same at 29 cents a minute. Students who make a lot of calls during the day might save considerably with the 15-cent flat-rate under Plan B.

Students have been automatically put on the Plan A schedule, unless they had registered a change before the new rates took effect on Wednesday. Students may switch to Plan B for free, but each additional time students switch plans, they will be assessed a \$5 charge.

Access Blocked to Other Long-Distance Carriers

Students who have tried to get around HSTO's long-distance service by dialing a long-distance carrier access code, such as the heavily advertised "10-321," are greeted by a busy signal after they dial either additional "1," for direct-dial, or a "0," to dial an operator or use

a calling card.

"We don't block them," Kinchla said. Technical problems cause a busy signal to come on after a "1," Kinchla said, because long-distance carriers could only bill the call to Harvard University's main number, leaving individual billing impossible. But Kinchla said that "0" was available after a long-distance access code, allowing students to use calling cards.

During a test of dormitory phones on Tuesday night, however, dialing "0" after the access code also brought on a busy signal.

Regardless of whether the technical problems of the long-distance choice access could be worked out, Kinchla said she was not sure that HSTO would open up access to outside long-distance carriers, saying they would have to look at the potential financial impact on HSTO.

Switching to Bell Atlantic Difficult and Expensive

For students wishing to switch to Bell Atlantic local service, the process may be frustrating and expensive. A RECORD reporter called two different operators at Bell Atlantic both of whom said it was not possible to switch service.

"They absolutely can, and they will," Kinchla said. She said Bell Atlantic would need some technical information, and then a technician could come to the campus and install new wiring.

Since students have automatically been provided with and already billed for the installation of HSTO phone service, students switching to Bell Atlantic would have to pay installation charges a second time. Since the installation cannot be done remotely, a student choosing to switch would have to pay labor charges for the technician's on-site visit, Kinchla said.

Harvard students dealt directly with NYNEX, Bell Atlantic's predecessor, until 1989, when the university took over the phone service. Kinchla said that with NYNEX incoming students had to wait two to three weeks for phone service because NYNEX was unprepared for the seasonal rush in early autumn.

Panelists Discuss Japanese War Crimes

By Cindy Kim

The second annual East Asia War Crimes Conference gathered a panel of international law experts on Wednesday, Nov. 19 to discuss Japanese war crimes during World War II.

Although Germany and other European nations have recognized and attempted to compensate for their war crimes, Japan has been notoriously silent on the issue of atrocities it committed in China, South East Asia, the Philippines and Korea. For many of the approximately 100 audience members, the conference may have been their first time learning about Japanese war crimes.

Moderated by Professor David Kennedy '80, Harvard Law School's resident expert in international law, the panel presentations ranged from visceral factual descriptions of the atrocities in Nanking, China, by author Iris Sun-ru Chang, to an explanation of the legal and political perspectives of rightist Japanese nationalists by visiting professor Mitsuo

Okamoto.

Among the various war crimes, the systematic rape and enslavement of Chinese and mainly Korean women and children was the central issue of discussion. Because these victims are aging and will soon die out, compensating for the crimes is all the more critical.

Panelist Karen Parker spoke most passionately for the urgent need for compensation. She has represented World War II victims of Japan at the United Nations and has assisted lawyers in suits against the Japanese government to seek compensation and deplores the legal barriers and political stonewalling which prevents victims from receiving any remedy.

Although the victims' suffering can never be completely ameliorated, Parker reminded those in attendance that "until [the victims] receive compensation, disclosure, and an apology, it remains a current crime to the victim who relives it every day. Every person in this room is a victim — that is what a crime against humanity means."

Subramanian, Pariser Win Best Oralist Honors

Continued from AMES, p. 1

the presumption that homosexuals are likely to violate Ames's anti-sodomy law.

In response to Perry's argument that the presumption was widely adopted in the nation's courts, Judge Garland said, "Don't tell us what other courts said, tell us what to do with this."

Before Perry could answer, Garland interjected, "How do you know this, personal experience?" The tense silence was broken with laughter.

On Wednesday night, the Charles Hamilton Houston Memorial Team beat the the Langdell North Middle Memorial Team, vindicating the rights of a health-insurance provider to drop coverage of a woman who tested positive for Huntington's Corea, a fatal genetic disorder with a late-in-life onset.

Appellant attorney Subramanian got off to a shaky start when Chief Judge Smith asked counsel if he was familiar with the *Smiley* case of 1996. Subramanian had to admit that he was not. But went on to convince the judges that by dropping coverage for the appellee, the insurance company did not violate the Americans with Disabilities

Act because the appellee's genetic condition hadn't yet caused physical symptoms. Therefore she was not yet disabled.

Rachel Kleinberg also was peppered with tough questions, including having to answer for the absence of the insurance contract from the hypothetical record. Since competitors have no part in constructing the record, her options were limited.

"What portion of the non-existent contract are you asking us to strike out?" asked Judge Kessler.

Dealing with a hypothetical record she had no part in creating, Kleinberg answered in a moment of candor, "You have to work with what you have."

Pleased with the students' courtroom technique, Chief Judge Smith made a final admonition to the participants: "Don't go be transactional lawyers."

Ames Fellow Sean Carnathan LL.M. '97 wrote the record for the cases. Renata Ferrari '97 chaired the Ames semi-final round.

First-year Ames will begin in the first week of December. Second-year students can sign up in February for the chance to participate in next year's Ames competition.

Across the Wire



News From Massachusetts

Woodward Trial Raises Questions About Juries

BOSTON (AP)—Not since O.J. Simpson's murder trial has there been a trial as hotly debated as Louise Woodward's.

Both cases were followed closely around the world. And after both trials, a large percentage of the public thought the juries got it wrong, fueling a backlash against the jury system that has been under way for some time.

"The jury always rests on a fragile base of public opinion," said Jeffrey Abramson, a visiting professor at Harvard and author of "We, the Jury," a book critical of juries.

"Precisely at the moment when evidence in trials is getting more scientific, the membership in the jury is getting more ignorant," Abramson said.

Congress and many state legislatures have passed laws limiting the powers of juries.

In Germany, France, and in all but a small percentage of civil cases in England, juries have been abolished.

Scorn for juries is nothing new. Mark Twain once said, "The jury system puts a ban upon intelligence and honesty, and a premium upon ignorance, stupidity, and perjury."

If that's the case, say those who defend juries, it's because the jury system hasn't changed much since the Middle Ages.

"If (Thomas) Jefferson walked into a court today, he could probably try the case," said Thomas Munsterman, direc-

tor of the Center for Jury Studies at the National Center for State Courts.

Judge Hiller B. Zobel questioned a jury's capacity to determine truth more than two years before he overturned the jury's verdict of second-degree murder in the Louise Woodward trial.

Writing in American Heritage magazine, Zobel noted the problem may not be juries, but the ordeal they're subjected to.

"We expect average, untrained people to absorb evidence for days and weeks on subjects entirely foreign to them without explanation, clarification, or even the opportunity to take notes or ask questions," Zobel wrote.

In both the Woodward and Simpson trials, jurors were forced to choose between two sets of scientific experts—"Dr. Yes" and "Dr. No"—with no background or context.

As a result, jurors have to accept what the experts say more or less on faith, said John Sansone, an alternate juror in the Woodward trial and a Harvard-trained attorney.

"The issue isn't whether jurors are able to comprehend two sets of arguments," he said. "The issue is: on what basis do they choose between competing theories which are based on highly technical scientific data?"

"If you can't discuss the matter, ask questions, and you can't take your notes home or anywhere outside of court time, and you have no transcripts you can go

back and review, it essentially turns into a giant memory test."

In many courtrooms, judges prohibit note-taking altogether because they want jurors to pay attention to witnesses for clues about their credibility.

In one complicated eight-month civil trial between two large tobacco companies, jurors weren't allowed to take notes on testimony that filled 108 volumes.

If some in the public feel juries are imperfect, it's the public's fault for treating juries so poorly, said Munsterman.

"If we're going to give them 10 boxes of documents without indexes and say, 'Here's the evidence,' or ask them to sit for months and months with very little help, then maybe we deserve it," he said.

Some states are trying to find ways to help jurors make better decisions.

In Arizona, trials have time limits. Jurors can take notes and ask questions during a trial. If they can't reach a decision, they can ask questions of the judge and the attorneys.

In California, a judge lets juries take crash courses on topics that will be covered in complicated cases.

In New York, new rules will take effect next month that allow judges to give juries written instructions.

But all the note-taking in the world wouldn't help some jurors, such as those in a case in England in which four jurors relied on a Ouija board to reach a verdict.

Juries are more flawed than ever

these days because the peremptory challenge—the right to eliminate a prospective juror without giving a reason—is increasingly abused, say some legal experts.

Sometimes private investigators are hired to gather information about jurors. And highly paid jury consultants use complicated techniques to weed out all but the most biased, emotional, or suggestible jurors.

In the trial of Oliver North, a juror was selected after she said Congress reminded her of "The Three Stooges" during the Marine colonel's testimony before a congressional committee.

A growing chorus of voices wants to see an end to, or severe restrictions on, the peremptory challenge.

Despite the criticism, juries still have their defenders.

"Sometimes it's the jury that can make the unpopular decision because they're not running for something," said Munsterman. "They serve without ambition."

And there is a surprising amount of support for juries even though the public disagrees with individual verdicts, said one jury expert who has researched attitudes toward juries.

"They might think they're stupid, emotional and reached the wrong decision," said Valerie Hans, professor of criminal justice at the University of Delaware. "But, in general, people do throw their support to the institution."

Journal Charges Harvard Faculty Is "White Man's Club"

CAMBRIDGE, Mass. (AP)—Its president is one of the most vocal proponents of affirmative action in the country. Its black studies program is widely considered the nation's best.

But Harvard University itself "remains very much a white man's club," with only a handful of blacks on its faculty and little effort being expended to recruit more, according to a journal that tracks the advancement of blacks in higher education hiring and admissions.

At the current rate of hiring black professors, it would take Harvard a century just to catch up with the national average for universities and colleges, the Journal of Blacks in Higher Education calculated.

"It does not appear that Harvard is engaged in any serious effort to identify qualified black scholars and recruit them," the journal's editors wrote. "In many cases, the all-powerful and autonomous departments of the university only pretend to accept the constraint of racial diversity in faculty selections."

The journal's editors praised Harvard President Neil Rudenstine's outspoken support for bolstering the minority presence on American university and college campuses. But they said his message doesn't seem to have reached Harvard's separate schools and colleges, which have almost complete autonomy from Rudenstine in hiring their faculties.

University officials responded that the pace of hiring black faculty was picking up, though it was slowed by Harvard's infinitesimal turnover rate. They said the high-profile Department of Afro-American Studies was having a campus-wide impact.

"We don't feel defensive about these numbers, because in fact these numbers are growing quite rapidly," said Harvard spokesman Alex Huppe. "What we're enormously proud of is the quality of what's happening on this campus."

Small though the numbers of black faculty appear, said Huppe, they are up 32 percent since Rudenstine became president in 1991.

Of Harvard's 16,138 faculty members, 313 are black—about 1.9 percent, compared to the national average of 4.7 percent. But Harvard's figures include 245 medical interns, residents, and physicians who give occasional lectures or go on hospital rounds with students at Harvard Medical School. Of the medical school's 2,427 faculty who actually teach, only 27 are black.

Excluding the medical school faculty, there are 66 black faculty at Harvard, and only 18 of them teach at Harvard College, which comprises the undergraduate program and graduate schools in the humanities, natural sciences, and social sciences.

Many of those are attached to the

Department of Afro-American Studies, which has grown from a single professor to a star-studded faculty, including director Henry Louis Gates Jr., Cornel West, and William Julius Wilson.

"Harvard projects itself as an icon of affirmative action and diversity," the quarterly's editors wrote. "In many respects, its all-star lineup of black scholars in its Afro-American Studies Program permits the university to deflect criticism of its poor overall record."

Gates was traveling in Africa last week and could not be reached for comment.

But Huppe said: "The prominence of African-American scholars is not a shield, as the journal contends. It's in fact a means to gain greater recognition for African-American scholarship here and elsewhere."

The interdisciplinary black studies department, he said, "is not an isolated enclave just for African-American scholars who care only about African-American scholarship. These appointments have an enormous impact ... beyond the immediate department. If you just look at the 1.9 percent, it doesn't tell you the story about the dynamic quality of what we have at Harvard."

The four-year-old Journal of Blacks in Education has a circulation of about 5,000, most of them university professors and administrators.

Other schools have better records,

though Harvard rivals Princeton and the Massachusetts Institute of Technology also have comparably low proportions of black faculty.

But "Harvard is considered by many people to be the most prestigious university in the United States, if not the world, so their record is certainly well worth examining," said Bruce Slater, the journal's managing editor.

The university has long been the target of criticism over its record of hiring minorities and women. Years of protests by law school students and some faculty helped increase the number of black professors there to seven. More recently, alumnae have staged a boycott of the university's ongoing \$2 billion fund-raising campaign in an effort to get more women into tenured positions on the faculty.

BUY RECYCLED.

AND SAVE.

Celebrate America Recycles Day on November 15th.
It would mean the world to all of us. For a free brochure,
call 1-800-CALL-EPF or visit our web site at www.rll.org

Harvard Law RECORD

PUBLISHER
Rob Friedman



EDITOR-IN-CHIEF
Janie J. Kim

FOUNDED IN 1946

RECORD Suffers Growing Pains

The RECORD may be the oldest law school newspaper around, but compared to some of the serious granddaddies of print (The New York Times turned 146 this year), we're still in our infancy — or maybe adolescence.

And like any self-aware, emotive adolescent, the RECORD strives and struggles to forge some sort of identity for itself. What the hell is journalism doing on a law school campus anyway?

This may involve occasionally tweaking some aspect of our collective personality. Like 13 year old Susan Weaver who redubbed herself Sigourney or 16 year old Janie Kim who went temporarily vegetarian, the RECORD too hankers to experiment with new roles.

Last week, the RECORD decided to *play* sociologist. Armed with no serious statistical knowledge, but a \$100 account at Kinko's, and some goofy, creative energy, the RECORD disseminated a 38-question survey to J.D. candidates, probing for details about their political, personal, and religious views.

Much of it was inane and frivolous — but only because our darling little questionnaire was a hodge-podge of random queries with no unified scientific elegance. Given an appropriately conceived vehicle, there is a justified place (probably deep in academia) for even the most eccentric question on the survey.

Admittedly, our double-sided leaflet lacked a specifically defensible purpose. However, even with the flawed sample design and problem of self-selected survey takers, some interesting nuggets of info emerged. (See related story.)

We hope our survey provided fodder for some engaging dinner conversation, shocked your sensibilities with minimal unpleasantness, and/or didn't burden your overstuffed Harkboxes.

Next week, the RECORD returns to the business of unearthing hard news.

— Janie Kim

Staff

MANAGING EDITOR
Timothy Kiefer

EXECUTIVE EDITOR
Seth Persily

ENTERTAINMENT EDITOR
Judson Berkey

STAFF COLUMNIST
Renée Kaplan

STAFF WRITERS
Alyssa Caples
Suzanne Carter
Eric Johnson
Alex Rao

WIRE EDITOR
William Becker

EDITOR EMERITUS
David Liu

CARTOONISTS
Margie McWilliams
Arash Saedinia
Alfred Steiner

COLUMNISTS
Kate Arms
Michael Bennett
Neil Higgins
Chris Manning

CONTRIBUTORS
Dave Brown
David Flassing
Cindy Kim

BUSINESS MANAGER
Chih T. Cheung

ADVERTISING MANAGER
Steve P. Chen

OFFICE MANAGER
Michelle A. Jones

PRODUCTION
Cathaleen Bryant
Kim Isbell
Ben Lehrer

COPY EDITOR
Dusan Stojkovic

PHOTOGRAPHERS
James McCormick
Lesley Stone

Editorial/Letters Policy

Main office — Harvard Law RECORD, Harvard Law School, Cambridge, MA 02138-9984
Telephone: (617) 495-4418 • Fax: (617) 495-8457 • E-mail: RECORD@law.harvard.edu
West Coast Bureau: (510) 525-4875 New York Bureau: (212) 316-8582
Warren Binford Jacob Appel

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.

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 5:00 p.m. on the Monday preceding publication. Advertising deadlines are 5:00 p.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 Janie Kim. 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 periodical 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, U.S. Constitution

PRINTED BY THE HARVARD CRIMSON

• Letters •

Seyfarth, Shaw Documented Union-Buster

We write to respond to Tim Kiefer's editorial (RECORD, November 14, 1997), which criticized a Labor Law Project poster on the purported ground that the Labor Law Project was identifying Seyfarth, Shaw as a union-buster based solely on Judge Posner's comments scolding the firm for improper and unprofessional conduct during litigation. Neither that poster nor any of our other literature was intended to convey such a connection.

Particularly for those students who might have missed the information sheet that we distributed to the Harkbox of every 1L, 2L, and 3L at Harvard Law School, which highlighted many of Seyfarth, Shaw's labor practices, the Labor Law Project is pleased to respond to Kiefer's charge that it has misleadingly identified Seyfarth, Shaw as a union-buster. The Labor Law Project identifies Seyfarth, Shaw as a union-busting law firm because, among other things:

1. Seyfarth, Shaw cut its teeth representing agribusiness against the United Farm Workers in the 1970s. Cesar Chavez described this effort as "the largest and most despicable raid on any union in the history of this country." (Gilpin, On Strike for Respect.)

2. Two of Seyfarth, Shaw's most brutal clients are the Detroit News and the Detroit Free Press. When the newspaper workers' contract expired in 1995, management deliberately took an intractable bargaining position, inducing workers to strike. The newspapers hired permanent replacements (scabs), and continue to operate with permanent replacements. An administrative law judge of the National Labor Relations Board found that the newspapers engaged in unfair labor practices designed to cause and prolong the strike. (155 LRRM 3040, E.D. Mich. 1997) Strikers have been run over by company trucks and gassed by suburban police that the newspapers privately hired. (The Nation, 11/25/96)

3. The New Republic reported that a Seyfarth, Shaw partner stated that, "I come from the bomb-them-into-submission school of labor relations," and that while he told a Chamber of Commerce audience that it is illegal for an employer to organize the decertification of a union, he would tell them how to do it anyway, even though, "[t]his is a forbidden subject. So this is off-the-record. If you say we said it, we didn't say it."

Judge Posner's comment on the lack of professionalism

in Seyfarth, Shaw's work in an employment law case was offered neither to illustrate nor to prove union-busting activity. Seyfarth, Shaw has earned this badge elsewhere, as we detailed in the aforementioned information sheet distributed to student Harkboxes. Rather, we demonstrated that these union-busters, like many others, lack professionalism—a salient issue for all law students considering where to begin careers.

The Labor Law Project does not take lightly the decision to identify firms as union-busters or to highlight any of their other practices. As we noted in our information sheet and in our letter to the RECORD (October 23, 1997), we distinguish carefully between firms with reputable management-side labor practices and those who are union-busters. We invite Kiefer or any others with concerns or questions about our accuracy in identifying union-busters to give us a call at 495-4871.

Nick Akers '99
Kent Anker '98
Michael Kalt '99
Peter Keith '99
Kim Thomas '99

Harvard Labor Law Project
Executive Committee
November 17, 1997

Feeling Baaaaaaaaaad?

Or just a little sheepish?

Write to
the
RECORD

Place letters in the RECORD
box next to the 1L Hark Boxes.
Or send them to

Harvard Law RECORD
Harvard Law School
Cambridge, MA 02138

Tel: (617) 495-4418
Fax: (617) 495-8457
RECORD@law.harvard.edu

BOOK CORNER

By Richard D. Parker '70

Reclaiming Populism from the Right Wing

Michael Kazin

The Populist Persuasion: An American History

Basic Books, 381 pages, \$24.00.

Robert H. Wiebe

Self-Rule: A Cultural History of American Democracy

University of Chicago Press, 321 pages, \$25.95.

Each of these books addresses general readers. Yet it's likely that each will be read mainly by "progressive" intellectuals. That may not be such a bad thing. For they are the ones who need to read these books.

Inside their mental time capsule (sealed in the 70s) these intellectuals have heard tell of an upsurge of popular political energy, of ordinary people expressing their exasperation in new movements, on talk radio, at the polls. This is going on, they hear, under banners of "democracy," even "power to the people." It's disturbing because this popular political energy seems to be "right wing!" What's worse, today's "populists" are identifying *them* as part of the "elite" to be toppled from power. Rounding up the usual clichés, they denigrate it as a noxious expression of fundamentalist moralism and provincial insecurity, of white racism and male sexism. These two books—interpreting the history from which our fin-de-siècle populism has emerged—encourage such readers to crack open their time capsule, look around, and start thinking again.

Their coincidence of approach is striking. Both sweep from early 19th through late 20th century America. And both are driven by argument about the deteriorating condition of American democracy.

Their coincidence of interpretation is just as striking. Today's populism, they suggest, can't just be dismissed as "right wing."

Despite these similarities, the books have different emphases. They should be considered separately. And, since Wiebe's "Self-Rule" primarily interprets "the problem," while Kazin's "The Populist Persuasion" focuses on "the response," it makes sense to consider them in that order.

Wiebe addresses the debate about what should count as "democracy." He sees its origin in the politics of the early 19th century, when an idea of "the governing people" first flourished. What produced it was a collapse of "hierarchy," releasing popular energy. As he describes it, 19th century popular sovereignty was programmed for "expansion," requiring for its further realization only "another large-scale breakdown" of hierarchical authority.

But, Wiebe writes, America turned the other way. In the early 20th century, hierarchy didn't break down anew. A new one arose. This development involved two connected changes: (1) the "sinking" of a "lower class" into dependency at work and impotence in politics and (2) the division of the remainder of white America into a "local middle class" and a "national class" of corporate and "progressive" elites. He recounts the competition between the "local" and "national" classes through the first few decades of the century and then the "compromise" between them in the New Deal. Then, he tells how, after World War II, the "national class" achieved dominance in economic matters and how, in the 60s, it eclipsed the "local class" in social and cultural

affairs. With all this, the "class-bridging" political energy of the previous century declined. Voter turnout fell. In place of popular self-rule, the central State inflated. "We, the People" became — by the 70s — "a people being governed."

At the end, Wiebe mentions a rising popular "resentment" of the power and the pretensions of the "national class." "Nothing in America's democratic tradition," he warns, "has greater persistence and force than a popular hostility toward distant, hidden centers of power." This is the cue to turn to Kazin's book.

Like Wiebe's book, Kazin's is an interpretive essay. In separate chapters, it proceeds through several "populist" movements. Its aim is to explore the evolution of a populist political "language." Elements of this language include: (1) celebration of America as a "moral community," (2) condemnation of "parasitic" elites and (3) a call for mobilization of popular energy.

Kazin highlights several themes. The emotionally charged amorphousness of populist "language" sets it up for two sorts of political failure, he believes. First, it sets it up for cooptation by conventional politicians. This, he believes, is what the post-1968 presidents have been seeking, by adopting elements of populist "language." In the end, Kazin concludes that the populist "impulse" (probably) can't be permanently coopted, but that it can be defeated by a second vulnerability. It is the risk that its righteous indignation may sink the optimism, the patriotism, the inclusive celebration of ordinary people that makes its jeremiad so attractive. This, he argues, is what buried Fa-



ther Coughlin, George Wallace — and the new left.

The spirit of the new left, in fact, animates Kazin's book — as it animates Wiebe's. What, then, is an old new leftist to make of the persistence and flourishing of vibrant populism ... on "the right"?

That, it seems, is the question Kazin set out to answer. He winds up a bit equivocal. He feels still a need to call himself a "progressive." He "detests" much of what today's populism stands for. But, it appears, his historical study has disabled him from settling for this conventional pose. Reading the book, one feels him struggling, thinking.

In the end, he learns and he teaches three connected lessons. All are reinforced by Wiebe. The first is that American populism transcends "left" and "right." For it is simply about democracy. The second is that it is not, most basically, about the distribution of material goods as "progressives" wish it were. Rather, it is about politics; it is about the culture of politics; it is about democracy. The third is that, in this century, "progressive" intellectuals have got in the habit of disdaining ordinary American people and majority rule. That disdain is no secret. It fuels the populist "language" of our time. And it has, at last, exacted from them the price of political irrelevance—a price that enemies of democracy must expect, eventually, to pay in any democracy.

Prof. Richard D. Parker is the Author of "Here the People Rule: A Constitutional Populist Manifesto." A longer version of this review appeared in the *Law and History Review*.

By Timothy Kiefer '98

Law Firm Diary Warns Students of Bleak Future

William R. Keates

Proceed With Caution: A Diary of the First Year at One of America's Largest, Most Prestigious Law Firms

Harcourt Brace, 162 pages, \$17.95.

The vast majority of Harvard Law School students will eventually work at large corporate law firms. But, most HLS students, and especially 1Ls, have little idea what it is like to be an attorney at a large law firm. William R. Keates's "Proceed With Caution," despite some serious flaws, is worth a read for its introduction to the harsh realities of law firm life. The book's brevity (162 pages) and easy-to-read format make it an ideal book to read on the plane home for Thanksgiving or Christmas.

Keates describes law students' ignorance of their likely future in a diary passage describing his first meeting with Steve, a Harvard Law School 2L who was working as a summer associate at the firm, and Lynn, another summer associate: "They seem so naive — it's downright amusing to see how little they know about working at a law firm. It's hard to believe I was just like them as a law student. Reality is going to slap them silly."

And the reality that Keates describes is terrifying: "You will be fighting to make rich clients richer. Your

work will be boring and your hours will be long. In short, you'll find that the practice of law isn't what you envisioned at all."

The author assumes no legal knowledge on the reader's part, and so the book is best suited for first-year law students. (The book is even better suited for the person considering whether to apply to law school — and undoubtedly this book will convince many *not* to apply — but presumably the readers of this newspaper are past that stage.) Keates explains things as fundamental as what a law review is and the difference between partners and associates, so 2Ls and 3Ls will find many parts of the book too basic.

However, Keates argues that even those 2Ls and 3Ls who have worked as summer associates at law firms have little idea of what working as a real associate is like. In Keates' opinion, summer associate programs are nothing more than Potemkin villages: "[A] large firm's summer associate program should offer a bird's-eye view of what it's like to practice law at the firm. Laughably few summer associ-

ates actually gain that insight, however. Over the course of the summer, they'll typically attend fun and expensive events, receive interesting work, face few (if any) pressing deadlines, and typically put in an eight-hour day. By the time

they return to school, they've had an experience that is inaccurate at best — and calculatedly misleading at worst."

Although Keates's book is well worth reading for its valuable warnings about the downside of large-firm practice, it is still a deeply flawed book. The book's most serious weakness is Keates's insistence on anonymity. We learn in the last paragraph of the book's introduction that "William R. Keates" is a pseudonym. And that's just the beginning of the author's obsession with hiding his identity. Keates never reveals where he attended law school, although the dust jacket claims he graduated from one of the Ivy League law schools. He describes his employer only as "one of New York City's principal law firms." The author states that he also changed the names of people, descriptions of businesses and locations — so for all we know, he might have actually worked for a Los Angeles firm. This total anonymity sharply reduces the author's credibility, since there is no real person standing up for the veracity of his account and the validity of his conclusions.

Compare Keates's approach with that of Richard Kahlenberg '89 in "Broken Contract: A Memoir of Harvard Law School," another example of the legal memoir genre and perhaps the best book ever written about Harvard Law School. Kahlenberg uses his real name, the real names of the law firms at which he interviewed and worked, and the real names of many of the attorneys with whom he worked. Client confidentiality is always an issue when one writes a book about one's legal work, as Kahlenberg acknowledges in his chapter on his summer associateship at Ropes and Gray, but he avoids that problem by not describ-



ing the details of his legal work. (As Kahlenberg points out, describing his work at a level of detail to implicate client confidentiality issues would likely have put the reader to sleep.) Keates could easily have done the same in his book, perhaps changing the names of client

companies where appropriate. The author's anonymity undermines the authenticity of the diary entries. The diary simply does not read right. It sounds as if it was written after the fact for the purpose of publication. To cite one example, the supposed diarist writes, "I hopped in my car — a Porsche 944 — and drove over to Rob's house." What real diarist would need to remind himself of what make of car he drove? It turns out that the Porsche is important to the author's later discussion of "golden handcuffs," but the way it is mentioned in the so-called diary sounds artificial.

The contrived nature of the diary entries is not as serious a problem as one might think. Contrary to what the title indicates, the majority of the book's text is *not* a diary, but rather text discussing issues raised in the relatively brief diary entries. The text is generally well-written, weaving personal anecdotes with references to articles and published reports. Although Keates does not use footnotes, he provides a detailed bibliography for readers who want to follow up on the sources he cites.

"Proceed With Caution" is not the best book that could be written on the subject of large law firms, but it does an adequate job warning students of what they are in for should they go the big-firm route. 1Ls in particular should consider packing this book in their carry-on bag as they head home this holiday season.

Proceed with Caution

A Diary Of
The First Year
At One Of
America's Largest,
Most Prestigious
Law Firms



William R. Keates, Esq.

THESE HALLOWED HALLS

By Kate Arms '98
RECORD Columnist

TEMPORARY AND TIMELESS

The Fogg Art Museum on Quincy Street is the main resource for students of Western art history at Harvard. The major ongoing exhibit on the first floor is "Investigating the Renaissance," while upstairs a walk through the gallery reveals an overview of art history from the end of the 18th century to the early 20th century.

"Investigating the Renaissance" is a permanent exhibit of early Italian Renaissance painting. The exhibit includes information about art restoration and the pigments and materials used in some of the paintings. A computer kiosk in one of the rooms allows individuals to follow their own interests in learning about the restoration process and shows images of the results of restoration as well as x-rays and other

techniques used to study paintings.

"Circa 1874: The Emergence of Impressionism" marks a moment in time and reveals the process of separation from the classical style by painters such as Renoir, Gauguin, Pissarro, Degas, and Cezanne. It is a companion exhibit to the Maurice Wertheim Collection, also on the second floor of the Fogg. The Wertheim collection spans the development from Impressionism and post-im-

pressionism to the beginning of modernism and contains both painting and sculpture. In addition to later works of

the artists included in "Circa 1874," the Wertheim collection includes works by Manet, Monet, Van Gogh and Picasso. The Picasso works are currently on loan to the Museum of Fine Arts in Boston for their exhibit "Picasso: The Early Years, 1896-1904."

"Sublimations: Art and Sensuality in the Nineteenth Century" reveals the sensual shadow side of strict propriety. One particularly striking item in this exhibit is Rodin's "The Eternal Idol." This white marble sculpture portrays a man and woman in sensual connection. The man leans into the woman's



passion he is experiencing. The man's body grows out of the base of the sculpture and is trapped by it at the same time, revealing the power of this fantasy to dominate him.

Also on the second floor of the Fogg through December 28 is "Fragments of Antiquity:

Drawing Upon Greek Vases." Harvard has recently acquired a new collection of vases and pottery fragments and this exhibit is the introduction of this collection to the community. Both complete vessels and fragments are displayed together. The complete vessels are strikingly dramatic in their red and black starkness, but sometimes the sheer drama of the color can distract from viewing the images themselves. The fragments, on the other hand, draw the viewer into the details of the image.

Accompanying the exhibit, in the hall outside the main room is "Lyrica Suite #1-9" by Catherine Kernan, a contemporary American artist. "Lyrica Suite #1-9" is a series of intaglios to accompany a translation of poems by Athanasios Christopoulos. The poems focus on themes of love, music, and drinking with mythological references focusing on Eros, Aphrodite, Apollo, and Dionysus. The connection of earthy themes with mythology is intimately revealed by the intaglios. The images Kernan chose to create appear to be details of ancient Greek vases focusing on hands connected to lyre strings, hair, drinking vessels, or naked torsos, revealing profound sensuality. The lines of the pieces are simple with very few gradations of gray, provoking an immediate awareness of the symbolic nature of the images. As details rather than complete images, the arms connected to the hands extend beyond the borders of the print connecting the detail to the greater world outside the image.

As a reminder of the impact that the past has on the present, in art but also in other realms of life, the inclusion of the Kernan intaglios in the otherwise ancient exhibit reminds the viewer of the focus on art history of the Fogg museum exhibits.

The Fogg Museum is open Monday through Saturday 10 am - 5 pm and Sunday 1 - 5 pm. Admission is free with Harvard ID.

Rodin's ... white marble sculpture portrays a man and woman in sensual connection. The man leans into the woman's chest, entranced while the woman supports him without response. She is playing with her toes, distanced from the passion he is experiencing.

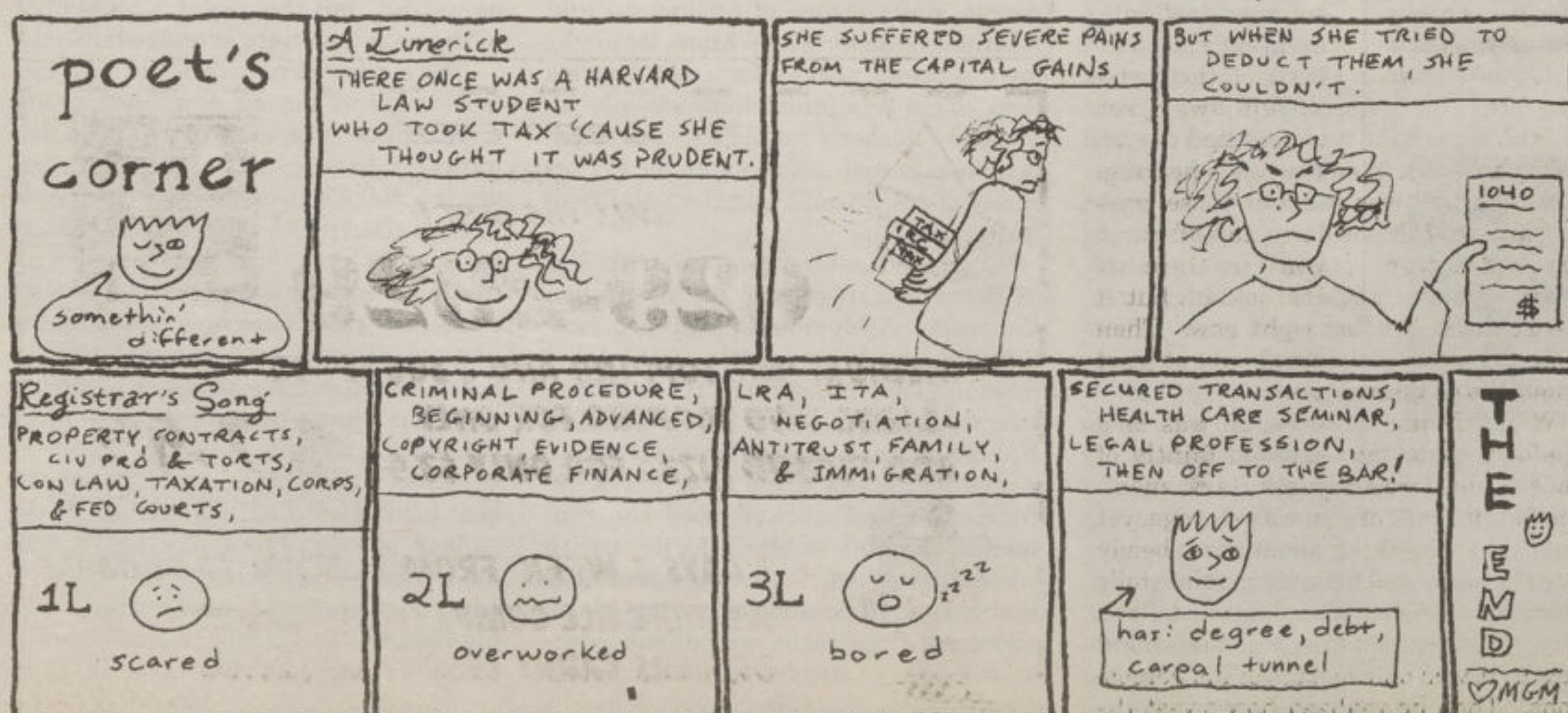
Reasonable Man Discusses the High Tech Industry

By Alfred Steiner and Mark Torre



Spike

By Margie McWilliams

Attention
HLS AlumniGET THE
RECORD
FOR FREE!

Your membership in the Harvard Law School Association entitles you to a FREE subscription to the RECORD. In addition, your support of HLSA helps us distribute the RECORD free of charge to students, faculty, and staff. If you are not a member of the Harvard Law School Association, or if you are a member but are not receiving the RECORD, please contact:

Harvard Law School Association
1587 Massachusetts Avenue,
Baker House
Cambridge, MA 02138
tel. (617) 495-4698
fax (617) 496-4572

Musings and Vagaries

DRUGSTORE J.D.

By Renée Kaplan '99
Staff Columnist

CVS is great, really great. It's all so cheap and good and messy. You might not want it all, but you could afford it if you did, and it's always open and on the way to everything. It's more embracing than a Store 24, more intimate than a Star market. It's one of those few wonderful places on earth where you can have anything you want, because whatever you pick up is probably under 20 bucks, and, more likely than not, if it is within arm's reach, then it's candy. And best of all, CVS is always talking to you, letting you know what time of the year it is, announcing to you what holiday season it is, exactly what it's time to plan for, dress for, buy for, and get excited about; quality dialogue, clear consumer signals, perpetual feedback. Recently, the firm-bound 2L's experience seems to have opened and closed an aberrant parentheses of similarly concrete, perceptible goals and similarly continual feedback. The recruiting experience was like a condensed month's worth of very clear thumbs up and thumbs down, a crisp and constant measure of one's market value, a CVS-style signal of whether you were wearing the right company colors, whether the firms were going to buy into your brand name and throw you into the seasonal display — or not.

All in all, it was a stark contrast to the ol' day-to-day back on campus. And coming back to the farm after this bizarre flashforward to the world awaiting at the end of law school, it seems that meanwhile, back at the farm, not much has changed. Time seems to eke on by like it did before, pedantically plodding through the predetermined itinerary of law school. No surprises there really, all in due course and predictable sequence, with fairly little to mark off time except for a vague sense of the increasing prox-

imity of the endpoint: week 3? week 14? Whatever, different week, same procedure, exams closer. CVS is pretty predictable too, of course; we all know the order of the seasons. But there, it's wham bam boom, knocking off time and seasons faster than you can finish your last month's colors of Hershey Kisses and M&Ms, in a splendid frenetic frenzy of messy and bountiful seasonal displays that crowd you at the door and at the cash register, that block you at the end of every aisle. The selection of wall orna-

the boxes of christmas lights, gold balls, and articial wreaths? Do they send all the autumnal theme-colored gold and burgundy Hershey Kisses replaced by the red and green ones back to the factories to be brutally stripped, remelted, remolded, and rewrapped?

Who knows? It's a marvel, it's a miracle, but in any case, the seasons seem to fly by at an unmistakably staggering pace; a notable counterpoint to law school.



firms can't wait for summer to be here and over, can't wait for third year to be done and law school to be graduated, wham bam boom, can't wait for you to come on board as a first year associate. Gotta keep moving, says CVS, keep knocking off

time, for every season past, there's a season ahead, those colors are out, these colors are in. Time's flying, I tell you.

But who cares? Because if you're looking around and the packages of M&M's are pink'n'ed, and you see large stockpiles of foil-wrapped hearts, huge piles of 99-cent bags of cheap, chalky, nasty tastin' little heart-shaped candies, then you know that somehow—don't worry how—the first semester has passed, classes were attended, résumés were dispatched, recruiting must have occurred, exams were most likely studied for and taken, winter break must sadly have passed and there you are, with barely any time left and but a few more repetitions of the same holiday candy colors until you have your J.D. Simple as that with CVS or S&C or S&S or S, T&B. I don't know that Rite Aid or Brooks couldn't do the same, but the point is that when it all begins to meld together, and an astounding number of weeks amazingly seem to have passed, quite unbeknownst to you, when your notebooks seem to have thickened, and your casebooks seem to have become highlighted, and you may even have acquired a few outlines or begun a few of your own—and yet you're not exactly sure just what the point of it all is again, then just check into CVS and you can't go wrong: you'll know exactly what time of the year of it is, how you're supposed to be feeling, what you're supposed to be celebrating, and what, of course, you should buy. A marvelous reality check.

The recruiting experience was like a condensed month's worth of very clear thumbs up and thumbs down, a crisp and constant measure of one's market value, a CVS-style signal of whether you were wearing the right company colors.

ments and decorative office bibelots and candy—the real battle horse of the CVS arsenal—are good like that too, conveniently, magically, instantaneously changing thematic color at exactly 12:01 a.m. on the morning after the just-passed holiday. What do they do with all the ghoulish-shaped chocolates and the orange marshmallow chews, replaced by the santas on a stick and the holiday variety packs? What about the paper skeleton cut-outs, and the plastic pumpkin buckets — vanished — suddenly replaced by

Every time you look around at CVS, time, the old rascal, seems to have stolen some superhero's cape, the silly jokester, and all in cahoots with the CVS execs and the Hershey Foods Corporation, pretending like we just can't wait to get from one holiday to the next, just flying over whole chunks of experience, whole periods of living and breathing and thinking and building and earning and reflecting and digesting and growing and renewing and refurbishing and recharging the depleted stocks of self and experience. Just like



"Did you go to the Texas in the 80s party?" came a fuzzy girl's voice from somewhere between consciousness and his left toe.

"No, was it good?" asked her friend.

"Yeah! Everyone was wearing peg leg jeans and cowboy boots and there were tons of free tofu fajitas and pink margaritas!"

Fenno's stomach turned. Just the thought of peg leg jeans made him queasy. Or maybe that was his hangover speaking. "No more tequila shots with Nesson," he thought. "no matter how good a dancer he is."

Fenno was in a foul mood. The stimulants were beginning to wear off, and he was slowly getting a dim sense of where he was. Big lofty ceiling. Hideously fake wood-paneled lecterns. Thousands of dollars worth of legal books that had clearly never been used for anything but backdrop. Smarmy-looking yet nervous law students standing in front of gloating judges who looked faintly like cats in heat.

It was all Fenno could do not to scream in terror. Somehow, he had ended up in the audience for the Ames semi-finals. Fenno definitely needed to ease up on those crystals. That terrible incident with the refried beans at the Texas party was bad enough. Now he had really gotten himself into a mess. His eyes glanced furtively around, desperately seeking a way out. As he was about to lunge for the exit, the doors closed with a terrible, sickening boom.

It was too much to bear. All the bad memories from LRA hit Fenno over the head with a force only slightly greater than the one exerted by Larry Tribe's backside on his plush blue chair. Fenno

had a sudden all-too-vivid mental image of the countless evenings each one of these hapless souls must have spent behind a computer screen, paging through Westlaw screen after screen. He desperately tried to mentally superimpose a picture of the "Naughty Catholic Girls" webpage, but the memory refused to come. Fenno had to restrain himself from screaming.

"May it please the court," one of them began, in a voice that seemed to indicate that he was far more pleased with himself.

"Here it comes," thought Fenno. "No way out now."

"My name is..."

Suddenly, from out in the crowd: "I object!" A collective gasp escaped from the room. Heads turned to stare. Who would dare interrupt the most sacred HLS tradition?

"Your honors, I object! I object to this proceeding. I object to the people who waste their lives on this crap. I object to Bob Clark's dumb little smirk. And I object to the union-busting lawfirms who will hire all of you and make their living off the pain and suffering of the marginalized, downtrodden, oppressphmrglearghmmmmmmmm."

It was only when Fenno felt them gagging him and dragging him away that he realized who it was that had the temerity to break in on the Ames hearing. What the hell was it about those crystals, anyway? "Mental note to self: never buy again from anyone in Gannett house." It was a useful lesson, but it wasn't much comfort right now. Then came the blow on the head, and at least a moment of blessed piece.

When Fenno came to, he was in a shadowy room that smelled faintly of smoke and three-day-old Hark sushi. The face in front of him was strange, yet there was something about those beady eyes that captured his gaze. A faint smile appeared, and then a knowing nod. "You know who I am, don't you?" Fenno's mind raced. It was on the edge of his perceptions. Then he realized how sweet the

smoke was, and Fenno was flooded with fond memories of dolorous afternoons on Charlie Nesson's porch. In a sudden burst of insight, it came to him: "You're Richard Posner, aren't you?"

"Oh, yes, Fenno. Yes indeed." The hands rubbed together insistently. And your little union-busting comment

caught my attention, so I arranged to have Clark's thugs bring you to me.

The air was thick with foreshadowing. Fenno gulped. "What do you want with me?"

Next episode: Fenno learns the sordid truth.

Quote of the Week

Harvard Square animal-rights activist:
"Have a cruelty-free Thanksgiving!"

3L student: "You mean don't visit my family?"



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



Briefs

Harvard, Yale Dispute Fundraising

A week after Yale Law School concluded what was billed as the most successful law school capital campaign ever, HLS officials announced that, based on a standard financial review, Harvard's last campaign was actually more successful.

Yale's official total stands at \$180 million raised over the past five years. That figure would have made Yale Law School's campaign "the most successful capital campaign in the history of legal education," according to Honorary Campaign Chair Oscar M. Ruebhausen.

However, Harvard's original total for its five-year capital campaign, which concluded in 1995, was \$175 million. This past week, Harvard officials announced that the new recalculated total is in fact \$181 million.

"It took another review of the books in 1996 to properly compile the information in its entirety," HLS spokesperson Mike Chmura said. "These things take a while to add up."

—The Harvard Crimson

Environmental Law Society Takes Stand on Kyoto Conference

The Environment Law Society is drafting a letter to President Clinton in an attempt to influence America's role in next month's Kyoto Conference.

In 1992 there was a similar environmental summit in Rio, Brazil, where a number of developed countries, including the United States, agreed to try to reduce emissions to 1990 levels. According to ELS member Tanya Bartucz '99, however, "it was all a big failure."

"The U.S. is 13 percent above 1990 emission levels now, and is expected to be 23 percent above 1990 levels in 2010," Bartucz said. "And the current U.S. proposal is to start reducing below 1990 levels in 2012. So basically, the ELS is concerned because there is a consensus among scientists that global warming is happening, and no one knows what the effects will be."

Bartucz said that the letter to Clinton will urge the president to "adopt a stronger position."

Gay Holocaust Survivor Discusses Experiences in Concentration Camp

Stefan Kissinsky spoke at Harvard last Friday about being beaten and interrogated by the Gestapo, and then shipped off to a concentration camp during the summer of 1942 when the Nazis discovered that he was gay.

Nazi investigators discovered Kissinsky's homosexual orientation when they intercepted a love letter from Kissinsky to his boyfriend. Kissinsky was 17 years old at the time. He spent 10 months in a concentration camp in Poland before the camp was liberated.

During the talk, Kissinsky said that many of the injustices perpetuated by the Nazi government have still not been addressed by the international community. While Jews, Gypsies, political prisoners, and others were paid reparations by the German government after the war for the suffering they endured, those imprisoned for being gay or lesbian remain the only group of people that the German government has yet to make reparations to.

—The Harvard Crimson

Bicyclist Hit By Vehicle Near Law School

A bicyclist was struck by a motor vehicle in the 1500 block of Massachusetts Avenue on Monday, Nov. 3, according to a Harvard University Police Department report. The 1500 block of Massachusetts Avenue forms the western border of the Law School campus. The accident was reported to the Harvard police at approximately 7:00 p.m.

Weld '70 Joins Law Firm of McDermott, Will and Emery

Former Massachusetts Governor William F. Weld '70 is joining the law firm of McDermott, Will and Emery, the firm announced on Nov. 17.

Weld is expected to work in international law at McDermott. He will reside in both the firm's New York and Boston offices.

While serving as Massachusetts governor, Weld unsuccessfully ran for the U.S. Senate in 1996. In 1997 Weld resigned as governor after he was nominated as ambassador to Mexico by President Clinton. Weld's nomination as ambassador was withdrawn after North Carolina U.S. Senator Jesse Helms blocked the nomination.

Weld is married to China expert Susan Roosevelt Weld '74. They have five children.

Suarez '75 Elected Miami Mayor in Upset

Xavier Suarez '75, a former Miami mayor, upset incumbent Joe Carollo in the city's mayoral runoff Nov. 13, in a contest swamped by allegations of voter fraud.

Suarez got 53 percent of the vote, while Carollo received 47 percent, with all precincts reporting.

Carollo's supporters challenged the results, and are requesting that a judge throw out absentee ballots and declare Carollo the winner.

In the week before the Nov. 13 election, authorities arrested one man on suspicion of buying ballots and charged a 92-year-old political boss in the Little Havana neighborhood with voter fraud.

SPORTS NEWS

HLS Booters Shine at Yale Tournament

By David Flassing '99

The HLS Soccer Club took third place at the Eighth Annual Yale Cup, held November 8-9.

Fighting off lack of sleep, jet lag, and a week of soft living in major legal markets, the team took the field at 9:00 a.m. Saturday, Nov. 8 against the Yale School of Management.

Though completely outdressed by the HLS Club, which was sporting its new black and red Diadora® kits, the Yalies stormed the HLS goal relentlessly in the first and second half. The power backfield of J.T. "No shot at any" Price '98, Alan "What is it good for?" Warfield '98, Brad "Mr. Ed" Edmister '99 and Matamba "Hall" Austin '99, along with goalie Zack "Mr. Good" Drench '98, were more than up for the challenge, turning back all attempts and stopping several shots on the goal line.

Some lovely passwork inside the Yale penalty box just before the half by forward Dave "Who's the" Boschetto '98 and midfielder Helge "Flying L" Boes '97 led to a goal by Perham "Knit cap" Gorji '98. The goal turned out to be the difference, as HLS beat the Eli, 1-0.

The team next took the field at 11:00 in a tightly contested match with Cornell. The HLS lads, for the most part now awake and aware of their environs, took down the Cornell squad 1-0. The HLS tally was put in by Joel "Dig My" Erb '98, who picked up a rebound from 20 yard blast from Boes that nearly deposited the Cornell keeper in his own net.

Hard work in the defense by Tom "who you callin' b—h?" Snyder '99 and Ben "Cat's Elbow" Katzenellenbogen '99 made the goal stand up. Blissfully unaware of the climactic conditions about to descend upon them, HLS qualified for the second round of the tournament for the second time in 3 years.

HLS's next victim was Georgetown. The game was played in conditions that would close most airports — freezing rain, coming down sideways in sheets. The HLS footballers started slow, spotting the Hoyas a 1-0 lead with some sloppy coverage. The team showed true grit in the second half, however, and stormed back with 3 unanswered goals. Pat O'Loughlin tied the score by heading in a Helge Boes cross from the left side of the Georgetown penalty box. Minutes later, with some nice play down the

right side of the field, Boschetto served O'Laughlin a nice ball in the center of the penalty area. O'Laughlin made no mistake on it, drilling it home from ten yards out for the go-ahead goal. Petr "The Great" Severa LL.M. '98, who showed tremendous ball work all week-end long, later ran through the Georgetown defense like a hot knife through warm butter for the final nail in the Georgetown coffin.

The HLS players, having conservatively checked out of the Milford, CT HoJo Saturday morning, checked back in Saturday afternoon as the top seeded team in their group. After a frantic late-night search for an all night laundromat in greater New Haven, and some ill-advised 1:30 a.m. phone calls about game times, HLS awoke Sunday morning with a mission: win more games and avoid hypothermia.

Sunday started the way Saturday ended—bone chilling torrential downpours and an HLS victory. HLS faced a talented and vocal NYU team in the tournament quarterfinals. Much trash talk was done by the opposing squad, and hard words were passed about soccer ability, virility, and respective Tax Programs. The HLS squad did the more talking with their feet, however, and sent the New Yorkers home with a 2-0 victory. Boes scored the first HLS goal, bouncing a shot off an NYU defender. HLS scored its second goal off of a Boes free kick. Boes sent a long volley through the NYU penalty area, which found Erb on the far side. Erb deposited it in the back of the net, and HLS was off to the semis.

The turning point in the game may have been Price's strategic takedown of an NYU player in the box in the first half. The NYU player had a one on one with Drench, the HLS keeper, when Price dropped him like a bad habit at the penalty box line. The ref, cheesed off at NYU's verbosity, decided that the penalty must have occurred *outside* the box, and NYU failed to convert the kick.

In the semis, HLS succumbed to an extremely talented Wharton club, 7-0. Probably the less said about this game, the better. Down to one substitute, HLS was outrun and outplayed. At the final whistle, however, the HLS team walked off the field with their heads up, looking for shelter and knowing that they would be favorably power ranked in next year's tournament.



The HLS Soccer Club claimed third place in the 8th annual Yale Cup

"Time flies like an arrow, fruit flies like bananas."

—Groucho Marx

SPORTSGUY

SAY IT AIN'T SO, DREW BLEDSOE

By Chris Manning '98

Sports Editor

What the heck were Drew Bledsoe, Max Lane, and Scott Zolak thinking?

For you shut-ins in the audience, Bledsoe, Lane, and Zolak are members of the New England Patriots football team. Bledsoe is widely considered to be one of the best quarterbacks in the NFL. Zolak is his backup. Lane is an offensive lineman charged with protecting them.

Last Thursday night, the three were involved in a bizarre incident at the Paradise nightclub on Commonwealth Avenue. While attending a concert by the band Everclear—Bledsoe's favorite band—the three were invited onstage. Once onstage, each player stage-dived into the mosh pit below. Tameeka Messier, a 23-year-old woman from Maynard, now claims that she was injured by one of them, or (in the alternative) by patrons rushing to catch the three. Conveniently,

she thinks it was by Bledsoe, but I'll get into that later.

Let's list the reasons why this was a bonehead decision at the time:

1. They could have hurt themselves.
2. They could have hurt someone else.
3. They could have hurt their team.

First, regardless of the danger to others, these three should have considered the possible consequences of stage-diving to themselves. Imagine if Bledsoe and Zolak dive into the crowd, and no one catches them? We're talking separated shoulders, concussions, or worse. Imagine Pats' coach Pete "Lonely and Dreaming of the West Coast" Carroll coming into work on Friday to learn that his top two quarterbacks are out for Sunday's game, and possibly the season, because they were stage-diving with a bunch of BU undergrads. And under NFL rules, non-football-related injuries like these mean that the Patriots don't

have to pay their salaries while they're not playing.

Second, regardless of what may or may not have happened Thursday night, any or all of these three guys should have considered that they could have hurt someone else. Bledsoe and Zolak each weigh

around 235 pounds, while Lane weighs in at 305. These guys aren't lightweights, no matter how many people are catching them.

Third, regardless of whether or not the players or the patrons were injured, the three should have thought of the consequences to the team. Suppose, completely hypothetically here, someone isn't hurt but sues the three anyway? Or suppose the team loses in Tampa Bay, and it gets out that these three were partying on the Thursday night before the game? The media criticism would cause a major distraction for a team trying to focus on a Super Bowl run.

At least one, if not two, of these dangers were realized last week. Messier claimed to be injured, and the resulting media frenzy created a huge distraction for the Patriots. Anyone who claims otherwise should watch the videotape of the Tampa Bay game, in which the Buccaneers dismantled the Patriots, 27-7. The Patriots were held to 16 yards and no first downs in the first half, and avoided a shutout only because of Scott Zolak's touchdown pass to Lovett Purnell in the final seconds of the game. Bledsoe threw for a measly 117 yards before being yanked, while being sacked five times (hey Max Lane, where's the beef?), throwing two interceptions, and losing a fumble.

Now I'm not placing all of the blame on our three Patsies. In our litigation-happy climate, eggshell plaintiffs looking for an easy payday would have licked their chops to be in that mosh pit at Paradise. So let's turn the harsh glare of the media spotlight on Tameeka Messier for a moment.

What the heck was *she* thinking? I mean, *hello*, it's a mosh pit, for crying out



loud! It's not like they're doing the hokey pokey in there! People get hurt in mosh pits all the time, whether from those in the mosh pit itself or from some stage-diving, spindly dweeb in baggy jeans screaming, "Death from above!" Anyone ever heard of

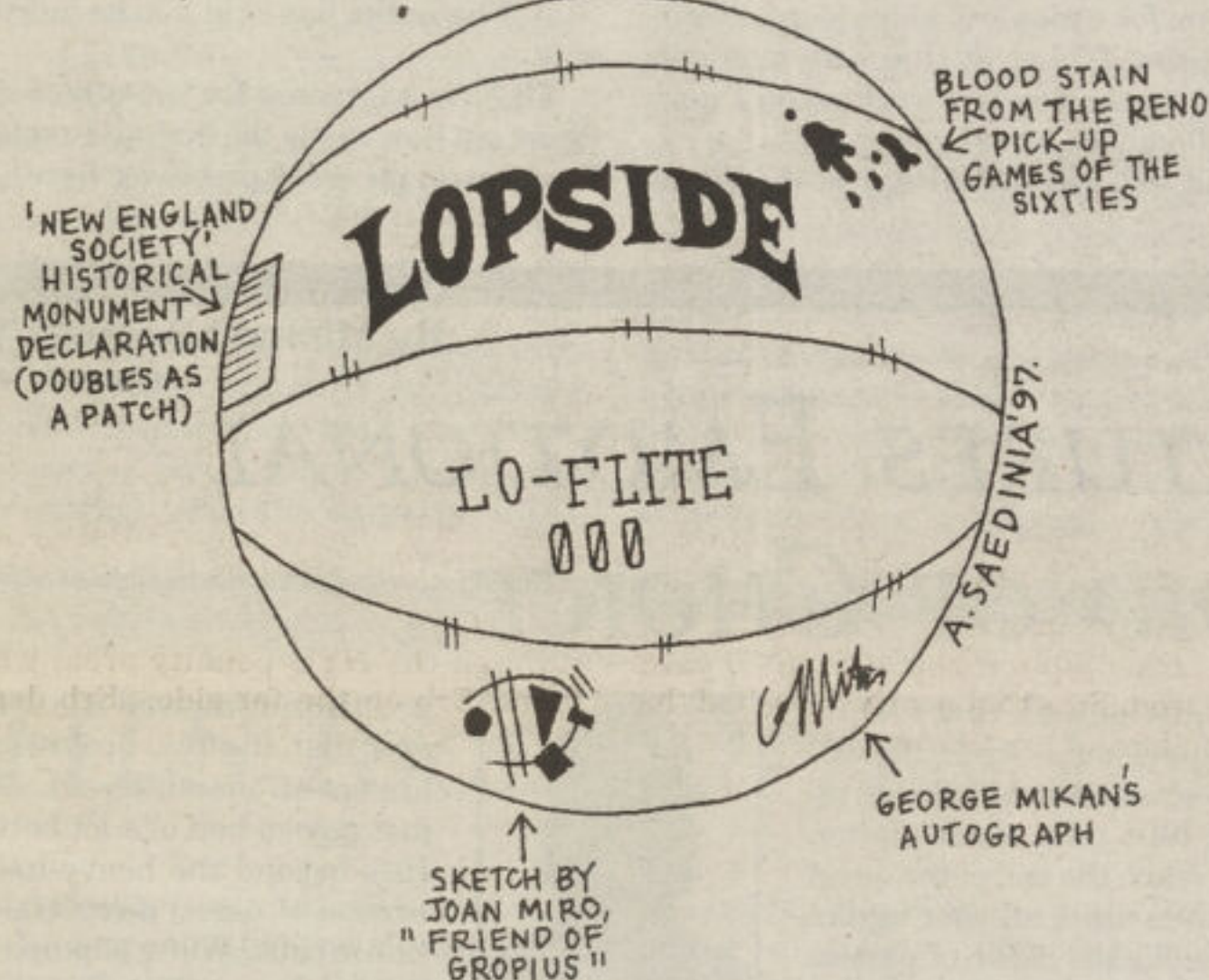
"assumption of risk"?

Messier's injuries seem pretty speculative, as well. She's been hospitalized since Thursday night, listed in stable condition with a *spinal contusion*. I'm not a doctor (but I play one on TV), but that sounds like a bruise on her back to me. And isn't it convenient that she claims it was Bledsoe—the richest player of the three—who allegedly injured her?

Forgive me for being insensitive, but in today's "let's sue an athlete" climate, I can't help but wonder whether Messier saw some "Heartspark Dollarsigns" of her own when the Pats diving team got onstage. Ask Charles Barkley about lawsuits. He's faced two in the past two years, each appearing to have been instigated by a wannabe plaintiff. In the most recent incident, 20-year-old Jorge Lugo allegedly threw a glass of ice on Barkley while he was sitting in a bar talking with three women. Barkley then allegedly chased after and either shoved or threw Lugo through a plate-glass window. They don't make glass the way they used to, said Barkley. Now while I may disagree with Barkley's choice of tactics, I can't dispute his anger at being a walking target for this jerk.

But whether or not Messier's injuries are genuine or a pretext for a civil lawsuit, the damage has been done to the Patsies. Now, as the Pats contend with the AFC East-leading Miami Dolphins and the new-and-improved New York Jets, Bledsoe has to hope that he and his team can put the events of the past week behind them if there's any chance of making the playoffs. Otherwise, he'll have an early off-season to figure out why his team's season seemed to sparkle and fade.

THE LEGENDARY HEMENWAY BASKETBALL



The View From Below

THE LOST QUESTIONS

By Neal Higgins '00

RECORD Columnist

What the RECORD have decided to give you, our readers, a peek into the editorial process. Last week every student received a copy of our official survey and many of you replied, sharing with us a range of details about your personal habits and beliefs. Now we'd like to share with you some of the questions that didn't make the cut:

Personal:

I am:

- a) Dumber than my classmates
- b) As smart as my classmates
- c) An egomaniac

I like to have sex with:

- a) I don't
- b) Myself
- c) dmnrtrx@AOL.com

My God is:

- a) Dead
- b) Better than yours
- c) Just a stranger on a bus

My religion is:

- a) My opium
- b) Invalid
- c) Irrelevant

My party of choice is:

- a) The Republicans
- b) The Democrats
- c) A bottle of tequila and "Judge Dredd" on Cinemax

Have you ever seen a therapist?

- a) I'm not paranoid
- b) It's nothing a little lithium can't fix
- c) I am the Eggman

When did you stop smoking crack?

- a) That's not funny
- b) It got me this far
- c) Hey Eggman, pass the pipe

To finance HLS I am:

- a) Burning my savings
- b) Drowning in debt
- c) Momma's boy
- d) Daddy's little girl
- e) I'd rather not discuss it

Campus Issues:

The Gropius Complex is:

- a) Hideous
- b) Depressing
- c) Home

The Renovated Langdell Reading Room is:

- a) Gorgeous
- b) Depressing
- c) Home

The RECORD is:

- a) Filth
- b) Propaganda
- c) Filthy propaganda

SLLR is:

- a) The Society for Law, Life, and Religion
- b) The worst acronym since CREEP

PLAP is:

- a) The Prison Legal Assistance Project
- b) The worst acronym since SLLR

Miscellaneous:

O.J. Simpson is:

- a) Innocent
- b) Guilty
- c) A future client



Ted Kaczynski is:

- a) Sick
- b) Crazy
- c) Up for tenure

"Hong Kong" is:

- a) Chinese
- b) A dive
- c) Home

Darren Schlanger's survey was:

- a) Sick
- b) Perverse
- c) The most excitement I've had in weeks

ALUMNI/AE ADDRESS CHANGES: Alumni/ae who receive the RECORD as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.

POSTMASTER: Send address changes to Harvard Law School Association, Harvard Law School, Cambridge, MA 02138.

Each alumnus/a receiving a RECORD subscription through the Harvard Law School Association should be on notice that \$5.00 of H.L.S.A. annual dues are used to purchase the RECORD subscription that he or she receives. Dues paid at any time during the H.L.S.A. fiscal year that began on July 1, 1997 and ends on June 30, 1998 purchase a subscription that begins in January 1998 and expires in December 1999.

Return Address:
Harvard Law School Assn.
Harvard Law School
Cambridge, MA 02138

THIRD CLASS POSTAGE PAID AT BOSTON, MA AND ADDITIONAL OFFICES.

OFF THE RECORD

By Eric Johnson '00
RECORD Columnist

WILL REAL LEECHES PLEASE STAND UP!

I HAVE HAD IT WITH LAWYER JOKES! Everyone thinks they're being so cute and clever when they tell me some joke about sharks don't eat lawyers because of professional courtesy or something like that. I try to chuckle and smile and let it roll off my back, but you know what? I'M SICK OF IT!!

Why does everybody hate lawyers? Sure they get in the middle of everything and usually manage to take home a third of it. Sure it's true that for every lawsuit, somebody wins, somebody loses, and the lawyers on both sides get paid. Yeah? So am I going to sit up here and tell you that lawyers are not leeches on society that suck out America's life blood? No, of course not, because I want to tell you the truth. I just want us to be fair about it. Why pick only on lawyers? What about the lousy doctors??

"Oh, but doctors are so nice, and they dedicate their lives to healing the sick, and the blah blah blah ..." OH YEAH??? Who makes an appointment for 2:00 p.m., finally comes waltzing in see to you

around 4:30, then charges you \$200 to tell you nothing's wrong with you? YOUR DOCTOR, THAT'S WHO! Huh? Huh? How 'bout it? If you're lucky, he'll refer you to an x-ray clinic that he has a 50-percent stake in, and he'll hit you for another 400 bucks. Cha-ching!

Speaking of leeches, who actually used the blood-sucking worms to help-

TORS, THAT'S WHO! And every Thursday night, who sleeps around, makes fun of homeless people while they operate on them, treats Dr. Carter like scum, and helped push L.A. Law off the TV-drama radar screen? Huh? Huh? That's right—THE ENTIRE CAST OF E.R.!



about them? The marketing geniuses sitting around in skyscrapers dreaming up new ways to do you in. When's the last time you passed something in the supermarket that was labeled "95-percent fat-free." Who dreamed this up?

"95-percent fat-free, oh, that's so good, it's fat free, I can eat it and not feel guilty and oh blah blah it's so wonderful blah blah ..."

PEOPLE, LISTEN! "95-percent fat-free" means that it is FIVE-PERCENT PURE FAT. One out of every 20 molecules jumping into your arteries is a yellow glob of heart-stopping lard! These people are actually trying to kill you! And they're probably getting kickbacks from the cardiac surgeons.

To help balance this blame-load of yuppie society, I'm honored to be the first RECORD columnist to stick up for what's right and publish DOCTOR JOKES:

Q: What's the difference between a dead snake in the road, and a dead lawyer DOCTOR in the road?

A: The snake has skid marks in front of it.

I'll have a lot more for you after I can figure out how to use the find-and-replace function on my word processor here.

And every Thursday night, who sleeps around, makes fun of homeless people while they operate on them, treats Dr. Carter like scum ... THE ENTIRE CAST OF E.R.!

fully bleed their patients of "bad blood" until probably a few well-placed malpractice suits got them to stop? That's right—DOCTORS, THAT'S WHO!

And who yells at nurses, thinks they're God, and takes out a wrong kidney here and there? Huh? Huh? DOC-

Dentists, actually, are even worse. They've gotten so good at preventing tooth decay with brushing and flossing—this is true—they've invented a new technique called a root planing. They numb your mouth, then stick a power tool under your gum line and actually plane your roots. YYRIIEEAAGGGHH! Just keep in mind, this procedure is for perfectly healthy teeth! After the novocaine wears off, you've got a week

in which eating oatmeal becomes an excruciatingly painful activity. And they sock you for a couple C-notes just for your good time. I'll bet at this very moment dental researchers are working on a new technique like "nerve polishing."

And what about MBA's? Huh? What

THE VERDICT

By Michael Bennett '98
Movie Reviewer

AUTEUR'S LATEST FEATURES EMOTIONAL CREATURES DEVOID OF CHOICE

Wong Kar Wai has crafted another visually opulent film in his latest effort, "Happy Together." Like his previous work, "Chungking Express," "Happy Together" successfully captures the intricacies of love and loneliness and casts them against a haunting visual backdrop.

Wong seems almost obsessed with human tendencies associated with the darker side of romance. His characters are usually outwardly strong and brave folk who are dying inside from fear or loneliness. In that sense, Wong's films have a strong American streak running through them (lack of fellowship, loneliness and emptiness in the face of abundance of

films use an artful and mildly mystical camera eye to show the beauty of everyday objects. With Wong/Doyle, the magic is in the color and untamed light exposures. With Bergman/Fischer, the image power comes more from detailed positioning and unique perspectives. Both teams produce fresh views of the mundane. Watch for Ho Po-wing's (Leslie Cheung) red blanket in "Happy Together." The texture and color can hardly be contained by the screen.

their attempt, all that's left is the upper-cut. And the violence acts as a reset button, almost like in a video game. They reach the end of the quest and then start all over again. Maybe it's the chase of possession that's the sport, as opposed to possession in and of itself.

As with "Chungking Express," Wong again points to the arbitrariness of lines drawn between the legal, moral occupations and the illegal. After a particular bad spat, Fai leaves Po-wing to prostitute himself in downtown's red light sector. He is fairly successful. Soon he arranges to see Po-wing, who has gotten a job as a street solicitor for a club. Po-wing has nothing but harsh words for Fai, who's become "a little slut" in his eyes.

But Fai reminds him that he also is



prostituting himself in a sense and that the two professions are not all that different. One just pays a hell of a lot better. He's beyond the heavy-handedness of other directors we know, but Wong's point is fairly clear. The lines are

meaningless. Fabrications all. "Happy Together" ultimately offers an idea that will be disturbing to many. It argues that couples cannot arrive at any meaningful, sustained happiness together. Only ritualized pain sessions and brief moments of bliss are possible. The fact that the two lovers are men only drives the point home more solidly. It reaches beyond the contemporary idea that men and women have serious relationship issues to work out to the notion that the species as a whole has got some thinking to do.

The film begins with the couple trying to make their way to a waterfall that is depicted on a kitschy lamp they own. Along the way, they have car trouble, fight a lot, and get lost repeatedly. Through the eye of Doyle's camera, the lamp is a blazing wonder but compared to the views of the actual waterfall, pales. The couple is left with the facsimile and never experiences the real thing together.

"Happy Together" ultimately offers an idea that will be disturbing to many. It argues that couples cannot arrive at any meaningful, sustained happiness together. Only ritualized pain sessions and brief moments of bliss are possible.

people and things, extreme violence of abstract and actual flavor, etc.)

But beyond that, his films, especially "Happy Together," are decidedly super-American. Consider the star of the film, Leslie Cheung. Despite his fine acting abilities, he is an action film guy by nature. A cross between Schwarzenegger and Sean Connery. But here, he plays a homosexual who's so in love with his boyfriend that he can only express his emotions through hostility and violence.

For the second film in a row, Charles Doyle II is Wong's head camera man. It's safe to say he's one of the most gifted cinematographers appearing with any frequency in the U.S. today. His style is hectic and jumpy. Then mild and solemn. Then heart stopping. In a moment Doyle jumps from the chaotic downtown traffic of Buenos Aires to the trance-inducing roar of a raging waterfall.

At times it is similar to the effect of an Ingmar Bergman film. In particular, "The Magician" comes to mind. Both

A disturbing trend of "Happy Together," as well as "Chungking Express," is Wong's disbelief in conscious choice. His characters seem hard-wired to do nothing but express the psychological phenomena of the film's moment. They proceed like androids programmed with nothing but emotions. The loneliness of the two primary characters is so prevalent that they seem unthinkable without it. They would die without the angst they provide for each other.

As well, their violence is equally disturbing and feels misplaced. At one point, Fai punches out Po-wing after a scuffle and leaves him on the floor with a palooka's daze in his eyes. This happens shortly after they make love. It's as if they are so enraptured with one another that the feelings mutate slightly and become hate. They're so attached that their only desire is to possess the other completely and when they brush against the asymptotic limit of possession, only to realize the foolishness of

李 Chef Lee's 園

GOURMET CHINESE

Free Delivery

with order of \$10 or more, in Cambridge and Somerville

876-7666 876-7661

Luncheon & Dinner

"This is one of the best Chinese restaurants around."
Harvard Law RECORD

"Easily the best Chinese restaurant ..."
The Gotta Eat! Guide

"Chinese food with originality."
Boston Globe

10 % OFF

purchases of \$20 or more

and

5% OFF

purchases of \$20 or less

with student ID

Monday, Wednesday and Thursday
11:30 a.m. - 10:00 p.m.

Tuesday
5:00 p.m. - 10 p.m.

Friday
11:30 a.m. - 11:00 p.m.

Saturday
1:00 p.m. - 11:00 p.m.

Sunday
4:00 p.m. - 10:00 p.m.

Student discount cannot be combined with any other specials or coupons.

ROCKING THE CRADLE

By Dave Brown '00
Guest Columnist

AU PAIR TRIAL INFLUENCED BY RACE, CLASS

News commentators seem to announce that a "trial of the century" is being conducted every few months. The latest case to draw rapt attention from national, and even international, audiences was the murder trial of British au pair Louise Woodward, which featured a cast ripe for a sensational media circus. A baby was dead amidst medical ambiguity; babyfaced, intense superstar defense attorney Barry Scheck squared off against earnest, plodding prosecutors with thick Boston accents. Would enigmatic Judge Hiller Zobel set the chubby-cheeked au pair free or send her to the big house to do hard time?

Yet, despite the fact that this plot was practically scripted for the tabloids, it is difficult for me to understand why the Woodward trial sparked such impassioned responses from onlookers who had nothing at stake in the outcome. I see such legal spectacles as analogous to playoff games — exciting to watch and full of drama, but if your side loses, you just switch the channel.

Yet, hundreds took to the streets bearing placards proclaiming Louise Woodward's innocence; some later burst into tears of joy or furiously expressed their outrage when the judge sentenced

her to time served. But at least the emotions unleashed during and after Woodward's trial were not as vehement as the reaction to the O.J. Simpson verdict. While many blacks celebrated Simpson's acquittal with enthusiasm that may have seemed misdirected, this glee can be understood as a feeling of symbolic triumph over a racist criminal justice system. On the other hand, the anger and disgust that many whites displayed in the aftermath of this verdict cannot solely be

even an illegal one — from Latin America or the Caribbean, would she have received such an outpouring of sympathy or such a lenient sentence?

Middle- and upper-class families who are trying to choose between hiring black and Hispanic immigrant nannies and European au pairs may now reconsider the trade-offs in this decision. An au pair's stipend is fixed at \$139.05 per week, or less than \$12,000 per year, by federal standards. An immigrant's salary is more subject to negotiation, but in certain cases the threat of a call to INS and swift deportation can be a powerful bargaining tool. The thought that the meager weekly wages an immigrant nanny receives are still higher than the yearly salary she used to receive at Disney's factories in Haiti can help to ease the guilty consciences of their employers.

But, the scandalous fallout of hiring an illegal nanny and not paying her Social Security taxes can deflate political aspirations — just ask Kimba Wood or Michael Huffington. While an immigrant caretaker may be the preferred choice of some parents who have a fetish for a stereotypical black "Mammy" raising their children, hiring an au pair may serve as a status symbol for others in the country club set. Out on the links,



experiences with au pairs can be bandied about between discussions about interest rates and Republican presidential hopefuls. Some proud parents may be able to boast: "Our au pair has taught our children to speak fluent

Dutch in just three months; she also bakes the most delicious cakes and sweetbreads." Others will complain: "This is the second au pair who has broken into our liquor cabinet, abandoned the kids, and totaled the Mercedes while out joyriding." But in the wake of the Woodward trial, one must weigh the status symbol advantages of an au pair against the nagging fear that the seemingly innocent young European girl with the lilting accent will actually prove to be a baby-killer.

Finally, the Woodward trial helped to increase the public's knowledge of the criminal justice system. With the advent of televised court proceedings, and the increasingly intensive media scrutiny of high-profile trials, Americans are having more informed and nuanced conversations about legal issues. For example, two rounds of Rodney King trials led to discourse about double jeopardy. The Woodward case prompted discussions about the integrity of the jury's verdict and the proper role for the judge. The Marv Albert trial demonstrated that testimony about a man wearing a garter belt and panties will lead to a speedy plea-bargain. Now, we can only wait and see what kinds of lessons the Paula Jones trial will teach us.

The Marv Albert trial demonstrated that testimony about a man wearing a garter belt and panties will lead to a speedy plea-bargain.

attributed to dismay that justice had not been served, but was complicated by racial passions and prejudices.

Issues of race and class can also explain aspects of the national fixation on the Woodward trial. For example, imagine that the Eappens were a working class family in South Boston or Dorchester who hired a regular baby-sitter instead of an au pair. Stories of this trial would not have been plastered on the front pages of Boston newspapers — they would have been buried deep within the Metro sections, if the trial was covered at all. Or, if Louise Woodward was an immigrant — perhaps

Raving and Ranting

HLS IDOLS OFTEN LEAVE MUCH TO BE DESIRED

By Dusan Stojkovic '00
Guest Columnist

It seemed to me everyone and any one was writing these, so why not I? And IT, the event that provoked my first column, seemed to remind me (though I do not flowing-consciously remember it) of the first time I became cognizant of the fact that my parents were imperfect: yes, they too were human just like all the other bastards — even as a toddler I possessed a deep-rooted trust in the goodness and forthrightness of human nature.

IT was a quote from Holmes, but hardly the type to which I'd been accustomed.

"Three generations of imbeciles are enough." *Buck v. Bell*, 274 U.S. 200, 207 (1927).

I heard IT in a surprisingly affecting speech by Michael Bérubé, an English professor at that bastion of bleeding-heart nihilism, University of Illinois at Urbana-Champaign. To be sure, my initial reaction was pathetically common: denial. I'm still processing IT; still in the *Verarbeitung* stage.

Buck was a "feeble minded white woman" (*Id.* at 205), inmate at the Virginia State Colony of Epileptics and Feeble Minded, who brought suit in error to a judgment of the Supreme Court of Appeals of Virginia which affirmed a judgment ordering Bell, Superintendent of said Colony, to perform a salpingectomy upon Buck. A salpingectomy is apparently a form of forced sexual sterilization through the tying of the Fallopian tubes. (For a visual depiction, cf. <http://www.laparoscopy.com/pictures/ectopic.html>; this is not for the squirmish at heart, but it makes one wish the Internet had existed back in 1927).

Buck's principal argument was that the Virginia legislation providing for forced sterilization went against the due process clause of the Fourteenth Amend-

ment to the U.S. Constitution.

Not so, said Holmes on behalf of the Court. Since both Buck's mother and illegitimate daughter were "feeble minded" (*Id.*), it was in the state's interest to prevent her from procreating further. Holmes pointed to the bureaucratic procedure involved in executing a salpingectomy and the very fact that Buck had taken her appeal all the way to the

because injustice was necessary to discern justice. The question was if some techno-contraption were invented that could reach a just verdict 99.999999% of the time would we want to replace the current justice system with it.

Perhaps we had to go through numerous eugenics-gone-amok episodes in history, most markedly the one in the Third Reich, to realize that Holmes's ruling in *Buck* was just wrong. Or have we learned? Cries for the sterilization of convicted sexual offenders have become growlingly vociferous as of late.

As the Man himself so aptly pointed out, "The life of the law has not been logic; it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even



the prejudices which judges share with their fellow-men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed." Oliver Wendell Holmes, *The Common Law*, page 1 (1880). And a great poet once said "Yes, I eat cow. I am not proud." Kurt Cobain, Bleach, track 10 (1989). Amounts to the same thing, in effect.

My point, and I do have one, is this: promulgating reverence to arguably esteemed personages of legal history is futile, at best. Yet a number of professors at this institution seem rather keen on insisting that if a certain so-and-so said it, it must be "a good thing." Martha Stewart Living, any given page (any given year). My own intuition has been, and will continue to be, to take whatever is "a good thing" (*Id.*) from whoever said it and use it to further whatever it is I'm trying to further, say, my legal education.

In the meantime, please spare me your prefabricated idols. I have little need for them.

Getting one's tubes tied — or, for that matter, nuts sapped out — is evidently analogous to inoculations against childhood diseases.

Supreme Court as a proof that she had not been denied due process of law.

He went on to say, "It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes." (*Id.* at 207)

Aha; getting one's tubes tied — or, for that matter, nuts sapped out — is evidently analogous to inoculations against childhood diseases. That argument is pure common sense, it strikes one as just. . . butta, does it not?

IT also re-evoked my visceral answer to the question Prof. Slaughter '85 posed at the end of the first session of Civil Procedure back in . . . September, was it? It seems much longer ago, now. My answer, if I can still remember it after all the brainwashing Prof. Rosenberg (no year; NYU grad) forewarned against, was no



Buy our computerized MBE Review,
get the Massachusetts Essay Exam Review

FREE!



While others are raising prices – or thinking seriously about it – the radical Bar Review offers you this incredible deal.

Buy our computerized, self-study MBE Review for only \$495**, and we'll give you our self-study Massachusetts Essay Exam Review free.

This is not a misprint. You get our complete Massachusetts Bar Review – MBE Review plus state essay package, an \$875 value – for only \$495**.

And if that's not the best deal you've heard recently, consider this: If you complete this full package, we guarantee you'll pass your Massachusetts Bar Exam the very first time or we'll refund your purchase price*.

What's the catch? It's a limited time offer and expires December 31, 1997. Also, limited quantities may apply.

Otherwise, it's our true full Massachusetts Bar Review product.

* Certain restrictions apply. Call for complete details.
** Plus shipping and handling.
© 1997 M-Mash, Inc. Registered trademarks: MicroMash, M-Mash, Inc.
All other trademarks are the property of their respective companies.

Our computer-based MBE® Review drills you on the real questions from the most recently released Multistate Bar Exam. Our state package features a disciplined schedule of mandatory assignments and a dedicated "mentor" to insure your success.

Nothing's been left out. You get all the software, books, and assignments – everything you need for your July Bar Exam. Plus our pass guarantee.

Call and order now. Save a bundle. Be guaranteed you'll pass your Massachusetts Bar Exam in July.

Do it today.

CALL NOW!
1-800 BAR EXAM
Ext. 6216

MicroMash Bar
R E V I E W

6402 South Troy Circle • Englewood, CO 80111-6424 • 1-800-227-3926 • FAX: (303) 799-1425
e-mail: info@MicroMash.com • Web site: <http://www.MicroMash.com>

The RECORD's last issue
of the year will be published
on December 5, after the
Thanksgiving holiday.

Have a Happy Thanksgiving!

— From the RECORD Staff