



Harvard Law RECORD

RECEIVED
JAN 16 1998
SERIALS DEPARTMENT
HARVARD LAW SCHOOL
America's Oldest
Law School
Newspaper
35 CENTS

Volume 106, No. 1

Cambridge 02138

Friday, January 16, 1998

Emeritus Prof. Louis Loss, Securities Law Specialist, Dies at 83

By RECORD Staff

Emeritus Prof. Louis Loss, 83, died Dec. 13 at Beth Israel/Deaconess Hospital in Boston of congestive heart failure.

Loss, who is considered the intellectual father of securities law in the United States, is credited with developing the term "securities regulation." He is the author of an 11-volume treatise on securities law, which has been cited by courts hundreds of times — 50 times by the U.S. Supreme Court.

Loss authored a proposed codification of federal securities law. Although it has never been passed by Congress, it is often cited by courts in interpreting existing law.

Loss' early work with the federal Securities and Exchange Commission helped develop practices for combating insider trading. The Second Edition of the Oxford English Dictionary recognizes him as the originator of the

term "tippee" to describe a person who illegally trades a stock based on an inside tip about it.

"Louis Loss was a titan in the legal profession," said Dean Clark '72. "For 60 years he worked to develop the field of securities law. The impact of his writings on securities law is immeasurable. He was a stellar instructor who taught thousands of lawyers about this important area of law, both in the classroom and through his writings and consultations."

Loss was born in Lancaster, Pennsylvania on June 11, 1914. He earned his bachelor's degree from the University of Pennsylvania in 1934 and his law degree from Yale Law School in 1937.

Career opportunities for a Jewish lawyer in the Great Depression were limited, so Loss took a job with the newly-formed Securities and Exchange Commission in 1937. He served as staff at-

Please see **LOSS**, p. 4



Microsoft Attacks Lessig's Role in Antitrust Litigation

By Rob Friedman

Since December, Prof. Lawrence Lessig has been at the center of the battle named U.S. v. Microsoft.

An expert on antitrust and cyberspace, Lessig was appointed special master in the case by U.S. District Court Judge Thomas Penfield Jackson '64. Almost immediately thereafter, Microsoft locked Lessig in its crosshairs, and the software giant has been firing away.

What's at stake in the case is "potentially the most important issue on the table now for the future of cyberspace," according to Prof. Charles Nesson '63. Microsoft has sought to put Lessig's reputation at stake as well.

Lessig came to HLS last year as a lateral from the University of Chicago Law School. A graduate of Yale Law School, Lessig is currently teaching a seminar entitled High-Tech Entrepreneur with Prof. Jonathan

Zittrain '95. He has written several journal articles on law and cyberspace and is currently working on a book exploring the topic of Internet regulation.

When Lessig was appointed special master on Dec. 11, he knew that the task of collecting facts would be challenging.

"I intend to do everything I can to consider the matter as fairly and expeditiously as possible," he stated.

Lessig has not publicly commented on the case since that time.

"In Lessig I think Microsoft couldn't have a better special master," said Nesson. "He is deeply acquainted with the tech. He is deeply schooled in antitrust. He loves the space and wants the best for its future."

Dean Robert Clark called Lessig "an ideal person for the position of special master. He

is a leading scholar of Constitutional law and the developing field of the law of cyberspace."

Zittrain, who refused to speak about the substance of the case because he is assisting Lessig, said he thought Lessig was an ideal special master.

In addition to having the "brilliance for the job," Zittrain said Lessig is "at home with the latest and greatest software and hardware."

Lessig's task is to assist the fact-finding process by gathering evidence and framing issues for Judge Jackson.

Zittrain said the job also involves making proposed findings of fact and law.

"[Lessig has] wide latitude to structure the presentation of evidence and the manner in which the case will be sorted out," Zittrain said.

Please see **LESSIG**, p. 5



Film Archive to Screen Award-Winning Work by Hershey '67

By Janie Kim

Filmmaker Barry J. Hershey '67 found his calling more than a decade after receiving his LL.B. from Harvard Law School — in a film production class at MIT. Hershey's sixth film and first feature, "The Empty Mirror," will be screened at the Harvard Film Archive this weekend and is the product of a career path unconventional for most HLS alumni.

"I've not practiced law a single day of my life," said Hershey, who worked for several years in a "start-up entrepreneurial situation" upon leaving HLS. He returned to Harvard

in 1978 as a Visiting Fellow, registering in the film production course that Hershey found "particularly transformative."

"[The class] very much stimulated the artistic process," said Hershey, "and I was transported by the creative process. The experience of making a film has a transcendental quality to it — the sense that if you release yourself into the process, the film will make itself."

In 1981, Hershey received an MFA in cinema from the University of Southern California.

Hershey said his "hunger for creative outlets" often put him at odds with his law school studies.

"[Law school] was so intensely logical. I had this sense

that it ran counter to imagination, mysticism, intuition, surrender to the muse ... I do recall a rebellion against the push — while I have immense respect for it — to frame things in such logical, precise, and linear terms."

Asked why he chose to study law, Hershey responded, "It was

Please see **HERSHEY**, p. 4

Four Wasserstein Fellows Appointed

Joaquin Avila '73 Returns to HLS

By Judson O. Berkey

This semester's Wasserstein Fellows include lawyers working in women's rights, civil rights, federal prosecution, and voting rights, the Office of Public Interest Advising announced. The four attorneys will meet individually with students over two-day periods and advise them about public interest.

The four fellows for the spring semester are:

•Joaquin G. Avila '73, a voting rights attorney in private practice and a former president and general counsel at the Mexican American Legal Defense and Educational Fund.

•Martha F. Davis, legal director at the NOW Legal Defense and Education Fund.

•Andrew Fois, assistant attorney general with the U.S. Department of Justice.

•Robert Rubin, Deputy Director of the Lawyers' Committee for Civil Rights in San Francisco.

The Wasserstein Public Inter-

est Fellows Program was created in 1990 in honor of Morris Wasserstein by means of a \$500,000 gift from his family. The program is designed to support awards to exemplary public interest lawyers who can assist students interested in pursuing public interest career paths.

Each year, there are over 150 applicants for the six to eight semester-long fellowship positions. The fellows are chosen by a Wasserstein Selection Committee appointed by Dean Clark '72 on the basis of outstanding dedication to public interest law and demonstrated excellence within their field.

The Committee attempts to select a group of Fellows with a diversity of experiences, areas of expertise, and geographic locations.

This spring's fellows represent a wide range of practice areas. Avila is a voting rights attorney in Milpitas, California who litigates cases at all levels

Please see **FELLOWS**, p. 4



Courtesy W.W. Film Co.
Director Barry J. Hershey on the set of "The Empty Mirror"

INSIDE

THIS ISSUE

Remembering
Herbert Berman .. 8

Robberies Near
Campus 3

M.I.T. Student in
Peruvian Prison ... 7

New Year's
Resolutions 5

Also:
Antony and
Cleopatra, Comics,
and, of course,
Fenno.

51 Years Ago in the RECORD

The Harvard Law School Record

VOL. 3 NO. 1

CAMBRIDGE, MASS., WEDNESDAY, FEBRUARY 19, 1947

PRICE TEN CENTS

NEW CLASS TO HEAR ORIENTATION TODAY

Faculty, Students To Explain All School Activities

All members of Harvard Law School's entering class will assemble in the Langdell Court Room at 4 p. m. today for a one-hour orientation session, to be conducted by faculty representatives and the heads of student organizations.

The meeting will be opened by Dean E. N. Griswold, who will extend a welcome to the entering men and will briefly discuss the purposes of legal education.

Dean Griswold will be followed by Professor W. Barton Leach, who will devote about 25 minutes to a discussion of the all-important subject of how to survive in the law school.

The *Harvard Law Review*, the law school's most distinguished activity, will be represented by its president, Elliot L. Richardson, who will briefly discuss the "Bible," as it is commonly known.

Henry J. Smith, Chairman of the Board of Student Advisers, will give a brief summary of the work of the Board, but a detailed discussion of the Ames Competition will be left until another meeting on Friday of this week. Information concerning this meeting is given elsewhere in this issue.

The work of the Harvard Legal Aid Bureau will be discussed by its President, Davison Dunlop.

The Law School Committee of Phillips Brooks House, which serves the social, economic and physical needs of the student body, will be represented by John F. Martin, who heads the group.

The Harvard Law School Forum, which was organized during the last term of 1945 for the purpose of bringing distinguished speakers to the law school to head discussions of current problems, will be represented by its president Jerome L. Rappaport.

The newest of the law school activities, the *Record*, will be discussed by President Thomas J. O'Toole.

KINGS BENCH PLANS SMOKER

New Social Organization Will Meet Friday Noon

As its first function, the King's Bench, a social club for law students, will hold a smoker, Friday afternoon, 3-5 p. m. in Kendall House, with members of the faculty in attendance. The major portion of the affair will be a "get acquainted" meeting, with a very brief business session for the discussion of organizational plans.

Representative students of each year in the school have mapped tentative plans for the organization, and its activities during the coming term. These suggestions will be offered to the membership for approval.

One of the chief reasons for the formation of the King's Bench, as found in its charter, is the belief that "life should not end with enrollment in the law school." The organizing committee is of the opinion that there is a definite place for a club which combines the social and intellectual aspects of Harvard Law School, without regard to the race or creed of its members.

In the selection of members of King's Bench, the organizing committee has found necessary only one restriction—that of maintaining the club's size to a reasonably workable number. Membership invitations to date, have been extended to some 100 students. It was feared that any wider range would render the organization unwieldy before its activities were finally established.

The King's Bench does not consider itself in competition with other existing social clubs in the law school. With nearly 2,000 students enrolled here, there should be greater opportunity for social activity than that available, it is felt. Such activity in the King's Bench will be designed merely to complement the school's academic program.

Included in the tentative King's Bench schedule are bi-weekly dances and parties at Kendall House, weekly luncheons, and discussions which will include legal and non-legal topics.



Professor Archibald Cox who will be acting Vice-Dean during Professor Livingston Hall's absence.

COX NOW ACTS AS VICE DEAN

Hall and Six Other Profs Absent on Spring Vacation

Students who have problems to discuss with the vice dean this term will find Professor Archibald Cox in the office in place of the regular Vice-dean Livingston Hall, who is on vacation until the summer term.

The duties handled by the vice dean, which Professor Cox will take over, include the general disciplinary problems of the school, responsibility for the dormitories, general assistance to the dean, member of the administrative board of the school, and the interviewing of veterans who desire to return to complete studies begun before the war.

Professor Cox, who was graduated from the Law School in 1937, returned here in October 1945 as a Visiting Professor of Law. He was appointed Professor of Law last term.

In addition to Professor Hall, six other professors will be on vacation this term. They are E. M. Morgan, Royall Professor of Law; E. Merrick Dodd, Jr., Fessenden Professor of Law; George N. Gardner, David F. Cavers, Lon L. Fuller, and Paul A. Freund, Professors of Law.

During the post-war period, with the school running three terms a year instead of the usual two, and with a considerably greater number of students attending, the teaching load of each professor has been greatly increased. In order to compensate for the increase in work over pre-war years, the school has been attempting to give professors one term off out of every three, whenever possible. The vacations to the above professors were granted as a result of this policy.

AMES ORIENTATION SET FOR FRIDAY

The values of law club work and the Ames Competition will be explained to entering students at an orientation meeting at 4 p. m. on Friday of this week in Langdell Court Room. The prizes to the winners of last term's competition will also be awarded at this meeting.

Dean E. N. Griswold will be present and will address the new students briefly, following which Professors Andrew J. Casner and Archibald Cox will explain why participation in the Ames competition is advantageous, both at the law school and in practice.

Jack Shea, the first year chairman for the Ames Competition, will explain how the law clubs are organized and the general structure of law club work. Henry J. Smith, President of the Board of Student Advisers, which conducts the Ames Competition, will preside at the meeting.

Hugh Calkins of the Kent Club will receive the prize for the best first term oral argument, and Roswell Perkins, also of the Kent Club, will be given the award for the best first term brief.

The club prize for the highest score in the second term competition will go to the J. Smith Club, and the Pound Prize for the winner of the third term qualifying round will be received by the Landis Club.

Jack E. Bronston, a third term student last term, will receive the award for the best judge's opinion submitted to the board.

GRISWOLD FURTHERS PLACEMENT

Western Trip Serves Purpose Of Securing Job Opportunities

As part of a general effort to institute a placement program at the Harvard Law School with sufficient range to secure employment opportunities for present and future graduates, Dean Erwin N. Griswold recently made a trip to the far west.

With a broad purpose of maintaining acquaintances, making contacts and establishing good will for the Law School, the Dean at the same time was laying the groundwork for a further trip to the same areas by Mr. Harrison S. Dimmitt who is in charge of placement at the Law School.

Every section of the country is being covered in an attempt to set up efficient machinery to aid in placing the astounding number of approximately one thousand men who are expected to graduate during the calendar year of 1948.

Dean Griswold is greatly concerned with the placement problem and as evidenced by his trip is making a concerted effort to arrive at a satisfactory solution.

California, which has the third largest number of Harvard Law School graduates ranking behind New York and Massachusetts, was the scene of two major speeches by the Dean. He spoke at San Francisco to one hundred and forty Law School graduates and at Los Angeles to two hundred and fifty. He also spoke in Seattle, Washington.

An encouraging sign which the Dean noted was the fact that much interest and a willingness to co-operate was evinced by many of the lawyers.

In his speech before the Harvard Club and the newly organized Harvard Law School Association of Southern California, Dean Griswold made an oblique reference to the postal pay case, saying: "I hope you have not overlooked that the dissenting justices were Justices Frankfurter and Burton. I like to think that they got something at the Harvard Law School that enabled them to keep their feet on the ground."

EDUCATION CONFERENCE

Any students interested in doing preliminary work in preparation for a conference on legal education should leave their names, phone numbers and addresses with James Perkins at the Board of Student Advisers this week. The conference is to be jointly sponsored by the Columbia, Yale, Pennsylvania, and Harvard Law Reviews and is tentatively scheduled for late Spring.

TWO LAW DANCES WILL BE OFFERED

Two law school dances have been planned for the Spring Term, it has been announced by Jud Leetham, Social Chairman of the Law School Committee of Phillips Brooks House.

The first will be an informal dance on March 1 from 8 to 12 p. m. at Cowie Hall, Harvard Business School. Tickets for this dance, which sell for \$2, including tax, are now on sale at Gammett House, and will also be sold in Langdell Hall. Ken Reeves and his orchestra will play. Set-ups will be available at a reasonable cost.

The committee urges that tickets for this dance be purchased as soon as possible, in order that the size of the crowd can be determined and arrangements made to hire a larger hall if this proves necessary.

The formal spring dance will be held on Friday, March 21, from 9 p. m. to 1 a. m. at the Hotel Somerset, Boston. Tickets for this dance will sell for \$4.20 including tax. Chappie Arnold and his orchestra will play.



Members of the new *Record* Board on the steps of the Austin Hall, left to right, front row: Herbert Berman, Thomas J. O'Toole, Marshall Deutsch; second row: Harvey Karlin, Seymour Epstein, Nathan C. Fitts, Richard H. Wolford; third row: David Kallman, Nathaniel B. Tepp, Byrne Litschgi; fourth row: Loren E. Juhl, Samuel Schwartz, Seaward Snell, Robert W. Culbert and Charles O. Porter, also Board members, are not included in the picture.

REPEATERS

The examination papers of the men who failed their first year work last October and elected to repeat have been corrected with record speed. The results which have just been announced reveal that 13 of these men have passed while 26 have failed for a second time. 9 of the men who went down in the first attempt chose not to try again.

The casualty rate among these repeaters is slightly lower than that suffered by the first group who were allowed to repeat.

LAW REVIEW HAS 60th ANNIVERSARY

The 60th anniversary of the founding of the *Harvard Law Review* was observed on January 25 with an anniversary dinner at the Harvard Club. Included among the guests were the *Law Review* men who had graduated since the 50th anniversary dinner was held in 1907.

Principal speakers for the evening were United States Supreme Court Justices Felix Frankfurter and Harold H. Burton, both Harvard Law School graduates. Before going to the Supreme Court, Mr. Justice Frankfurter was Byrne Professor of Administrative Law at Harvard.

Phil Graham, publisher of the *Washington Post* and President of Vol. 52 of the *Law Review* spoke on behalf of the graduates. Remarks on behalf of the present *Law Review* men were made by James H. Wilson, President of Vol. 59, and Elliot L. Richardson, President of Vol. 60.

The dinner was also marked by the attendance of one of the founders of the *Review* and President of Vol. 1, John Jay McKelvey, New York attorney.

The guests were also addressed by Dean E. N. Griswold, and Professor Paul A. Freund served as master of ceremonies.

FORUM REVISES SPRING PLANS

Strikes, World Government Dominate New Program

Industrial relations and international organization will provide the subjects for discussion at the six spring term meetings of the Harvard Law School Forum, the recently-released revised schedule shows.

(For the benefit of new students, the Forum has been organized since the war for the purpose of bringing before the student body the prominent men of the nation to discuss the pressing problems of today.)

The spring term series will be opened on February 28 with a meeting to discuss the causes of industrial strikes. Speakers for this meeting will be Clinton S. Golden, Counsellor for the United Steelworkers, and Leo Wollman, Professor of Labor Relations at Columbia. On March 7, Willard Wirtz will discuss "Labor and the Law".

"How Can We Mitigate Industrial Strikes?", will be the problem before the Forum on March 14. Speakers for this meeting will be Donald Richberg, co-author of the National Railway Act, and Jeffrey Friedman, former general counsel to the Wage Labor Board.

On March 28, Thurman Arnold, former Assistant Attorney General, and George Soule, former editor of the *New Republic*, will present "A Restatement of the Liberal Creed".

The discussion of International Organization will begin on April 11 with "An Analysis of the United Nations", presented by Abraham H. Feller, The General Counsel to the United Nations; John G. Winant, former American representative on the Economic and Social Council; and Edward Stettinius, former Secretary of State and First American Representative on the Security Council.

(Continued on page three)

NEW BOARD CHOSEN FOR THE RECORD

O'Toole Chosen As President; Berman Editorial Manager

The *Record* today begins its third term of publication as the nation's only law school newspaper, under the direction of a 15-man board, twelve of whom were elected to new positions at the close of last term.

The new President of the paper is Thomas J. O'Toole (Harvard '42) formerly Editorial Manager, who succeeds Paul F. Hellmuth (Notre Dame '40). Succeeding O'Toole as Editorial Manager is Herbert Berman (N. Y. U. '44), who was formerly News Editor. Marshall J. Deutsch (C. C. N. Y. '42) replaces Rinaldo A. Capone (Harvard '40) as business manager.

Other changes in the Board are as follows:

Seaward B. Snell (Northwestern '44) replaces Samuel C. Waller (Princeton '40) as Promotion Manager; Loren E. Juhl (Illinois '40), succeeds Berman as News Editor; R. W. Culbert (Drexel Tech. '41), formerly Calendar Editor, replaces C. Duane Aldrich (Harvard '40) as Articles Editor.

Seymour Epstein (Penn. State '39), formerly Opinion Editor, succeeds Charles W. Davis (Harvard '41) as Current Case Editor; Nathaniel Tepp (Fordham '40) replaces Epstein as Opinion Editor and is also serving temporarily as Advertising Manager, a position he held last term.

Sam Schwartz (Wisconsin '45) replaces Culbert as Calendar Editor; Richard H. Wolford (Harvard '43) succeeds Torbert MacDonald (Harvard '40) as Secretary; and Byrne Litschgi (Florida '41) replaces Robert C. Trump (U. of Conn. '44) as Treasurer.

Board members who occupy the same positions they held last term are Harvey Karlin (Pitt '39) Feature Editor; Nathan C. Fitts (Amherst '39), Alumni Editor; and David Kallman (C. C. N. Y. '41), Circulation Manager.

Other members of the staff for this term are Mitchell Aaronson (Minnesota '43), William Barnes (Yale), Morton B. Brian (Harvard '41), John L. Cady (Harvard '43), Irving Constant (Harvard '45), Bankroft G. Davis, Jr. (Harvard '41), Eugene Flanagan (Yale), John E. Hess (Bowdoin '43), Charles A. Lord (Colby '42), Robert Maier (St. Lawrence '42), John F. McKenna, Jr. (Creighton '43), Bernard W. Nimkin (Harvard '43), James L. O'Dea (Notre Dame '44), William F. Passanunzi (N. Y. U. '40), Vincent St. John (Pitt '44), and Kenneth G. Weinberg (Miami U. '40).

Circulation of the *Record* at the end of last term was near 2,000 which included approximately 500 alumni and library subscriptions. The balance of the circulation was accounted for through student subscriptions and weekly sales at the law school and elsewhere.

Editorials

NO MORE DOUBLEHEADERS

Playing two games in one day is likely to be a tiring task for any athlete. Pitching a doubleheader is regarded as the feat of an iron-man; and yet a number of students last semester and this semester have been placed in the position of facing an academic doubleheader—that is, the taking of two examinations on the same day.

The taking of a single examination is itself a rigorous task. In fact, the schedule of examinations for the first year class has been so arranged that there is at least a one day interval between each examination. The administrative difficulties of arranging such a schedule for the entire school are obvious, but it does not seem unreasonable to request that students should not have to pitch for more than four hours a day.

It is true that an effort was made to alleviate the problem by rescheduling some examinations last semester but that this was a wholly inadequate and temporary measure is attested by the fact that a number of students did take two examinations on the same day and a perusal of the schedule for next May reveals two of the most notable among the future places of conflict: May 17, International Law, Suretyship, Domestic Relations all at two o'clock; May 20, American Legal History and Federal Jurisdiction at nine o'clock, and Evidence and World Organizations at two o'clock.

Now that the Law School is operating on a seven semester basis, it is difficult enough for a student in the seventh semester to select a sufficient amount of courses

which he is desirous of taking without being deterred by his examination schedule and to go even further, there seems to be no valid reason for any student being forced to exclude a course because of the examination schedule.

When the subject was broached to some of the members of the faculty, their replies were most unsatisfactory. They included such excuses as the following: that the students this semester had been given notice of the examination schedule and hence could avoid any conflict by not taking one of the conflicting courses; that other students had relied upon the schedule and therefore it would be unfair to change it; that the secretary's office should be contacted when conflicts arose.

The first reply has been answered; courses should not have to be chosen on the basis of when the examination will fall. As for the second reply: if the examination schedule were rearranged so that no two examinations involving conflicts fell on the same day then no student would be prejudiced to any great extent and the burden of others would be greatly alleviated. From the third reply we have the source of the suggested solution to the problem. Mr. Bowe has pointed out that within the present time allotted to examinations it is impossible to shift the courses around to avoid conflicts. The solution then seems obvious. Lengthen the present time for examinations. This can be done by shortening the vacation period which would not disturb the academic schedule in any way and would remove an unnecessary burden on many students.

H. B.

HLS Joins Community Economic Development Movement

By David Liu

While many of his classmates struggled to stay awake during class, Nick Brown '98 incorporated and drafted contracts for a laundry pick-up and delivery business. Wilbert Watts '99 worked to secure patent and trademark rights for a client who built a better baby bicycle seat. And Jon Hooks '99 sought to obtain 501(c)(3) charitable organization status for an inner-city tenant association.

Brown, Watts, and Hooks were among the students who participated in the Community Enterprise Project (CEP), a unit of the Law School's Hale and Dorr Legal Services Center in Jamaica Plain. Along with the winter term Community Economic Development class and an externship program that places students with local nonprofit organizations, CEP represents Harvard Law School's foray into the burgeoning field of community economic development (CED).

According to Bill Simon '74, a visiting professor from Stanford Law School who is teaching the winter term class, CED refers to "locally based activities intended to create housing and jobs for low income people."

He said that CED is characterized by three themes: 1) the local community as both the agent and beneficiary of economic development; 2) innovations in the structuring of property rights; and 3) soft inducements to participation.

"Community economic development is a field that didn't exist 15 years ago—and didn't have a name 10 years ago," said Simon.

In recent years, however, there has been "an intensification of interest across the political spectrum," he said. Simon said that both Jack Kemp's "opportunity society" and Jesse Jackson's call to "focus on building human and social capital" implicate CED.

Despite expressing reservations that CED is more expensive to support than the welfare state and that some disabilities cannot be corrected by CED without welfare, Simon spoke optimistically about the potential of CED.

"I think that the track record of affordable housing is especially promising in its impact in providing both housing and stability. . . . Another aspect of CED's success, a positive externality of development, involves mobilizing com-

munities," said Simon.

Although he said that "the returns aren't in on job and business development," Simon suggested that the role of many community development corporations in linking private and public efforts affords promise.

Involved in all of these areas of CED is Harvard's Community Enterprise Project. According to the CEP Student Handbook, "The primary mission of CEP is to provide legal assistance to neighborhood entrepreneurs, business owners, nonprofit organizations, first-time home purchasers, alternative lenders, community residents, and neighborhood developers in order to facilitate economic development, access to capital, and equity ownership within their communities."

CEP, like other units of the Legal Services Center, is limited to serving certain low-income Boston neighborhoods, including Jamaica Plain, Dorchester, and Roxbury. Unlike other units, however, CEP's clients are not bound by financial eligibility guidelines. Moreover, CEP charges clients a flat rate for common services and will set charges for other services on a case-by-case basis, although any fees levied are typically at a significantly below-market rate.

CEP, which began during the 1994-1995 school year, arose out of proposal put together by Nancy Kelley '88, an attorney with the law firm of Hale and Dorr, Prof. Gary Bellow '60, and Lecturer Jeanne Charn.

According to Liz Solar, a CEP clinical instructor who was originally hired to set up the unit, "Nancy's idea was to get Hale and Dorr attorneys more involved with organizations that were involved in societal change; she wanted to demonstrate that skills in corporate law could be used in neighborhood efforts. Gary and Jean liked the idea of students coming through the [Legal Services] Center doing this sort of work."

"There was a realization by the School that a lot of its graduates were going into corporate practice," said Anders Yang '94, who left private practice to assist with the Law School's CED efforts.

"[CEP and the CED externships] clearly filled a gap in our clinical offerings. And it was an attempt to provide not just Band-Aid remedies, but to teach

our clients how to be entrepreneurs."

Yang said that Harvard joined several other law schools, including Georgetown, SUNY-Buffalo, Michigan, and Yale, in embracing CED. Nevertheless, said Yang, CEP is unique in that it represents a collaboration between a law school, law firm, and traditional legal services.

In keeping with its varied origins, CEP's five clinical supervisors hail from a variety of backgrounds, crossing the private, government, and nonprofit sectors. The supervisors, each of whom assigns cases to and oversees up to four students, have different reasons for choosing CEP.

Art Johnson, a clinical supervisor who has spent more than 25 years working in the Boston nonprofit sector, said that he was drawn to CEP by the opportunity to work on social and economic infrastructure issues while at the same time teaching students about CED. One of Boston's early so-called "urban pioneers," Johnson also stressed the importance of giving "community members some ability to shape the inner city."

Brian Price, CEP's senior clinical instructor and former General Counsel at the State Office of Minority and Women Business Assistance, commented on CEP's combination of various areas of law in a practice setting. "CEP encompasses corporate and securities, finance, banking, contracts, commercial law, real estate, commercial leasing, zoning, trademark, copyright, and franchising law—and that just names a few," he said.

Solar emphasized the clients that come to CEP. "I enjoy working with groups of people and organizations that are trying to promote positive change in neighborhoods. CEP tends to have clients that are proactive and energetic that are doing some great things."

Although students expressed surprise at the time commitment required by CEP and the distance of the commute

to the Legal Services Center, they appreciated the practical aspect of CEP and the transferability of the skills acquired at CEP. Said Watts, "I'm generally more of a practical person, and to me hands-on experience is a whole lot more valuable than just talking theory. [My supervisor,] Ellen-Marie [Ray] said that the best way to learn things is by getting your feet wet. CEP provided a good balance between letting you do things yourself and providing guidance. I found it very rewarding."

"I think that the best thing about clinicals is that you learn things better, more permanently, by doing than just by reading," said Brown. "[At CEP] I learned about property law, about the differences between an LLP and a corporation, in way that I hadn't learned it before. And I became comfortable with a lot of law I hadn't learned before. Law school is evil for not letting you take more than one clinical at a time. It's also evil for limiting the amount of credit you can get for clinicals to 12 credits."

Hooks commented on the transactional work performed at CEP. "On one level, [the transactional work] seems very dry, but the subtle nuances you have to learn over the semester were really engaging."

Students also spoke of the supervisors' attention to meeting their interests. "If you make an interest known, supervisors are very good about funneling cases to you," said Watts.

In the future, CEP hopes to expand its services and participate in larger transactions. Towards this end, CEP was recently selected to represent the tenant association of the Academy Homes II housing project. This 315-unit project is one of 11 federally-subsidized, HUD-owned projects that will be rebuilt because of its deterioration over time. The project's cost is currently projected at \$38.5 million.

Said Solar, "We're headed towards doing bigger projects, working for bigger businesses, performing more complex work. I think we'll be able to see our impact on the community."



Prof. Bill Simon '74



Nick Brown '98



Wilbur Watts '99

Poll Says Students Want Registrar's Office On-Line

Kane Hopes to Establish System Within 2-3 Years

By Timothy Kiefer

Students overwhelmingly support placing course registration, grade retrieval, and transcript requests on-line, according to an unscientific poll conducted by the Law School Council late last semester.

Registrar Stephen Kane said that he has been working on establishing such a system, which he hopes to have in place within the next two to three years.

According to the survey, 91 percent of students believe that the Registrar's Office should implement a system for on-line transcript requests. Eighty-nine percent support establishing on-line registration, and 81 percent support establishing on-line grade retrieval.

The survey was conducted by randomly distributing 100 surveys to each of the three J.D. classes and 50 surveys to the graduate law students.

Because it was up to the individual student whether or not to return the survey, it is possible that self-selection may have created an unrepresentative sample group. Of the 350 surveys distributed, 15 percent (54 surveys) were returned and 85 percent (296 surveys) were not returned.

Assuming that the responses constituted a representative sample of HLS students, the poll would have a margin of error of plus or minus approximately 13 percent. The relatively large margin of error was created by the small sample size (54 responses).

Kane said that he has been researching companies to provide the computer services, and that he has narrowed the selection to three possible companies.

"We're definitely going to do it," Kane said. "Right now we want to make sure we get the right vendor."

LSC President Dina DeFalco '98 said that Kane has been "cooperative" on this issue.

"The Registrar's Office is fully aware that students want this," DeFalco said. "The question is not if, but when. I'm not saying when is going to be next year, but Kane is completely in favor of this."

DeFalco said that the issue at this point was finding a suitable computer system. She said that she and Kane both wanted a system that was efficient, had easy access for students, and protected student confidentiality.

The survey was conducted by Charles Hokanson '98, chair of the LSC Academic Affairs Committee. The results were based on surveys received as of Nov. 29.

Armed Street Robberies Reported Near Campus

By Timothy Kiefer

Two campus-area street robberies have been reported recently, according to the Harvard University Police Department. No arrests have been made in connection with either of the cases.

On Jan. 7, at approximately 4:13 a.m., two undergraduate students were robbed by two men at the corner of Concord Avenue and Follen Street, near the Sheraton Commander Hotel. One of the robbers displayed two butterfly-type knives and demanded that one of the victims give him his bicycle. The bicycle was described as a Montana Mountain model, dark blue with white lettering.

The robbers were last observed walking down Concord Avenue toward Cambridge Common. An immediate search of the area by the Cambridge and Harvard police departments failed to produce any results.

The first suspect is described as a white male, 19-20 years old, six feet tall, thin build, medium length blond hair,

wearing a dark blue top and jeans. This suspect is the one who displayed the knives.

The second suspect is described as a white male, 19-20 years old, six feet one inch tall, heavy build, medium to long dark brown hair, wearing a white jacket and jeans.

On Dec. 18, at approximately 8:50 p.m., a graduate student was assaulted and robbed of property in the parking lot near Rockefeller Hall. Rockefeller Hall is located at the Divinity School campus, approximately a five-minute walk east of the Law School campus.

The suspect is described as a dark-skinned black male, 25-30 years old, six feet tall, weighing approximately 200 pounds with a big build. The suspect was wearing a black baseball cap with a white Nike insignia on it, a gray fleece sweater, dark pants, and glasses, possibly wire rim in style. There was a strong odor of alcohol on his person.

Anyone with information on either of these incidents should contact the Harvard University Police Criminal Investigation Unit at 495-1796.



Briefs

Gideonse '71 Dies; Was HLS Clinical Instructor

Martin Gideonse '71, who worked at HLS for over 20 years as a clinical instructor, died on Jan. 3.

"Marty was my friend, mentor, colleague and teacher. ... There are two important lessons Marty taught all of us involved in clinical legal education: respect for clients and love of students," said Charles Ogletree '78 in a written statement.

Gideonse had served as a supervising attorney and clinical instructor at the Prison Legal Assistance Project (PLAP) since 1976. Gideonse earned his bachelor's degree from Swarthmore College in 1960.

Condolences may be sent to Gideonse's family at 29 Churchill Ave., Arlington 02174. Donations in his memory may be sent to the Prison Legal Assistance Project or to Massachusetts Citizens Against the Death Penalty, 14 Beacon St., Boston 02108.

Thefts Reported at Austin, Gannett

On Dec. 29, at approximately 4:30 p.m., a man contacted the Harvard University Police Department to report that his coat and other items had been stolen from Gannett House.

On Dec. 10, at approximately 12:30 p.m., a woman called the HUPD to report that her wallet had been stolen from her purse, which was in her office in Austin Hall.

No suspects were identified or arrests made in either case, according to HUPD reports.

"Crummy" Law Firm Gets New Name

The Newark law firm of Crummy, Del Deo, Dolan, Griffinger and Vecchione began the new year with a new name — on Jan. 1, the firm was renamed Gibbons, Del Deo, Dolan, Griffinger and Vecchione.

"To be candid, there was anecdotal evidence that people outside the legal community were making fun of the name," managing partner David J. Sheehan was quoted as saying by the Newark Star-Ledger. "Someone at a multinational company might tell a co-worker, 'Let's use the Crummy firm.' The other person says, 'Excuse me?' Needless to say, it's not the best way to go forward."

The name Crummy referred to Andrew B. Crummy '23-'26, who founded the firm in 1926 upon leaving HLS. Crummy died in 1981.

"He was quite a guy. He was a short, feisty Irishman who grew up in Bayonne in a family with very limited means and went to Harvard Law School," partner Michael Griffinger told the Star-Ledger.

Gibbons, the name added to replace Crummy, refers to another HLS alumnus. John J. Gibbons '50, a former federal appeals court judge, now works as special counsel for the firm and teaches law at Seton Hall University.

Naked Trucker Delays U.S. Rep. Crapo '77

When U.S. Rep. Michael Crapo '77, an Idaho candidate for the U.S. Senate, showed up a half hour late for a speech in Boise on Dec. 3, his excuse was nothing but the naked truth.

Crapo was delayed at the airport in Pocatello by a man who was driving a truck up and down the airport's runways, according to a report in The Washington Post. Crapo's plane waited on the ground until police captured the truck driver, Ronald Glenn, who was naked when he was apprehended.

Lloyd '72 Runs for Senate in Pennsylvania

Pennsylvania State Rep. Bill Lloyd '72, a Democrat, announced Jan. 5 that he will run for the Senate seat currently held by U.S. Sen. Arlen Specter. Specter, a Republican, is seeking re-election this year.

"Arlen Specter is considered a moderate, but he doesn't vote on the side of Democratic constituencies nearly as often as a Democrat would," Lloyd said.

Both Lloyd and Specter oppose their parties' positions on abortion. Lloyd is pro-life, while Specter is pro-choice.

Before entering the state legislature, where he has served for 17 years, Lloyd was an attorney representing consumers in utility rate cases before the Public Utility Commission.

Mayor Suarez '75 Threatens Miami Herald

Miami Mayor Xavier Suarez '75 has threatened to cancel all city advertising contracts with The Miami Herald unless the newspaper starts "to be a lot nicer to me."

Suarez left a message Monday evening on the voice mail box of a Herald advertising manager whose office processes the legal ads, the newspaper reported in its Jan. 7 editions.

"This is the mayor of Miami," Suarez said in his 70-second message. "I noted that we are subsidizing you and your newspaper with ads related to official notices of the city."

"If that's the case, I strongly suggest you tell your maximum leader of the free world for the publishing company ... that he better tell his maximum leader of the publishing side of the newspaper ... to be a lot nicer to me."

"Because otherwise we're going to figure out every possible way of advertising in any possible newspaper except yours," Suarez said.

Herald Publisher David Lawrence said "the news columns of this newspaper are not for sale and they never will be."

"I've been in this business for 35 years at seven newspapers and frankly I have never seen anything like this ... ever," he said.

The mayor called a day after The Herald published a story about absentee ballots collected by the mother of a longtime Suarez supporter.

Suarez did not return calls seeking comment.

— The Associated Press

Hershey Explores Evil in Film on Hitler

Continued from *HERSHEY*, p. 1

the sixties and a chance to study at Harvard. I applied to Yale and Harvard. If I hadn't gotten into either of those schools I would not have gone to law school."

Hershey's experimental feature film "The Empty Mirror" explores what might have happened inside Adolph Hitler's mind if, after World War II, he had been cut off from his role as Führer and left to contemplate his deeds. In this imaginary construct, Hitler pores over film reels and interacts with a host of characters, real and imagined, ranging from Eva Braun and Joseph Goebbels to Sigmund Freud.

"The film involved two fundamental questions," said Hershey. "How can a deeper understanding of who Adolf Hitler was and how his mind operated help us identify and respond to situations in the future where evil deeds may be perpetrated on a mass scale?"

"And on a smaller, more personal scale, how can studying the nature of Hitler's delusions help us to understand the psychological processes which, sadly, lead men and women to cause suffering to others?"

Key to production was the invention of a new projector that prevented the image degradation and synchronization problems previously intrinsic in simultaneously recording live action and projected images. This allowed for the novel use of projected images behind a constantly changing foreground.

"It's an entirely new technology," says Hershey. "No one else has one like this."

Hershey is currently in development of a new film tentatively titled "Veridical Dreams."

"All I can say is that [the new film] involves a model and a photographer," said Hershey. "The way I work is intuitive. If I talk about it, it releases the energy and the muse shuts down. Part of it is protecting the process. And part of it is that it's still at a very incipient stage."

"The Empty Mirror" received the Gold Hugo at the Chicago International Film Festival and a CINE Golden Eagle. It will be shown at the Harvard Film Archive, 24 Quincy St., Friday, Jan. 16 at 8:30 p.m.; Saturday, Jan. 17 at 9 p.m.; Sunday, Jan. 18 at 6:30 p.m. The film stars Norman Rodway, Camilla Soeberg, Peter Michael Goetz, and Joel Grey.

Wasserstein Fellows to Counsel Students

Continued from *FELLOWS*, p. 1

of the federal courts and conducts legislative and administrative advocacy. Davis works on a variety of women's issues for NOW in New York City and is the author of a book on the welfare rights movement of the 1960s. Fois has held a variety of state and federal government positions since graduating from Georgetown University Law Center. Rubin conducts and supervises class action litigation in the areas of voting rights, health care, higher education, immigration, and public benefits.

The fellows will be on campus for one or two days during the semester for one-hour individual counseling sessions with students. Students who sign up for these

sessions will be able to review informational packets containing details of the fellows' autobiographical history, typical work day, and current organization. The sessions are designed to allow students to explore individual career aspirations and concerns by drawing on the fellows' experience.

The fellows are also asked to participate in at least one public speaking engagement designed to reach a wider audience. For example, last fall Wasserstein Fellow Lauri Adams '78 made a speech on environmental law and also met with the Environmental Law Society and the Environmental Law Journal.

Students interested in meeting this Spring's Fellows should sign up through OPIA.

Loss, Author of Eleven-Volume Securities Law Treatise, Dies in Boston

Continued from *LOSS*, p. 1

torney from 1937 to 1944, chief counsel of the Division of Trading and Exchanges from 1944 to 1948, and associate general counsel from 1948 to 1952.

Loss, who had been a visiting lecturer at Yale from 1947 to 1952, joined the HLS faculty in 1952. He was appointed William Nelson Cromwell Professor of Law in 1962. In 1984, he took emeritus status.

Among Loss' students were U.S. Supreme Court Justices Anthony Kennedy '61, Ruth Bader Ginsburg '56-'58, Antonin Scalia '60, and David Souter '66.

Loss' publications include "Anecdotes of a Securities Lawyer" (1995), the 11-volume "Securities Regulation" (1989, with Joel Seligman '74), "Fundamentals of Securities Regulation" (1995, with Seligman) and "Commentary on the Uniform Securities Act" (1976).

He was the co-author of "Blue Sky Law" (1958). He was editor of "Multinational Approaches — Corporate Insiders" (1976) and co-editor of "Japanese

Securities Regulation" (1983).

Loss' publications have been translated into French, German, Italian, Japanese, Portuguese, and Spanish.

In a 1993 article in The New York Times, Loss described his writing in these words: "There are people at this faculty who scorn treatise writing and liken legal treatises to battleships — prime, prestigious stuff in their time, but not really worth their keep in the contemporary world. But what they don't realize is that these books have shaped the law. They made a field of law that didn't exist before."

From 1969 to 1978, Loss served as a reporter for the American Law Institute's 700-page Federal Securities Code.

Loss is survived by his wife, Bernice S. (Segaloff) of Cambridge, daughter Margaret R. Loss of New York City, son Robert S. Loss of Lexington, sister Anne Stein of Philadelphia, and three grandchildren.

Contributions may be made in Loss' name to the Cambridge School of Weston and the Harvard Brain Tissue Resource Center in Belmont.

PUBLIC FORUM

What is your New Year's Resolution?

Sunny Chu '00

I scrapped six deadly sins. I think I'll still give lust a chance. I'm also this close to swearing off fried foods. But I'm having problems determining whether gluttony also covers beer and wine. The jury is out on that one until after exams.



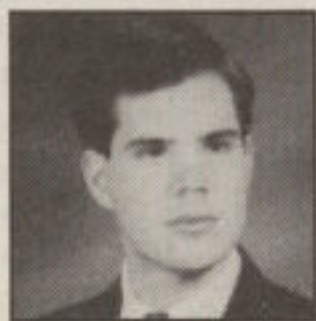
Christopher Garcia '99

To get more sleep. I haven't been terribly good at it. I just want to do too many things. I'm a proctor at the College, I'm in BSA, I like to spend time with my friends ... and the whole clerkship process has been a little bit of a monkey wrench. It's taking its toll.



Matthew Harman '99

I want to sue Harvard Law School in a class action on behalf of its students for loss of consortium 'cause no one's getting laid. (Don't put that down, man.) I'm just kind of kicking the idea around. Maybe Tribe can help out or something.



Shigeru Ino LL.M. '98

My hope or wish is that I complete my study of the tax rules, especially property tax and federal income tax. I'm trying very hard to write my LL.M. paper. But because my theme "Property Valuation for Tax Purposes" is so minor, I can't get much information. In Japan, I have many materials, but in the United States, I only have four books. I'd like to get more information from American sources.

Michele Kron '98

I guess I wasn't thinking about it too much this year. Usually it's been about getting in better shape. And I've been able to keep it up somewhat—going to the gym and eating more vegetables like spinach and broccoli.



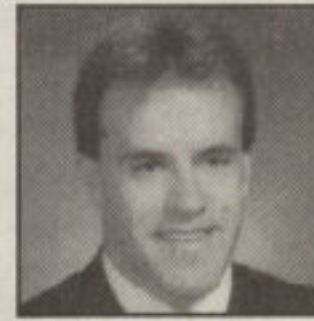
Kimberly Pustulka '00

I don't really have one. I guess I just didn't think about it this year. I mean, they're fine if you want to have one. But I just didn't see anything special about a particular day where I needed to make this promise to myself. It's more like I make them as I need them—like wishing I'd studied harder for finals this week, but that'll probably have to be a lesson for next semester.



Michael Tognetti '99

I've got a whole list. I'm going to run the Boston Marathon. I got myself a pretty good 100-day program book and I'm running four or five miles every other day. I'm going to write at least one letter every week to friends and family. So far, one letter was to an uncle and one was to an ex-girlfriend. I'm not trying to get back together with her. I mean, she's a friend. She sent me some e-mail recently. I'm going to read at least one chapter of a novel every night before I go to bed. I'm just about half way through "The Alienist" by Caleb Carr. It's set in 1896 and it's about this chase to catch a serial killer. And I've started to keep a journal again. I heard it was a good idea to keep one when you're at law school so you can go back to it when you're old and gray and remember your youth. I started one when I first got here but stopped some time around the second semester.



Prof. Lessig Shrugs Off "Shallow" Challenge

Continued from LESSIG, p. 1

Lessig's work must be completed by May 31.

The Case of U.S. v. Microsoft

On December 11, 1997, Judge Jackson ordered Microsoft to stop forcing computer makers to install its Internet browser on personal computers as a condition for buying Windows 95.

The order responded to claims by the Justice Department that Microsoft was violating a 1995 consent decree by unfairly leveraging its market dominance in Windows 95 to gain market share in the Internet browser market.

Microsoft has argued that its browser, Internet Explorer, is an integrated part of Windows 95. To prove its point, Microsoft responded to Judge Jackson's order by offering computer makers a choice of pre-installing either an outdated version of Windows 95 or one it said would not work because of files missing from the browser.

At a judicial hearing, however, Judge Jackson announced that he had removed Internet Explorer from his computer with the help of a law clerk. He said Windows 95 was fully functional after the program was removed.

In his cease and desist order, Judge Jackson left open the ultimate question of whether Microsoft was violating the 1995 consent decree.

"Without the benefit of further evidence in the record, an attempt to answer that question would be premature," Jackson stated.

Lessig's role is to assist Judge Jackson in this task.

An E-Mail Message Demonstrates Bias?

On Dec. 25, Microsoft filed a motion with Judge Jackson asking that the judge revoke his order installing a special master. At the time, Microsoft argued that a special master was not necessary.

In addition, Microsoft expressed concern about Lessig, stating the corporation was unfamiliar with Lessig and suggesting that Lessig's writings indicated he had already formed opinions that would bear on the case.

Microsoft cited a 1995 Yale Law Journal article in which Lessig referred to the Windows operating system as a "futile" clone of the Macintosh operating system.

Last week, Microsoft went public with information it claimed demonstrated Lessig's bias. In a letter sent to Lessig and simultaneously released to the me-

dia, Microsoft asked Lessig to disqualify himself and revealed an e-mail message sent by Lessig in June 1997 to Peter Harter, an attorney for Microsoft-rival Netscape Communications.

In the e-mail, Lessig complained that when he installed Internet Explorer on his Macintosh the software "screwed up" his Netscape bookmarks.

"OK, now this is making me really angry," Lessig wrote.

Lessig explained in the message that he had installed Microsoft's browser to qualify for a contest to win a new Macintosh. Lessig stated that when he installed the program on his computer, he "sold [his] soul."

Lessig also wrote that "Charlie Nesson thinks we should file a law suit."

On Monday, Microsoft formerly motioned that Lessig be removed. Under the heading "Professor Lessig Should Be Disqualified from Further Participation in This Case," Microsoft argued that its earlier concerns regarding Lessig's preconceived opinions were "well-founded."

"Professor Lessig compares installing a Microsoft product, the Macintosh version of Microsoft Internet Explorer 3.0, on his computer to selling his soul, presumably equating Microsoft with the devil," the motion stated.

"Professor Lessig also refers to a discussion with a Harvard Law School colleague about the possibility of filing a lawsuit against Microsoft," the memo continued.

Microsoft's motion also referred to a talk at the University entitled "Should Microsoft Be Allowed to Swallow the Net?" in which Lessig participated, along with Gary Reback of Wilson, Sonsini, Goodrich & Rosati, Netscape's outside counsel.

Microsoft charged that the summary of the session "has been removed inexplicably" from HLS' web site, and suggested foul play.

Lessig Refuses to Step Down

Lessig responded to Microsoft's charges of bias during a Jan. 6 conference call in which he refused to recuse himself.

"I've considered the matter, the request from Microsoft under Section 455 to disqualify myself," Lessig said. "And understanding that test to be the test whether one who equips himself with all of the facts, whether that person would conclude that this is an impediment to my judging the present case impartially. I have concluded that I do not believe that it would be an impediment to judging impartially and I therefore will not recuse myself."

The Justice Department defended Lessig's decision.

"Having combed professor Lessig's extensive writings for useful nits, Microsoft has proffered three out-of-context quotes, accompanied by inaccurate and tortured characterizations of his writings," stated a Justice Department memorandum.

Prof. Nesson criticized Microsoft for its "shallow" challenge.

"It seems an extraordinary opening gambit to attack the character of the man who is to sit in judgment," Nesson said. "The attack itself was made, unsworn, in a letter simultaneously released to the media on the basis of an uninvestigated, incomplete e-mail record without Microsoft knowing the content."

"And the bottom line is anyone in tech space who hasn't at some point cursed

Microsoft out of frustration just hasn't been in the space ... [because] the very process of getting anything done inevitably leads you to frustrations and that means frustrations on occasion with Microsoft."

Nesson said he believed that Microsoft's challenge was "tremendously short-sighted."

"The worst thing that could happen to them is that they would win," Nesson said, pointing out that Lessig's philosophy on the law in cyberspace is "to doubt the viability of rule and sanction as a means of governing the space."

Nesson said Lessig believes that code and markets, more than law, will control cyberspace behavior.

The Associated Press contributed to this story.

> > Peter.
> >
> > Ok, now this is making me really angry, and Charlie Nesson thinks we
> >
> > should file a law suit. But please tell me whether this is true.
> > When
> > I
> > installed Internet Explorer 3.0 on my Mac system (only because I
> > wanted
> > to be entered into the contest to win a 3400! I sold my soul, and
> > nothing
> > happened!). the next time I went into netscape, all my bookmarks
> > were
> > screwed up. Did I do this?
> >
> > When are you in Cambridge? I've moved permanently now, and I'd love
> > to
> >
> > show you the center, and talk and whatever else we can think of
> > doing.
> >
> > Larry Lessig

E-mail message sent last summer by Prof. Lessig to Netscape attorney Peter Harter

李 Chef Lee's 索
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.

Cambridge City Council Urges New Trial for American Imprisoned in Peru

By Timothy Kiefer

The Cambridge City Council passed a resolution urging a new trial for Lori Berenson, a former M.I.T. student and Cambridge resident who is currently serving a life sentence in a Peruvian prison.

The resolution, which was approved Dec. 15, calls on U.S. Secretary of State Madeline Albright to "do all within her power to impress upon the Peruvian Government the importance of providing Lori Berenson an open and fair proceeding in a civilian court without further delay."

Berenson was convicted in January 1996 of treason by a Peruvian military court. The government accused Berenson of cooperating with a terrorist group seeking to overthrow the Peruvian government.

According to the City Council resolution, Berenson "was denied a fair public trial by a competent, independent and impartial tribunal, as required by Article

14 of the International Covenant of Civil and Political Rights," to which Peru is a signatory.

Berenson's supporters say that she was not allowed to call witnesses, cross-examine adverse witnesses, or present evidence in her defense. The trial was presided over by military judges whose identities were kept secret.

Prior to the council meeting, about 15 Berenson supporters gathered in the sub-freezing weather outside City Hall to hold a candlelight vigil.

James Williamson, the organizer of the vigil, said that he wanted either a new trial or Berenson's release.

"Give her a fair trial or let her go," Williamson said.

Williamson said that although he never knew Berenson personally, during her student days Berenson lived two blocks away from Williamson in the Cambridgeport section of Cambridge.

Also at the vigil was Lee Winkelman of Jamaica Plain, who said that he knew Berenson from when they were both in El Salvador approximately five years ago.

"I know Lori and I know her commitment to social justice ... I know that she's no terrorist," Winkelman said.

As one might expect, the Peruvian government disagrees with Winkelman's point of view. In a January 1996 letter to The New York Times, Ambassador of Peru to the United States Ricardo V. Luna wrote, "Ms. Berenson never made a secret of her involvement with the Tupac Amaru revolutionary movement [MRTA], a group with a record of assassinations, bombings, kidnappings, robberies and attacks, including against the United States Embassy in Lima."

Those who believe that Berenson is guilty point to a statement she made in court in January 1996. "[I]n the MRTA there are no criminal terrorists," Berenson told the court. "It is a revolutionary movement." She also criticized the social injustices she saw in Peru. Berenson's statement was widely interpreted as a defense of the MRTA and as an act of defiance against the court.

Berenson is being held in the

Yanamayo prison near Puno in the Andes Mountains. According to U.S. Representative Carolyn Maloney, who recently visited Berenson, she is "confined to a cold, dark cell for 23 hours every day ... The cell is unheated while the temperature drops to 5 degrees below zero at night." Maloney represents the New York City district where Berenson's parents live.

According to Maloney, the harsh conditions in the prison have caused a variety of health problems for Berenson, including failing eyesight, permanent laryngitis, and red, swollen hands.

Fifty-two U.S. senators and 175 U.S. representatives recently sent a letter to Albright urging her to intervene on Berenson's behalf. All of Massachusetts' senators and representatives signed the letter. Williamson said that Albright has not yet taken any official action on the issue.

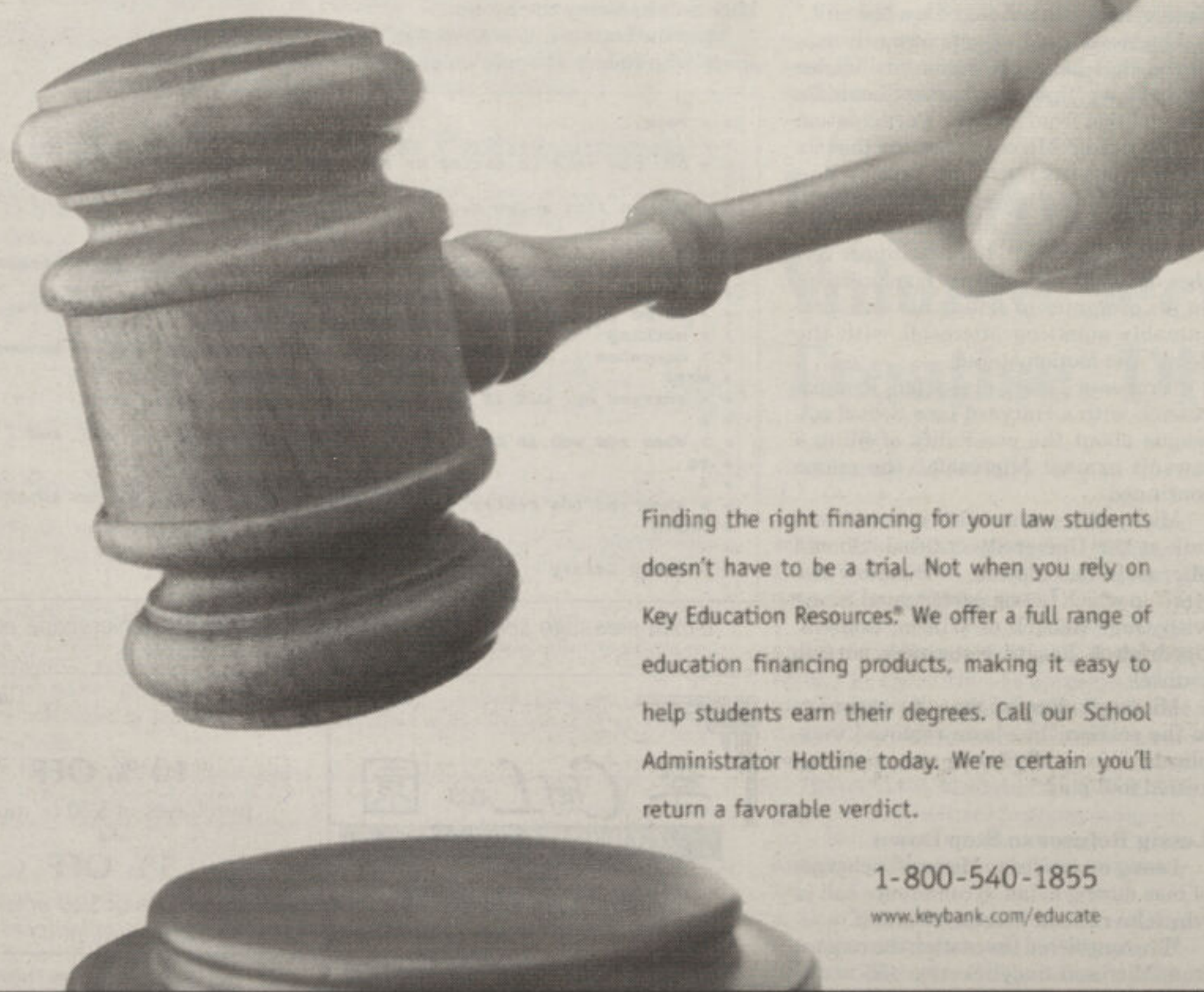
Williamson said that President Clinton raised the Berenson issue in a discussion with Peruvian President Alberto Fujimori held about a year ago, but that Clinton did not press Fujimori on the issue.

"Clinton has said little and done even less, I'm afraid," Williamson said.

In a report released a few days prior to the council meeting, Human Rights Watch/Americas criticized Peru's government for allowing the army and police to routinely torture suspected terrorists and criminals. The Washington-based human rights group said that Peru's human rights record has improved in recent years, however.

Berenson's supporters have established a web page to publicize their campaign. The address is: <http://www.geocities.com/CapitolHill/9968/>

The lender that helps
you bring order to
all your law students'
financial needs.



Finding the right financing for your law students doesn't have to be a trial. Not when you rely on Key Education Resources®. We offer a full range of education financing products, making it easy to help students earn their degrees. Call our School Administrator Hotline today. We're certain you'll return a favorable verdict.

1-800-540-1855

www.keybank.com/educate

HELP AT EVERY TURN

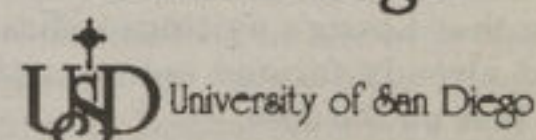


Education Resources



SUMMER LAW STUDY

in
Barcelona
Dublin
Florence
London
Moscow
Oxford
Paris
San Diego



FOREIGN LAW PROGRAMS
SCHOOL OF LAW
5998 Alcalá Park
San Diego, CA 92110-2492

e-mail: cking@usdlaw.acusd.edu
fax: 619/260-2230
<http://192.215.86.8>

The Listening Room

STOCHANSKY: It's All Good, Yo

By Darren "Huggy Bear" Fried '99

Guest Columnist

Andy Stochansky
While You Slept

A cold rain fell over the Harvard Law Penitentiary for the third day in a row as the wind blew over the alien landscape. I needed a little music to take me off of this bleak set and onto one a little more inviting. So I put on the radio and it was even worse than normal; the winter doldrums had freeze-dried the radio programmers into a vicious lethargy of stupidity and tired clichés. I flipped through the CD changer past the Bootsy Collins and Nina Simone, past the Faith No More and Ennio Morricone, and onto the debut album from Andy Stochansky.

The album's first cut, "I'm Standing", begins with a slow and seductive rhythm of drums and bass, and gradually builds with the addition of voice, guitar, accordion and percussion. The song's construction is almost jungle-like in the call and response of the various instruments, as the different tones and rhythms create a complex but catchy sound that is impossible to resist bopping your head to. Stochansky's evocatively open, honest voice fits perfectly with the lyrics of loss and longing that seem to signal dealing with the death of a loved one... "my feet are planted where you stood before / the sun is drying these dead flowers / and I hear the sound / of your singing voice going by / and I smile of your memory / and I hold you close in mind".

The album takes a bunch of unexpected turns after its opening cut, starting with "Pass the Wheel", a beautiful

ballad verging on a lullaby that is almost country (but isn't), and "Under Your Glory", a reworking of a traditional Ukrainian song. Maybe it's the uilleann pipes or the ether guitar, but the song has a melancholy feel of disconnect- edness and distance. Even if I am half Ukrainian, I still don't understand the language, so it could be a joyous song of springtime for all I know. A second version later on the album adds drums and a preacher's incantation of "Hallelujah", both of which work to simultaneously ground the song in



that often. "To Know Yourself" starts out with a somewhat familiar hip-hop beat, but the samples and Andrew Gilchrist's "whippy and crunchy kind of percussion" (whatever that might be), along with the shift in dynamics and tone a couple of minutes into the song, add an extra dimension that is sorely missed in most popular music. The same can be said for Stochansky's use of the djembe as a lead instrument in "Dear Sir", where vocally he's reminiscent of Sting's earlier, more adventurous solo work. If commercial radio programmers had any balls whatsoever they would play "The Woman Who...", a gorgeous song that is immediately catchy, as well as musically and lyrically inventive.

While You Slept is an album thick with textures and shifting moods; it's not the kind of airy record you put on before a party, although it does have its share of danceable songs. You know how certain albums are just associated with a particular season? (If *Born to Run* isn't summer, I don't know what is.) At least for me, this is definitely an autumn album. It's more like a deep blue-gray lake in October than a splashing turquoise pool in mid-July. There's a sadness running through it, often noticeable in Stochansky's voice or in the single drawn out note of a violin. But the sadness that can make it a heavier listen also makes it a more enjoyable listen, since sadness can also be beautiful, and we can all use a little more beauty in our music, and our lives.

To find out what the hell I'm talking

about, send \$18 American or Canadian to: **Population 60, P.O. Box 5, Terra Cotta, Ontario L0P1N0 Canada**. **Coming Attractions...** If you like the blues at all, check out legendary bluesman **James Cotton** this Thursday at House of Blues in the Square. His album *Taking Care of Business* is a classic and his live shows are legendary... Check out **Boston Rhythm** at the Somerville Theater on 2/1 featuring some awesome West African, Brazilian, and Japanese drummers (call 876-4275)... **John Cafferty and the Beaver Brown Band** (!!!) play unplugged and free at the South Station on 2/5 @ noon. On the dark side, oh yeah...

Stuff I'm waiting for: My vote for Artist of the Decade, **Ani DiFranco** (whose drummer is the aforementioned Mr. Stochansky), releases her latest CD, *Little Plastic Castle*, on Valentine's day... **New Hole** by summertime hopefully... **Sade** has been working on her album in between troubles with the law... **Pearl Jam** comes out next month, although they'd be a much better band without Eddie Vedder (please don't throw stuff at me)... **Spacehog** by summer, although I think I'm the only one who cares... **New Run D.M.C.** in Spring, possibly... **Public Enemy** is back together and hopefully they'll realize that without a good beat, the message is just gonna get lost... Although they look like they're melting, **Robert Plant and Jimmy Page** have done some cool reworkings of the old **Led Zep** tunes, and they're gonna tour again this year. If you want to hear the originals, check out the release of the live BBC sessions from '69... And of course, last but not least, one more week of waiting on the edge of our seats... January 23rd, it's the release of the **Spice Girls** movie. Happy New Year!

This is definitely an autumn album: more like a deep blue-gray lake in October than a splashing turquoise pool in mid-July.

sounds that are more familiar to us, and reduce the song's essential mystery. The same kind of ethereal, otherworldly flavor is also found on the piano and violin composition "Two Float" and "The Voice", a vaguely U2ish song which is almost entirely vocal driven, except for the anvil-like percussion keeping time and the late entrance of the strings.

Some of the best songs on the album use rhythm in ways we just don't hear on the radio, or even in most western music (basically the same thing) all

THE VERDICT

MIGHTY, MIGHTY APHRODITE

By Michael Bennett '98

Movie Reviewer

"Jackie Brown." A white dude's expose of what Toni Morrison might call the perceived "black excesses": language, sexuality, flesh, physicality, etc. Quentin Tarantino's latest effort. His greatest to date.

More candidly outspoken on the central matters of race and class in America than "Amistad" or "The Titanic." Stylistically superior to both. The film opens with a side shot of the incredibly sexy Pam Grier, as the title character, Jackie Brown. She's making her way to work on the automated sidewalk of an airport tunnel. Initially she is carried along passively, staring blankly ahead. Then a pace comes upon her. She starts to rush forward, propelled by her own energy. Or is it something pulling her? Maybe she's caught. It could be a rocket's stage in the rush for escape velocity or the angular momentum of flotsam caught in Poe's Maelstrom. It could be either of these scenarios when we first meet Jackie Brown and either when we see her driving away in the end with the same blankness.

Watching the film is difficult for a couple of reasons. Tarantino's fierce and deft use of music is almost overpowering. The songs are classic soul tunes for the most part. Most folk will recognize them. The uncanny part is that they perfectly tell the story of the film as it is theatrically played out. When Bobby Womack wails out "Across 110th Street", the viewer knows the whole film if he knows the lyrics. The triple unison of oral, musical, and visual story telling is almost overpowering even in the first few

minutes of the introduction. The fluidity requires a double viewing.

Secondly, Tarantino's fetish with all things Black continues to have a wave-matter-like effect. It seems to be simultaneously a showing of deep understanding and an exploitative circus. Unlike Spike Lee's upstanding, middle-class heroes, Tarantino dwells on the scoundrels — pimps and ho's. But in the mass of depravity he depicts real aspects of Black folk, most importantly humanity. Bobby Womack says it succinctly:

I was the third brother of five/ tryin' to doing whatever I had to do to survive/ not sayin' what I did was alright/ tryin' to break out of the ghetto was a day to day fight/ ... you don't know what you'll

and sobering look at non-heroes. That is to say imagined humans. It sheds more light on race relations than more dramatic would-be epics pumped full of gas and ether. Should the source cause more talk than the product? Uh-uh?

Again Tarantino, the international rogue of film archives, is at work on multiple planes. He owes a lot to Akira Kurosawa's film, *Rashomon*, a dissecting study of perspective. A "big switch" scene of Jackie Brown, viewed over and over again from the various vantage points of the participants just wouldn't work without this move. Continuously bowed in respect and giving props to his ancestors, Tarantino in the very beginning pays homage to John Woo in an auto-satirizing display. One character tells another how criminals want .45's instead of 9mm's, despite the latter's mechanical superiority. The character argues that after seeing "The Killer", a classic John Woo, the thugs've just got to have it. As often as Q.T. taps into the reservoir of things Woo, he apparently must have it as well.

The cauldron of emotion that surrounds race sends off such smoke that it almost masks the noir elements of this work. Tarantino has managed to concentrate and transpose the traditionally black & white optic of the noir world into the racially Black and white faces of the cast. They are walking memorials in a sense, transported from the twisted world of Chandler and last seductions



to a realistic yet equally warped world of Tarantino's ghettoed underworlds. It's a subtle and fundamental tweak of the noir genre. Jackie Brown is the quintessential siren who's drifted ashore in Compton, having her way with all men that come within her sexual radius. And she plays them all.

Towards the end of the film, Jackie Brown, the Black protagonist, kisses Max Cherry, the white protagonist. This is nothing new. We've seen Black and white people kissing on screen for awhile now. At least since Nichelle Nichols and William Shatner in the late sixties. But somehow, Tarantino taps into a new, unnamed pit of emotion which renders the kiss a bizarre and awkward thing. Both times that I saw the film, the audience went silent and slipped deep into their seats.

And again Tarantino hangs the essence of his characters on a most homoerotic based criminal code of conduct. Ordelle (Sam Jackson), Luis (Robert DeNiro), and Beaumont (Chris Tucker) are each satellites in a weird world of quasi-honorable, mobster flick inspired characters. They're like fungible urban samurai. Any one of them could be cut and pasted into *Pulp Fiction* or *Reservoir Dogs* and feel right at home. They wouldn't miss a beat.

"Jackie Brown" has its share of violence, but it doesn't even register on the meter of Tarantino's earlier works. Still, the moments of brutality are intense enough to send the audience into strange fits of laughter. Laughter as a ready available coping mechanism for the absurd and unanticipated violent moment. Patently Tarantino.

Should a Black director have made this film? It might more easily pass through our collective digestive system ...

do 'til you're put under pressure/ across 110th street is a helluva tester.

But we cannot forget the Blaxploitation period. Tarantino is very aware of it. On one level satirizing it, while on another mimicking it. But getting to the popular questions these days, should a Black director have made this film? It might more easily pass through our collective digestive system, but I don't think so. Could a Black director have made this film? Not one that we're aware of on our radar presently. This is a backhanded, spinning, realistic, anti-glamour

Harvard Law RECORD

PUBLISHER
Rob Friedman



EDITOR-IN-CHIEF
Janie J. Kim

FOUNDED IN 1946

Remembering Herbert Berman '47, an Original RECORD "Hell-raiser"

Herbert Berman '47 was one of the best friends the RECORD ever had. A founding editor of the RECORD in 1946, Berman died suddenly last Thursday at his home in Forest Hills, NY at the age of 74.

Berman had been a true community leader. The most senior active member of the New York law firm Tenzer, Greenblatt, Fallon & Kaplan, Berman found ample time to devote his talents to the causes for which he cared deeply. He was president of the board of trustees of the Queens Borough Public Library, and at one time served on the boards of New York City's Board of Higher Education, the City University of New York, New York University, and the Ralph Bunche Institute at the United Nations.

Berman was particularly proud of his work with the World Jewish Restitution and World Jewish Congress in trying to recover property looted by the Nazis and secreted away in Swiss bank accounts.

In an interview with New York Newsday, he said, "We're uncovering tremendous injustices and trying to correct them. As counsel to the World Jewish Restitution Organization I have been leading the charge against the Swiss bankers."

One of Berman's more modest legacies was helping to establish the first law school newspaper in America.

Vol. 1, No. 1 of the RECORD was published on July 17, 1946 with Berman as news editor. The lead story that week reported on nine high rankers selected for Board of Student Advisers; the featured column was dubbed "Confessions of a Law School Wife"; the editorial dissented from Dean Pound's assessment of the RECORD as essentially frivolous and irrelevant to the law student's task.

And so our little "journal of opinion" (as we called ourselves in that very first editorial) was born in such unwelcome climes — undoubtedly thanks to the scrapiness of the first editorial team.

Before graduating and embarking on his wide-ranging career, Berman took on the mantle of RECORD editorial manager. Half a century later, Berman continued to support the RECORD with generous contributions of time and money. As a Board member of the "Friends of the RECORD," he worked to strengthen the newspaper's alumni base and keep the paper financially viable.

We remember Berman's spirit and warmth as evidenced in his Nov. 20, 1997, letter to Charles Porter '47, RECORD founding president:

"We had a marvelous time at the reunion. My basic reaction when I saw the other members of our class was 'How did you ever become associated with these old farts?' Another reaction I had was that despite the passage of more than 50 years, personalities and characteristics do not change. My own appraisal as to what has happened since 1947 is that some are wiser, some are older and some are richer ... and [then we have] a couple of hell-raisers like you and me who are still going strong."

— Janie Kim

Staff

MANAGING EDITOR
Timothy Kiefer

EXECUTIVE EDITOR
Seth Persily

ENTERTAINMENT EDITOR
Judson Berkey

STAFF COLUMNIST
Renée Kaplan

CONTRIBUTOR
Jeremy Bash
Steve Lee

EDITORS EMERITI
David Liu
Jaclyn Liu

CARTOONISTS
Margie McWilliams
Alfred Steiner

COLUMNISTS
Kate Arms
Michael Bennett
Darren Fried
Eric Johnson

BUSINESS MANAGER
Chih T. Cheung

ADVERTISING MANAGER
Steve P. Chen

OFFICE MANAGER
Michelle A. Jones

PRODUCTION
Kim Isbell
Ben Lehrer

WIRE EDITOR
William Becker

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 periodic paid at Boston, MA and additional mailing offices.

©1998 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 •

Where's the Beef?

Last I checked, the RECORD still calls itself a "newspaper." That said, where's the news? More to the point, the RECORD regularly has more columns than news stories. Taking your October 17, 1997 issue as an example, there are only eight news stories (counting AP feeds) and 12 columns (not counting Fenno or the editorial). Surely things can't be that slow around Cambridge and the law school.

Don't get me wrong: the food, sports, and movie columns — as well as those directed at "news" or legal events — certainly have a

place. However, notwithstanding how funny most of the self-absorbed columnists mistakenly think they are, your readership can only handle so many anecdotal, semi-cathartic diary-like entries.

Rather than only criticize, I actually have a few suggestions. First, how 'bout interviewing/profiling one faculty member each issue. Surely the professors have something worth learning that can't be stuffed into a 70 minute lecture. The subject matter could include everything from recent research to outside case work to bio-

graphical information to turn-ons and turn-offs to views on diversity to opinions on the designated hitter to run-on sentences.

Likewise, how 'bout profiling the work of various student groups occasionally (e.g., defenders' cases). Finally, why not run point-counterpoints on pending, high-profile Supreme Court cases.

In short, however difficult, use your imaginations. If that fails, try running jumbles.

Bill Choslovsky '94
Chicago, IL
January 7, 1998

Roe v. Wade "Act of Judicial Tyranny"

In 1973, Justice Harry Blackmun wrote in *Roe v. Wade*:

"We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer."

With the ludicrous assertion that a question of biology, the science of life, was even partly a matter of philosophy or theology, the Court side-stepped the question and proceeded, in spite of its admit-

ted (though feigned) ignorance, as though prenatal lives did not exist. By this key lie among many, the Court evaded acknowledging that what they were really striking down was the philosophical premise of our nation — that human rights are intrinsic with human lives. They turned back the clock to when human rights were granted or denied by the powerful based on criteria of their choice, and gave us a nation based on might makes right, the philosophy of all oppression. The mindless resistance to banning partial-birth abortion, a barbaric and medically unnecessary abortion ritual, highlights this fantastical devotion to power and control

instead of truth and justice.

Every Supreme Court vacancy causes a panic over keeping a majority that will support *Roe v. Wade*, a pathetic spectacle that recalls the effort to maintain a balance of slave and free states in the Senate. When will we admit that this act of judicial tyranny — devoid of truth, justice knowledge, reason and principle — cannot stand, just as the house divided against itself over slavery could not stand.

Real Americans will never accept *Roe v. Wade*. We want our country back.

Alfred Lemmo
Dearborn, MI
January 11, 1998

• Correction •

A news article in the Dec. 5 edition stated that Emeritus Prof. Charles Fried will not be teaching his Constitutional

Law class on a regular basis due to his recovery from heart surgery. In fact, Fried's absence was limited

to the fall semester's class. He plans to resume teaching his Constitutional Law class in future semesters.

SEND US A LETTER

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

Harvard Law RECORD
Harvard Law School
Cambridge, MA 02138

By Richard A. Posner '62

Law School Should Be Two Years, Not Three

In this article, I will be discussing two dissatisfactions. The first is the dissatisfaction of many lawyers, particularly but not only recent law school graduates, with the conditions of the private practice of law; a dissatisfaction shared by a number of law professors. The second is the dissatisfaction of many lawyers and judges, and some law professors, with the changing character of legal scholarship and, more broadly, with the growing estrangement between academia and law practice. This estrangement is nicely captured in the following statement by a professor at the Yale Law School: "Law professors are not paid to train lawyers, but to study the law and teach their students what they happen to discover."

These two phenomena have different causes and, I suspect, no cure. But both would be ameliorated by the deregulation of legal education and practice, which I believe would lead to a two-year J.D. on the model of the two-year M.B.A. awarded by business schools, and would lead indirectly to a slight reduction in the pressure on young lawyers to recoup their investment in legal education by working ridiculously long hours. Although I favor complete deregulation of legal services, I shall for the sake of practicality confine my argument to the case for eliminating the requirement of a third year of legal education.

The deterioration in the working conditions of lawyers is a product in part of the increased competitiveness of the legal-services industry. That increased competitiveness is part of an economy-wide movement toward greater competitiveness in service industries ranging from medical care to funerals, a movement that follows the movement in the 1980s to greater competitiveness in manufacturing. In the case of law, as earlier in the case of transportation, the trend to greater competitiveness has been helped along by a relaxation of regulatory controls, notably over the pricing

and advertising of legal services and over the provision of substitute services by accountants, trust officers, paralegals, and others. Since the tendency of competition is to transform producer surplus into consumer surplus, it is no surprise that one effect of the competitive revolution in legal services has been to make lawyer work harder.

Turning now to the changing character of legal scholarship, I think it is mainly though not entirely the product of causes internal to scholarly enterprise rather than having anything to do with the changes in the market for legal ser-

not always economics. Eventually these people came to occupy positions of influence in academic law and began recasting legal scholarship in their image.

So, to summarize, law is becoming more like a business at the same time that law school is becoming less like a business school and more like a graduate department in the humanities and social sciences. The practice and the academy are indeed drifting apart. What if anything is to be done?

I want to consider what law schools can do about the drift, since there is very little law firms, subject as they are to

eager and attentive. The main benefit of the abolition of a third-year requirement, however, would accrue to the students who decided not to stay for a third year. The shorter the course of instruction is, the lower the cost of law school to the student and hence less intense the pressure to work killing hours in order to pay off one's student loans.

The student who obtained a J.D. (or call it an LL.B. and limit the J.D. to the three-year graduates, if you want) from an elite law school after completing the program that I have outlined would have saved himself as much as \$100,000 — \$20,000 in tuition for the third year and \$80,000 in foregone income in that year (less of course after taxes, but still considerable). In an age of specialization, is this so clearly an inferior alternative to the present system that it should be banned by the state?

I imagine that some will think me a philistine and others will think that I have overlooked the humanizing or civilizing role of an extended legal education — the only hope, they argue, for restoring the fading ideal of the statesman lawyer. That would be a wistful hope, greatly exaggerating the moral effect of education, especially when the education is law school and the morals are those of lawyers. Law is fast becoming a business, and the law schools cannot reverse the trend. As business ethics are not clearly inferior to legal ethics, I do not myself think that the trend should be regretted on moral grounds. I think therefore that the law schools should adjust to it rather than fight it.

Richard A. Posner '62 is the chief judge for the U.S. Court of Appeals for the Seventh Circuit and a senior lecturer at the University of Chicago Law School. This article is based on a talk that was given at a conference between national law schools and large firms held in Washington, D.C., on January 6-7, 1997.

The shorter the course of instruction is, the lower the cost of law school and hence less intense the pressure to work killing hours in order to pay off one's student loans.

vices, important and far-reaching as those changes have been. Beginning in the early 1960s, developments in economics, in political theory, in philosophy more generally, in history, and even in literary criticism presented increasing opportunities to analyze law using the tools of other disciplines.

I had a conventional legal education and spent most of my time before I went into teaching of law in 1968 in fairly conventional law-type jobs. But when I became a law teacher I quickly became confirmed in the view that I had already formed that economic analysis of law was a lot more interesting than doctrinal analysis. Many others of my wave and subsequent waves of new law teachers had the same reaction, though the external discipline that fascinated them was

intense competitive pressures, can do about it. I think that what law schools can do is to recognize that the public regulation of legal education, as a result of which lawyers cannot (with unimportant exceptions) be admitted to the bar without three years of residential study at a law school, is anachronistic, and to press for deregulation. The elite law schools, at least, can do this without grave jeopardy to their existence. They could attract more students to a shorter course of instruction, and many of their students would voluntarily elect a third year at such a school, though not perhaps until a later point in their career. And with the captive-audience character of the third year removed, those students who did stay (or come back) for a third year would be

THE END OF THE TUNNEL

HLS STUDENTS GET "ENLIGHTENED"

By Jeremy Bash '98

Guest Columnist

Hardly a day goes by without someone coming on television or radio to chastise our generation for being apathetic, lazy, ignorant, and self-indulgent. Over winter break, I attended a conference in Williamsburg, Virginia, that forcefully disproved those negative stereotypes.

Six current and former HLS students — Angela Fannon '98, Stacie Fatka '98, Marci Skolnick '98, Joe Clark '97, Cheryl Hudson '97, and I — joined 40 others in their late twenties and early thirties to exchange ideas, learn from one another, and discuss the most pressing public policy issues of our times. It was the first ever "Enlightenment" Weekend, a three-day gathering loosely modeled on the Renaissance Weekend for baby-boomers, famously attended by the First Family, in Hilton Head, South Carolina, every New Year's.

The Enlightenment is a new non-partisan, not-for-profit Washington, D.C.-based organization, which was founded this year by two recent law school graduates — Jason Levien, a 1997 Michigan Law graduate, and David Angeli, a 1997 Georgetown Law graduate. The purpose of the organization — and its annual conference — is to bring together people who are concerned about the direction of our families, our society, our nation, and our world. By sparking debate and discussion about issues, such as foreign affairs, trade policy, education reform, affirmative action, and the environmental crisis, the Enlightenment aims to elevate the discourse on these topics and attract the "best and the brightest" of



our generation to help solve some of these problems. Most importantly, the organization wants to foster the exchange of forward-thinking ideas, which have

always formed the basis for any positive change in our nation.

When I first arrived for the Weekend's events, I was immediately taken by the high caliber of participants. In attendance were: Scott Sherman, the former executive director of the Martin Luther King, Jr. Center for Non-Violence; Jami Floyd, a former instructor at Stanford Law, now a reporter at Court TV; Michael Dorsey, a U.S. representative at the Earth Summit; Celes Hughes, an advisor to U.S. Rep. Lee Hamilton; Tim McCann, a managing director at Bear Stearns; and Nena Shaw, a former environmental protection specialist with the EPA — just to name a few.

On Friday evening, after everyone got acquainted, we heard policy mini-lectures from three of the participants, each offering a unique perspective on the issue of "The U.S. Evolving Role in the Global Community." An environmental specialist discussed transnational efforts on the ecological front; a foreign trade expert discussed the use and misuse of unilateral sanctions; and a former Navy intelligence officer discussed the criteria for the "use of force" in regional conflicts. These insightful presentations were followed by

a series of small-group breakout sessions, after which we all reconvened to continue the debate and share what we had learned.

Day Two featured a panel on "Engaging Society's Disenfranchised." Joe Clark '97, who is currently clerking for a federal judge in Richmond, Virginia, outlined the arguments for and against affirmative action. His talk was followed by a speech on how to use new technologies, including the Internet, to offer new avenues of civic participation to minorities and the poor.

During our free time, we toured Colonial Williamsburg, enjoyed the unusually beautiful weather, and continued our discussions about public policy, career moves, and life plans.

For those of us who came to law school to be challenged by new ideas and to meet the sharpest minds of our generation, HLS can sometimes disappoint — not because people here aren't incredibly bright, but because too often we shy away from "serious" discussions about issues that affect our future. Our classes are weighty enough; when we're not in class, we'd rather have fun than sit down for a penetrating discussion about the Social Security trust fund. That's why we need a weekend away, like the Enlightenment, to get our creative juices flowing again and to rekindle our passion for ideas.

HLSers can also benefit from hearing non-lawyers discuss their visions for our society. As a 3L, I find classroom discussions all starting to blur together — doctrine vs. policy; rules vs. standards; slippery slope vs. line-drawing;

efficiency vs. fairness. We all know the drill; we all can recite the standard arguments. But what I, at least, tend to forget is that there's a whole different way to think about things that they don't teach in law school: the perspective of the physician, who treats heroin addicts at a methadone clinic in Denver; the management consultant, who works on corporate re-engineering at a major computer company in L.A.; the journalist, who has to balance the need to get the most important story with the need to keep her viewers glued to her 5:30 newscast.

The Enlightenment is about expanding vistas, exploring solutions to difficult problems, and reconnecting the bonds between our generation and our government. Most of all, it is about taking our civic obligations seriously enough so that no one can accuse our generation of sitting still while pressing challenges go unmet.

Anyone interested in learning more about The Enlightenment — the weekend or a forthcoming policy journal — is encouraged to e-mail Stacie Fatka at fatka@law.harvard.edu



THESE HALLOWED HALLS

By Kate Arms '98
RECORD Columnist

Is JANUARY REALLY DEAD?

Life at HLS always seems a little bizarre during January. One-Ls are caught up with exams while everybody else faces this odd one class winter term. The assumption that student energy is not available for non-academic pursuits during January can lead to a sense that nothing is happening. But this is not true.

William Shakespeare's "Antony and Cleopatra," the final production of the Harvard College Fall semester, ran in the Agassiz Theatre this past weekend. Directed by Harvard senior Timothy Foley, the production was a remarkable achievement. One of Shakespeare's more difficult plays, "Antony and Cleopatra" is not presented often for good reason. The text is long and the characters are complex. The structure of the fourth and fifth acts in particular do not help the actor playing Cleopatra sustain the emotional pitch necessary to make the final suicide of the queen of Egypt a moment

of great tragedy. The production suffered under the inexperience of the lead actors in the final resolution of the play, but was visually brilliant and enjoyable nonetheless.

Two performances stood out. As the man who must tell Cleopatra that Antony has married another, freshman Dan Berwick drew out all the humor possible in his struggle to tell the truth without

was James "Seph" McNamara '00, as Enobarbus. Enobarbus is Antony's right hand man for most of the play, trying to keep Antony on a sensible path, yet knowing that passion will drive Antony to behave in less than ideal ways. Early in the show, Enobarbus serves as part of the comic lightness which allows the suspense to build throughout the play. McNamara delivered this material with a light touch, drawing out the sexuality and spirit of the circumstances. As tragedy draws closer for Antony, Enobarbus makes a tough decision to leave Antony and join the opposition, a decision he almost immediately regrets. McNamara's struggle was palpable, proving his command of the serious as well as comic elements of the role.

The other HLS student involved in "Antony and Cleopatra" was Tech Director Mark Penney '99. Penney will be bringing his theatrical skill back to HLS this semester as he will be directing Terrence McNally's "Lips Together, Teeth Apart." Watch for auditions at the end of January. Also at the end of January will be auditions for the Law School Parody, "Reasonable Men In Black."

If getting involved with theater sounds like fun, but neither of the HLS spring



offerings appeal, the Harvard Radcliffe Dramatic Club audition process, Common Casting, will be happening February 4-8 at the Loeb Drama Center. See the HRDC web site at <<http://hcs.harvard.edu/~hrdc/hrdc/cc/>> for more details.

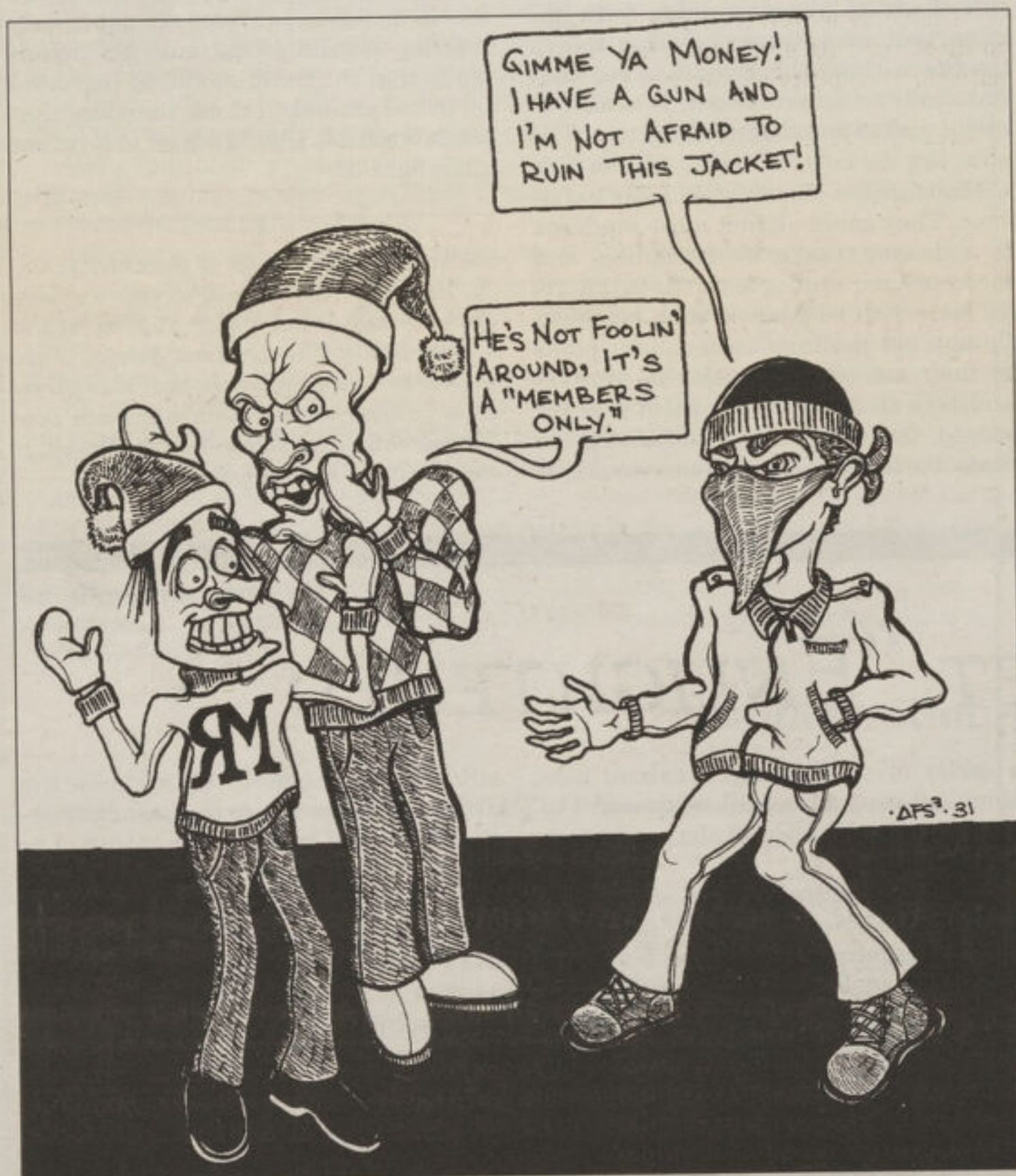
If watching other people's work is more in your line, this may be a good time to explore the Harvard Film Archive, located at 24 Quincy Street in the basement of the Carpenter Center for the Visual Arts. During January, features include documentaries from the 1997 Montreal World Film Festival and a series of six videos created by cellist Yo-Yo Ma based on J. S. Bach's "Suites for Unaccompanied Cello." Coming in February is a series honoring German playwright and poet Bertolt Brecht, the first presentation of all existing film material produced by Brecht as director and metteur-en-scene, including films of "Mother Courage and Her Children" and "The Threepenny Opera." Also in February, the Modern Directors series features Ingmar Bergman and Satyajit Ray. Most of the films at the Harvard Film Archive are shown several times. Check the web site at <<http://film-4.fas.harvard.edu/calendar.html>> for dates and times. Tickets are \$5.

One final note, if you are involved in the arts on campus and would like to see your name and activities mentioned in this column, please send me details by email at carms@law.harvard.edu.

The assumption that student energy is not available for non-academic pursuits during January can lead to a sense that nothing is happening.

Reasonable Man Gets Mugged

By Alfred Steiner



Spike



OFF THE RECORD

By Eric Johnson '00
RECORD Columnist

AN OPEN LETTER TO STUDENT GOVERNMENT

The following is an open letter to your student government — the Law School Council.

Dear LSC:

Here are some ideas to improve life at HLS:

Install a sprinkler timer on the automatic doors at Harkness Commons. At certain times of day there are hundreds of people going in and out of the Hark. Instead of people having to hold open the door for one another or continually pressing the handicapped-access button, we could just hook the thing up to a seven-day sprinkler timer. If you get the funding and the permission from the authorities, I could go to Home Depot and get an \$80 Rainbird system and grab some wire and a few relays from Radio Shack and we'd be in business. I've al-



ready got a Phillips-point screwdriver. Labor's on me. My way of saying thank you to the Law School.

Change our mailing address. Nobody knows what in the Lord's name I'm talking about when I tell them my ad-

dress is "7312 HLS Holmes Mail Center." I always get mail labeled like this: "7312 Hills Homes Male Center"

Why can't my address just be "7312 Harvard Law School"? It would look more intimidating on the small-claims-court complaints that I've been filing. (About three a month, lately.)

Manufacture Sweaters Dyed the Color of a Dried Coffee Stain. That way I can gulp down coffee in the mornings without worrying about whether I'm going to spill it all over myself. Now, I know what you're saying...

"But Eric, I don't think LSC manufactures sweaters."

Sure, but LSC could make "Coffee Stain" the official color of the Harvard Law School, and that way the Coop would fill up with yellowish-tawny colored clothing almost overnight.

Another idea is the Stain Shirt. The Stain Shirt would have several different kinds of stain-like graphics all over it, so that you're covered no matter what you spill on yourself. This could be very big. Don't be fools and pass this up.

I know I could probably have made millions on these ideas by jealously procuring patents on them, but I felt that it was more important to share this cornucopia of wealth with my law school community. I thank you in advance and look forward to hearing your response.

Sincerely yours,

Eric Johnson

By Margie McWilliams

Musings and Vagaries

DING

By Renée Kaplan '99

Staff Columnist

The checklist for the 2L's first semester, all kidding aside, really was busy, busy and very, very full. What with Gianni and Di (and Dodi — why does everyone always forget about Dodi? People are still talking more about the damn bodyguard than about dead Dodi), things had already gotten off to a tumultuous start before we even arrived on campus. And after the initial wave of beginning-of-the-term parties, the disclosure of summer weddings and engagements, the ohmygod-blank-made-law-review surprises, after some last minute add/drop decisions, after the sick realization that it was the last day of add/drop and that you had ten seconds to add something (anything) worth at least three credits but no more than five and that met on Tuesdays and Thursdays but preferably not in the afternoon or you weren't going to make the 26 credits a year cut-off — already interview season was upon us, and really the semester was essentially over.

And that whole flurry of a flutter of a scramble of a mad, whirling maelstrom of a hullabaloo deal has already been documented, of course. But like all already over-analyzed, much-too-talked-about, predictable, and for the most part unchanging from year to year kinds of experiences — first semester deserves its very own Annual New Year's Sexiest Moment of the Year Award.

And the Sexiest Moment of the Year Award goes to ... the ding letter. "Ding," a crucial word in the second year law student's lexicon, closely related in mean-

ing and resonance to "hose" or "neg," and, coupled with the word "letter," generally implying some official, written, though not always so expeditiously imparted form of rejection (*reject*, v. 1. to refuse to have, take, use, recognize. 2. to refuse to accept or admit. 3. to discard as useless or unsatisfactory.). The ding letter genre probably left few people unvisited during the weeks of on-campus interviewing, and generally came commingled in some way with surprise, whether it was unpleasant surprise, mild surprise, or the lack of surprise entirely.

For the most part, even if the surprise was unpleasant it was not great — and herein lies the very particular and special effect of the ding letter, that of inducing a sense of unpleasantness *even* in the absence of surprise — for the 2L recruit, in the very first week, very rapidly grew an extrasensory intuition regarding the likelihood of receiving a ding letter from any given firm. Every soon-wily 2L learned to decode the subtle signals, the tacit give-aways, the signs that more likely than not the ding missive would come: the rumor that some people had started getting calls, maybe that a few had been extended on-the-spot callbacks, that there was an informal gathering somewhere that evening that you did not, well, formally know about; or when one, perhaps two, maybe even three weeks had elapsed since the on-campus interview, and you were still checking your voicemail and reflexively, not to say pointlessly, rejoicing over the still-void void in your mailbox; or that

your roommate, or your friend's roommate, or the rumor that your roommate's friend's roommate had received a callback, or perhaps all three. Really, when the ding letter finally did arrive, it was already a constructive waste of postage (in itself a menial, small-minded, petty and very real comfort).

Except, occasionally, the succinct text enclosed within the thin letter did afford some pleasure. Indeed, the phrasing of the ding letter itself deserves a few words of praise for the mastery of its sometimes elegant, and always parsimonious elocution. There were any number of original variations of thanks-but-no-thanks, of no-can-do-but-really-for-sure-you-must-come-see-us-next-year, of not-now-hon-we're-so-sorry-but-there-are-just-so-few-us-and-just-so-many-of-you:

"I am writing, with great regret, to tell you that we will not be able to invite you to visit us for further discussion and consideration." (Okay, well how about coffee some time then?)

"At this time I am sorry to report that, after considering our situation for next summer and reviewing the results of all of our recent interviews, we are not in a position to invite you to our office for further interviews this fall." (Geez, I never said you had to be supine. Bunch of phillistines.)

"I hope, however, that you will want to meet with us again next fall to discuss the possibility of employment after



graduation. If you have any difficulty scheduling an on-campus interview with us at that time, please let me know." (Oh, the Big Man's gonna pull strings and get me an interview, huh? Well aren't I special, and isn't he the shit?)

The brilliance of the ding letter lies in its effectiveness in driving already obvious rejection politely home, in most formally concluding affairs, in keeping a neat, straight record of things, in tying up useless, messy, loose ends (namely, you). In just making things perfectly clear for everyone, in everyone's best interest, of course, while managing still to maintain a tone of hearty good feeling and mutual respect, *n'est-ce-pas*? The very stuff of professional camaraderie.

Hopefully, 1998 will produce some equally notable and sexy moment of the year. In fact it's barely January and only Winter term, and some professors clearly are already vying for the Award with some far-fetched hippie idea of teaching a "class" with no book and no reading and movies and music and popcorn and pizza. Much more likely candidates for our institution's Award are the clerkship application process, or perhaps the Law Review's auxiliary subpara-sub-committee for the debate over whether to provide Fleischman's Light margarine or Land-o-Lakes butter with the democratic editors' morning bagels at Gannett House. In any case, happy new year.

Fenno

Fenno sat comfortably in front of one of the malfunctioning Macs in the cybercafe and flipped through the RECORD. He was trying to work up the courage to take a sip from his coffee when, looking up, he spied a 3L casually making her way from the dorms. It was only with a double-take that Fenno realized the significance of the peculiar rectangular object the 3L was holding.

Fenno jumped up to intercept her path, coming as close to running as he had in over six months — but he caught the 3L just before she had committed herself irrevocably to the library.

"What's that?" Fenno asked accusingly.

"Oh ... that," the 3L said with a nervous laugh. "Why, that's a book. *Anti-trust* by Areeda and Kaplow. Lack of Foundation Press. 878 pp. \$89. (1997).

"What's it worth to you for me not to tell people you've been seen running around with a casebook during the winter semester of your third year?"

"Quite a bit," the 3L admitted. "Actually, I've got a good excuse: fall semester exams have just ended."

"Isn't studying after exams a somewhat novel concept?" Fenno asked.

"Not at all," the 3L protested. "I had four exams last semester, and I ended up studying outlines of outlines of Emmanuels. When you get to that point, substantive analysis tends to get a bit thin."

"That must have made for some interesting exams."

"Well, yeah, I found myself having to rely on policy my fair share."

"That's not necessarily fatal," Fenno offered.

"In *Accounting and Evidence*?"

"Oh," Fenno smiled. "What are you going to do about your fall grades?"

"That's easy. I took the lead from Ted Kaczynski and sent all my teachers a note saying 'This could have been a let-

ter bomb. If you give any grades below B-, next time it will be."

"And you think that they'll take you seriously?"

"Hard to know for sure. All I can say is that last Thursday's *Adviser* had five job offers for students to open mail for faculty members."

"That's encouraging," Fenno acknowledged.

"Yes it is. It looks like I may be able to make my point without poisoning their house pets."

"Which is a good thing," Fenno said. "Since in the case of some of them, that could amount to homicide."

"That wasn't subtle," noted the 3L.

Fenno shrugged. "How long do you expect your spurt of academic conscientiousness to last?"

"Oh, until April 15th — or until first semester grades are out. Whichever happens first."

"If last year is any indication, that could be a dead heat."

"You're exaggerating," the 3L said.

Again Fenno shrugged. "That's what they pay me for."

Quote of the Week

"Charlie Nesson thinks we should file a law suit."

— Prof. Lessig, in the "smoking gun" e-mail complaining about Microsoft software.



FORGET THE REST,
AND
CALL THE BEST!

629-2929

MEDIUM ONE TOPPING AND 2 SODAS -OR-

-LARGE TWO TOPPING FOR ONLY

ADD SECOND PIZZA FOR ONLY \$3.99 \$ 7.99



7 DAYS A WEEK FROM 11:00AM TO 12:00AM

WE TAKE ALL COMPETITORS COUPONS

DRIVERS CARRY LESS THAN \$20.00



JOSE'S

Mexican Food & Cantina

Winner of the Prestigious Boston Globe Reader's Poll.

Best Mexican Food

MON.-TH 10-10;
FRI. & SAT 11-11; SUN. 5-10

FREE Parking in Our Private Lot

\$5 OFF

ANY 2 DINNER
ENTREES

NO EXPIRATION

Good for multiple couples

131 Sherman Street, No. Cambridge

(617) 354-0335

Serving the Harvard Community for over 14 years

spring break fever

Need a break?

Cheap tickets Great advice Nice people

Rio \$883

Cancun \$302

London \$278

Ft. Lauderdale \$175

Council Travel

CIEE: Council on International Educational Exchange

273 Newbury Street

Boston

(617) 266-1926

MIT-Student Center W20-024

84 Massachusetts Ave.

Cambridge

(617) 225-2555

12 Eliot Street, 2nd Floor

Cambridge

(617) 497-1497

