



Students call for the appointment of a person of color to the Admissions Committee, a call that would soon be answered.

Clark Names Prof. Wilkins '80 to Admissions Committee

By Ben Lehrer

Dean Clark '72 appointed Prof. David Wilkins '80 to serve on the Admissions Committee in December just before the holiday break.

The appointment responded to student demands that a person of color be placed on the committee in order that it reflect the diversity of the faculty.

"We are ecstatic about the appointment of Prof. Wilkins to the

Committee," said BLSA president T.J. Stevenson '00. "Clark and [Dean of Admissions Joyce] Curll did what needed to be done and did it quickly."

Wilkins, who was on sabbatical last semester, acknowledged that serving on the Committee would be a tremendous amount of work and responsibility, but felt it was important enough for him to accept Clark's appointment.

"The issue of declining minority enrollment is very important and something I care very much about," he said. "I don't know what the reasons are for the decline, but I am looking forward to working with my colleagues on the committee and admitting the best class we can for Harvard Law School."

Both Clark and Curll emphasized that the main focus of their

efforts to reverse the downward trend in minority enrollment would be in increasing the number of applicants and the number of admitted applicants who decide to attend.

"I think that the problem is probably going to be most effectively solved by putting a lot of effort and skill into improved marketing to increase the applicant volume from minorities, and into recruitment after those

people are admitted," Clark said. "But I also realize that there is a perception issue about whether the committee is doing its best," he added. "I wanted to address this perception issue."

"It will also be very useful to add a different perspective to the committee, especially someone



Prof. David Wilkins '80

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Harvard Community Mourns Loss of A. Leon Higginbotham Jr.

Judge, Professor, Activist Succumbs to Stroke

By Elizabeth Read

A. Leon Higginbotham, chief judge emeritus of the U.S. Third Circuit Court of Appeals and Public Service Professor of Jurisprudence at the Kennedy School of Government, passed away in the evening of Dec. 14, at Massachusetts General Hospital in Boston.

Judge Higginbotham accepted his position at the Kennedy School upon retiring from the bench in 1993 after 29 years as a federal judge. In the Law School Curriculum, he taught a Seminar on Race, Values and the American Legal Process.

Higginbotham leaves behind a considerable legacy of civil rights

activism and influence. As a jurist, educator and scholar, Higginbotham repeatedly urged the nation to confront the racial violence and injustice of its history, finding a trail of oppression in outwardly ordinary historical documents.

At the funeral service on Dec. 21, Prof. Charles Ogletree '78 said Judge Higginbotham was "not only a mentor but a father figure for me and for a generation of young law professors and lawyers. He was the epitome of the people's lawyer. Despite his in-

dividual merits and accomplishments, he never hesitated to lend a hand to the poor, the voiceless, the powerless and the downtrodden."

Higginbotham himself was born into a working-class family in Trenton, New Jersey on Feb. 25, 1928. Beginning his higher education as an engineering student at Purdue University, he eventually earned his bachelor's degree in liberal arts at Antioch College in 1949. He



Judge Higginbotham

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HLS Profs Perform in Ongoing Clinton Drama

By Ben Lehrer

The road to impeachment is paved with Harvard Law professors.

From the early days of President Clinton's impeachment saga, HLS professors have remained close to the spotlight.

Prof. Charles Ogletree '78 has played the role of advocate, representing Francis Carter, Monica Lewinsky's first lawyer, as well as former Agriculture Secretary Mike Espy. Espy had his own independent counsel investigation concerning charges that he accepted illegal corporate gifts. Espy was acquitted of all wrongdoing last year.

Profs. Richard Parker '70 and Laurence Tribe '66 contributed to amicus briefs filed in the Paula Jones lawsuit for Jones and Clinton, respectively. Both professors, along with Alan Dershowitz and visiting professor Judge A. Leon Higginbotham, who passed

away on Dec. 14, testified in front of the House Judiciary Committee in hearings held last November and December.

Parker testified for the Republican majority, while the other three testified for the Democrats.

Parker, a Democrat, speculates that the Republicans invited him because of his work in support of the proposed amendment to proscribe flag burning.

Dershowitz, Higginbotham and Tribe testified that impeachment was not warranted in this

In addition, Dershowitz says he is involved in the ongoing ordeal "on a daily basis," responding to press inquiries, writing columns, and taking calls from congressmen opposed to impeachment.

"Sexual McCarthyism" is Dershowitz's term for the use of information about a person's sexual life to tarnish that person's public image.

"The Starr Report is one of the most disgraceful documents in American history," said Dershowitz. "It was designed to disgrace the president into retiring."

He pointed to the inclusion of a statement made by Lewinsky to a friend recalling that Clinton told her that in three years he might not be married to his wife any more.

"This is the paradigm of sexual McCarthyism," said Dershowitz. "This was akin to J. Edgar Hoover having taped Martin Luther King Jr. engaged in a sexual activity and

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RECORD Feature

case, while Parker testified that perjury is an impeachable offense, although this did not mean that Congress was required to vote to impeach.

Dersh Quick to the Pen

Hot on the heels of The Starr Report, Dershowitz produced a book entitled "Sexual McCarthyism" about the Clinton scandal and the Independent Counsel Law.

LL.M. Accuses Au Bon Pain of Racist Security

By Janie Kim

A security guard's attempt to remove Raphael Abiem LL.M. '99 from the Au Bon Pain coffee shop at 1100 Mass. Ave. was at least partly motivated by racial stereotyping, said Abiem.

Abiem, who is originally from Sudan, accuses Au Bon Pain of offering a contrived premise for its attempted eviction of him. He says that the only obvious factor that distinguished him from the store's other customers was his race.

Still, the cafeteria-style eatery remains Abiem's "favorite Harvard Square hangout."

Citing the pragmatism necessary to navigate a society where racially-tinged stressors seem almost unavoidable, Abiem said, "I suppose I could stop spending my dollar or two there. But it would be of little consequence to Au Bon Pain. On the other hand, the benefit I gain from the social element there...from meeting my friends far outweighs any drawbacks."

"For me to be discouraged by the bigotry of a few would be ridiculous," said Abiem.

Fighting Back With Psychology

On Dec. 23, at around 8:30 a.m., Abiem said he was sitting in the interior dining area of Au Bon Pain when a security guard, contracted from Pinkerton Secu-

rity, began to "hover" around him.

"All of a sudden he told me, 'Leave,'" said Abiem.

According to Abiem, when he asked the security guard why he should leave, the guard informed him that there was a 30-minute limit on the time customers could sit in Au Bon Pain.

Abiem protested, however, that he'd been sitting at the table for "only seven to eight minutes at the most." Abiem remembers several of the tables inside Au Bon



Raphael Abiem LL.M. '99

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Boldizar, The Buzz, and the perennially derisive Fenno.

Apology Letter Unsatisfying, Says LL.M.

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Pain were occupied, most by customers who were already sitting when he arrived.

"The only people who sat down after me were a mother and son. Yet I was singled out," said Abiem.

When the guard persisted, threatening to call an Au Bon Pain supervisor if Abiem did not leave, Abiem, who said he was the only black customer in the store, became "naturally angry."

"I lashed out at the security guard who was African American," said Abiem, "I told him, 'Inferior! Inferior! Inferior!'"

"This is self-hatred. You saw me, the only black man in the room and exercised power over the only person whom you felt comfortable doing so ... the only person you weren't intimidated by."

"I psychologized a bit," Abiem said.

The Pinkerton security guard and an Au Bon Pain supervisor then relented, he said. He subsequently asked them for a letter apologizing for the "unfair and discriminatory" treatment he'd received, and a supervisor agreed to write one.

For the next several days, on his commute to the Law School, Abiem stopped by the Pinkerton security table in Holyoke Center, inquiring about the letter of apology. "All of this was being done in coordination with Au Bon Pain," he said.

ABP's Golden Rule

Abiem finally received a letter of apology from Au Bon Pain on Dec. 29, but the letter lacked a signature and was printed on fax paper bearing no heading. Abiem returned the letter to Au Bon Pain, and the following day, he retrieved it, now signed by Au Bon Pain district manager Bahjat Shariff.

"It was just at this point that I read the letter," said Abiem, "the content being: we are sorry for what happened, but the day it happened to you it happened to others, too."

"In effect they were saying: if it happened to other people, then I should gladly accept it, too."

Abiem found the letter unsatisfactory and related this to Shariff. "I told him, 'I warrant a more explicit and better letter

of apology,'" he said.

At this point, according to Abiem, Shariff extended his hand — which Abiem took—and wished the LL.M. student good luck.

No employee at the Harvard Square Au Bon Pain would speak on the record about Abiem or that Dec. 23 morning, instead referring the RECORD to corporate headquarters.

ABP = AOK

In his apology letter to Abiem, Shariff wrote, "We hope you continue to visit our cafe." The eatery will not be disappointed.

"I will most definitely continue to go there," said Abiem, "I get a coffee virtually every day there. I've been going there for five years: first as a Divinity School student, then as a visiting fellow at the Law School, and now as an LL.M."

Abiem called Au Bon Pain, "a necessary point of interaction," where "as a foreigner, [he] is exposed to the social intricacies of this country."

"I don't encounter America anywhere else this way," said Abiem, "Whenever I

go to Harvard Square, even for a moment, I peek in to see if any of my friends are there. I've made many good friends there over the years."

Incident? What Incident?

In late December, Pinkerton did receive a phone call from someone complaining of mistreatment by a security guard, said Pinkerton operations manager Michael Pepe.

"The person, however, did not leave a name or telephone number," he said, "denying us a full opportunity to address the matter. It is not our policy to ignore an aggrieved party."

That aggrieved telephone caller was not Abiem, however, who said he did not contact Pinkerton's main offices because he sees Au Bon Pain as the primary culprit.

Pepe, who said he joined Pinkerton last week, said he did not have enough information to comment further on the matter. "And I regret that," he added.

"We do have guidelines and procedures that require our guards to comport themselves in a sensitive manner,"

Pepe said.

On Monday, Pepe said he'd welcome an opportunity to investigate the matter, but since no official incident report was filed, "we're not even sure if an incident occurred."

Pinkerton Security would not initiate an investigation without an official customer complaint, he said.

"Consequences,"

Forecasts ABP Pres

On Wednesday, however, Au Bon Pain president Samuel Yong said that his office was indeed conducting an investigation into the matter.

Yong said he requested statements from both Pinkerton and store personnel to determine what transpired between the security guard and Abiem.

"I want to know whether store policy was violated or any discrimination occurred," said Yong. "We take discrimination very seriously, and we absolutely don't condone it."

If discrimination based on race did occur, Yong said there would definitely be "consequences." He declined to specify what actions would be warranted.

"I'd like to find out exactly what happened first," he said.

Au Bon Pain's policy is that a person may sit in our store for 30 minutes, "but after that time, we ask them to either purchase something or we graciously ask them to leave."

Yong said this policy was developed some years ago in an effort to accommodate the needs of paying customers and the sizable homeless population in Harvard Square.

"We don't ask our security guard to make a judgment call as to whether the restaurant is full or empty or who looks desirable and who does not," said Yong. "We have this clear-cut rule so things don't get handled in an *ad hoc* or discriminatory way."

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BSA Picks Excited New Leadership

By Dusan Stojkovic

The Board of Student Advisers recently elected Jennifer Harvey '00 and Heather Field '00 to serve as its president and vice-president respectively.

Harvey and Field, the only candidates for the student organization's leadership positions, will replace the outgoing president Chris Garcia '99 and vice-president Erica Cheng '99.

"I'm really excited, the BSA is a great tradition," Harvey said of her election to the Board's presidency. "We have a lot of challenges coming up for the coming year."

The greatest challenge will apparently be implementing the LRA program's newly evolved teaching structure.

"This year's structure has definitely been different to the past paradigm, with the decentralized LRA Sections taught by Profs. Hay [88] and Horwitz [67]. The BSA has been instrumental in bringing about this change in hopes of providing a good LRA experience for everyone," Harvey said.

Field echoed many of Harvey's sentiments. "I'm very excited and looking forward to another terrific year of being part of the BSA," she said. "Above all, I hope to continue our work in enhancing the IL LRA experience."

Towards the success of the novel LRA program, Harvey emphasizes that "a lot of credit goes to Hay for striking a personal balance and deciding to give up a significant chunk of his personal time."

Another change implemented this year was actually not an innovation, but a reversal to the prior system. "Traditionally, the First Year Ames Moot

Court Competition was held in the spring and a few years ago it was moved to the fall on a trial basis," Harvey said. "It was decided that this experiment did not work out."

Harvey, who also serves as chair of the Native American Law Students Association, insists that the fact that only two persons stood as candidates for the BSA presidency in no way suggests apathy among its members.

"Everyone is eager to be involved in the administration of the Board, and each committee will be chaired by a different 3L," she said.

"I am very excited that Jennifer and Heather are the new leaders of the BSA," Garcia said. "Both have proven themselves to be extremely capable; I know that legal writing instruction at the law school has been left in great hands," he added.

As to his own experience as BSA president, Garcia said, "It was an honor and a privilege to have been able to serve the BSA and the HLS community in that capacity. Erica and I both worked hard to make sure that legal writing services were delivered effectively to all 1Ls."

He went on to stress the importance of his BSA colleagues in achieving that goal. "In truth, we have to thank all of the wonderful Board members we worked with — each of whom dedicated countless hours and amounts of energy — for the result," he said.

The selection process for next year's BSA members will start in April, and one of the first tasks awaiting the organization's new leadership will be to establish the precise criteria for choosing among current 1Ls to serve on BSA next fall.



Jennifer Harvey '00, new BSA President

Revered Judge Dies at 70

Continued from JUDGE, p. 1

graduated from Yale Law School in 1952 and began his legal career as an assistant district attorney in Philadelphia.

By 1956, Higginbotham was special deputy attorney general for Pennsylvania. In 1962, President John F. Kennedy named him the nation's youngest Federal Trade Commissioner; he was the first African American to hold this post.

Two years later, he was appointed to the federal bench in the Eastern District of Pennsylvania. In October 1977 President Jimmy Carter appointed Judge Higginbotham to the Third Circuit, where he ultimately rose to the position of chief judge.

Over the years, Higginbotham was also active as counsel to the Congressional Black Caucus for several U.S. Supreme Court voting-rights cases. At the request of South African President Nelson Mandela, he served as an international mediator during South Africa's first universal-suffrage election in 1994.

Before joining the Harvard faculty, Higginbotham taught in the law schools of the University of Michigan, New York University, the University of Pennsylvania, Stanford and Yale. He also served as Senior Counsel at Paul Weiss Rifkind Wharton & Garrison.

Higginbotham earned acclaim for his scholarship as well, in particular a multi-volume series entitled "Race and the

American Legal Process." He also co-edited "African Americans and the Living Constitution."

"It's impossible to capture the brilliance of Judge Higginbotham," said Ogletree. "He exemplifies the rare qualities of someone who excelled in everything he did yet found time to give back to the community."

President Clinton honored him in 1995 with the nation's highest civilian award, the Presidential Medal of Freedom. In a statement released upon the judge's passing, Clinton described him as "one of our nation's most passionate and steadfast advocates for civil rights" and one whose life "set an example of commitment, enlargement and service to young minds at home and abroad."

On December 1, Higginbotham testified before the House Judiciary Committee on behalf of the President in the impeachment proceedings. Two weeks later, he suffered a fatal series of strokes.

The funeral was held on Dec. 21 in Boston, drawing hundreds of mourners including famed activist Rosa Parks and Supreme Court Justice Stephen Breyer. Harvard plans to hold a memorial service later this month.

Judge Higginbotham is survived by his wife, Evelyn, a professor at the College, and four children.

The family has requested that donations be made to the Children's Legal Defense Fund.

MT Court Rejects Speed Law

HELENA, Mont. (AP) — The state Supreme Court has thrown out Montana's "reasonable and proper" daytime speed limit, and some fear highways could turn into racetracks.

In a 4-3 ruling in December, the court said the law was unconstitutionally vague and did not give drivers fair notice of what specific speed is fast enough to be a violation.

Montana's current nighttime speed limits are 65 mph on interstates and 55 mph on two-lane highways, and those are not affected by the court's ruling. State officials quickly vowed to get another speed limit on the books.

"I think we need to get a speed limit imposed in this state as soon as reasonably possible. This is a serious situation,"

said Attorney General Joe Mazurek.

Montana is the only state without a numeric daytime speed limit for cars and light trucks. The previous law, referred to as the "basic law," has been on the books for more than 40 years. It was supplanted by the federal speed limit during the 1970s, but became Montana's only general speed law again after Congress repealed the federal limit in December 1995. The law required that motorists drive no faster than is reasonable and proper for conditions.

Police officers could rely on other laws, covering reckless and careless driving, to control the fastest speeders; however, conviction under those laws requires evidence of a disregard for the safety of people or property.

Administration to Focus on Recruitment

Continued from WILKINS, p. 1

like Wilkins who is so well liked and effective in getting things done," Clark said. "I was surprised and delighted that he was so quick to agree."

Other Profs Get Involved

Clark said that a number of other faculty members have agreed to work with Curll and her staff on recruitment. He said that Profs. Chris Edley '78, Randall Kennedy and Charles Ogletree '78 have agreed to serve on an ad hoc committee that would help formulate and implement minority recruitment strategies.

"There is a large pool of qualified applicants," Ogletree said. "We have to overcome their skepticism about coming to Harvard Law School. The name is no longer enough to create a presumptive view that admittees will agree to come here."

Ogletree pointed to a number of factors that might keep away applicants, such as large class size compared to other top law schools, the perception that a large student body leads to the absence of a sense of community and the fact that a number of people may not know the value a Harvard degree has for career advancement.

Ogletree plans to enlist prominent minority alumni to participate in the recruitment process.

Clark added that financial concerns may be keeping qualified applicants away, and that he hoped to make scholarships and financial aid a priority in the next capital campaign.

Great Expectations

Having a faculty member of color appointed to the Admissions Committee was one of the principle demands of an informal student group that had been meeting with the administration during the fall in an attempt to get it to address the issue of declining minority enrollment.

The group, calling itself the Coalition for Diversity, organized a rally last December before the appointment was made to demonstrate student support for making a change to the Admissions Committee.

Over 300 students attended the rally.

Student organizers passed around printed postcards which asked Clark to appoint a person of color to the Admissions Committee. Clark, however, said he made the decision to appoint Wilkins before seeing the cards.

Stevenson nevertheless called the appointment a victory for student activism.

"I think the reason that the appointment was made is because we weren't going to rest until it was done," he said. "Originally they told us that the exist-

ing committee members would 'absorb our concerns.' Why should we rely on them absorbing our concerns when the school has brilliant people of color that were willing and able to serve on the Committee?"

Ogletree said that both the students and the faculty have the obligation to stay involved in the process.

"The administration certainly philosophically believes in the value of diversity," he said. "We need to nudge them along to make sure that this philosophical view becomes a practical reality."

Spike



By Margie McWilliams



Briefs

Fried named Professor of Law

Charles Fried will return to a tenured professorship at HLS on July 1, 1999. Fried, who has taught at HLS since 1961, will resign as an Associate Justice of the Massachusetts Supreme Judicial Court in June 1999. Fried served as Solicitor General from 1985-1989. Since joining the Supreme Judicial Court in 1995, Fried has been the Carter Professor of General Jurisprudence, Emeritus and Distinguished Lecturer on Law. This fall, Fried taught Constitutional Law.

"I welcome Charles Fried's return to the faculty," said Dean Clark, '72. "His appointment to the tenured faculty will strengthen the School's offerings in Constitutional Law, Contracts and other important areas of the law. His experiences, not only in the executive branch, but most recently, in the judiciary, will be of great benefit in the classroom."

Silvergate '67 and De Broff Named Lawyers of the Year

Harvey Silvergate '67 and Stacey De Broff are among Massachusetts Lawyers Weekly's 10 "Lawyers of the Year." Silvergate was recognized for his role in defending Louise Woodward, the British au pair whose murder case reached the Massachusetts Supreme Judicial Court last year and for his book, "The Shadow University," about political correctness on America's college campuses.

De Broff was celebrated for her work as founder and director of OPIA, a post she held from 1990 until 1998. During her tenure, the percentage of HLS graduates accepting public interest jobs rose from 2 percent to 12 percent. She is also the author of "Mom Central," a book dealing with issues relating to working mothers.

The 10 lawyers on the list were selected for "winning important decisions, being involved in cases that raise challenging legal issues and otherwise furthering the profession's commitment to the rule of law and to justice in the commonwealth."

Three HLS Students Garner Skadden Fellowships

Three HLS students are among the 28 Skadden Fellows for 1999: Katherine Dix '97, Cynthia Godsoe '99 and Mari Hinojosa '99. The fellowships provide funding for the fellows who will spend two years providing civil legal assistance to those in need.

The recipients will work in a wide variety of organizations across the non-profit sector. Dix will work for the Legal Aid Society, Godsoe for the Child Care Law Center and Hinojosa for Lawyers for Children.

The fellowships are sponsored by the law firm of Skadden, Arps, Slate, Meagher and Flom LLP.

A Civil Action Comes to HLS

The Berkman Center for Internet and Society, and Films for Justice at Seattle University School of Law are co-sponsoring a one-day conference on teaching "A Civil Action" in the classroom. The conference, A Civil Re-Action, is an opportunity for educators to learn to apply the fact pattern of the book and its film adaptation "A Civil Action" as a teaching tool.

Prof. Charles Nesson '63, who served as a plaintiff attorney in the case will be among the panelists at the conference. Other panelists include defense attorneys Michael Keating '65 and William Cheeseman '68, LL.M. '69, plaintiff's attorney Jerome Facher '51 and Jonathan Harr, the author of "A Civil Action."

The conference is part of Lessons from Woburn, a larger on-going project on the Internet using the Civil Action story and many of the primary materials from the case as a vehicle for teaching students about the legal system.

The event will be held on Jan. 30, in the Ames Courtroom. The conference is free, but limited to only teachers and professors.

1998 a Banner Year for Large Jury Verdicts

BOSTON (AP) — Reflecting what legal experts described as anger at big business and a desire to send a message, juries awarded \$2.8 billion in the nation's 10 biggest verdicts last year.

Eight of the 10 topped \$100 million each, according to Lawyers Weekly USA, a Boston-based publication that has been compiling such a list since 1989.

The combined figure was nearly four times the total of the 1997 top 10, and would be the highest tally ever, if not for a bizarre case in 1996 in which jurors awarded a single \$22 billion judgment against former Philippine dictator Ferdinand Marcos. That verdict has since been overturned.

"Inflation is under control in the country, but not in the courtroom," said Thomas F. Harrison, publisher of Lawyers Weekly.

The biggest winner on the 1998 list was a Russian inventor in Houston who was awarded \$1.5 billion after his business partners forced him out of a company he founded.

In 1989, the largest verdict was \$75 million, a figure that wouldn't have even made it onto this year's list.

"Now you can have a \$50 million award and it is not even in the newspaper," said Victor Schwartz, general counsel to the American Tort Reform Association.

Legal experts attribute the steady increase to factors including the publicity from previous verdicts, as well as the fact that juries seem to be angrier at big businesses, and more willing to make them pay for their wrongs.

In some cases — like last year's No. 5 award in a Ford Ranger rollover accident in Jackson, Miss. — punitive damages made up \$120 million of the \$144.9 million verdict.

"Juries are starting to think that maybe you need to award this much money to get the message across," Harrison said.

A change in the composition of the bench over the last three decades also has made an impact, said Richard Samp, chief counsel of the Washington Legal Founda-

tion, a watchdog group that supports tort reform. Many judges were former plaintiff trial lawyers themselves.

"The judges who are hearing such cases no longer believe that there should be realistic limits set by the law on an amount of an award that can be given," Samp said.

The list only includes verdicts that the editors at the publication believe have a chance of being collected. A \$525 million verdict against a convicted killer out of Greenville, N.C., was kept off the list. The defendant — sentenced to 27 years — has no assets and no way to pay his victim, Lawyers Weekly said.

Most of the verdicts are likely to be significantly lowered on appeal.

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Across the Wire



News from the East, West, and Mid-West

Court Pierces Boston's Omerta in Blue

BOSTON (AP) — It's been nearly four years since Boston police officer Michael Cox was grabbed from behind while chasing a suspect and beaten, allegedly by fellow officers. They apparently had mistaken Cox, a plainclothes officer, for the bad guy.

Two policemen were found liable at the end of last December for using excessive force. One of those two also was found liable on the more serious civil charge of assault and battery.

Critics complain the years it took to bring the case to a conclusion demonstrates a "blue wall of silence" — the unwillingness among officers to testify against each other.

"These kinds of allegations about police, the so-called 'testilying' kind of thing,

they're allegations we hear about often," said John Roberts, executive director of the Massachusetts branch of the American Civil Liberties Union. "It's a problem that the police department needs to address and historically has not."

The jury found that officer James Burgio committed assault and battery and that Burgio and David Williams used excessive force against Cox. It cleared officer Ian Daley of excessive force, while finding that Williams, Burgio and Daley showed deliberate indifference to Cox's medical needs when they left him injured on the ground.

The jury found that a fourth officer, Kenneth Conley, did not engage in a coverup, though Conley had been con-

victed of perjury in June for giving a grand jury false testimony about Cox's beating.

Roberts said the case "never would have seen the light of day" if Cox had been a regular citizen complaining of police misconduct.

"They're either told to go someplace else or kind of given a runaround, and that's often the best case scenario," he said.

Despite the resolution of the civil trial, the Boston Police Department issued a statement Tuesday saying the incident was still under investigation.

Police spokesman Kevin Jones would not comment on the case this week and refused to discuss the department's handling of public complaints against officers.

"IA (Internal Affairs) takes complaints all the time," he said. "I'm not going to get into this."

The attack happened on the night of Jan. 25, 1995. Cox, a plainclothes officer, responded to a report that an officer had been shot in the city's Roxbury neighborhood. Dozens joined the chase as the four suspects sped through city streets in a gold Lexus.

When the suspects abandoned the car, Cox said, he began chasing one of them

over a fence.

That's when he claims he was struck from behind. Several officers then allegedly kicked and beat him on the ground. When they realized Cox was a police officer, they ran away.

Since then, the divisive case has slowly crawled through the department's Internal Affairs Bureau and the court system.

Cox's lawsuit against the officers went to trial last November. In a separate suit which has yet to come to trial, he has accused the city and Police Commissioner Paul Evans of violating his civil rights by failing to investigate complaints of excessive force and discipline officers.

Officer Conley was suspended in August 1997 and convicted of perjury earlier this year. The officers accused by Cox of actually administering the beating were suspended in October 1998.

Conley maintains he told the truth and says the "code of silence" exists only in the movies.

"I've never heard of it," he said. "Not with the Boston Police Department as long as I've been there."

Full Tenth Circuit Upholds Practice of Plea Bargaining

DENVER (AP) — In a decision prosecutors describe as vital for criminal justice in America, a federal appeals court has ruled that plea bargains can be offered in exchange for testimony, reversing a decision that had declared the practice illegal.

The full 10th U.S. Circuit Court of Appeals ruled Friday that immunity deals and lesser sentences offered for the testimony of witnesses did not violate federal laws against bribery.

"It's a great day for federal prosecutors across this nation," said Linda McMahan, U.S. Attorney for Colorado. "We are delighted with the 10th Circuit's opinion ... prosecutors are not violating the law or acting unethically when they engage in such a practice."

Last summer, a three-judge panel of the 10th Circuit shocked the Justice Department when it declared plea-bargained testimony to be illegal.

Prosecutors believe deals offering leniency to witnesses who testify in criminal cases are essential in bringing down organized crime leaders, drug lords and other high-profile criminals.

Defense lawyers contend the deals are tantamount to buying testimony and argue that there are other ways witnesses can help prosecutors.

The panel's ruling was put on hold until the full Denver-based appeals court could review the issue.

In its opinion Friday, the majority wrote that Congress has long known of the widespread practice. Had Congress intended to forbid such plea bargains, the court reasoned, "it would have done so in clear, unmistakable and unarguable language."

The three judges who made the earlier ruling dissented from Friday's majority ruling.

"Since the (three-judge) panel issued its opinion in this case, prosecutors from coast to coast have attempted to portray it as the death knell for the criminal justice system as we know it."

"But experience has proven that the government, just like the private citizens it regulates and prosecutes, can live

within the rules," wrote judge Paul J. Kelly Jr. in his dissent.

The case centered on the Kansas conviction of Sonya Singleton on charges of cocaine trafficking and money laundering. The three judges said the chief prosecution witness illegally received leniency in exchange for his testimony, violating the law against bribing witnesses.

In his original ruling, Kelly said prosecutors had to abide by the same rules that apply to others.

"If justice is perverted when a criminal defendant seeks to buy testimony from a witness, it is no less perverted when the government does so," he wrote.

The Justice Department said the practice was common, noting that Timothy McVeigh and Terry Nichols were convicted in the Oklahoma City bombing based on testimony from a former friend who struck a deal.

The three judges had ordered a new trial for Singleton and said Congress should rewrite anti-bribery laws if legislators believe prosecutors should be exempt.

Lawyers scrambled to delay other cases affected by the ruling, but most did not expect it to stand. If the full 10th Circuit did not overturn it, they said Congress would likely have amended the law.

Federal Judge Pulls Plug on Papal Pornography Site

ST. LOUIS (AP) — A Web site featuring information about Pope John Paul II's visit to St. Louis, along with erotic pictures, was ordered removed from the Internet.

The Archdiocese of St. Louis said a Web site by Internet Entertainment Group was confusing Internet users seeking information on the Jan. 26-27 visit, the pope's only scheduled U.S. stop this year. It also infringed on the Archdiocese's trademark, their lawyers told a federal judge.

"It's inappropriate. It's degrading. It's deceptive. And it's wrong," archdiocese spokesman Steve Mamanella said.

The judge told Seattle-based IEG to dismantle its site immediately. A Wednesday hearing was scheduled to determine whether the order should be made permanent.

IEG spokeswoman John Dalton said the company plans to fight the restraining order. He declined further comment.

The site does include a message in bold letters advising parental discretion. It also notes that neither IEG nor the Web site is affiliated with the Catholic Church or the archdiocese.

It includes John Paul's scheduled stops in St. Louis, as well as links to attractions, hotels and sporting events. But nestled at the bottom of each Web page is an advertisement for IEG's erotic adult Web site Clublove, which features sexually explicit material.

"They're doing it to make money and to lure people into their pornographic Web site," said Mamanella, who discovered the site by accident while doing an Internet search using various key words.

He was not the only one who stumbled upon the site. Numerous people have called the archdiocese in recent days to complain about IEG.

DiCaprio Film Sparks Thai Environmental Suit

BANGKOK, Thailand (AP) — A group of Thai villagers plan to sue 20th Century Fox, saying producers damaged a protected beach near their homes to film the latest Leonardo DiCaprio movie.

Villagers say the producers of the film "The Beach" removed natural vegetation and replaced them with coconut trees on Maya Beach and damaged coral reefs in the area.

Maya Beach is a nature preserve on the tiny island of Phi Phi in the Straits of Malacca. The island's inhabitants say laws protecting the preserve are being violated.

Niyom Piewdee, head of the village, and Apinan Paongern, who heads the provin-

cial environmental committee, announced Monday that they would sue the U.S. studio and its Thai representative.

They have also asked anti-corruption officials to investigate the head of the Royal Forestry Department who gave permission for the studio to alter the island.

They say removing the natural vegetation will cause the beach's delicate ecosystem to erode.

"Government officials in this case have shown repeatedly that they are on Fox's side," said Wanlert Kittithorakul, a protest leader. "They shield the film people and make excuses for them constantly instead of upholding national park protection laws.

So the people must uphold the law."

Film crews have denied damaging the reefs. The filming sparked protests on the island. Last month a dozen villagers tried to stage a sit-in on the beach, but a group of thugs — who villagers say were led by government officials — ordered them to go.

In a separate film dispute in November, 20th Century Fox dropped plans to shoot a remake of "The King and I" in Thailand, and instead moved the filming to Malaysia.

The Thai Film Board twice rejected scripts submitted by Fox, saying they were demeaning and featured inaccurate portrayals of Mongkut, a 19th century king of Siam, as Thailand was then known.

Send in the Experts: Judiciary Committee

Continued from *Profs*, p. 1

sending the tape to his wife."

The resignation of speaker-designate Robert Livingston shows that sexual McCarthyism cuts both ways. Dershowitz said he hoped that people would reject sexual McCarthyism and judge elected officials by how they govern and not by what they do in their private family lives.

Of Starrs and Barrs

HLS professors hit the House Judiciary Committee in two waves. The first was on Nov. 9, when both Profs. Parker and Tribe, who is currently on sabbatical, testified regarding the history of impeachment.

The colleagues came to different conclusions. Tribe believes that the history and the language of the Impeachment Clause require that there be a serious assault on the system of government to warrant impeachment.

Clinton's alleged perjury, which in an interview Tribe called "a deliberate deception of the judicial process in order to save one's skin," did not meet this requirement.

Parker believes that there should be a much lower threshold of what constitutes an impeachable offense, but distinguishes between "impeachable" and "should impeach."

He characterizes the decision to impeach as "a political judgment," and said that the Framers expected that Congress would take into account what they thought was good for their constituents and for the country.

Dershowitz and Judge Higginbotham testified on Dec. 1 as part of a panel entitled "The Consequences of Perjury and Related Crimes."

Dershowitz testified that perjury is both common and rarely prosecuted, and said

that when it is prosecuted it is usually as part of another agenda.

According to Dershowitz, perjury committed by police officers, known as "testilying," is almost never prosecuted.

If Clinton been an ordinary citizen, he concludes, he would not be prosecuted for his allegedly false statements, and therefore impeaching him constituted an "improper double standard."

Dershowitz admitted that he didn't think he would sway a Republican-dominated Congress with tales of a perjury epidemic amongst law enforcement officers.

"It was like talking to a wall," he said. He added that while he had little hope of changing their minds, there was a point in bringing up police perjury.

"I was trying to convince some members of the Committee to take up the issue of perjury outside the context of this political vendetta," he said.

Judge Higginbotham echoed testimony made to the Committee by Tribe

and Cass Sunstein, a University of Chicago professor. Higginbotham said that impeachment is an extreme remedy reserved for egregious abuse of presidential power.

He said that false testimony about "consensual sexual relations" did not cause the gravity of injury that would merit impeachment.

The professors' testimony provoked a reaction from Congressman Bob Barr, R-Ga, one of Clinton's most vociferous opponents on the Judiciary Committee.

"Barr said that these professors had little to offer the Committee," said Tiffany Bingham

'00, who accompanied Judge Higginbotham to Washington. "He said that 'real America'

knows what is right, and he is inclined to listen to 'real America' and not these academics."

Higginbotham responded coolly to Barr's implication that he and Dershowitz were not "real Americans."

"He told Barr that his father was a laborer and his mother a domestic," said Bingham, "and that he knows firsthand what it is to be a 'real American.'" Higginbotham added that as a teacher, he learns every day from his students different views and senses about what America is really about.

"The Judge pointed to the decisions in *Plessy v. Ferguson* and *Dred Scott v. Sandford*,"

saying that they represented what 'real Americans' may have believed at one time," Bingham recalled. "He added that Justice Harlan, a 'real American,'

dissented in *Plessy*, which shows you can't classify what it means to be a 'real American.' There is no one dominant value or morality in America."

Higginbotham's message may have been lost on Barr, who was a keynote speaker at a 1998 conference sponsored by the Council of Conservative Citizens, a white supremacist group.

According to Dershowitz, Barr first denied he spoke at the conference, but when Dershowitz produced a photo of Barr embracing a CCC leader at the conference, he admitted speaking but "blew the whistle on [Senator] Trent Lott for speaking too."

Barr's luck continued to plummet this week when Hustler publisher Larry Flynt claimed he had evidence that Barr had an affair while married and paid for a former wife's abortion.

"The exchange with Barr was the highlight for everyone there," said Bingham. "It was the most emotional and explosive part

of the day. The rest was just tit for tat; both sides had their positions and were going through the motions."

Wherefore Impeachment?

The HLS professors have different explanations for the impeachment spectacle.

Tribe sees the gulf between the pro- and anti-impeachment forces as one caused by different conceptions of the rule of law.

In his view, those favoring impeachment see the rule of law as the center of everything, and the idea of a president committing perjury regardless of the subject matter attacks the integrity of this center. Those against it see law somewhere on the periphery, and life in the center.

To the latter group, a lie under oath about sex is less weighty than a lie not under oath

about the deaths of thousands of people, as in the Gulf of Tonkin, or about serious misconduct of policy, as in Iran-Contra, Tribe said.

"Another possible ulterior motive is that this whole case is about a profound clash of cultures," maintained Tribe. "Clinton represents to the conservatives the worst of 1960s relativism. He embodies

sexual license and lack of a belief in absolute truth that his opponents see as anathema and the cause of the downfall of America's greatness."

Tribe also said that some Representatives may have seen impeachment as the most effective way to censure the president.

Tribe doesn't believe that the Senate will ultimately vote to convict, but warned that he "wouldn't bet

THE AMERICAN WAY

Aborted House Speaker-elect Rep. Bob Livingston (R-La) could have been a contender. Unfortunately, he suffered from the same affliction that got the President in so much hot water, and his rapid rise and fall made Icarus seem like a dawdler in comparison.

His replacement, Rep. Dennis Hastert (R-Ill), managed to stay off Flynt's list and became Speaker of the House on January 6. In his pre-Speaker days, Hastert headed a House health care task force. By an amazing coincidence, he received over \$170,000 in campaign contributions from health professionals, pharmaceutical firms, hospitals, and insurance companies, according to the Center for Responsive Politics, a nonpartisan research group. Even more coincidentally, his task force sponsored a health care bill containing a number of terms extremely favorable to the health-care industry (the bill eventually died in the Senate). Hastert also sat on the House telecommunications subcommittee, which may go some way to explain the over \$43,000 in contributions he received from telecommunications companies.

The moral of the story: sleeping around is fine, so long as the objects of your desire are faceless.



YOUR TAX DOLLARS AT WORK

"I'm just like you," impeachment-hero Linda Tripp said last year as the story of her taping Monica Lewinsky's love confessions hit the press. "I'm just an average American who found herself in a situation not of her own making."

Tripp's job, however, is far from average. According to the Boston Globe, Tripp has been placed in charge of a Pentagon program to show off the United States military forces to celebrities. This daily toil earns her over \$90,000 a year.

In between now and April 15, when you pay your taxes, just remember that it doesn't all go to nuclear bombs and farming conglomerates. Your tax dollars go to maintaining the humble lifestyles of "average Americans."

Excerpts from Profs' Testimony Before the House

Alan Dershowitz

On the basis of my academic and professional experience, I believe that no felony is committed more frequently in this country than the genre of perjury and false statements. Perjury during civil depositions and trials is so endemic that a respected appellate judge once observed that "experienced lawyers say that, in large cities, scarcely a trial occurs in which some witness does not lie."

[T]here is little apparent concern to remedy that serious abuse of the oath to tell the truth—even among those who now claim to be so concerned with the corrosive influences of perjury on our legal system. The sad reality appears to be that most people care about perjury only when they disapprove of the substance of the lie or of the person who is lying.

I am convinced that if President Clinton were an ordinary citizen, he would not be prosecuted for his allegedly false statements, which were made in a civil deposition about a collateral sexual matter later found inadmissible in a case eventually dismissed and then settled. If President Clinton were ever to be prosecuted or im-

peached for perjury on the basis of the currently available evidence, it would indeed represent an improper double standard: a selectively harsher one for the president (and perhaps a handful of other victims of selective prosecution) and the usual laxer one for everyone else.

Judge A. Leon Higginbotham Jr.

I cannot in the abstract articulate exactly where the line between impeachable and non-impeachable perjury does fall. Instead, I can only urge that you allow yourselves to be guided by a principle of restraint in interpreting an ambiguous area of constitutional inquiry, particularly where the failure to exercise such restraint could result in the nullification of the will of the majority of the electorate, not to mention the profound weakening of the institution of the presidency.

[T]he impeachment clause was not intended to give unlimited options to either an unrestrained committee of Congress or a super-aggressive Office of the Independent Counsel seeking to use the label of perjury to prosecute a President for what primarily was a dereliction of sexual mor-

als, where the underlying sexual acts did not constitute a grave injury to the country...I pray that this Committee will, in a non-partisan way, rise to its highest potential of statesmanship by giving this issue its calm and insightful thought before speaking and casting a vote that will affect America's rendezvous with destiny.

Richard Parker

The judgment the House of Representatives must make is a political judgment. It is, however, a political of a specific, limited kind. If anything is clear in the discussion of impeachment in *The Federalist* No. 65 and 66, it is that partisan—or "factional"—politics ought not determine the decision whether to impeach...[I]t would tend to dilute or pervert the standard for impeachable behavior, turning it into mere opposition to, or support for, the policies of the President. At the same time, it is not just appropriate, but desirable and even necessary that another sort of politics be brought to bear on the decision. That is "institutional" politics. The Constitution's framers believed that, as a check on presidential misbehavior, periodic elections were insufficient. Hence, the provision for impeachment. And, in order to make effective

Laurence Tribe

[I]t would be short-sighted indeed for any witness before this body, or for any member of Congress, to approach the task of defining "high crimes and misdemeanors" from a narrowly result-oriented perspective. To put it bluntly, anyone who would raise the bar on what constitutes an impeachable offense simply in an effort to save President Clinton, whether for partisan reasons or in a spirit of genuine patriotism, may live to regret the abuses by future presidents that might be unleashed were we to establish a precedent making it too difficult—more difficult than the Constitution, rightly understood, contemplated—to remove a president whose misuse of the awesome powers of that office endangers the republic. And, conversely, anyone who lowers the bar on what con-

Hears it From Harvard Law School Profs

the family farm on it."

Dershowitz sees the impeachment as "a sour grapes effort at undoing an election," and a power play by the Religious Right. "Removing Clinton has been on the right wing agenda for a long time," he said. "Before the Lewinsky story even broke, Barr, Falwell and Bork all called for his removal."



Dershowitz reserves plenty of blame for the president and his lawyers. "President Clinton gave his right-wing enemies plenty of ammunition not only by his sexual acts but by the greatest legal blunder of the 20th century: not settling the Paula Jones case." Parker had harsh words for everyone involved. "Both the Republicans and Democrats have gone overboard," he said. "The Republicans have demonized Clinton, and the Democrats have demonized the right, or 'religious right' — the liberals have a lot of buzzwords for them, like McCarthy did for Communists."

He said he was amused by the claim that impeachment was an attempt at a "legislative coup." "Impeachment wouldn't annul the election, and Dole wouldn't become president," he said. "Do the people who say the Republicans are trying to change the election results think we're idiots? Following the constitution is not a coup. The level of their rhetoric is very shameful."

Parker said that Clinton could get out of his trouble by admitting what he did.

"Clinton is in total control of the process," he said. "If he said he lied under oath, it'd be over. I think people want him to face what he did. I don't think that he will

take responsibility, but I think Congress should say that he lied under oath and condemn him for that."

In Parker's view, either censure or impeachment would be a permissible outcome.

Endgame

Whether or not Clinton is removed, he still faces criminal proceedings when he leaves office.



Oglethorpe believes that Clinton would prevail in such a trial.

"If an impartial jury looks at the conduct of the independent counsel in this case, they will come out with an emphatic verdict of not guilty," he said.

Oglethorpe said that such a trial would be Clinton's first chance to have a full and fair hearing that wasn't possible in the highly politicized House proceedings.

Parker said that regardless of the outcome, in constitutional terms the impeachment will be seen as an important step in the post-Vietnam reorientation of power between Congress

will result in a reevaluation of the Independent Counsel Act, and that this would be an opportunity for valuable reform.

"We are the only civilized country in the world that merges the political and prosecutorial roles in the Attorney General's office," he said. "The greatest single flaw in American justice is the

politicization of prosecution on the city, state and federal level." He advocates depoliticizing prosecutors of all levels, making them professional civil servants instead of elected officials.

Tribe hopes to resume his sabbatical in peace when the impeachment ends.

"Several years from now when I have my next sabbatical, I hope that the president will have enough sense not to fool around with any interns."

THE GRAND INQUISITOR

Chief Justice William Rehnquist is legendary as a stickler for procedures who doesn't suffer fools gladly. Thus, having to preside over one hundred career politicians who are essentially making up the rules as they go along must be a colossal pain in William Rehnquist's supreme tushus. In addition, the Chief Justice, whose judicial career began at the top, has practically no trial experience. He has sat as a trial judge just once, presiding over a 1984 civil case in Virginia that was reversed on appeal.

On the bright side, Clinton's naughty escapades and their consequences caused a rush on Rehnquist's 1992 book, "Grand Inquests," which examines the impeachment trials of Supreme Court Justice Samuel Chase and President Andrew Johnson. Publisher William Morrow announced that it will re-release the book in mid-January, with a first run of 25,000. This is just further proof of the old marketing maxim: sex sells.

and the President.

"The process, as a correcting mechanism, is good," he said. "The real horror of post-World War II history is the Vietnam War, a case of gross inflation and misuse of presidential power. I think this is an important part of the adjustment process."

"In my life I think there was only one president who absolutely needed to be impeached, and that was Lyndon Johnson," he added.

Dershowitz believes that hindsight will show that Congress trivialized the impeachment process. "If a real case comes along warranting impeachment, they may look back and say it's not worth it."

He said that Starr's political vendetta



House Judiciary Committee

stitutes an impeachable offense simply in an effort to "get" President Clinton, whether for partisan reasons or in a spirit of equally genuine patriotism, may live to regret the abuses by future congresses, and the resulting incapacity of future presidents, that might just as easily be unleashed were we to establish a precedent making it too easy — easier than the Constitution contemplated — to remove a president simply because, as in a parliamentary system, the legislature has come to disagree profoundly with his or her public policies or personal proclivities and has thus lost confidence in the President's leadership.

A president who completely neglects his duties by showing up at work intoxicated every day, or by lounging on the beach rather than signing bills or delivering a State of the Union address, would be guilty of no crime but would certainly have committed an impeachable offense. Similarly, a president who had oral sex with his or her spouse in the Lincoln Bedroom prior to May 23, 1995 (the date on which D.C. Code Ann. '22-3502 was repealed), or in a hotel room in Georgia, Louisiana, or Vir-

ginia at any time, would be guilty of a felony but surely would have committed no impeachable offense.

[W]hen we put the President on trial are we placing one federal branch in a position to sit in judgment on another, empowering the Congress essentially to decapitate the Executive Branch in a single stroke — and without the safeguards of judicial review. Neither of the other two branches of the national government is embodied in a single individual, so the application of the Impeachment Clause to the President of the United States involves the uniquely solemn act of having one branch essentially overthrow another. Moreover, in doing so, the legislative branch essentially cancels the results of the most solemn collective act of which we as a constitutional democracy are capable: the national election of a president. To suggest that, having deliberately rejected parliamentary supremacy at the founding of our republic, we should now embrace a theory that would make the President the most vulnerable of all federal officials to the drastic remedy of impeachment and removal — truly the political equivalent of capital punishment — is preposterous.

The Buzz

By Tanya Marsh '00
RECORD Columnist

Now Playing: The Bard and the Virgin Queen

Will Shakespeare (Joseph Fiennes) is a brilliant young playwright whose next work is highly desired by two rival playhouses. The only problem? He has a serious case of writer's block and is in need of a muse. Enter Lady Viola (Gwyneth Paltrow), whose doomed relationship with Will provides the inspiration for Romeo and Juliet.

As I have been reminded several times, I made some remarks in the last issue of the RECORD that dismissed this movie as "yet another costume drama featuring young Hollywood in tights." I could not have been more wrong. **Shakespeare in Love** is a wonderfully clever comedy that is true to the Bard's works, although it takes liberties with his life.

Some familiarity with Shakespeare (at least "Romeo and Juliet" and "Twelfth Night") is required to understand a few of the jokes. This is a pretty gutsy move for Hollywood: knowledge of the canon is useful to fully enjoy a popular release movie! (If you need a brush-up, I highly recommend glancing at Harold Bloom's new book: *Shakespeare, Invention of the Human*.) My only disappointment is that the filmmakers didn't make a companion piece with this cast acting out the entire play. (I am upset with the producers of Al Pacino's "Looking for Richard" for the same reason.) The bits of the play in the film were wonderful, and surprisingly, Paltrow held her own against Royal Shakespeare Company veteran Fiennes.

Written by Tom Stoppard and balanced by a great supporting cast (Geoffrey Rush, Judi Dench and Ben Affleck), "Shakespeare in Love" is a truly unique movie and well worth the full price of admission, as is another recent film set in the same epoch, **Elizabeth**.

This pair of movies shares more than time period and characters: both Joseph Fiennes and Geoffrey Rush play leading roles. While Will Shakespeare and Robert Dudley both require Fiennes to brood in romantic frustration, the movies allow Rush to show off his generous dramatic and comedic abilities. Cate Blanchett is also quite convincing as the Virgin Queen in the first years of her reign and is rumored to be a front-runner for an Oscar nomination. The year is 1558 and England has just experienced four rulers in a scant 11 years. Henry VIII (infamous for his break with the Catholic Church over his first divorce) has died, leaving a young son, Edward, and two daughters, Mary and Elizabeth, as heirs. Edward VI reigned for a short time and extended his father's Protestant reforms. Lady Jane Grey, the sixteen-year-old niece of Henry VIII, was thrust into the throne by her ambitious father-in-law and executed after nine days. Mary, turned bitter by her father's treatment of her mother Catherine of Aragon and England's rejection of Catholicism, ascended and ruled for five bloody years. Elizabeth, who few thought would ever inherit the throne, came into power in a time when England's coffers were bare, hostile Scots and the French threatened her borders, and the country was diplomatically isolated as a result of her predecessors' extreme behavior. Her reign, and this movie, is the story of one of history's strongest women, for Elizabeth I brought England out of this confusion to a political, military and cultural zenith. Go Xena!

As usual, my only residual complaint is that this script altered history when I strongly believe that the truth is strange and interesting enough. I agree that Robert Dudley (Joseph Fiennes) was probably the love of Elizabeth's life, but there is much evidence that she didn't consider marrying even him after the traumatic conclusion of her parent's marriage (the beheading of Anne Boleyn). Elizabeth's transformation into the Virgin Queen in the film was quite dramatic, but her head shaving and heavy white makeup was more likely a result of the ravages of smallpox than deliberate political strategy. Finally, and this may sound picky, but Sir William Cecil was only a few years older than Elizabeth and was her councilor for forty years, yet the movie has him portrayed by Sir Richard Attenborough and removed from power in a short time! One caveat: this movie features a LOT of historical personages whose intrigues make much more sense with independent knowledge of the period. As soon as I left the cinema, I had a strong urge to read up on my English history. Get a head start and check out one or two popular histories by Alison Weir: *The Six Wives of Henry VIII* and *The Life of Elizabeth I*.

New on Video

Just to continue the theme of the day, **Oscar and Lucinda** stars Ralph Fiennes (the older and more famous brother of Joseph) and Cate Blanchett in a strange and fascinating love story about two people who don't really fit until they meet each other. Set in turn-of-the-century Australia, Lucinda is an heiress from the outback who is impulsive, far too interested in the sphere of men, and lacking in the required social graces. Oscar is an oddly naive minister with an unhealthy addiction to gambling. These are very strange characters and are played with grace and dedication by Blanchett and Fiennes.

Lucinda and Oscar's obsession with gambling brings them together, but it also sets the stage for the major problem in the story. Lucinda, who owns a glass factory, bets Oscar that he cannot transport a church made entirely of glass to a remote Australian town. Oscar is not a person particularly well suited for such an arduous journey, and Lucinda quickly comes to regret their wager. Again, although this is a pretty farfetched story with outlandish character, Blanchett and Fiennes are wonderful (as usual) and maintain the suspension of disbelief. If I ever buy goldfish, I think I'll name them Oscar and Lucinda.

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One Small Step for Us

The RECORD welcomes the appointment of David Wilkins to the Admissions Committee. His appointment shows that the administration is willing to address student concerns with concrete action, and that when we join our voices together we will be heard. Of course, a single appointment is not going to magically resolve the issue of declining minority enrollment, but it is a good first step.

Now that students have proved that they can make a difference, what is next on the agenda? Granted, significant time and energy will need to be spent in making the potential of increased student diversity a reality, but there are plenty of other areas of concern that deserve our attention.

There are the some obvious targets. For example, Hemenway's fate is still in limbo. Think exercise bikes and barbells strewn about in Ropes-Gray next year. In addition, LIPP could use a good looking at. While LIPP may concern only a small percentage of students, the fact that Harvard lags behind other top law schools in terms of the support it gives to students choosing public service is troublesome. And perhaps more students would be willing to consider public service if they had some help fighting off the horrible debt monster.

There are more global problems as well. Last year, several faculty members, concerned with what they perceived as a noticeable decline in HLS's institutional health on a number of levels, proposed several changes. Gary Bellow and David Kennedy made a number of proposals for reforming the school, for re-engaging the student body in the intellectual pursuit of law, and for getting the faculty more involved in the school's governance and in the intellectual community.

The Legal Education Committee likewise put forth a number of concrete proposals for improving the institutional atmosphere. For the students, these proposals got lost in the hubbub about the much maligned and now largely ignored attendance policy. And since the Legal Education Committee is now defunct, it seems there's nobody left to pick up where it left off.

It is encouraging that faculty members have shown themselves willing to step forward and take leadership roles in fostering concrete change. But their actions cannot occur in a vacuum and succeed. True reform at HLS will require a concerted effort to bridge the seemingly impassable gulf between the faculty and the student body; an effort based on shared values and goals of improving the institutional culture at HLS which affects us all.

Hopefully students, having seen with the addition of Wilkins to the Admissions Committee what success can be attained when areas of concern are clearly articulated to the administration, will seize the opportunity to work with like-minded members of the faculty to shape their experience at HLS for the better.

— Kimberley Isbell and Ben Lehrer

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—First Amendment, U.S. Constitution

• Letters •

Jolls Sets RECORD Straight

It has come to my attention that an article in your Nov. 20, 1998 issue, discussing Celebration 45 weekend, attributed to me the statement that I experienced "palpable gender bias against female students" during my time as a student here. Anyone who attended the session at which I was a speaker knows that I said

nothing of the sort. I followed two speakers who attended HLS in the decades before I did, and the main thrust of my remarks was that things had improved dramatically since their time at the law school. I was (and am) pleased that the things they described were things of the past. This is not to say there

is nothing left to be done; there always is. But the account of my (claimed) experience of "palpable gender bias" is completely fictitious. I simply have no idea where it came from. This letter serves, I hope, to set the record straight.

Prof. Christine Jolls '93
Dec. 16, 1998

RESOLVED

By Alyze Lowen '00

A Different New Year's Resolution

The celebration of the New Year prompts many people to make resolutions for the upcoming year. People fixate on how they can be more successful. They vow that in the following year they will lose those last five pounds, achieve more at work, find true love, come closer to meeting the definition of success formulated by our society. People focus on the inadequacies of their achievements in past years. Even if a given person is atypical and actually values the happenings of the last 365 days, that appreciation is often tainted by a determination to improve upon that past success. It seems that "good enough" is never quite "good enough."

For my entire life, I too have been fixated on how to be more "successful." (And I doubt that I am the only individual attending this law school whose success has been defined by the amount of accolades received.) My initial New Year's resolution this year focused on achieving "more," on making my life more perfect. Yet, as I lay in the hospital this past New Year's Eve, unable to walk because of a bizarre virus that had struck my legs, I was forced

to re-evaluate my definition of success.

Reader, I do not mean to evoke pity for myself—a girl who sat eating hospital food (primarily orange Jell-O and watered down mashed potatoes) while you got drunk on champagne and danced in the New Year. To the contrary, this New Year's was undoubtedly the best one I have ever experienced. When I was released from the hospital on New Year's Day, I felt a kind of happiness I had not yet experienced.

Instead of wishing for what I didn't have on this New Year's, I finally appreciated what I did have. While in the past I had resolved to run faster and break a past marathon time, this New Year's I was just so happy to know that I would be able to walk down the aisle to marry my fiancé this summer. This year I did not yearn for what I didn't have, but rather was deeply grateful for what I did have. I am not telling you this story to be self-righteous or to impart some great revelation. Rather, I am writing this in the hope that maybe next year you might think twice about adopting numerous resolutions to become "better," might realize that "good enough" really is "good enough."



Yee Haw!

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—Ralph S. Tyler, Jr. Professor of Constitutional Law Prof. Lawrence Tribe '66, on the Clinton impeachment proceedings.

Celluloid Chronicle

By Sarah G. Vincent '00
RECORD Columnist

THE CLASSICISM OF CLASS ACTIONS

In writing "A Civil Action," his chronicle of the 1980's litigation surrounding severe environmental pollution in Woburn, Mass., Jonathan Harr did not reduce any of the concerned personalities to caricatures. Both the families who suffered from corporate negligence and the factory officials responsible for the environmental tragedy come across as fully-developed personalities. In his new film adaptation, director and writer Steven Zallian decides to focus on Jan Schlichtmann (John Travolta), the ambulance-chasing lawyer who takes on a just cause, and the opposing lawyer, Jerome Facher (Robert Duvall).

The result is a drama about the architecture of class. Schlichtmann, a ruler in the realm of the *nouveau riche* '80s, is constantly shown moving in the legal world of austere stillness. Schlichtmann wheels handicapped clients and speeds down the highways of Massachusetts until forced to contemplate the Woburn case after being ticketed next to the site of contamination, a cluster of factories shown in the midst of a bucolic clearing.

At first, his interest in the "orphan" or unwanted case derives from greed: after he sees that "deep pocket" corporations, W. R. Grace and Beatrice Foods, are involved in the contamination of Woburn's water supply, Schlichtmann is inspired. He moves from the decadent glory days of success, a journey from brownstones to skyscrapers, through a vertical world of upwards mobility, but meets his match in Facher, the attorney for Beatrice Foods.

Facher is from the very world which Schlichtmann refuses to let intimidate him, a senior partner at Hale & Dorr who teaches at Harvard Law School, but not of that world. Facher ridicules the system from which he derives his power —

playing ball while taking important calls, hiding out in the basement, fixing a tattered briefcase with clear scotch tape during a court ruling and toting a tiny radio (without the headphones) to listen to Red Sox games. If litigation is war, he is the conquering general. Facher confides to Schlichtmann, "We are like kings...deciding fates of others." Unlike Schlichtmann, he refuses the trappings of a king because he is confident of his power and has no need to prove it.

As Schlichtmann begins to care more for justice than money, he loses his image and financial standing, remaining oblivious to his partners' pleas to settle. He whines at Judge Walter J. Skinner (John Lithgow) as he loses control of the case. A meeting at the Harvard Club in New York City ends disastrously as he shows his desperation for a settlement, while the defendant mocks him ("I thought you were a Harvard man") and forces the conversation into trivial small talk.

Zallian admirably restrains himself from the huge courtroom emotional outburst often seen in genre works like *Matlock* or *Perry Mason*. Rather, a sudden glance from the page, a pause of movement or the slightest tilt of a head indicates emotional significance during a number of depositions. The film shows how the legal world of professionalism and contained emotion can crumble once the restraint is broken.

Zallian tends to overdo some motifs. For example, a sequence in which a key witness for the defense switches loyalties offers a close-up shot of every glass of water poured, spilled or sipped. While a few such images might be effective, the director's overindulgence here undermines the importance of the scene.

Zallian's film is also a visual essay on

class in the city of Boston. It consistently depicts lawyers closeted in luxury-fitted rooms or in skyscrapers overlooking the city, while meetings between different classes, between the lawyers and their clients, occur in much humbler venues. William Cheeseman

J.D. '68, LL.M. '69, the attorney for Grace, meets one key witness in the alley, and Schlichtmann is constantly shown crossing a border to the blue-collar masses. Ultimately, he is in a sense "infected" by that class, and relegated to a tiny office and small diners, a world of horizontal movement.

Unfortunately, Zallian does not develop the characters of the working-class victims of the tragedy, using them only as plot devices. The film does succeed in showing the uselessness of the unexamined life, as Schlichtmann pauses with progressive frequency to contemplate his role in life and to contemplate values other than money.

Travolta is superb as the oblivious and rapid-paced protagonist, and his conversion is convincing. He talks and clothes himself in expensive suits to convince not only his audience but also himself of his



preeminence. Travolta shows insecurity in the blink of his eye or the flick of his wrist as Schlichtmann begins to realize that no one buys his facade.

Duvall steals the show with a glorious performance as Facher, and you cannot help but delight in the Machiavel-

lian lessons he delivers to Travolta. He remains above the fray of the frenetic action and holds a riveting presence. While refusing to parry in minor legal maneuvers, Duvall's character glories in the ultimate game of power. As Facher, he is the perfect foil to Schlichtmann's insecure posturing.

William H. Macy, who plays Gordon, the financial advisor, embodies the panic of Schlichtmann's law firm as it begins to plummet financially. He convincingly moves from poised joker to a desperate man firing excess staff, cleaning the office, playing the lottery and cashing in valuable childhood mementos in a futile attempt to keep the office solvent.

Overall, while *A Civil Action* shows that there are no clear cut winners in a lawsuit, the film does laud the pursuit of dignity and justice over the love of money as a reason to practice law.



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Her Indie World

UNDER MY SKIN

By Suzanne Carter '00
RECORD Columnist

Yes, another year is over, and so let's recount our hopes and dreams. Perhaps this year's big summer hit from the blockbuster that wasn't won't be as annoying or pervasive as last summer's "And I Don't Want the World to See Me When Everything's Made to Be Broken Because Even When I Dream of You the Sweetest Dream Will Never Do and I've Been Watching You Like a Hawk (insert crying baby noise here)." And maybe, just maybe, Duncan Sheik and the delectable Celine Dion will swirl into oblivion this year and no one will notice ("Behind the Music" and the "E! True Hollywood Story" included).

But wait! Hold that cynicism! This column is meant to recount all things musical that got under my skin in a good way in 1998. So dear readers, if you'll indulge me in this indulgence of indulgences, the enumerated year-in-review, I won't stand with you on a mountain, I won't "bathe" with you in a sea, but you can be close to me you're like my father, close to me you're like my mother...

1. Tori Amos

from the choirgirl hotel

If I could tell the world just one thing, it would be to buy this CD. Amos veers from electronica to dance music to hard rock to pop piano ballads with masterful ease, all the while proving herself the best lyricist in modern music (think Anne Sexton). My pick for album of the decade.

2. Pulp

This Is Hardcore

While lame bands like Matchbox 20 dominated the American charts, the Brits proved once again that they could out-rock those sorry Yanks, and no one rocked better than Jarvis Cocker and Co., smiling through their tales of aging, social alienation, and what it takes to be a man. Let Oasis and Blur worry about conquering Britain — right now, Pulp's the best band in the world.

3. The All-New Madonna

Her latest, *Ray of Light*, was truly like a prayer, solidifying the grande dame's position as a bona fide talent. Don't dis-

count her status as a media icon, though; Madonna-as-earth-mother may be her latest in a long series of self-defined personae (emphasizing the self-defined), but there's no doubting who mothered popular music's current gyno-revolution.

4. Garbage
Version 2.0

The surviving girl's Kurt Cobain, chanteuse Shirley Manson earns that clichéd "voice of a generation" monicker, veering through a calvacade of honest emotions, alternately angry and resigned, independent and needy, arrogant and insecure. Garbage is the best band in America right now. No surprise, considering all four members reside in Wisconsin.

5. Jesse Camp

Thanks to the Connecticut prep-schooler turned VJ, Blur's "Song 2" is only the second-least coherent thing on MTV. The living bad hair day provided us with the best entertainment on the network since Puck was kicked out of the house.

6. Hole

"Celebrity Skin"

No one really believes Courtney Love is a walking study in demonology anymore, but hearing her snarl "you want a part of me/well I'm not selling cheap" is a whole lot more fun than listening to David Schwimmer's ex whine about how all out of faith she is for the 6 millionth time. My pick for song of the year.

7. Lauryn Hill

The Miseducation of Lauryn Hill

Hip hop was the year's commercially dominant music form, but its misogynistic undertones often made the genre seem unwelcome to women as artists and as listeners. Enter Fugee Lauryn Hill, whose disarming honesty and feminism radiated throughout her solo debut.

8. Liz Phair

whitechocolatespaceegg

If the Coen brothers were remade as Lilith Fair headliners, they'd sound like Liz Phair. It's the winter of her matrimonial discontent, and Liz has responded with her finest album to date, a wise darkly comic musical panorama.

9. Mary Lou Lord
Got No Shadow

Mary Lou once made a living busking outside Harvard Square's Learningsmith; with its jangly guitars and stripped-down production, this trick-ass biatch's major label debut, *Got No Shadow*, reflects this with heartfelt authenticity. The best record you didn't hear in 1998.

10. Green Day

"Good Riddance (Time of Your Life)" Who would have thought the band who once called an album "Dookie" would turn out the year's most beautiful ballad?

11. The Burt Bacharach Revival

Forget swing. The hippest retro craze was all Burt. There was Burt's terrific album with Elvis Costello, "Painted from Memory"; there was Rhino's boxed set devoted to Burt; there was Burt's seventieth birthday concert, recorded for posterity on video and compact disc. Shagadelic!

12. Eagle-Eye Cherry

"Save Tonight"

Oh that pulsating urgency wrapped up with catchy genre-spanning verve. Don's son and Nene's brother makes like Jakob Dylan.

13. Semisonic

Feeling Strangely Fine

Much more than the Kong's swan song "Closing Time," this album of immaculately crafted, lyrical pop-rock is reminiscent of I.R.S.-era R.E.M. And besides being a Harvard College alum, lead singer Dan Wilson is easy on the eyes.

14. Marilyn Manson

as Political Pundit

What did Marilyn prove by his numerous appearances on "Politically Incorrect"? One, that he's not as frightening as he or his detractors want you to believe; two, that red jumpsuits aren't always a fashion don't; and three, that he and Florence Henderson are indeed strange bedfellows.

15. R.E.M.

Up

It's easy to dismiss R.E.M. They crank out really good highly literate pop-rock



album after really good highly literate pop-rock album. *Up* is the band's best effort in years, and nothing is more a tribute to this than the fact that the more you listen to it, the more the album's intricate beauty takes hold of

your soul.

16. Everclear

"[Insert Single of Your Choice Here]"

Whether you liked the loud, angry bounce of "Everything to Everyone," the upbeat sure-to-be-a-movie-trailer-fixture "I Will Buy You a New Life," or the supremely cheesy "Father of Mine," Everclear was the radio band of the year. Who says mindless is bad?

17. Beck

Mutations

Few contemporary artists have the ability to produce an album as diverse but as consistently good as *Mutations*. Even fewer artists could revive bossa nova while spouting lyrics like "oh and now you've had your fun under an air-conditioned sun."

18. The Grammy Telecast

Soy Bomb. Big Baby Jesus (né Ol' Dirty Bastard). Marilyn Manson au naturel. Paula Cole's armpits. Yes indeed, it was the most surreal night of the year, and we got to watch it on television! Let's hope the powers that be don't have any funny ideas about beefing up security this February.

19. Shawn Mullins

"Lullaby"

You'll swear you're listening to Lou Reed... until you hear it on "Party of Five" teasers. Thankfully, Shawn bypassed Jennifer Love Hewitt for "Lolita" Dominique Swain in the death-by-California video.

20. Beastie Boys

Hello Nasty

The Beastie Boys take hip hop back to the mid-eighties, when lyrics were senseless, costumes were goofy, and videos were worth watching. And any one of them is way cuter than all five Backstreet Boys combined.

SPORTSGUY

LOCKOUT BEHIND YOU

By Josh Swartz '00
RECORD Columnist

The NBA lockout came to an abrupt end last Wednesday, just one day before Commissioner "David and Goliath" Stern's much publicized "drop dead" date for reaching a collective bargaining agreement with the NBA Players Association. So, mere hours before Cinderella turned into a pumpkin and the season was lost forever, the two sides ultimately concluded that the \$2 billion pie was big enough for everyone — big and small, rookie and veteran, owner, player and agent — to feast on, even if it meant sharing a little bit of the wealth with others.

After six months of acrimonious negotiations, fraught with mudslinging and name-calling, it was back to business as usual for the highest paid unionized employees the world has ever seen. Union negotiators Patrick "Ewings of the Dove" and Billy "Hunter and Gatherer" emerged from GM Building in New York with smiles and high-fives, thus forever ending my dream of playing professional basketball next year when the NBA threatened to use replacement players. Well, we haven't seen an NBA box score since May, but like any good reporter, it's worth mentioning who won and who lost as the result of the new collective bargaining agreement.

The single most divisive issue during the lockout involved sharing the near \$2 billion in NBA revenue. The owners asked for a 50-50 split, while the players offered

to take as little as 55 per cent in the fourth year of the agreement (they got 57 per cent last year). The agreement calls for the players to receive 55 per cent of the total revenue in the fourth, fifth and sixth years of the agreement, and 57 per cent in the seventh year, should the league choose to exercise its option on the final year. There is no limit on the percentage of revenue the players can receive in the first three years of the deal. Winner: Players.

The owners' biggest coup involves the imposition of salary limits, a restriction to which no professional sports union had ever before acquiesced. The maximum salary for players with 10 or more years' experience is capped at \$14 million. Players with six to nine years' experience can earn \$11 million and players with zero to six years are limited to \$9 million. A grandfather clause allows players to sign for 105 per cent of their last salary and the minimum salary was raised a bit. Winner: Owners. Big Winner: Kevin "nothing but" Garnett of the TWolves whose \$121 million contract will be the most any player will make under this collective bargaining agreement. Really Big Winner: The same Minnesota Timberwolves, who may now be able to afford to keep Stephon "Marbury v. Madison" and "Uncle" Tom Giolitti. Big Losers: Super agents and players like "Kobe beef" Bryant who stood to make Garnett-type money.

In the past, first-round draft picks the

past three years signed three-year guaranteed contracts and were eligible for free agency after their third year. The agreement calls for a three-year rookie scale with teams holding an option for the fourth year and a right of first refusal in the fifth year. This makes the draft infinitely more important than before because rookies will effectively be locked up with the team that drafted them for five years. Moreover, with the new salary limits in place, teams will be able to re-sign their free agents far more easily, so players will not sign with another team simply because that team can offer them more money. Winner: Good general managers like Jerry "Wild, Wild," West who have used the draft to acquire quality players Bryant and Nick Van "Microsoft" Exel.

The new agreement also lets those players entitled to the Larry Bird "of Prey" exemption get an increase of 12 per cent per year. In sum, the new collective bargaining agreement likely means more parity in the league, at least if the latest rumors placing Michael "Air" Jordan on a golf course in the Bahamas are true. The settlement will also have a profound effect on the HLS intramural basketball season scheduled to start in mid-February. Plans to move league games to the Fleet Center in the event of Hemenway's closure have been scrapped and the massive migration of NBA players to the law



school's B-League (following the precedent of many A-League quality players slumming it in the B's) has been stemmed temporarily.

One lingering question remains from the lockout's aftermath: will the fans come back?

I leave you with the words of Boston Celtics guard "Oh My God They Killed Kenny" Anderson, "Of course, the fans will come back. It's the NBA. Hey, get out of my way, I'm looking for my car."

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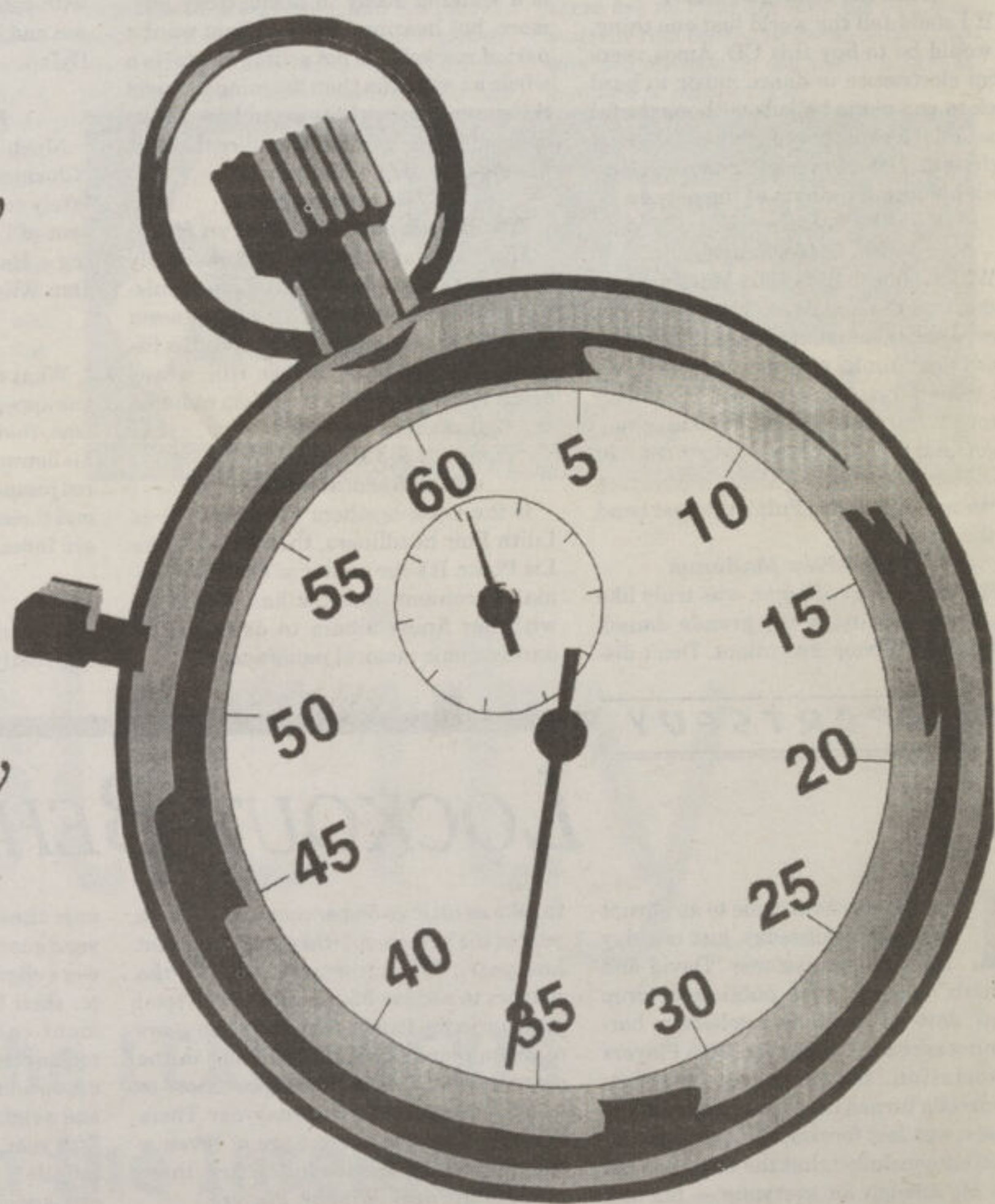
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