



Chomsky says U.S. reliant on force, world obedience

by Justin Cooper

Every American knows that you can't trust what you read in the newspaper; but, according to Noam Chomsky, they just don't know how bad it really is.

Chomsky, a professor of linguistics at the Massachusetts Institute of Technology, argued forcefully that the entire story of the Israeli-Palestinian conflict since 1967 has been incorrectly or only partially told by the U.S. media.

Having accepted an invitation from the Middle Eastern Law Students Association, Chomsky spoke to an eager audience on Monday, March 6. The crowd occupied every chair, doorway and empty spot of floor space in Langdell South.

He began his presentation by reading selected headlines from Monday's newspapers, and showing how the stories revealed only partial truths. After quoting an article from The New York Times that gave a figure for the number of Israeli civilians killed in Israel's ongoing conflict with Lebanon, Chomsky said, "What's said here is not false, but it's a tiny footnote to the truth, and that's typical." He pointed out that no mention was made in the article of the Lebanese civilians that had been killed in the same conflict.

Chomsky went on to claim that there are systematic biases in the way events in the Middle East are represented in the American press. He said that the term, "rejectionist," for example, is

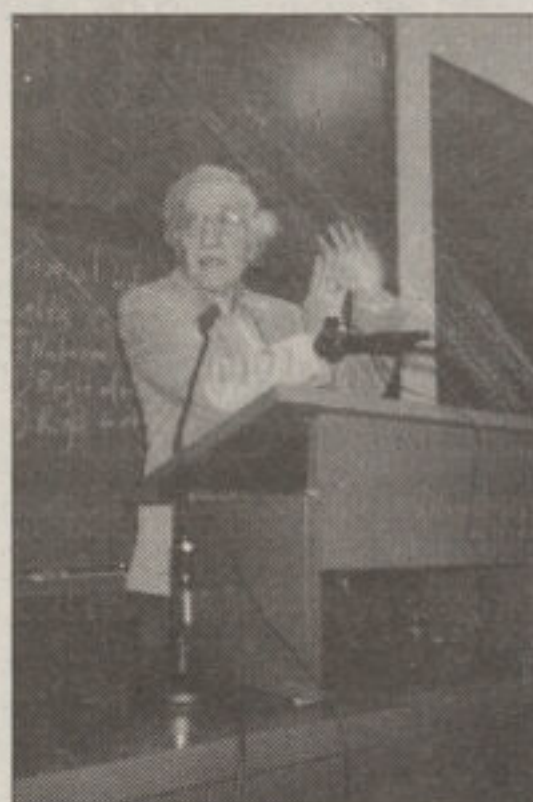


Photo by Arash Saedinia

Prof. Noam Chomsky

applied only to groups or policies that reject Israeli national rights, not to groups or policies that reject Palestinian national rights. Highlighting another bias, he added, "Hezbollah guerrillas are always called 'Iranian-backed,' while Israeli forces are not referred to as 'U.S.-backed Israeli troops.'"

The bulk of Chomsky's presentation was a retelling of the last 35 years of Israeli-Arab relations. He argued that there were several opportunities for peace along the way, but that the United States and Israel, which he called a "client state," acted consciously to prevent peace and reject Palestinian claims for national rights.

Chomsky claimed that his version of this story is based on careful reading of newspaper articles and scholarship from around the world.

Please see **ISRAEL**, p. 2

Profs join slavery reparation effort

by Justin Herdman

A group of prominent black scholars, including Prof. Charles Ogletree '78 and Prof. Chris Edley '78, have vowed to research remedies for the enduring legacy of American slavery. In agreeing to join the project, Ogletree and Edley have signaled that the call for reparations is moving into the mainstream agenda of African Americans.

In January, Ogletree and Edley attended a roundtable discussion of 22 scholars and policymakers to discuss the issue of reparations for slavery. The meeting was convened at the behest of Randall Robinson, President of the TransAfrica Forum and author of "The Debt: What America Owes to Blacks."

In his book, Robinson argues that blacks are far

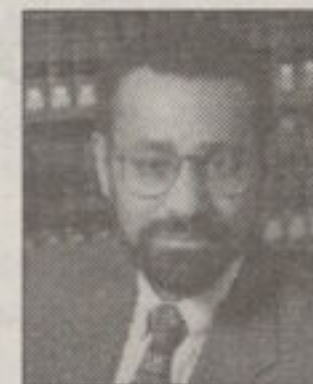
from recovered from the abuses of slavery. In fact, he contends that America's collective wealth was built upon the backs of the enslaved. Compensation is therefore due to those who continue to be victimized, economically and socially, by the episode of American slavery, he argues.

Slavery, according to Robinson, did not end with the Emancipation Proclamation. "We are not just talking about slavery, but the century of discrimination that followed it," Robinson told the Boston Globe last week.

At the January meeting,



Prof. Charles Ogletree '78



Prof. Chris Edley '78

Robinson described what he called "contemporary victims of America's holocaust" to the panel participants. They include "the black man in prison, who, in a fairer society, might have realized their full potential" and "the black mothers, too often alone and hopeless beneath their burdens."

Following the January meeting, Ogletree and others pledged to look into possible remedies. Included among the alternatives were financial reparations, which remain "a viable remedy for the burdens

Following the January meeting, Ogletree and others pledged to look into possible remedies. Included among the alternatives were financial reparations, which remain "a viable remedy for the burdens

Please see **SLAVERY**, p. 4

ACLU head a crusader for women

Strossen '75 calls on students to be honest intellectuals

by Justin Herdman

Most critics of the American Civil Liberties Union (ACLU) point to its court victories as evidence of judicial legislating gone wrong. But Nadine Strossen '75, the organization's president, insisted that judges remain the last line of defense against incursions upon constitutional rights.

The federal courts, insulated by salary and tenure protection from the "tides of public opinion" and occasional "hysteria," act as a "safety net" against political manipulation of the constitution, Strossen said in an address delivered at

the Law School on Tuesday.

Such statements sounded the theme to her address, sponsored by the HLS Forum. Speaking on the topic of "Current Challenges to Civil Liberties," Strossen stressed the independence of the judiciary as a "meta-issue" which has a permanent, profound consequence for other freedoms.

One such example is the issue of unhindered speech on the Internet. In 1997, the ACLU successfully argued that the Communications Decency Act (CDA), a federal law that restricted access to most offensive material available on the Internet, was unconstitutional. The Supreme Court's "almost unanimous" ruling in *Reno v. ACLU* proved that the challenged law was "really, really unconstitutional," she

said.

But the political pressures brought to bear on legislators have led to a new incarnation of the CDA, the Child Online Protection Act. And once again, the ACLU may call on the courts to halt attacks on constitutionally protected liberties.

Noting that few politicians wish to appear soft on pornography, Strossen asked rhetorically, "Who's going to vote against the Child Online Protection Act?"

Strossen, who is also a professor at the New York Law School, was elected to the ACLU's presidency in 1991. She was the first woman selected to lead the ACLU, which is the nation's largest and oldest civil liberties

Please see **ACLU**, p. 4

NEWS ANALYSIS: SUPREME COURT UPDATE

Justices train steely gaze on criminal procedure

by Francesco Barbera

The Supreme Court, whose wide-ranging agenda this term has garnered much attention, trained its focus this week on the criminal procedure controversies that continue to dominate its docket. The justices handed down two decisions and heard oral arguments in two others, putting a small dent in a criminal case load that accounts for fully a third of the Court's business.

In *Portuondo v. Agard*, announced on March 6, the Court ruled that a prosecutor does not violate a defendant's constitutional rights by suggesting in closing arguments that the defendant had tailored his own testimony after listening to the witnesses at his trial.

The defendant in the case,

Ray Agard, was charged with sodomy, assault and weapons possession. The trial came down to a credibility war between Agard and his accusers. During closing arguments, the prosecutor told the jury: "Unlike all the other witnesses, [the defendant] gets to sit here and listen to the testimony of all the other witnesses before he testifies," he said. "That gives you a big advantage, doesn't it? You get to sit here and think, 'What am I going to say and how am I going to say it?'"

Defense attorneys argued that the prosecutor's statements amounted to a burden on the defendant's Sixth Amendment right to be present at his own trial, his Fifth Amendment right to testify on his own behalf and his Fourteenth Amendment right

to due process. The Second Circuit agreed with the claims, and ordered a new trial. In New York, the Circuit Court noted, defendants are required by statute to attend their trials.

Justice Antonin Scalia '60, writing for the majority, reversed, holding instead that comment on the defendant's opportunity to tailor testimony "is appropriate — and indeed, given the inability to sequester the defendant, sometimes essential — to the central function of the trial, which is to discover the truth."

Justice Scalia, known for his originalist constitutional exegeses, began by noting that the defendant's claims have no historical foundation ("The process by which criminal

Please see **COURT**, p. 10

Mock trial team mocks opposition



The HLS Mock Trial Team won the American Trial Lawyers Association Mock Trial Regional Competition in Providence, R.I., last weekend. The team qualified for the national finals on March 23 to 26 in West Palm Beach, Fla. (L to R) Matthew Whitley '02, Erica Taggart '00, Marty Pritikin '00, Valarie Hays '00, Bethany Rubin '02, Seth Blonder '00, Mike Lingle '00, Bobby Klinck '02. Not pictured: coaches Prof. Peter Murray '67, Prof. Diane Juliar and Bob Griffin, a Suffolk County District Attorney.

Jessup Moot Court team to set world aflame

by Ethan Bernstein

Snow and sleet were not enough to keep the HLS Jessup International Moot Court Team from trekking out to Albany last month. And the competition was not sharp enough to keep the team from bringing home a trophy.

The team returned to Cambridge having won both the title of Regional Champions and the opportunity to represent New England at the international finals in Washington, D.C. The Jessup, which is an Ames-like competition, pits law schools from around the world against each other as they argue a case based on international law principles. It is the world's largest and most prestigious international law moot court competition.

This year's New England regional competition, which is typically one of the most competitive in the nation, included teams from 12 law schools. The five-person Harvard team was made up of Ethan Bernstein '02, Bill Burke-White '02, Wade Coriell '01, Shaheed Fatima LL.M. '00, and Woo Lee '01.

The team emerged from the oral rounds without a single loss. Burke-White also received a best oralist award. Kate Greene, the team's coach, remarked that she was "proud to have the chance to be associated with such rising stars."

The two-day competition was held in the Albany State Courthouse and hosted by the Albany Law School team. The rounds were judged by state and federal court judges, including Judges on the New York State Court of Appeals, as well as professors and practitioners in the field of international law.

The other teams "were all very well-prepared and excellent adversaries," remarked Burke-White. Lee described the other teams as "extremely friendly," pointing out that the students on the Fletcher team, whom the HLS team faced in the finals, actually offered to help the Harvard team prepare for the international rounds. Fatima commented, "there is no doubt that we all learned a lot from competing in the Regionals and hopefully this will

improve our performance in Washington."

Jessup History at Harvard

The Philip C. Jessup International Law Moot Court Competition was founded in 1959 by a group of law students from Harvard University, Columbia University and the University of Virginia. Approximately 1,500 students from more than 300 law schools in almost 50 nations around the world participate in the Competition each year, including over 140 U.S. law schools.

Harvard's history of success in the Jessup, however, has been modest at best. Until last year, Harvard had not gained the opportunity to participate in the international rounds for over 20 years. Last year, Harvard's team broke the losing streak, and this year's team has followed suit. Maryanne Hancock '01, one of last year's team members, remarked that "many organizers of the international rounds were surprised to see HLS there last year after Harvard's prolonged absence. Our team was honored to represent HLS, and we are really proud that this year's team is returning."

When Vaccine Trials are Torture

The moot problem this year concerned the issue of vaccine trials being conducted in a developing nation, a large percentage of whose population suffers from a fatal disease. These trials are carried out by the subsidiary of a parent corporation located in the developed world. Conflict arises when the government of the developed country instructs the parent company to cease the trials on the grounds that the side effects are too great. Pertinent points are whether the vaccine trials do indeed breach various international conventions, especially the Torture Convention, and whether the developed country can exert control through the parent over the emerging-market subsidiary. The facts are detailed and give rise to many a moral dilemma as well as the ubiquitous legal questions moot courts are infamous for testing.

Prof champions religious freedom

by Mike Adams

The Harvard Journal of Law and Public Policy (JLPP) celebrated its 23rd year on Sunday with an address by Prof. Michael McConnell, a member of the Journal's advisory board.

McConnell, a leading conservative constitutional law scholar, currently holds a tenured position at the University of Utah School of Law. He served as a visiting professor at HLS during the Winter 1999 term and taught a course on Religion and the Constitution. Additionally, McConnell has been extended an invitation to join the HLS faculty in a tenured position.

In his address to the JLPP, McConnell examined the function and treatment of religion in the American political process. He began by claiming that the recent tiff over presidential candidate George W. Bush's appearance at Bob Jones University, an institution whose leadership has historically held virulently anti-Catholic views, had been blown out of proportion. McConnell suggested that Catholic leadership likely had similarly dim views of Protestantism.

"It is not intolerant to have serious disagreements over religion. That's what religious freedom is all about. Genuine religious differences between Catholics and Protestants, which are worthy of real discussion, have been trivialized by politics," he said.

McConnell defended the historic role religion has played in America's social and political affairs since before its founding and defended those who are active in political affairs because of their religious beliefs. According to McConnell, every major social reform movement in U.S. history has had roots in religious social activism. He cited Calvinist and Baptist sermonizing as having laid the groundwork for American rebellion against England in the 1770s; Catholic and Jewish leadership's successful heralding of labor reforms and social welfare legislation during the industrial age and the New Deal era; and the involvement of clergy as the backbone of the Civil Rights movement since the 1950s. Although McConnell conceded that religion has been used as a tool to defend racial discrimination — as at Bob Jones University — the professor concluded that, as a whole, religious activism in social and political affairs has benefited the nation.

McConnell said that faith deserves the same respect secular ideas receive in the justification of individual political ideology. He compared such groups as the "religious right" with other groups which engage in "identity politics," contending that they shared a common trait of developing political ideas out of shared experience, rather than solely upon reason.

Finally, McConnell proclaimed the prerogative of the religiously motivated to be involved citizens as sacrosanct, equivalent to the right of other persons motivated by differing motives seeking moral and social improvement. "It's a plus for people motivated by deep moral convictions to be involved in politics, even if we disagree with them," McConnell said.

ISRAEL

Continued from page 1

Looking only to the American press for information, he said, would give one a very distorted view of this story, as many of the key events were not reported at all, or were severely distorted.

Chomsky said that one must read the papers carefully to "unravel a network of now deeply embedded falsehoods and, I have to use the word, racist distortions." He was referring specifically to what he sees as different treatment by the press of Palestinian national rights and Israeli national rights.

Chomsky gently chided the audience in recounting the story of the relationship between U.S. actions abroad and

how they are reported in the American press. "One of the advantages of being the world's most powerful state, with a very obedient educated class at home, is that you can do what you want."

That theme recurred frequently in Chomsky's address; he sees the U.S. as acting unilaterally in the world arena, without regard for the interests or opinions of other nations. At the end of his talk, he summed up his story of the U.S.'s role in the Middle East by saying, "What this demonstrates is the extent to which the world is governed by the rule of force."

During the question and answer period after the talk, an audience member asked where Americans should get news if they can't trust the press. "That's like asking how to become a good chemist," Chomsky replied,

"except that in chemistry, nature isn't actively working against you."

But Chomsky was not cynical about the role of individual Americans in processing the news, and thereby helping to shape national policy. In fact, he hinted that if Americans were better informed about world affairs, the U.S. government could not make the many of the policy decisions of which he so strongly disapproves.

"All these years, if there had been any meaningful public support in the U.S. for what was international consensus at the time," he said, referring to international opinions over the last 30 years on Palestinian national rights, "I think things would have been very different."

Some audience members reacted strongly to Chomsky's views on the Middle East. Steve Hoberman, an undergraduate at MIT, objected to Chomsky's assertion that the policies of Israel's two major parties, Likud and Labor (now One Israel), are virtually indistinguishable. "That just seems false. It's absurd," Hoberman said.

He acknowledged, however, that Chomsky's presentation was persuasive. "I'm walking out of here more convinced than before of his views, even though those views are outlandish," Hoberman said.

Other audience members had a more favorable response. "I've read many of his books, so his views were not a surprise to me," said Dmitri Evseev '01.

"I think he always provides a jolt of insight into American foreign policy," Evseev said. Evseev also expressed some disappointment that Chomsky did not elaborate on his criticism of educated Americans for their "obedience."

Brian Range '01 said that he didn't know what to expect coming into the presentation. "I was vaguely familiar with Chomsky beforehand," Range said.

"I liked the stuff about how you have to question the media and what their motivation is," Range added.

The crowd itself was not sated by Chomsky's lecture, which lasted an hour and a half. Audience members stayed around for at least another half an hour as Chomsky informally fielded questions at the front of the room.

• Letters •

Culture Shock II served up on campus menu

I am writing to everyone to invite them to the Society for Law, Life and Religion's second annual Culture Shock, an international food festival.

Culture Shock II will benefit the Waltham Support Committee for Battered Women and A Woman's Concern crisis pregnancy center. The support committee provides a shelter in a confidential location for women and their children to escape the bonds of an abusive relationship. In order to aid its clients in recovering from their past relationships and make a new and independent start in life, the support committee also runs a 24-hour hotline and provides education, crisis intervention, referrals, and victim advocacy work.

A Woman's Concern encourages women in diffi-

cult situations to carry their pregnancies to term. To make such a choice a real possibility, the center provides material assistance to their clients, such as baby clothes and food, parenting mentors and support, and referrals for services covering adoption, health care, housing and legal advice. The center does not provide services or referrals for pregnancy termination.

Last year, the Society hosted almost 200 people and raised over \$2,000 at the event. Almost more importantly, the day brought together a broad cross-section of the HLS student body in a common effort at helping real women in need. It was a very pleasant afternoon, and we encourage you to share it with us again this year.

A special note of thanks

is also due to Cameron Schroeder and Amélie von Briesen, co-chairs of Harvard's Reproductive Freedom Project. Cameron, Amélie and the RFP do not support Culture Shock. In light of their opposition to last year's event, however, the Society for Law, Life and Religion has worked with them on the language we have used to advertise this year's event. We appreciate their assistance in demonstrating to the community that even the most diametrically opposed groups can agree to disagree.

For information on the event, please look in this week's Adviser for more details. Hope to see you on March 18th.

Jay Webber '00
March 7, 2000

IMMEDIATE OPENINGS!

Students earn \$375/\$575 weekly processing/assembling medical I.D. cards from their homes. Experience unnecessary... we train you! Call MediCard, 1-541-386-5290, ext. 300.

Who had the greatest impact in the equity markets in 1999?

#1 in IPOs: Priced 58 IPOs, more than any other firm in one year.

#1 in aftermarket performance: An average 250% increase for lead-managed IPOs and secondary offerings.

#1 increase in market share: Largest percentage increase in total equity underwriting volume versus any other firm.

Credit Suisse First Boston.

Credit Suisse First Boston continues to set the standard for investment banking performance. To ensure our leadership position, we are looking for the most talented people to join our efforts. To learn more, please contact us at CSFB.com/careeropportunities/

**CREDIT
SUISSE** | **FIRST
BOSTON**

www.csfb.com

Prof. Lessig clarifies stance on Microsoft monopoly break-up

by RECORD Staff

Prof. Lawrence Lessig, who wields influence over the judge in the federal government's antitrust suit against Microsoft, recently downplayed news reports that indicated his doubt about breaking up the software behemoth.

In the Feb. 24 edition of the Washington Post, Lessig was quoted as saying, "I'm skeptical about breakup. It doesn't seem logical to me, but it does to the government."

But in a Feb. 25 e-mail exchange with CNET News, Lessig elaborated on his comments.

"What I said was: One, I have done my time in this case and am looking forward to being released for good behavior; two, I have not studied the issues enough to say anything serious; but, three, my bias is to be skeptical about a breakup," Lessig wrote.

"I would have thought one and two

would have entailed that three was not newsworthy. I still believe that, and don't want to tempt non-newsworthiness anymore," he added.

Lessig's opinion may carry weight with the presiding judge, Thomas Penfield Jackson, who appointed the HLS professor as a special master earlier in the Microsoft case (Lessig was dismissed as special master by the Court of Appeals) and asked him to write a friend of the court brief on the effects of technological tying. Such influence could in turn change the final outcome of the antitrust suit, according to legal experts.

"Since everyone knows the judge has tremendous respect for Lessig, if Lessig honestly, sincerely and thought-



Prof. Lawrence Lessig

fully believes break up is not appropriate, then that's got to influence the judge," said University of Baltimore School of Law professor Bob Lande. "Since that influences the judge, then that, therefore, will influence the government to be more flexible in its demands during negotiations."

A ruling by Jackson could be handed down in as early as two weeks.

At Jackson's request, Lessig filed a brief concerning whether Microsoft had illegally tied its Web browser, Internet Explorer, to Windows 95 and 98 with the intent of dominating the market. The brief could be read to support either side.

"I would have to say Lessig's brief greatly affected Judge Jackson," Lande said.

In Chicago, Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit has been mediating the settlement discussions between

government and Microsoft lawyers. Initially, Posner acted to bring the two sides closer to a common philosophical perspective; otherwise, settlement would have been impossible. But prospects of a breakthrough were dim before closing arguments. "I'm not optimistic about settlement," a source close to the talks told the Washington Post in the Feb. 18 edition.

If Jackson rules against Microsoft, an action that is highly anticipated, then the trial will move into the remedy phase. And the discussions about a break-up of Microsoft are expected to reveal deep divisions between the two sides.

Microsoft recently e-mailed Congressional offices and referred to a break-up as a "regulatory death sentence." As for observers of the trial, they may wonder whether a Lessig endorsement of that statement could result in a stay of execution.



Photo by Justin Herdman

Supporters of Sen. John McCain, (L to R) Jonathan Freimann '01 and Tom Snider '00, watch as Mike Adams '01 defends Gov. George W. Bush's tax proposal at the Republican debate last Thursday.

Republicans search party's soul

by Justin Herdman

The battle for the presidential nomination of the Republican party has been in evidence on campus throughout the year, but animosities were on open display last week as supporters of the insurgent candidate Sen. John McCain (R-Ariz.) debated admirers of Texas Gov. George W. Bush.

The debate was held on Thursday, March 2 in anticipation of the Super Tuesday primaries. Two HLS student supporters of McCain — Jonathan Freimann '01 and Tom Snider '00 — had put forth the challenge to Bush's proponents — Mike Adams '01 and Chris Ward '01. The event was moderated by John O'Quinn '01, who led the debaters through several rounds of questions concerning diverse issues such as the candidates' stances on taxes, abortion, health care and foreign policy.

Snider initiated the debate with an appeal for young voters to consider McCain at the ballot box. According to Snider, McCain is "determined to inspire young people to embrace causes greater than themselves."

Adams led off the pro-Bush side by saying that there would be no attacks against McCain's character. Winning a laugh from the mostly conservative crowd, Adams pledged not to mention McCain's "past destruction of government planes or his years in prison."

Throughout the debate, Adams and Ward posed this question to the audience: "Who's the real conservative?" Adams noted that when scored by a conservative organization, McCain's recent voting record is so poor that "every third day, the people of Arizona had a Democratic senator."

The debate was rife with political

slogans. Ward dubbed his candidate a "reformer with results," pointing to the "changing culture" in Texas' education that Bush has witnessed during his almost six years in the governor's mansion. Freimann retorted that in the absence of a sustained effort to reform the current campaign finance system, Bush's chest-pounding maxim was analogous to "taking credit for inventing the Internet."

This subtle slap at Vice President Al Gore was also a constant theme through the night, as were continuous comparisons of the candidates to former President Ronald Reagan. "Senator McCain says a vote for him is a vote to win one for the Gipper," Ward said, "But it's really a vote to win one for the Tipper."

Meanwhile, Snider insisted that McCain was the only candidate who could prevail in November's general election. "If you don't want a President Gore, then you'd better vote for John McCain," Snider said.

Freimann responded to allegations that McCain's opposition to abortion is less than vociferous. McCain, who has made critical remarks of right-wing Christian leaders like Pat Robertson, is "pro-life, make no mistake about it," Freimann said. But, Freimann said, McCain recognizes that extreme conservative elements of the party try to intimidate Republican voters and "don't try to win over their hearts."

While the results of the Super Tuesday primaries were decidedly tipped in favor of Bush, the debate was a product of several months of unpredictable politics. Adams tried to explain away the McCain phenomenon as a courtship between the candidate and the press. "This is the greatest romance since Al and Tipper fell in love here at Harvard," Adams said.

SLAVERY

Continued from page 1

faced by African Americans under slavery," Ogletree said.

Specifics, such as the nature of a potential lawsuit or damages, have yet to be addressed, Ogletree said. Research has focused instead on broader questions of policy and precedent.

While the project is still in its preliminary stages, legal and historical research has already yielded fruit. The group has examined analogous situations like the payment of reparations by Germany and South Africa to victims of the Holocaust and apartheid, respectively.

Additionally, examples within the United States itself provide precedent for the scholars' agenda. Japanese-Americans received compensation for internment during World War II, and the state legislatures of Oklahoma and Florida have produced legislative remedies for black victims of lynchings.

In a Republican-dominated Congress, legislative solutions to the problem will likely fall prey to political realities. Rep. J.C. Watts (R-Okla.), the only black Republican member of Congress, said through a spokesman last week, "It's difficult to talk about the future for African-Americans when you are always talking about the past."

But if the Democrats overtake the House of Representatives in

November, prospects for reparations may brighten. A current proposal by Rep. John Conyers (D-Mich.) would require that recommendations be made to Congress on appropriate remedies for victims of slavery.

Turning to the courts, however, would pose a variety of more complex legal obstacles. Ogletree acknowledged that legislative remedies are considered by many to be the "easier course." Still, Ogletree said that the legal solution "justifies further inquiry before being abandoned."

"There is no dispute that this country gained a substantial benefit from slavery," Ogletree added.

The question that remains to be answered, then, is exactly what remedy would be appropriate? Ogletree's vision of that remedy may avoid the political heat inevitably attached to financial reparations.

"We don't in any way expect individuals to receive a check," Ogletree said. Rather, the government might adopt a general remedy that benefits the "continuing victims of the legacy of slavery," Ogletree said.

Students at HLS have already contributed to the project, volunteering to conduct research and examining analogous compensation schemes. Ogletree said that "despite expected and predicted challenges and skepticism," he has witnessed a "surprising level of interest" among the student body and has issued a call for even more volunteers.

ACLU

Continued from page 1

organization.

Since then, she has guided the ACLU as it fulfills its unique mission — defending "all fundamental freedoms for everyone," according to Strossen.

In recognition of Women's History Month, Strossen focused on two of these fundamental freedoms in the context of gender law.

The first of these, an acknowledgment of women as a group meriting equal protection under the Fourteenth Amendment, has received a boost with the ascension of Justice Ruth Bader Ginsburg '56-'58 to the Supreme Court in 1993. Ginsburg, who used the ACLU's Woman Rights Project as a vehicle to litigate sympathetic cases, has repeatedly voted to subject distinctions by gender to heightened judicial scrutiny, according to Strossen.

But Strossen has no intention of relenting in the battle for women's rights. "Formal legal equality is only the first step," she said, echoing the second theme of her speech — that to

retain their meaning, civil rights must be defended from erosion.

This point was made all the more clear when Strossen discussed reproductive rights. Abortion, which Strossen deemed a "precious freedom," is under siege from the legislatures via partial-birth abortion bans. These bans "outlaw or threaten to outlaw doctors from performing even the most common abortion procedures," Strossen said.

Therefore, Strossen said that the legal uncertainty surrounding these prohibitions mean that "Roe v. Wade will be up for grabs" as the cases make their way through the court system.

Throughout the address, Strossen emphasized the ACLU's "intellectual honesty." As a former Harvard Law student, Strossen is no doubt aware of the intellectual conflicts that are waged in the classroom and on campus. "Your integrity and your intellectual honesty is your most valuable asset," Strossen told the audience.

Her final piece of advice was directed to students on the verge of entering the legal profession: when dealing with clients and adversaries, Strossen urged, "call the shots honestly."

INTERVIEW

by Justin Herdman '01 and Tanya D. Marsh '00

HLS grad named Indiana Attorney General

by Tanya Marsh

Indiana Governor Frank O'Bannon recently appointed Karen Freeman-Wilson '85 to fill the unexpired term of Attorney General Jeffrey Modisett. When she was sworn in on February 16, Attorney General Freeman-Wilson became only the second African-American woman to serve as a state attorney general in the United States. The first, Pamela Carter, served as Indiana Attorney General from 1992 to 1996. Freeman-Wilson is expected to be the Democratic Party's nominee to retain her office in the November 2000 election.

A native of Gary, Ind., Freeman-Wilson graduated from Harvard

College in 1982 and from Harvard Law School in 1985. The daughter of a steelworker, she was the first member of her family to attend college. Following law school, she returned home to Gary.

Freeman-Wilson, who was inspired to attend law school by the careers of civil rights leaders such as Thurgood Marshall, quickly became an influential public servant in her home state. As Lake County deputy prosecutor from 1985 to 1988, she wrote a manual on prosecuting child molesters. From 1989 to 1992, Freeman-Wilson led the Indiana Civil Rights Commission, working with state legislators to pass fair housing laws and to bring Indiana law into alignment with the Americans

with Disabilities Act.

In 1994, she was appointed by then-Governor Evan Bayh to serve as the presiding judge in Gary City Court. She ran unopposed for re-election to that post in 1995 and 1999. Although African Americans make up over 83 percent of the population in Gary, Freeman-Wilson was the first black woman to serve as a judge in Gary City Court.

As judge, Freeman-Wilson created innovative programs to help young people avoid drugs, smoking and gangs. She served on the board of the Rainbow Shelter, a domestic violence shelter in Gary, and helped establish Harbor House, a shelter for babies born with crack addictions.



Photo courtesy of Indiana Democratic Party

Karen Freeman-Wilson '85

RECORD: I understand that your decision to leave Indiana for Harvard College and HLS wasn't an easy one.

FREEMAN-WILSON: Well, I went to the College, so that was probably the more difficult decision. Going to the Law School was just a natural progression for me. I backed into Harvard actually. Strangely enough, my first choice was General Motors Institute, which was a co-op program. I got down there, hated the foundry, called Notre Dame and they didn't have any housing and ended up calling Harvard. So that was always the joke of the Chicago Harvard Club, that Harvard was the third choice for me. But once I got out there, I loved the area, and I said going to the Law School would be a great opportunity.

R: Did a course or professor had a profound impact on you?

F-W: Martha Minow was a professor I thought very highly of and have kept in touch with. In fact, shortly after leaving law school, I taught a family law course [at Valparaiso University in Indiana] and used a lot of her cases and patterned it after the course I took from her. I had a really good working relationship with her.

R: You decided to go back to Gary after graduating. Do Harvard degrees stand out in Indiana and did this help you during the course of your career?

F-W: Sure, it did and it has. There are not many folks in Gary who have Harvard degrees, certainly not law degrees. I think that my colleagues and people in the city of Gary who placed in me the confidence to either represent them or do legal work for them thought it was significant that I was a Harvard Law School grad.

R: You've had a number of public interest jobs — director of the Indiana Civil Rights Division, a prosecutor and a judge. Did you feel that HLS was encouraging of public interest at the time you were here?

F-W: They let it be known that there was something out there other than corporate law. The large majority of my classmates went into the corporate sector, but it was not heresy, or unheard of, to do something different than go to Skadden Arps. So [public interest] was something that was encouraged — certainly, in the legal services clinic, it was something that was encouraged and supported and that I felt good about being able to do.

R: Was the Low Income Protection Plan in place back then and did you get any assistance from it at all?

F-W: Actually, the Low Income Protection Plan started just as I was graduating. So I did get the benefit of that and it made the decision easier because I had significant loans. Now it wouldn't appear to be significant, but it was upwards of \$30,000 from the

Law School and those had to be paid.

R: How do you think that reform of LIPP reflects on Harvard's image?

F-W: I think it shows a real commitment [to public service]. The fact that the program exists at all shows a commitment to allowing those graduates who choose to contribute in the area of public interest law to do so. I know one of the factors that motivates individuals from other law schools not to go into those areas is the daunting levels of student loans they have to repay. So I think that, one, having LIPP in place shows a commitment, and, two, the fact that they are look-

Hoosier State's Freeman-Wilson chats with the RECORD

ing to revamp it, because the program has been in place upwards of 10 years and you have to fine tune anything. LIPP should be no different.

R: There has also been a recent proposal that would require future HLS classes to give 40 hours of pro bono work as a graduation requirement. What do you think about this requirement? What does it signal to you?

F-W: That would be an excellent requirement for two reasons. It would signify Harvard's commitment to public interest, but more importantly, it would require those individuals who may not have ever thought about a career in government or in the public sector to really consider something that is foreign to them. They might get in there and like it.

R: Do you have any advice for students who know that they want to go into public service?

F-W: I think one of the things that would be very helpful would be to take advantage of [Career Service's] mentoring program during spring break. I intended to sign up for that program, but because of the pending change of positions, I wasn't sure which hat to sign up under and I missed the deadline. I may still call to try and get in.

R: I would think that they would make an exception for you.

F-W: It would be tremendous for them to spend that time during the spring break. Students would benefit from participating in some of the clinics that are available and some of the Law School's programs. I know that there was a program with the Suffolk County Prosecutor's office that a lot of people found to be very helpful and, as I said earlier, I was involved in the legal clinic [the Hale and Dorr Legal Services Center, with Director Jean Charnne '70 and Prof. Gary Bellow '60] and that really got me on the straight

and narrow because there is always a temptation to... you know... in my law school essay I wrote about public interest law. And, well, you get in [to HLS], you become a 1L, and everybody is talking about money and you start thinking about money. But when I got back into the clinic, I said "No. I want to follow through with the commitment that I made to myself and my community." So it is significant to provide those outlets. You can always get a job at Skadden Arps or Sidley & Austin, but if you provide avenues for people to pursue public interest law, then at least you have exposed people to a

viable option.

R: So you come to the Attorney General's office with experience as a judge and a lawyer. How do you think those two different approaches to law are going to help you in your job?

F-W: Well, one of the things you find out quickly in the Attorney General's office is that it has a multitude of legal responsibilities to the citizens of Indiana in the areas of environmental, consumer, criminal — all areas of the law. And to the extent that I've just about done it all, from the plaintiffs and defense sides and as a practitioner and a judge, it gives me a multitude of perspectives.

R: In terms of that experience, you face an election in November. What are your priorities as attorney general before the election and beyond as well?

F-W: Well, my priorities are to make the citizens aware of what the Attorney General's office can provide for them. So many people have congratulated me on being appointed and then the next question is, "What does the attorney general do?" So I want to make it, if not a household word, certainly common knowledge what the duties and responsibilities of the office are to the common citizen on the street. We have some specific concerns here. One is that of payday lending. We have some real problems in that industry that I think the Attorney General's office is well-positioned to address. We have some issues in the area of sweepstakes contests that catch Indiana residents unaware. We have problems regarding home improvement contracts. We have some environmental issues; we are in a position to address those issues and plan to do that.

R: A predecessor of yours — Pam Carter — was the first woman of color to serve as an Attorney General in the United States. Are you the second?

F-W: Yes, yes, I am. Pam was my mentor so I am particularly honored to follow in her footsteps.

R: What did you learn from Pam Carter's tenure as attorney general?

F-W: I had an opportunity to watch her when I was at the Civil Rights Commission because I reported to her. One of the things I learned was that hard work gets recognized more than a lot of talk. Actions speak louder than words. And you have to pick your battles.

R: How will you be able to balance the demands that campaigning places on your time as well as assuming the new duties of your office?

F-W: I have to work smarter and use every minute efficiently. I have to be committed to a long day and keep my eyes on the prize, because I can't work ten hours in the Attorney General's office and go home when I leave here — I have to hit the campaign trail. And my commitment is to do both. I won't let the office fail because I'm out there trying to win the election. That would be counter-productive.

R: You were elected city judge in Gary — is that what kicked off your interest in politics?

F-W: I always had an interest, even before going to law school. My parents had been active in mayoral campaigns when I was a child. I was on the political circuit even before I could vote. A good friend's mom was on the city council and is in the State Senate — I was always interested in her efforts. So when I came back and wanted to make a contribution to my community, I thought that the political arena would be a logical place to do that. And I actually ran for city council and lost, and then after being appointed City Judge I was elected to two terms on my own having no opposition.

R: Looking back over your career thus far, how do you see HLS fitting into it? I get the feeling talking to a lot of students that law school is just kind of a way station where they go to recharge their intellectual batteries before they go out into the world and make a difference. So how did you view your time at Harvard Law School?

F-W: I think that it allowed me to develop my thinking skills. I think everybody leaves there with the ability to look up information in legal books and analyze cases and do all of the standard things that they teach law students to do that you may never again do in life, depending on what your endeavors are after law school. But [more important for me], I came back to Indiana where there are not many Harvard Law graduates. It allowed me to distinguish myself and I think both of those factors have led to any success that I have experienced in my career.

Harvard Law RECORD

PUBLISHER
Stephen V. Scali



EDITOR-IN-CHIEF
Justin Herdman

FOUNDED IN 1946

What do we want?

During her address to HLS students, ACLU President Nadine Strossen made reference to the "j" word — justice. Students tend to talk around the word, she said. It's as if they're embarrassed should the word perchance roll off their lips.

But as this issue of the RECORD demonstrates, students do not forget the notions of justice that brought them to Harvard Law. Of course, some students suspend use of the "j" word, opting instead for cost-benefit analyses and balancing tests. And others resort to silence when confronted with tough legal issues that demand tribute to the concept of justice.

On the HLS campus, though, demands for justice are unavoidable. Students who would be far more comfortable observing reactions to the Diallo verdict from the isolation of their own homes must now witness intense emotional reactions as they walk to class. Depending on the individual, the Diallo case has focused attention upon the perceived inequities or perceived bedrocks of the criminal justice system. What one segment of society views as evidence of deeply ingrained racism and inequality, another will point to as a sign that juries truly can apply the law to a complex, emotion-laden set of facts. Two perspectives, from two radically different starting points, converge at the same place — that "j" word again.

Look to the work of Charles Ogletree and Chris Edley, who are researching the viability of reparations for slavery, to prove that the story of justice also has a number of beginnings. No matter the outcome of their project, and in spite of the grave objections it will no doubt inspire, Ogletree and Edley are also in pursuit of that "j" word. Though they may be forced to defend their struggle in strict legal terms, the heart of their quest is justice. And those who criticize the route they take are not disinterested in the final port of call — they only have a different belief in where that place will be found.

—Justin Herdman

Staff

EXECUTIVE EDITOR
Francesco Barbera

EDITOR EMERITA
Kimberley Isbell

BUSINESS MANAGER
Angela Sun

ASSOCIATE EDITOR
Justin Dillon

OFFICE MANAGER
David Barrett

ENTERTAINMENT EDITORS/
PRODUCTION ASSISTANTS

CONTRIBUTORS
Mike Adams
Ethan Bernstein
Stuart Buck
Sam Goodstein

STAFF WRITER
Justin Cooper

Tanya Marsh
Dusan Stojkovic

CARTOONIST
Derek Windham

COLUMNISTS
Liz Falk
Reese Pecot
Darren Schlanger

PRODUCTION MANAGER
Meredith McKee

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

The Harvard Law RECORD (ISSN 0017-8101) is a publication of the Harvard Law School RECORD Corporation, a non-profit, independent, student-owned and run corporation of the Commonwealth of Massachusetts.

The RECORD is published weekly on Fridays, 21 times 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 and alumnae. Copy and photo deadlines are 5 p.m. on the Monday preceding publication. Advertising deadlines are 5 p.m. on the Tuesday preceding publication.

Submissions may be sent to the RECORD at the above noted address, dropped in the RECORD box in Harkness Commons or left in Justin Herdman's 2L Hark box. All copy must be typed, double-spaced, and submitted on paper and on a computer disk or by e-mail. The RECORD staff reads and appreciates every letter it receives; the RECORD reserves the right to edit letters and submissions 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 the U.S. Individual copies: 35 cents at newsstands, 50 cents at the Law School, \$1.00 mailed, \$2.50 for back issues. Second-class periodical paid at Boston, MA and additional mailing offices.

Copyright 2000 by the Harvard Law RECORD School Corporation and by the contributors.

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

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

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

• Letters •

Fellow classmate rushes to Reese's rescue

I would like to respond to [Adam Oyeibanji's] essay [March 3 issue]. As a 1L in Section II who happens to know Reese Pecot, I would just like to vouch for the fact that Pecot is, in fact, "happy and well adjusted." I would also like to point out that, although she is

obviously not what we on the cutting edge of pop culture like to call a "morning person," she nonetheless manages to entertain us all with her winning personality and good cheer at 8:30 every morning of the week, an impressive feat, all considered.

Perhaps Oyeibanji could consider this and give Pecot, and all of us in Section II, a rousing toast the next time he's out drinking on a Monday night (or Sunday or Tuesday or Wednesday).

Dave Min '02
March 2, 2000

Noam Chomsky and MELSA distort truth

Shame on the Middle Eastern Law Students Association for inviting infamous Israel-basher and discredited political radical Noam Chomsky to campus this past Monday. As was to be expected, Chomsky delivered the usual anti-Israel diatribe, blaming Israel for the fact that its Arab "neighbors" seek to destroy it. According to Chomsky, the entire Arab-Israeli conflict is the fault of Israel, and it would go away if only Israel were to disappear.

Of course, Chomsky failed to mention that Israel is a tiny country the size of New Jersey, or that Israel is surrounded by hostile rogue dictatorships — such as Syria and Iraq — that do not recognize Israel's right to existence. Of course, Chomsky failed to mention that, in violation of international law, these hostile rogue dictatorships invaded Israel in 1948 — on the day it was founded — with the intent of destroying it. Of course, Chomsky failed to mention that these hostile rogue dictatorships again invaded

Israel in 1973 on Yom Kippur, the holiest day in the Jewish calendar, once more seeking its destruction.

Chomsky also failed to mention that Arab terrorists routinely murder innocent Israeli and American civilians through suicide bombings — but Chomsky probably would defend these cowardly acts of terrorism as falling within the Arab terrorists' "right to attack innocent civilians." In addition, Chomsky omitted the fact that Holocaust-denial and anti-Semitic propaganda run rampant in the Arab media, including those of Israel's supposed "peace partners" Egypt, Syria, and the PLO. Perhaps this last omission is understandable as Chomsky himself has defended a notorious Holocaust-denier named Robert Faurisson and, in fact, had contributed an introduction to a book written by Faurisson that denied the existence of the Nazi gas chambers. (5/19/99 Wall Street Journal A22) ["A Dishonorable Degree" by

Peter Hellman].

While Mr. Chomsky's anti-Israel propaganda was to be expected, the real question Harvard Law students should be asking is what would motivate the Middle Eastern Law Students Association to invite an extremist with such an outrageous background to our campus. I would like Harvard Law School to remain an institution that encourages free thinking and the free exchange of ideas. Others, apparently, would like to take Harvard Law School in the direction of intolerance and extremism. We as law students have the right to condemn those that spread vicious historical lies and the responsibility to hold an organization accountable for condoning the unfair targeting of a group. I hope that all law students can join together and tell the Middle Eastern Law Students Association that Israel-bashing and Holocaust-denial are not acceptable on this campus.

Jordan N. Malz '00
March 7, 2000

• In Memoriam •

John G. McCarthy '35: film, television mogul

John G. McCarthy '35 passed away March 5 at Beaumont, Bryn Mawr, Penn. He graduated from Williams College, Harvard Business School and Harvard Law School. During World War II, he served as Lieutenant Commander in the United States Naval Reserves.

As President of the

Motion Picture Export Association and later the Television Program Export Association, he opened a number of overseas markets in Europe, South America, Australia and Asia for many Hollywood feature films and television programs by negotiating removal of trade barriers at the highest levels of foreign

governments.

In the middle of McCarthy's career, President Eisenhower named him United States Representative to the Organization for European Economic Cooperation, as well as U.S. Minister for Economic Affairs at NATO in Paris from 1957 to 1960.

McCarthy was 90.

Retired Judge Jacob Lewiton '33 dies at 91

After 30 years of service as former chief justice of the Boston Municipal Court, Jacob Lewiton '33 died at his home on March 1. He was 91.

Lewiton attended Tufts College and Harvard Law School. He was editor of the Harvard Law Review from 1931 to 1933.

Serving in the United States Navy during

World War II, Judge Lewiton saw action during the battles of Iwo Jima and Okinawa. Lewiton earned the rank of lieutenant commander. After the war, he resumed his private practice until being named special counsel to Governor Robert Bradford. In 1948 he was appointed as an associate justice of the Boston Municipal Court. In

1973, he was appointed chief justice by Governor Francis Sargent. He served the Municipal Court for 30 years.

As chief justice, he instituted many new programs and reorganized court procedures. One of his programs provided affordable legal services to needy recipients and served as a statewide model for other courts.

PERSPECTIVE

by Harvard Black Law Students Association

Open Letter to HLS Community From BLSA

We, the members of the Harvard Black Law Students Association (BLSA), write to express our outrage over the death of Amadou Diallo and to address some of the injustices that the Diallo verdict has left unresolved. As African Americans and as law students, we are greatly concerned about police brutality, racial profiling, and the balance between effective law enforcement and civil liberties.

We are incensed because the police could have shot at any one of us 41 times for engaging in behavior that they deemed suspicious simply because of the color of our skin. We are angry because too many of us have been unfairly targeted by the police. We have been humiliated by racial profiling and harmed by police brutality. We immerse ourselves in the study of the law, but we also recognize that racial fears and prejudices continue to poison the criminal justice system. A Harvard Law identification card would not have shielded Diallo from those 41 bullets, and a Harvard Law degree will not shield us from the racial complexities we confront.

After we review the facts of this case, we fear for our safety and the safety of the entire black community. Diallo's death demonstrates that no black person is immune from race-based presumptions of criminality. These presumptions trigger overly aggressive police behavior, causing officers to react with overwhelming firepower when a black man simply reaches for his wallet. The fact that four police officers mutilated Diallo's body with 19 bullets in the vestibule of his own home

indicates that there is no safe space for black Americans.

Our justice system condones and rewards reckless police practices, ranging from indiscriminate "stop-and-frisks" to "shoot-first, ask-questions-later" incidents. The NYPD's Street Crime Unit (SCU), a self-styled "search and destroy" deployment to which the four officers who shot Diallo belonged, has faced numerous complaints for similar targeting of innocent minority citizens. For instance, in 1998 the SCU stopped and searched over 45,000 men, most of whom were African American and Latino, but made only 9,000 arrests. Overall, the New York Police Department experienced a 39 percent rise in police brutality complaints from 1993 to 1998.

Diallo's death is not an isolated blight on the NYPD's record. In 1998, the city was shocked when police officers sodomized Abner Louima, a Haitian immigrant, with a plunger in a station house bathroom. Yet, these horrific incidents have not prompted Mayor Rudolph Giuliani or Police Commissioner Howard Safir to overhaul police policies and tactics or to change the structure of the city's toothless civilian complaint review board.

These problems affect law enforcement administration nationwide. For example, last year we learned how New Jersey State highway patrol officers disproportionately targeted and stopped black motorists because of race-based suspicions. Los Angeles is currently reeling from the revelations of Rafael Perez, a police officer assigned to an anti-gang unit that oper-

ated in a predominantly Latino neighborhood. Perez has revealed that officers routinely lied under oath to secure convictions of suspects, stole and dealt drugs, and shot unarmed individuals. Perez has also told investigators how members of the LAPD framed innocent people by planting or "throwing down" drugs and guns to justify their arrests or by "thumping" citizens to force them to lie or perjure themselves in support of defendant convictions. The L.A. police scandal has led prosecutors to overturn criminal convictions and to investigate at least 70 officers. They expect that the city's civil liability may exceed \$1 billion.

As these cases and scandals prove, it is commonplace for black individuals to be viewed as suspected criminals simply by virtue of their race. Too often minority communities are told that they must choose between effective law enforcement and protection of their civil liberties. We reject this false dichotomy. Inherent in good police practices is familiarity with a community and sensitivity to its particular needs. Good police practices do not use race as a proxy for reasonable suspicion or probable cause. Ultimately, racial profiling creates a climate of intimidation, forcing residents of minority communities to fear both the cops and the robbers.

Will the Diallo verdict produce simple frustration or will it spur systemic change? After the Rodney King case, despite our community's rage and despair, the fundamental problems that plague the criminal justice system persist. The Diallo case now demands a

commitment to national reform that changes racial perceptions and protects the individual rights of minorities.

First, we insist that our elected officials be held accountable for brutality and corruption in law enforcement. Second, federal and state officials must enact and aggressively enforce legislation that prohibits racial profiling as a legitimate police practice. Third, the courts must not allow unjustifiable racial perceptions to color the standard of reasonableness. Fourth, special prosecutors and/or independent investigators must provide more insistent and aggressive oversight of police conduct. Fifth, police departments must completely revamp the ways in which police officers interact with minority communities by implementing better training, a more diverse work force, and increased interactions with community members. Obviously, this is not an exhaustive list of the needed reforms, but it serves as a necessary starting point for a long overdue effort.

Diallo's death must motivate each of us to fight against the injustices persistent in American society. As law students, we must examine these issues in our classes, extracurricular activities, and informal discussions. As future lawyers, we must fight against the subtle and overt racism that continues to poison our criminal justice system. We are committed to an uncompromising struggle to secure the safety of our community.

Charlene Morrisseau '01 is president of BLSA. Several members of the group collaborated to write this piece.

PERSPECTIVE

By Stuart Buck '00

Diallo verdict outcry suffers from media bias

Recent days have seen protests on the Harvard campus and around the country about the Amadou Diallo verdict, which acquitted four police officers charged with killing Diallo. Protestors are indignant over what they see as rampant injustice and mistreatment of minorities by the police. According to some, blacks now have to fear for their lives everywhere they go.

The Diallo case is indeed a tragedy, not only for the Diallo family but for the larger community of people who fear the authorities who are supposed to protect them. The tragic facts of the Diallo case, however, should not cause us to lose all reason and ignore the empirical evidence that police shootings have actually dropped in New York City. The question I wish to address in this essay is why people think that police misconduct has gotten worse, when in fact it has gotten better.

First, let's look at the empirical statistics. Many protestors seem to think that police shootings have risen under Rudy Giuliani, but the opposite is the truth. In Mayor Dinkins's last year in office (1993), police shootings in New York numbered 212. Last year, the number was 73. Fatal shootings by the police fell from around 25 per year in the mid-1990s to 11 in 1999, the year Diallo was killed. Moreover, citizens' complaints about police conduct have fallen from 10 per 100 policemen in 1993 to 5.4 last year. To compare to other cities, New York's 1998 rate of fatal shootings per 1,000 police officers was .48, compared to 2.01 for Miami and 3.12 for Washington, D.C.

And not only police shootings have fallen in New York. The murder rate has fallen drastically under Giuliani's tenure as well. In the 43rd precinct—

where Diallo lived—the number of murders dropped from 27 in 1997 to 13 in 1998 following the introduction of the Street Crime Unit—a greater-than-50-percent drop. The overall murder rate in New York City dropped 70.6 percent from 1991 to 1998. For some actual figures, in 1992, 2,262 people were murdered in New York, while 756 suffered the same fate in 1997.

Many people have complained, with some justification, about over-aggressive New York police tactics in stopping and frisking people on the streets. But given that blacks are some six times more likely to be murder victims than whites (according to DOJ statistics), it may be no exaggeration to say that thousands of blacks are likely alive today thanks to the incredible drop in the murder rate since Giuliani took office.

So much for the statistics; all these figures are available to anyone who spends a few minutes on LEXIS. The question, then, is why do so many people perceive the plight of minorities to be so much worse under Giuliani, when the facts show a trend in the opposite direction? A cynical answer would point out that Giuliani is a Republican, and many activists and so-called community leaders simply don't care about the facts when they can exploit a chance to criticize a Republican. But if that answer strikes you as uncharitable, perhaps there is a better explanation.

Two observations about human nature might serve to explain why peo-



ple's perceptions differ so strikingly from the facts here. First, there is the nature of the media and their focus on the unusual. The national news media generally (though not always) give coverage to an event in inverse proportion to the commonality of that event. Thus the cliché that if a dog bites a man, it's not news; while if a man bites a dog, that is news. An example is the hugely disproportionate coverage given to airplane crashes, which kill far fewer people per miles traveled than automobile crashes. But at least in part because airline crashes are so rare (and auto crashes so commonplace and universal), airline crashes get much more publicity when they occur. Another example is the fact that so much more publicity is given to police shootings in New York than to shootings in Washington, D.C., even though the rate of police shootings was six times higher in D.C. in 1998. This is not to say, of course, that all highly publicized events are rare—but I do suggest that if you want to guess the ex ante probability of an event, then (other things being equal) the fact that it is highly publicized is evidence that it is rare.

Second, there is a pervasive cognitive bias known as the availability heuristic, which affects our estimates of probabilities. The availability heuristic (identified by psychologists Kahneman and Tversky in a famous 1973 article) causes us to overestimate the probability of an event if an example comes readily to mind. Thus, when asked whether more words begin with "r" or have "r" as the third letter, people wrongly say that more words begin with "r"—because it is easier to think of such examples. Or, people overestimate the likelihood of plane crashes

versus auto crashes, because of the over-publicization given airline crashes mentioned above. Additionally, some people become "availability entrepreneurs" (to use Cass Sunstein's term) by giving as much publicity as possible to otherwise-rare events, in hopes of exploiting the resultant public overestimation of the probability of those events. One thinks of Al Sharpton's obvious efforts to use the Diallo killing to inspire public reaction against Giuliani.

So, the combination of the availability heuristic and the media's focus on the unusual gives us the following perverse effect: When bad events become more rare and hence less of a problem, the media gives them more publicity and hence people tend to see them as more of a problem. Think of it this way—if thousands of people were being shot and killed every day just as Diallo was, no single killing could possibly receive as much news coverage as Diallo's killing has. The media simply would not have the resources to cover individual killings if they were commonplace. Precisely because Diallo's killing was an aberration, it was possible for the news media to provide extensive coverage of his trial and the ensuing public reaction. And this saturation coverage has likely contributed to people's overestimation of the prevalence of New York police killings—which, it must be repeated, have not risen but dropped in the past few years.

What can be done about this? Not much, I fear, except to remind ourselves constantly that our discussions of public policy should be grounded in empirical facts, and not on the (mis)perceptions that result from media coverage.



Staff Picks

Justin H.

Best Picture: American Beauty
Best Director: Spike Jonze
Best Actor: Richard Farnsworth
Best Actress: Annette Bening
Best Supporting Actor: Tom Cruise
Best Supporting Actress: Chloë Sevigny

Tanya

Best Picture: American Beauty
Best Director: Sam Mendes
Best Actor: Russell Crowe
Best Actress: Julianne Moore
Best Supporting Actor: Jude Law
Best Supporting Actress: Toni Collette

Dusan

Best Picture: American Beauty
Best Director: Spike Jonze
Best Actor: Russell Crowe
Best Actress: Julianne Moore
Best Supporting Actor: Jude Law
Best Supporting Actress: Catherine Keener

Francesco

Best Picture: American Beauty
Best Director: Sam Mendes
Best Actor: Denzel Washington
Best Actress: Annette Bening
Best Supporting Actor: Tom Cruise
Best Supporting Actress: Chloë Sevigny

Suzanne

Best Picture: American Beauty
Best Director: Sam Mendes
Best Actor: Kevin Spacey
Best Actress: Annette Bening
Best Supporting Actor: Tom Cruise
Best Supporting Actress: Angelina Jolie

Kim

Best Picture: American Beauty
Best Director: Lasse Hallström
Best Actor: Russell Crowe
Best Actress: Julianne Moore
Best Supporting Actor: Haley Joel Osment
Best Supporting Actress: Angelina Jolie

Dave

Best Picture: American Beauty
Best Director: Sam Mendes
Best Actor: Russell Crowe
Best Actress: Annette Bening
Best Supporting Actor: Michael Clarke Duncan
Best Supporting Actress: Angelina Jolie

Meredith

Best Picture: American Beauty
Best Director: Spike Jonze
Best Actor: Kevin Spacey
Best Actress: Annette Bening
Best Supporting Actor: Haley Joel Osment
Best Supporting Actress: Toni Collette

Justin D.

Best Picture: American Beauty
Best Director: Sam Mendes
Best Actor: Richard Farnsworth
Best Actress: Hilary Swank
Best Supporting Actor: Haley Joel Osment
Best Supporting Actress: Catherine Keener

Steve

Best Picture: American Beauty
Best Director: Sam Mendes
Best Actor: Denzel Washington
Best Actress: Julianne Moore
Best Supporting Actor: Michael Clarke Duncan
Best Supporting Actress: Catherine Keener

It's unanimous:

Well, friends, the little gold men are set to be distributed on Sunday, March 26th on ABC. As you will notice on the bottom of this page, the RECORD is sponsoring its first Oscar contest. Be the most accurate prognosticator in the HLS community and you and a friend will be treated to dinner and a movie. You can enter by e-mailing your picks to me, tmarsh@law.harvard.edu, or by dropping an ultra-official ballot in my 3L Harkbox. Ballots are due by 5 p.m. on Friday, March 24th.

To help you make your picks and for general entertainment value, I have compiled the conventional wisdom on who has the best shot at Oscar gold as well as my own favorites. My compatriot Dusan, our new editor-in-chief, Justin Herdman, and our executive editor, Francesco Barbera, offer their own insights.

Best Supporting Actress

The nominees are: Toni Collette (*The Sixth Sense*); Angelina Jolie (*Girl, Interrupted*); Catherine Keener (*Being John Malkovich*); Samantha Morton (*Sweet and Lowdown*); and Chloë Sevigny (*Boys Don't Cry*).

Who Will Win: Hollywood politics currently favor Jon Voight's little girl, the darling of the Golden Globes, Angelina Jolie. The Academy loves it when actors play sociopaths, and Jolie's character in *Girl, Interrupted* certainly qualifies. Vegas bookies give Jolie even odds, but they gave Catherine Keener the same. *Being John Malkovich* garnered quite a bit of critical acclaim but not a lot of nominations. Rewarding Keener may be the Academy's way of recognizing her film. The bottom line: Jolie or Keener, too close to call.

Who Should Win: (Tanya begins.) If I had an Academy vote, I would go for Toni Collette. The Aussie actress was great in *The Sixth Sense*, but, more importantly, she has a good body of work (*Muriel's Wedding*, *Emma*) that the other young actresses in this category lack.

(Dusan chimes in.) Catherine Keener deserves the Oscar but will not get it. Her performance in *Malkovich* was a brilliant depiction of a total, complete nasty-ass bitch. The subdued attraction embodied by Keener's Maxine is something rarely seen in mainstream American films, if you can call *Malkovich* mainstream. She totally stole the show from what's-her-name (Tanya offers: "Cameron Diaz?").

(Justin opines.) Chloë Sevigny. Her name makes me think of a great song by Mother Love Bone, but I really liked her first film — *Kids*. Incidentally, the guy who wrote *Kids* is originally from Xenia, Ohio. And my grandpa is from Xenia. I haven't talked to my grandpa in a while, so maybe this pick is a product of pure guilt.

(Francesco adds.) Chloë Sevigny. Oscar isn't quite ready for Kim Pierce's troubling gender-bender, but Sevigny will be the exception. She plays a tough role fearlessly and with grit.

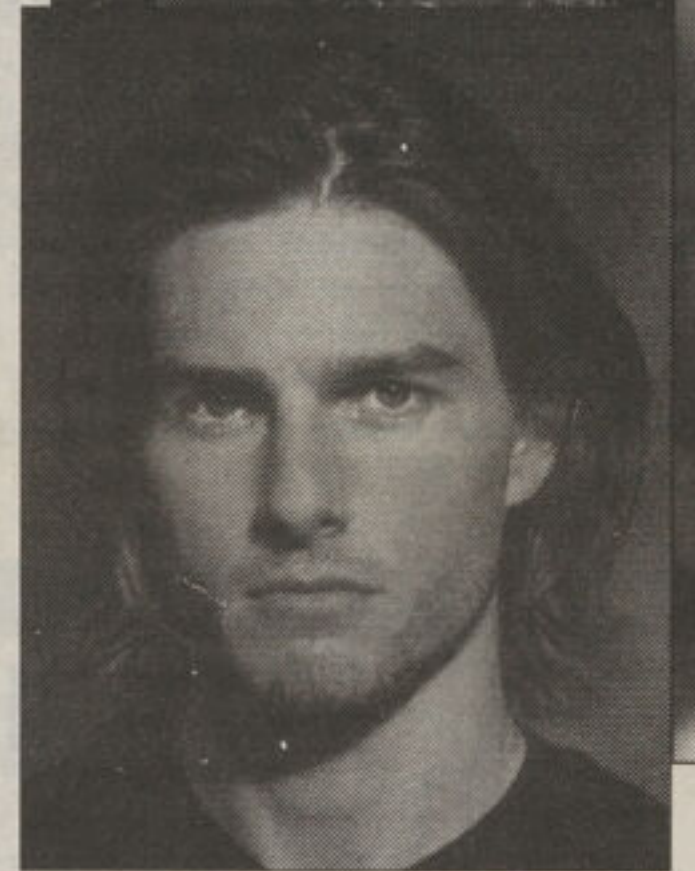
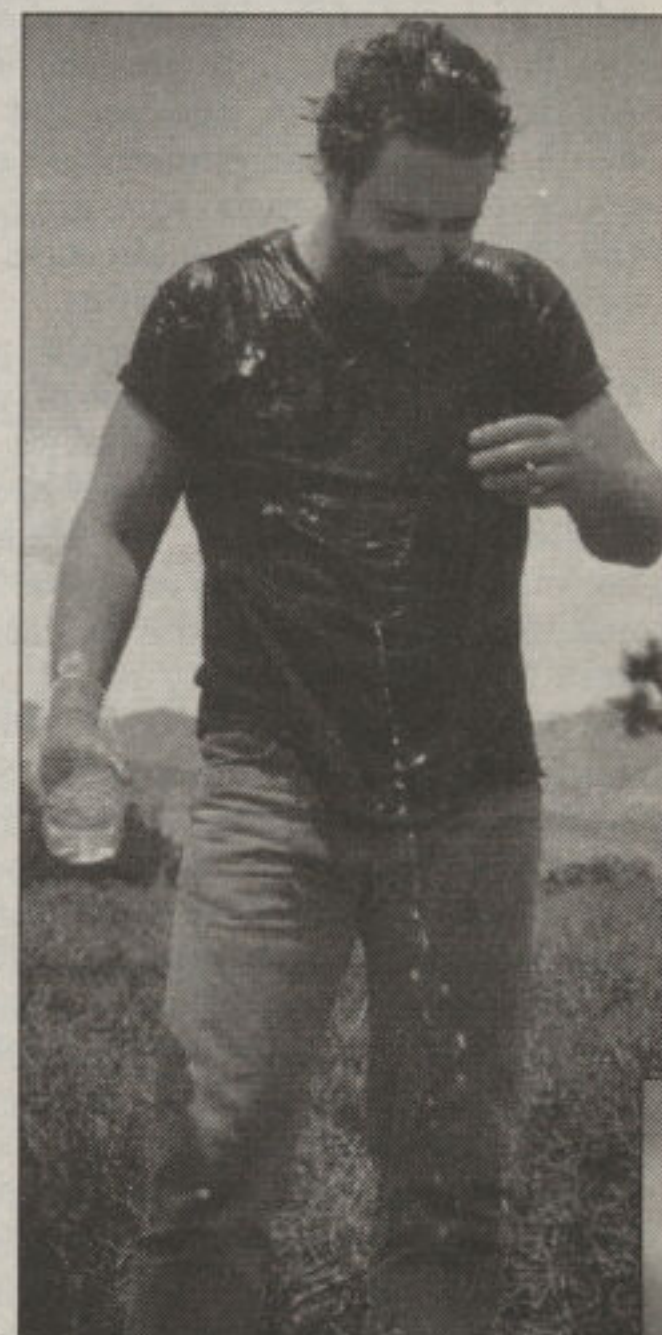
Best Supporting Actor

The nominees are: Michael Caine (*The Cider House Rules*); Tom Cruise (*Magnolia*); Michael Clarke Duncan (*The Green Mile*); Jude Law (*The Talented Mr. Ripley*); and Haley Joel Osment (*The Sixth Sense*).

Who Will Win: Cruise has been nominated for three Academy Awards, but he remains winless. Is this Tommy Boy's year? Hollywood is all aglow after his performance as the repentant son/inspirational speaker in *Magnolia*. Vegas puts Cruise and Caine at even odds and Osment close behind at 2 to 1. Michael Caine has been in 105 films, but he already has an Oscar. Osment is just a kid and no boy has ever won an Oscar (although plenty of girls have). I think the bookies overestimate Caine and Osment's chances. Bottom line: Smart money is on Tom Cruise.

Who Should Win: (Tanya's choice is clear.) *Ripley*, the second best movie of 1999, got a pitiful few nominations. So my sense of justice demands that Jude Law get the Oscar, especially since costars Matt Damon and Gwyneth "Fishstick" Paltrow already have one each and Jude acted circles around both. I could live with Tom Cruise based on his whole body of work, but my Oscar ballot would say, "Hey, Jude!"

(Dusan complains.) Tanya is copying all my picks! Because I really know who has the "street cred." Jude Law was the only of the five nominees who sang in character, and voters really ought to protest Matt Damon's omission from the Best Actor category by voting for Law.



(Francesco retorts.) Cruise is overdue, plus he'll get proxy votes for his solid showing in Kubrick's *Eyes Wide Shut*.

(Justin pipes in.) *Magnolia* stunk, and Cruise played Lestat minus the lacy frills and homoerotic undertones. But he's far preferable to Haley Osment, who aped Bambi for his role in *The Sixth Sense*, and Jude Law, who reminds me of Hamilton without liver spots. Tom will cruise victory, but he'd better enjoy the lovefest while it lasts. With a sickening splat, his soaring career is asphalt this summer in the sequel to *Magnolia*. Impossible.

Best Actress

The nominees are: Annette Bening (*American Beauty*); Janet McTeer (*Tumbleweeds*); Julianne Moore (*End of the Affair*); Meryl Streep (*Musical Heart*); and Hilary Swank (*Boys Don't Cry*).

Who Will Win: Conventional wisdom has it that 90210 chick (Swank) since the beginning of the awards season. But come on, regardless of how brilliant her performance was, she is an untested upstart — can she really compete in the long run with Bening, Moore, and Streep? I think a backlash will unseat Swank and pave the way for either Bening riding the *American Beauty* tidal wave, or Moore's recognition for her bevy of strong performances in 1999. Vegas has Bening and Swank both with odds, McTeer at 2 to 1, Moore at 8 to 1 and Streep at 10 to 1. The bottom line: Hollywood politics play favor Bening, especially since her handsome husband will receive the Thalberg Award at this year's ceremony. (For those curious readers, the Irving Thalberg Award is presented each year to a person in recognition of lifetime achievement in the industry. This year's recipient is Mr. Annette Bening Warren Beatty.)

Who Should Win: (Dusan begins.) Julianne Moore should get it, for no other reason than that she's been in 22 movies in 1999. She has been deserving the Oscar ever since 1994's *Vanya on 42nd Street*.

Clockwise from top: Annette Bening, Tom Cruise, Jude Law, Richard Farnsworth

Beauty' destined for gold



Photos cavalierly stolen from various sources

from top left: Russell Crowe, Annette Bening, Julianne Moore, Jude Law, and Tom Cruise.

currently has even odds on Spacey, puts Washington at 12 to 10, and Crowe at 2 to 1. In other words, a very, very close race. Spacey and Washington each already have an Oscar, and this is Crowe's first nomination. I don't know, folks. I just think this one is too close to call.

Who Should Win: (Tanya agonizes.) I could not imagine a choice that would raise a more disturbing personal dilemma for me. Russell or Kevin? Kevin or Russell? It's like deciding which of your children is the favorite. But I must choose one and so I do — Russell Crowe. Why? First, he deserved Oscar nods for 1992's *Romper Stomper* and 1997's *L.A. Confidential*. Second, Russell brings a level of intensity, intelligence, menace and raw sexuality to his roles like few actors can (only Robert DeNiro comes to mind). As Jeffrey Wigand in *The Insider*, Russell stole the show and made a loong movie far more appealing.

(Dusan sees no dilemma but empathizes.) Crowe is brilliant in *The Insider* because he becomes the character. Spacey and Washington use the "Method" well, but they don't offer anything new.

(Francesco retorts.) On the contrary, Denzel brings tremendous depth and intensity to his role. Method or not, his style is singular and powerful. Granted, the film has a wretched Hollywood gloss, but Denzel saves it from itself.

(Justin comes in from left field.) Richard Farnsworth. He's old, he's wrinkly, he rides a tractor. Grandpa (and guilt) again.

Best Director

The nominees are: Lasse Hallström (*The Cider House Rules*); Spike Jonze (*Being John Malkovich*); Michael Mann (*The Insider*); Sam Mendes (*American Beauty*); and M. Night Shyamalan (*The Sixth Sense*).

Who Will Win: This is an interesting year for this category. Three newbie directors (Jonze, Mendes, and Shyamalan) and two under-appreciated veterans (Mann and Hallstrom). Vegas odds makers, risk-averse as they are, have Michael Mann and Sam Mendes at even odds. Very odd. The precursor awards overwhelmingly favor Mendes's directorial debut and I think they are probably on target. Bottom line: I can't imagine Mendes not winning.

Who Should Win: (Dusan breaks free from conventional wisdom.) Spike Jonze should given praise for his wonderful video of "Praise You" (which he shot on an \$800 budget). *Being John Malkovich* wasn't bad either.

(Justin agrees.) Spike Jonze. Great first name. Even better last name. Okay, so it's fake. But putting *Being John Malkovich* on the big screen was a feat unto itself — the year's quirkiest movie deserves at least one Oscar, and I say the shiny little guy belongs in Spike's curio cabinet.

(Tanya dissents.) Not only will he win, Sam Mendes deserves to win.

The third time I went to *American Beauty*, I paid special attention to little details like camera angles and lighting. Besides the gorgeous thirty seconds of the plastic bag dancing with the wind, Mendes's directing is special because it is so subtle — it elevates the actors' performances and creates a beautiful canvas for the story. Have I mentioned how much I love *American Beauty*?

(Francesco chimes in.) Justin has a point: a film that has folks dropping from the sky beside the New Jersey Turnpike has definite merit, but credit will go to the screenwriter, Charlie Kaufman. Mendes will take it. Pop-profundity and visual flair — what else can we ask for?

Best Picture

The nominees are: *American Beauty*; *The Cider House Rules*; *The Green Mile*; *The Insider*; and *The Sixth Sense*.

Who Will Win: Of course I'm biased, but I'll give you the straight scoop. Dreamworks' *American Beauty* has dominated the precursor awards and critics' top-ten lists, but you can't dismiss Miramax's little-seen *The Cider House Rules*. Why? A year ago, all the smart money was on Dreamworks' *Saving Private Ryan* but the Miramax marketing machine was able to sway enough votes to score the big O for *Shakespeare in Love*. Not that I'm complaining, the Bard was my personal favorite for 1998, but Hollywood tongues wagged that Miramax bought itself the Oscar. Will history repeat itself this year?

A few differences weigh in to help *American Beauty*. Dreamworks was caught off guard last year, but this Oscar season they have adopted Miramax's guerilla warfare tactics and have outspent the Disney subsidiary in the trade papers. (Campaign finance reform for Hollywood, anyone?) A smoldering Miramax backlash may help Dreamworks. Plus, Miramax buddha Harvey Weinstein spent a few weeks in a Manhattan hospital with a bacterial infection late last year and word is he isn't as hands-on this time around. (Is Harvey the mastermind behind the 4,000 missing Oscar ballots? Inquiring minds want to know.) Still, Miramax has assembled a complex web of loyalty that could get out the Academy vote. Vegas has the two flicks tied with even odds. The other three honestly don't have a chance and should count themselves lucky to have been nominated. After the dust has settled, my money is on *American Beauty*.

Who Should Win: (Justin's definite answer.) *American Beauty*. Anything less would be uncivilized. (Dusan's short and sweet response.) Ditto.

(Francesco's herd instincts take over.) Ditto.

(Tanya's final word.) If you need to ask who I am rooting for, you haven't ever read this column before. The best picture of the decade should naturally be the best picture of 1999 — *American Beauty*.

Guess the most categories correctly
and win dinner and a movie for two!

RECORD Oscar Contest

Best Supporting Actress _____

Best Supporting Actor _____

Best Actress _____

Best Actor _____

Best Director _____

Best Picture _____

Tie-breaker: How many Oscars will *American Beauty* win? _____

In the unlikely event of a tie, a random drawing will be held to determine the winner.

Name _____

E-mail _____

Turn in ballot to Tanya Marsh's 3L Harkbox or e-mail your answers to tmarsh@law.harvard.edu by 5 p.m. on March 24.

work should pay off, dammit. I could live with Bening but Swank will never be in a decent movie again. Can you say "one [critical] hit wonder"?

(Tanya agrees.) I have been a big fan of Julianne Moore since the mid-1980s when she starred on *As the World Turns*. Since that time, she has starred in indie movies, art house films and blockbuster flicks. Last year alone, Moore starred in *End of the Affair*, *Magnolia*, *Cookie's Fortune*, *A Map of the World* and *An Ideal Husband*. She could have been nominated for her excellent performances in any of these, and she is my choice for best actress of 1999.

(Francesco protests.) Moore is talented but even she couldn't salvage Neil Jordan's pathetic muddle; Streep is the best actress in Hollywood hands down, but she's already got two Oscars to prove it. As Tanya said, Swank is too green. Bening will deservedly take home the Oscar here.

(Justin agrees.) Annette Bening. She deserves something for screaming, "Fuck me, your majesty!" and making it believable. Bening has my vote, despite demonstrating a regrettable lack of role-selection savvy by choosing to star opposite Larry Shandling's humming crotch in *What Planet Are You From?* Bypass the Buzz on Moore and bet on Bening.

Best Actor

The nominees are: Russell Crowe (*The Insider*); Richard Farnsworth (*The Straight Story*); Sean Penn (*Sweet and Lowdown*); Kevin Spacey (*American Beauty*); and Denzel Washington (*The Hurricane*).

Who Will Win: It's nice that Sean Penn and Richard Farnsworth were nominated, but the real contest is between Crowe, Spacey and Washington. The Academy loves to reward actors who went through a physical transformation to play their role, and each of these men had to manipulate their bodies for these pictures. Washington and Spacey buffed up and Crowe had to gain 50 pounds and look dumpy, a difficult feat for a rising Hollywood hunk. Vegas

COURT

Continued from page 1

defendants were brought to justice in 1791 largely obviated the need for comments of the type the prosecutor made here"), but rather stem from the Warren-era decision, *Griffin v. California* (1965), which prohibits prosecutorial comments on a defendant's refusal to testify. Scalia then distinguished the cases: "[T]he inference of guilt from silence is not always 'natural or irresistible,'" he stated. "By contrast, it is natural and irresistible from a jury, in evaluating the relative credibility of a defendant who testifies last, to have in mind and weigh in the balance the fact that he heard the testimony of all those who preceded him."

Scalia further noted that, with respect to issues of credibility, defendants are entitled to no special protections: "Once a defendant takes the stand, he is 'subject to cross-examination impeaching his credibility just like any other witness.'"

Justices Ginsburg '56-58, joined by Justice Souter '66, issued a strongly-worded dissent, arguing that the majority's decision actually thwarts the search for truth since such blanket accusations by prosecutors, applicable to every defendant, "tarnish the innocent no less than the guilty." She pointed out that the Second Circuit's analysis allows prosecutors to comment on specific inconsistencies in a defendant's testimony but simply barred generic adverse comments stemming from the defendant's constitutional right and statutory duty to be present at trial.

Justice Stevens, joined by Justice Breyer '64, concurred in the judgement but wrote separately to voice disapproval of the prosecutor's conduct in the case. "Clearly such comments should be discouraged rather than validated," he wrote.

In its second decision, *United States v. Johnston*, the Court held that a federal prisoner's term of "supervised release" begins on the day the inmate gets out of jail, even if the inmate should have been released years earlier.

The inmate, Roy Lee Johnston, was convicted in 1990 of drug possession with intent to distribute and two counts of the use of a firearm in connection with a drug trafficking crime. Johnston was sentenced to over nine years in prison and, as required by

Federal drug sentencing laws, a three-year term of "supervised release" — essentially a period of mandatory parole.

Five years into the jail term, the Supreme Court announced its decision in *Bailey v. United States* (1995), which narrowed the meaning of "use of a firearms" in connection with a drug offense. The decision rendered Johnston's firearm convictions invalid, and in 1996, the Federal District Court in Detroit modified his sentence to 51 months. By that time, Johnston had already served an excess of more than two years. The District Court ordered his immediate release.

Johnston then motioned the District Court to have the extra prison time credited to his term of supervised release, but the court denied the motion, finding that a grant of credit would undermine Congress's aim of "assisting convicted felons in their transitions to community life." A divided Sixth Circuit reversed, holding that, since Congress did not intend unlawfully excessive jail terms, Johnston was in fact not "imprisoned" during the period after he should have been released.

Writing for a unanimous court, Justice Kennedy '61 overruled the Sixth Circuit. Kennedy found that the "clear and precise" words of the Federal sentencing statute mandate that the term of supervised release begin on the day an inmate is released from prison, not an earlier date due to mistakes in sentencing.

The statute states that the supervised release term commences "on the day the person is released from imprisonment," and provides that the term does not run concurrently with imprisonment unless the inmate is sentenced to less than 30 days. Kennedy interpreted the latter provision to signify that Congress had considered the issue of exceptions and "in the end, limited them to the ones set forth."

"Absent ambiguity, the rule of lenity is not applicable to guide statutory interpretation," Kennedy stated.

The justices endorsed the District

Court's interpretation of the public policy underlying the supervised release term. "Supervised release fulfills rehabilitative ends, distinct from those served by incarceration," Kennedy stated. "[S]upervised release, unlike incarceration, provides individuals with postconfinement assistance."

Search and Seizure

Despite hundreds of opinions on the issue already, the Court's Fourth Amendment docket remains remarkably active as the justices struggle to define the contours of the amendment and its position in the constitutional order.

Last week, the justices heard oral arguments in two unrelated Fourth Amendment controversies. The cases raise the respective issues of whether a police officer searching for narcotics may pat-down the outside of a bag placed in an overhead bin of a bus, and whether an officer may stop and frisk an individual after receiving an anonymous tip alleging only that the person is carrying a firearm.

The bus case, *Bond v. United States*, is an appeal by Stephen DeWayne Bond, a passenger on a Greyhound bus who was convicted after a search of his bag revealed a brick of methamphetamine. The bus originated in Mexico, and was pulled over for a routine immigration inspection in Sierra Blanca, Texas. After checking passengers' documents, Border Patrol Agent Cesar Cantu began feeling the outside of bags in the overhead bin as he made his way out of the bus. Detecting a "brick-like" object in Bond's bag, the officer obtained Bond's consent to search its contents.

The Texas District Court and the Fifth Circuit rejected Bond's Fourth Amendment claim. In an opinion by Circuit Judge John Duhe, the court concluded that, since it is foreseeable that a bag in an overhead bin will be "squeezed, moved and manipulated by others," Bond had relinquished his expectation of privacy in the bag. The luggage pat-down, Judge Duhe said, was therefore not a search for Fourth Amendment purposes.

The court rejected Bond's argument that the officer's probing could not be equated to the routine shuffling of bags by other passengers. Citing the Supreme Court's decision in *California v. Ciraolo* (1986), which held that the Fourth Amendment is not implicated where police officers in helicopters, trained to spot drugs, observe marijuana plants growing in someone's yard, the court concluded that the officer's purpose to detect contraband was "irrelevant" to the analysis.

Observers at oral arguments noted that the justices appeared skeptical of the government's contention that the case should be analyzed under the "plain-view" exception to the Fourth Amendment. "You assume that touching and looking, for Fourth Amendment purposes, are identical," Justice Souter told Jeffrey Lamkin, an assistant solicitor-general arguing the case on behalf of the Clinton Administration. "People can stare at you on the street, but if they start patting down your pockets you'll think a different value is involved," he added.

The second case, *Florida v. J.L.*, comes to the justices from the Florida Supreme Court, which concluded that police violated the constitution when they conducted a pat-down search of a

teenage boy after receiving an anonymous tip that he was carrying a gun. The anonymous informant told police that there were three black males standing in a bus terminal during daylight hours, and that the one wearing a "plaid-looking" shirt was carrying a firearm. Officers arrived at the scene a few minutes later, located the men, and immediately frisked all three of them. The teenager wearing plaid — the defendant in this case — was found to be carrying an illegal firearm.

In a long line of precedents, the Supreme Court has announced standards for determining when a tip gives rise to the "reasonable suspicion" required by *Terry v. Ohio* to conduct a stop-and-frisk. Tips from a proven reliable source or consisting of independently suspicious conduct, such as a late-night call describing a man approaching a convenience store and wearing a ski mask, are considered sufficient, but an anonymous tip that provides only "innocent details of identification" apart from the alleged criminal conduct does not alone justify a *Terry* stop. To justify a stop, such a tip must be corroborated by independent police work which discloses additional suspicious circumstances apart from the bare allegation of criminality.

Applying the standard, the Florida court found the tip insufficiently reliable to justify the stop. "The tip involved present action which could have been provided by 'any pilgrim on the roadway,'" the court stated. "The officers merely verified that the defendant was in fact standing by the bus stop and wearing a plaid shirt, neither of which is suspicious."

The State of Florida argued for a "firearms exception" to the reasonable suspicion requirement, based on the premise that since firearms present a greater public danger, correspondingly fewer verifiable details should be required to justify police action. At least two Circuits — the Seventh and the District of Columbia — have recognized the exception, but the Florida court rejected it as unwarranted, given that firearm possession is generally permitted in the state.

At oral arguments, Florida's assistant state attorney general conceded that the frisk would not have justified had the tip reported marijuana possession, but claimed the suggestion of firearms possession increases the risk to officers' safety.

Justice O'Connor challenged the argument, noting that an officer is potentially at risk only if he or she improperly responds to unreliable tips. Justice Kennedy also sounded a note of skepticism: "We fear tips because of pranks and people who have vendettas. The assumption is they are generally unreliable."

The Clinton Administration entered the case in support of Florida.

Additional Supreme Court developments include the following:

The Court has dismissed two cases which presented the issue of whether states are immune from suits under the Americans with Disabilities Act (ADA), a federal anti-discrimination statute. The cases, both settled out of court, were considered important in the context of the Court's federalism jurisprudence, which in recent years has taken on a markedly states' rights orientation. At least one certiorari petition raising a similar question, *University of Alabama v. Garrett*, No. 99-1240, remains pending before the Court, and lower courts are sharply divided, but the Court's action this week means the issue will not be decided at least until next term.

Editor's Note: The RECORD's Supreme Court coverage is now available online at <http://courtwatch.tri-pod.com>.

Diallo Protest Part Deux



Photo by Justin Herdman

Students organized by the Black Law Students Association count to 41 and chant, "What do we want? Justice." The protest was in anticipation of a candlelight vigil to be held for Amadou Diallo, the African immigrant shot by Bronx police last year.

OPINION

By Sam Goodstein '01

When three's a crowd

Now that the two-party establishment has safely smothered the insurgency campaigns of John McCain and Bill Bradley, speculations about a Reform Party run by one of the ousted candidates are sure to rise to the surface. Ignore them — not because they're probably wrong, but because they're almost undoubtedly irrelevant.

This was made clear by the recent meltdown of the Reform Party, which came as no surprise. Putting aside the fact that the party has lost its ideological moorings — the idea of right-winger Pat Buchanan and Marxist Lenora Fulani working under the same banner is absurd — the Reform Party will fail for the same reasons that all third parties in America will ultimately fail: the architecture of our electoral system, campaign finance laws and the political tactics of Democrats and Republicans.

Political parties survive by delivering benefits to supporters, and you can't deliver anything if you don't win. Of course, in our system you don't win anything unless you win it all — unlike most other democracies, there is no

"proportional representation" that would give a party some seats in the government if it came in a strong second or third place on election day. So a third party presidential candidate must not only perform the Herculean tasks of getting on ballots across the country, generating enough media attention to develop name recognition and raising enough money to be viable, he or she must win states — and do so in more than one region of the country. Winning states in only one part of the country won't do much (as presidential candidate Strom Thurmond learned in 1948) and neither will winning a solid minority of the national vote without winning any states (as Ross Perot learned in 1992). In most other democracies, winning one region or winning a large minority of the popular vote will lead to some representation in the government — which allows a party to cultivate supporters in the hope that next time around they will win the big prize.

Campaign finance laws are the second barrier to third party success. Winning a national election requires tens of millions of dollars — and (with

the exception of George W. Bush) the major parties rely on public money to run their campaigns. For a party to receive public money, however, requires performing well in the previous election: a party must be on the ballot in at least 10 states and earn at least 5 percent of the national vote to qualify for public funds the next time around. But to reach this marker requires millions of dollars. Hence a Catch-22: Doing well requires money, but getting money requires doing well. Of course, a wealthy patron such as Ross Perot can steer a third party around this problem by personally financing a campaign. Therefore, to have any hope of viability, a third party needs extremely rich friends to bankroll the operation.

Even if there is a Perot-like figure to bankroll a third party, there remains one vital — and insurmountable — barrier to third party success: the Democrats and Republicans. A third party typically gains popularity by supporting an important issue that is not being addressed by the government. But once the third party demonstrates the electorate's interest in this

issue, the major parties will embrace the issue and completely co-opt the third party. The best example of this tactic involves the Reform Party and the balanced budget. In 1992, Ross Perot demonstrated the public's concern over escalating budget deficits, and by the next presidential election both Bill Clinton and Bob Dole made balancing the budget a centerpiece of their campaigns. After co-opting a third party's issues, it is easy for the major parties to convince the public that a vote for the third party is a wasted vote by saying: "We care about that issue too, and we can actually win, so vote for us."

Regardless of how eccentric the Reform Party's cast of characters may be, and regardless of how much infighting may go on within the party leadership, the ultimate failure of the party has little to do with its leaders or their actions. The reasons are embedded in the electoral structure of the United States, our campaign finance laws and the tactics of the major parties — and there isn't a pro wrestler out there that can do anything about it.

• Letters •

Anti-abortion violence must stop now

As March 10 is National Day of Appreciation for Abortion Providers, the Reproductive Freedom Project feels it is an appropriate moment to reflect on the reality that though reproductive choice is legal in this country, constitutional guarantees are not effecting the protections they are designed to provide. A growing climate of anti-choice terrorism severely limits the exercise of these rights and exacts increasingly severe costs on both women seeking abortions and, especially, on those who provide such services.

The assault on the freedom to choose takes many forms, from the harassment and intimidation of medical students and programs, to bombings, arson, death threats and murder. Targeting doctors, clinicians, and escorts working at health care clinics providing abortion services, anti-choice organizations threaten the lives and well-being of law-abiding individuals — all because those individuals are practicing their profession.

While Congress continues to make access to legal abortion more difficult, if not impossible, a nationwide campaign of violence, anti-choice rhetoric and internet "hit lists" have made doctors less willing or able to perform abortions. Threats have created an atmosphere of intimidation and violence that deters physi-

cians from entering the field and forces others to extreme measures to provide much-needed health services. Eighty-six percent of counties in the United States have no abortion provider, and the numbers of physicians trained to perform abortions is declining precipitously. In Mass., the number of abortion providers fell from 64 to 51 in 1998, and only 19 percent of all hospitals with ob/gyn services provide accessible abortion services. Only 12 percent of all ob/gyn residency programs offer first-semester abortion training as a part of normal studies. Threats against doctors performing abortions are common. In one instance, over 33,000 medical students received a book of "jokes" distributed by the anti-choice group Life Dynamics; the "jokes" detailed how doctors performing abortions should be shot, attacked by dogs or buried in concrete.

This is not empty humor: physicians working to provide choices to women across the country are subject to such treatment on a daily basis. Anti-choice leaders publicly call for the use of violent force and murder — termed "justifiable homicide" within the movement — as tactics in their political campaign. These calls have been heeded across the country:

Dr. David Gunn was murdered during an

anti-choice protest at the Pensacola Women's Health Clinic on March 10 seven years ago, after enduring years of harassment, threats, and clinic blockades. One anti-choice leader explained that Michael Griffin, the man convicted of Dr. Gunn's murder, "should be acquitted of any charges, because his actions were done in defense of people who were scheduled to die: the unborn...."

On July 29, 1994 Dr. John Britton and 74-year old clinic escort James Barrett were shot to death outside another pro-choice clinic. The man convicted for their murders, Rev. Paul Hill, explained, "The Christian principle is to do unto others as you would have them do unto you. If an abortionist is about to violently take an innocent person's life, you are entirely morally justified in trying to prevent him from taking that life."

On Dec. 30, 1994, Shannon Lowney and Leanne Nichols were murdered at their desks at pro-choice clinics in Brookline, Massachusetts. Again, anti-choice leaders praised the convicted killer, John Salvi: "Why is the life of a receptionist worth more than the lives of 50 innocent human babies?" queried one. Another explained, "Until recently the casualties have only been on one side. There

are 30 million dead babies and only five people on the other side, so it's really nothing to get all excited about."

The murder of Dr. George Patterson was similarly praised; the shooting of Dr. George Tiller was defended as well, and the threats, intimidation and violence continue. Seven abortion providers have been murdered since 1993 and 16 attempted murders have been recorded since 1991.

A "No Place to Hide" movement has been launched against several abortion providers by Operation Rescue, in which they are attempting to intimidate physicians into inaction. Their harassment includes petitions advocating the murder of abortion providers; frequent death threats; telephone calls to relatives — including one

physician's 80-year-old mother — claiming the deaths of target physicians; anonymous phone calls; hate mail; and targeted protests outside their homes and church services.

Abortion providers are obliged to don bulletproof vests, and several have purchased armored vehicles. Clinics have been forced to expend limited resources on precautionary measures like bulletproof glass, armed guards, security cameras and metal detectors: safety measures more suited to war-torn societies than health-care providers in our democratic nation.

All of these methods of harassment and intimidation are part of a deliberate, malicious campaign to limit women's access to reproductive choice and healthcare. These

extremist anti-choice factions have taken the law into their own hands, and have adopted violence as a response to the rule of law. Our society cannot tolerate this.

As members of one of the leading legal communities in this nation, we recognize the unacceptable costs this kind of terrorism exacts from our legal system. We recognize the efforts of those working to protect our rights within a rule of law, and those who make the exercise of the right of individual choice possible: the medical students, the doctors, the clinic workers, the judges and the politicians. And we appreciate.

Amélie von Briesen '01
Cameron Schroeder '01
Co-Chairs,
CLU Reproductive
Freedom Project
March 8, 2000

Fear should not be counseling technique

I applaud the Society for Law, Life and Religion (SLLR) for being honest in advertising the beneficiaries of its upcoming charity event. SLLR clearly indicated that "A Woman's Concern" is an anti-abortion center. So-called "Pregnancy Crisis Centers" usually are not so candid. They rely on deception and fear.

Though by no means as extreme as some centers, A Woman's Concern also engages in these tactics. They hand out flyers with statements like "Want to die?

Trust a condom." They claim that abortions raise the risk of breast cancer. A Woman's Concern tries to scare women from having abortions, with statements that abortion clinics use filthy instruments and are staffed by negligent, untrained personnel.

I support a woman's right to choose. Although I disagree with SLLR's anti-choice position, I support its right to advocate its views.

But I am outraged by the scare tactics of many "pregnancy crisis

centers."

A woman who reads an ad in the yellow pages and decides to take up the offer of a free pregnancy test should not be forced to watch a video of mutilated fetuses before hearing the results of her test. Should she get balanced information? Yes. Counseling about all options? Yes. Fear and intimidation by the people she thought would help her? Absolutely not.

Avery W. Gardiner '02
March 8, 2000

Continued above at right

Rude Awakening

HERE'S EMOTE IN YOUR EYE

By Elizabeth Falk '00
RECORD Columnist

Although I debated for a while whether or not I should devote this column to the ridiculous first-year student who wrote last week's piece declaring that my amazing first year roommate and I are pathetic whiners with no lives (no need to mention her name, as he did about eight zillion times), I decided he is not worth the paper it would be printed on. It suffices to say that anyone who can only point to poor grades as a cause for discontent in the third-year class is clearly grade-obsessed themselves (and thus, part of the problem he writes that he can't understand). Moreover, Oyebanji, before you accuse us "whiners" of a "lack of effort" at pursuing our lives here, I challenge you to keep up with either of us on a given weekend (or a weekday, for that matter). Neither of us are exactly wallflowers; God knows we try to have fun here (sing it, Macy!). Yet, despite my admiration for fellow Duke Justin Dillon and his wine column, which is apparently the only thing you and I have in common, I find it ironic that you have already learned the HLS motto — ALCOHOL IS THE ONLY WAY TO TOLERATE MOST PEOPLE HERE — without recognizing how completely unhealthy this reality is. Perhaps a moment of reflection about why you find yourself craving "more wine" will clue you in before you find yourself a corporate associate working 15-hour days, with no time for a 12-step program.

That being said, I have to thank Oyebanji for prompting me to reflect on the three biggest lessons I have learned over the course of my HLS career (presented in as non-whiny a means as possible, of course). So, in the tradition of my introspective writing style, I will try to utilize my personal experience over the next three columns to close out my RECORD career on a positive note, and explain the three real "bands of knowledge" that this HLS education has provided me with.

Despite Oyebanji's insinuations, I actually arrived at HLS an extremely happy and well-adjusted individual. This only became problematic as I was forced to spend the next three years trying to sort out how much of that happiness depended on the realness of my relationships with other people. In both high school and college, I was apparently amazingly lucky to have close friends who never forced me to question whether the effort to get to know the real side of people was worth it or, for that matter, whether most people have a real side at all. Without a doubt, HLS put that question up for debate.

One of the first lessons we all learn at law school is how illegitimate it is to incorporate intangibles such as "it just doesn't feel right to screw over Mrs. Miller after she raised all those kids" or "that's just plain morally wrong" into our carefully crafted Ames briefs. The "emotional," we're taught, is unabashedly inferior and unacceptable. Okay, I thought, I guess this "logical and reasonable" argument is intellectually interesting. But, crazy me, I also dealt with my first year assuming that this ideology had to end outside of the classroom (or the courtroom) for life to work properly. After all, what is the value of relationships and interaction if every conversation dances around the emotive reality of the participants?

Yet not long after starting here, it became clear that talking outside a mechanical level was beyond the scope of many of my classmates outside of the classroom just as readily as the gunners in my classes systematically ignored the "soft" elements of race, sex and class in legal problems. Socially, we'd all get pretty wasted and laugh a lot at dumb stuff, which in my relief at discovering how nutso Scott Turow was, I mistakenly identified as fun. Then came the moment I was facing real hurt and needed a friend, and was

amazed to realize that out of 550 of the world's most talented and intelligent, responsible people, there were damn few I could turn to.

Upon reflection, it was as if people had translated their learning of the power of "logical" and emotionally distant legal argument into the power of a "logical" and emotionally distant self; no one seemed to talk about anything meaningful between those sips of Scotch. Before long, I had to wonder: Are all these people just so smart, strong, and self-assured that they don't need anyone else? Why do I feel as if I am missing something? Soon I began to talk myself into the idea that real intelligence must necessarily translate itself into the extreme independence of mental and emotional closed-offness. Why else would everyone look at me like I was crazy when I asked them what they "felt" on a given topic? Before long, a message was being instilled inside me; while drinking partners abounded, and "intellectual conversation" soared, being a law student, and thus apparently a lawyer, meant that I couldn't and shouldn't depend on anyone for deep, real and honest connection other than good old me, myself and I. To expect otherwise was simply weak, childish reverie.

Without HLS, I would have never been forced to dabble in this absurd notion of individuals either too apathetic, too tired or too scared to speak deeply and meaningfully in a general forum as somehow indicative of adult reality. Being here has made me actively choose the standards to which I hold my close encounters, in relationships of all types, by mandating that I be cognitive of this alternative reality. Thus I can thank this education for its first powerful lesson; ultimately, only I



can be the determiner of how weak or powerful my dependence is on connection and engagement with others. I've tried to be an iceberg and pretend that I can handle everything myself; I've tried to laugh away the fact that other people's actions can hurt me, especially when I have placed my love and trust in them. After all, that's the HLS way; God knows none of us can ever risk looking vulnerable. Why else would so much of the interaction here dwell in the land of superficiality? For many, this place is the beginning of that life where cocktail party conversation is the norm, or friendships are assessed on how little or much they conflict with one's self-interest, and respected accordingly. It is the beginning of either that truly bizarre corporate mentality where the private/family sector becomes the only space for real connection, or even worse, a life in which all real communication is void and foreign.

So I will now go through life accepting the risk that comes with asking the hard questions, loving easily, opening myself up when I probably shouldn't, and believing that some logically unexplainable feelings should not be questioned or disregarded. For this I will always be grateful to my HLS experience, because the opportunity for repeated observations of individuals' inability to either a) have a real personality or b) take mental and emotional risks, which has forced me to solidify my belief that a "normal" existence requires a bit of vulnerability. It has been a challenge above all challenges to resist the temptation here of avoiding hurt by avoiding engagement, and to treat people and relationships as "logical" entities that can be rationalized on a reasonableness standard. I leave here with the message firmly engrained that to risk, to depend, to open up and engage is real strength, and nothing could ever convince me otherwise.

Fenno

What do you get for the abortion doctor who has everything?

Fenno usually had trouble with gifts, but she'd never had to shop for National Day of Appreciation for Abortion Providers, which fell on March 10 this year. (It's always 36 to 40 weeks before Christmas.)

This was a tough one. Fenno was in a giving spirit, and she wanted to do something nice. After all, abortion doctors kept the world safe from unwanted children, and Fenno knew how dangerous they could be, so she wanted to show her appreciation for all that hard work. (Fenno knew it was hard, because vacuuming always made her tired, too.) But what kind of present was appropriate? A Hoover? A jewel-encrusted coathanger? A bulletproof vest? What happened on NDAAP, she wondered. Did the banks close? Was there a parade? How exactly do you "celebrate" an abortion provider?

There should be a handbook for this, Fenno mused. She looked around the Hark to see if anyone there might know, but the only person she saw was Jay Webber. Probably not, she thought.

Fenno got up from her favorite couch near the Harkbox Café and started walking to Langdell. Maybe some research would help.

As soon as she walked outside, she heard the counting: "35, 36, 37..."

What was this? How many years it

would take to get Derek Ho laid? (Unless, of course, he decided to take his last name as seriously as he takes the rest of himself.)

"38... 39... 40..."

The number of times someone had told Frank Rossi, "Gee, I would, but I have a boyfriend?"

"41!"

Larry Tribe's bra size?

Fenno had no idea what this was about, so she kept walking. The voices were getting louder, though, and starting to chant. Fenno looked back, momentarily nervous until she remembered she had her wallet with her — and it was loaded. She moved on.

Fenno walked into Langdell and trudged up to the fourth floor. As she moved among the large tables, she laid eyes on something she hadn't seen in years — a bunch of 3Ls sitting around a table, reading.

What was this? Fenno had to know more.

She walked closer, pretending to look hard for something — like a scholarly publication by Lucie White — on the shelf. Then she saw it: the Bar/Bri MPRE book. That's right, she thought. The test is Friday.

"Okay," one of the 3Ls said. "Here's one: You're the dean of Harvard Law School and you need to raise money. You get the idea to give the highest bidder the chance to rename Langdell. A group of wealthy conservative alums" [Are there any other kind? thought Fenno.] "says it will give you \$30 million to rename the library for 1960 graduate Antonin Scalia. Do you:

a) Thank them politely but say you were looking for more?

b) Inquire if they'd like you to abolish LIPP at no extra charge?

c) Whisper softly to all of them, "Jawohl! Jawohl! A thousand times jawohl!"?

The 3Ls looked more confused than Mary Ann Glendon at a NAMBLA rally.

The student continued. "Yeah, that is tough. Let's see... the next one. Okay, same fact pattern, but this time it's Puff Daddy and he'll give you \$40 million to rename it 'The Notorious L.I.B.' Do you:

a) Politely decline and ask if his girlfriend has ass implants?

b) See if he'll settle for renaming

Gropius Complex 'Biggie Halls'?

c) Say, with feeling, 'Puffy, my friend, that shit is dope, yo. Because you and I know that it's all about the Benjamins, I would be most pleased to honor the late, great Christopher Smalles in the way you propose. You, my good man, are aaahhh-ite.'"

All this MPRE stuff had made Fenno tired, not to mention worried about the future of the legal world. She decided to forget this library stuff and go somewhere to be alone, blissfully alone, away from anything approaching a large crowd.

She headed straight for the Latino Law Conference.

Quote of the Week

'I said that my interest was in nudity and nude erotic dancing.'

— Prof. Richard Fallon, commenting on yet another Indianapolis obscenity case

THE BUZZ

By Tanya Marsh '00
RECORD Columnist

STONE AND THE CULTURE OF VIOLENCE

When Oliver Stone's ultra-violent *Natural Born Killers* was released in August 1994, it was enthusiastically greeted by critics impressed by the dizzying array of cinematographic techniques, rapid-fire editing and brutally honest social commentary. Politicians and "responsible" citizens were less enthralled by the artistic merits of *Natural Born Killers* and denounced the film as promoting a culture of violence. Stone, annoyed that *Natural Born Killers* had been so misunderstood, tried to respond to his critics but, unfortunately, his communication skills outside of the medium of film are sorely lacking. He usually ends up sounding like he has more than a few screws loose.

Stone's ultimate defense of *Natural Born Killers*, packaged as a shiny new DVD, was released on Jan. 25. I am a devoted new convert to DVDs and all the special features they include. The director's cut of *Natural Born Killers* is the best DVD I have found. It features the standard letter boxing, optional subtitles in three languages and chapter search capabilities. More importantly, it also includes seven deleted scenes with commentary by Stone, an alternate ending, three minutes of footage cut at the behest of the MPAA, and a documentary on the making of the film. It is this documentary that allows Stone and the stars of the film to defend *Natural Born Killers* as a political satire on violence in American society.

For those who haven't seen the film in a few years, a brief refresher. The script for *Natural Born Killers* was written by Quentin Tarantino (*Reservoir Dogs*, *Pulp Fiction*) and heavily edited by Oliver Stone and his writing partners. The story centers around Mickey and Mallory Knox (Woody Harrelson and Juliette Lewis), star-crossed lovers with shotguns and a serious grudge against, well, everyone. The origins of their sociopathic behavior patterns is brutally laid out in the film — Mickey's abusive father killed himself in front of his young son and Mallory was the victim of an incestuous father and a weak mother. (As Mickey puts it: "[We are told] that we are no good pieces of shit from the time we could breathe. After a while you kinda become bad.") *Natural Born Killers* does not offer this background as an excuse for the murderous rampage of its anti-heroes; rather, it is Stone's explanation for the violent heart of America. How can children brutalized by their caretakers and indoctrinated by amoral media turn out okay? But I digress from the story...

Mickey and Mallory meet at the

beginning of *Natural Born Killers* and quickly imagine themselves as a romantic force of vengeance. Mickey helps Mallory kill her parents and "liberate" her younger brother from their abuse. Then the couple embarks on a reign of terror in which 52 people are murdered. Stone didn't want the body count to numb the audience, so he used inventive visual tricks (revisited by David O. Russell in *Three Kings*) to continue to shock and appall.

As Mickey and Mallory make their way across the country, they attract hordes of perverse fans and the attention of three men: the Geraldo Rivera-type "infotainer" Wayne Gale (Robert Downey Jr.); the sadistic redneck prison warden Dwight McClusky (Tommy Lee Jones); and Jack Scagnetti, the lawman whose own violent predilections highlight the sometimes tenuous line between cop and criminal (Tom Sizemore). Each of these three men are caricatures to be sure, but their characters act as living satires of what Stone sees as an irresponsible mass media and a corrupt criminal justice system.

At the end of the first act of *Natural Born Killers*, Mickey and Mallory are caught by Scagnetti and put on trial. As their trial progresses, the film captures the media circus outside and the public's atrocious fascination with the couple. In fake news footage, one teenager declares "Mass murder is wrong. But if I were a mass murderer, I'd be Mickey and Mallory." Image over substance — even at the cost of moral truth. This has a ring of truth to it in post-Columbine America. We are a country obsessed with crime, with a schizophrenic reaction to violent individuals — we either clamor for their executions or transform them into folk heroes.

Self-styled social critics like John Grisham, the best-selling author and former member of the Mississippi legislature who blamed *Natural Born Killers* for inspiring a series of murders in the South, claim that filmmakers such as Stone are a large part of the problem. Tommy Lee Jones offers a much different view in the DVD's documentary: "The way that Everett thought about *Guernica* being too violent to view, well, it's about war and you can intellectualize that painting or revere it or put it up on a pedestal but most people seem to stand in front of it and think about war and how ugly it is and kind of feel grateful to stand in front of a thing of beauty that brings out feeling and knowledge to us. I would recommend the same point of view of this film." Which one is right, Jones or Grisham? Although Jones' defense of his art is much more appeal-

ing to me, there is some unintentional validity in Grisham's argument. There are a lot of idiots out there — far too many Americans' abusive childhoods have left them with moral vacuums instead of souls and a willingness to copycat anything that speaks to their violent fantasies. If you don't believe that we are turning into a nation which lacks the capacity to say no to any pleasurable activity, even those that are destructively self-indulgent, check out the next episode of *Jerry Springer*.

But again, I digress. The third act of *Natural Born Killers* takes place in a prison run by Tommy Lee Jones's character, the sadistic warden McClusky. Mickey and Mallory are naturally separated in the prison and tortured, respectively, by McClusky and Scagnetti. Wayne Gale, the host of television's *American Maniacs*, whose reporting on the homicidal lovebirds turned them into national celebrities, hosts a live interview with Mickey on Super Bowl Sunday. Mickey has obviously used his time in prison to study the timeless wisdom of Charles Manson and spouts sage aphorisms about being America's shadow. Arguing that murder is simply an extension of the brutality in the natural world, Mickey proclaims that he never had a choice: "Shit, man, I'm a natural born killer." Those philosophical revelations spark a prison riot where McClusky's cruel treatment of inmates is generously repaid and Mickey and Mallory make their escape with Wayne Gale.

Wayne, having just committed his first murder and abandoned his wife and girlfriend, is exhilarated by the outlaw life. He breathlessly proposes to Mickey and Mallory that they become a team — they continue to murder and Gale will make them bigger stars. But the couple turns him down — they have decided to give up the serial killer life to settle down and have a few kids — after they kill Gale, that is. They like him, Mickey tells the terrified and protesting television personality, but: "Killing you and what you represent is a statement." Mickey continues, "I'm not a hundred percent sure exactly what its saying..."

Mickey could be speaking for Stone as well, although the filmmaker seems certain of the many statements he wanted to make in *Natural Born Killers*. American society is morally corrupt and damages its children. The criminal justice system punishes the weak rather than the guilty. Mass media perpetuates and encourages the misguided and amoral fetishization of violence. If Mickey and Mallory had it in for just about every person they met, the same could be said for Stone and American institutions. Is Stone's depressing vision accurate or just the product of a shell-shocked Vietnam veteran with massive conspiracy fantasies? The answer isn't clear, but I remain convinced, six years after its initial release, that *Natural Born Killers* is a powerful and effective piece of art because it savagely confronts us with these vital questions and doesn't blink from unpleasant realities.

Why are hip
young lawyers
awe-Stroock
by a 125 year-old
firm?

Beats us. But we must be doing something right.
(For our Stroock troops and our clients.)
If you're young and talented, come see for yourself
at our reception for the Class of 2002
on March 16th at the House of Blues from 6:00 to 8:00 p.m.
R.S.V.P. to kamold@stroock.com

Contact: Diane A. Cohen
Director of Legal
Personnel and Recruiting
212-806-5406
or dcohen@stroock.com
Check out our website
at www.stroock.com

STROOCK
& STROOCK
& LAVAN LLP

180 Maiden Lane • New York, NY 10038-4982
Los Angeles • Miami • New York • Washington, D.C.

©2000 STROOCK & STROOCK & LAVAN LLP

HLS offers free RAD
(Rape Aggressive
Defense) self-defense
classes for women.
Check the Adviser for the
dates of the next class.

Madness With Method

By Darren Schlanger '00
RECORD Columnist

PRIMARY LESSONS

By the date of this column's publication, Super Tuesday will have firmly ensconced George Bush Light ("Less Thinking, Snorts Great") and Al Gore as final contenders in the bout for national Executive office. A quick synopsis of lessons gleaned from the primary season follows.

1) One Chin per Candidate Allowed: Americans celebrate beauty in many forms — buxom, vapid and blonde; anemic, alternative and heroin-chic; tanned, muscled and Southern Californian; corporate, besuited and manicured. This comely preoccupation carries over into the political arena and mandates of candidates a requisite amount of physical appeal or charisma to hustle popular support. Within the comprehensive gamut of conceptions of beauty, however, supplementary chin mass finds little advocacy. ("Is that a running mate beneath your chin, or are you just happy to see me?"). Next candidate with a goiter-like appurtenance akin to Bill Bradley's, if he or she covets a successful campaign, had best consult an Ear, Nose and Throat Specialist for surgical modification or find a more flattering wardrobe that better conceals the spare neck.

2) Military Heroes No Longer Sell:

Distinction in military combat carries less weight as an exhibition of character, leadership and patriotism than it once may have. W and Gore pretty much took a back seat in Vietnam (though, unlike Clinton, they did at least catch a ride on the bus), relying as they did on patronage owing to the power and wealth of their families. They're in. Like Dole before him, McCain sacrificed life and limb in serving his country, stewing for five years as a prisoner of war in a Vietnamese YMCA. He's out. Have Americans grown less hawkish, or are fewer people with appreciable talent, intellect and all 46 chromosomes entering the military? If you ever meet a Navy SEAL, the answer will spring from his vacant intensity.

3) Pedigree, However, Does Sell: American electoral culture venerates its political nobility. Hence, players with a blue-blooded appellation, like Bush, Gore and even Forbes, possess an unfair advantage over candidates with less thoroughbred nomenclature like McCain, Bradley and Hatch. The former three evoke images of the Mayflower and glazed ham, the latter three a Miracle Mile in a coal mining suburb of Erie and chicken pot pie. And while Americans may eat meat-

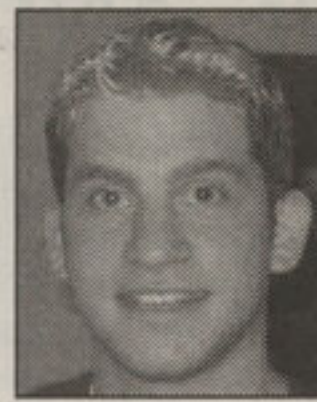
loaf, they do not elect it figurehead.

4) Admit to Drugs and be President: Our next President will be a confirmed and exposed former narcotics dilettante. Both Gore and Bradley have owned up to smoking pot in their youth, while Bush, financed by daddy, used to go through eight-balls quicker than Minnesota Fats at a championship pool tournament. And by his absurd foray into the Republican primary, one must assume that Orrin Hatch still enjoys an occasional hit from the crack pipe before attending tabernacle choir.

5) Mental Illness Need not Prohibit One from Seeking Office: The nuances of their political vision aside, there appears to be something clinically wrong with both Pat Buchanan and Alan Keyes, as though some trauma in their childhood has prevented them from playing well with others in a meaningful capacity.

6) A Caucus is not a Dingy City in Northern New Jersey with Bargain Outlet Stores and Mobsters in Cement Shoes.

7) Non-Citizens Play Prominent



Roles: It's not the lobbyists, the unions, the tobacco and gun industries, or the soft money donors that most influence national elections. And it's not the Chinese either. It's two non-citizens, neither of whom it's clear favors republican democracy over, say, totalitarianism, socialism or communism — Jesus Christ and God. Christ swings millions of votes on the right because he favors school vouchers and a Flag Amendment. His position on abortion seems ambiguous — he believes in choice (unless you ask the Calvinist pollsters), but has never really had to encounter childbirth whatsoever and thus does not fully appreciate the dangers inherent in curtailing abortion rights. Of course, he might be swayed by a cogent argument about the role abortion could play in snuffing out ex-ante his competition, the Anti-Christ. God, on the other hand, maintains a more centrist, moderate political vision, favoring reduced taxes and safer streets. But he opposes school prayer because all the additional complaining would magnify his already considerable headache and objects to the death penalty, in light of the overcrowding, urban blight and rising property costs in Heaven and Hell. Fucking real estate brokers.

PERSPECTIVE

By Reese Pecot '02

Reason Turned on Its Head

Reasonableness killed Amadou Diallo.

I found myself reminded of this by a comment posted on Court TV's chat room about the Diallo case. On Feb. 7, the author wrote:

"I'd like to see you people, so quick to point the finger, do [the police officers'] jobs day after day, and put your life on the line. Not likely to happen, is it? What if you found yourself, after one split second of your life, in this situation? The fact IS that until you've walked in their shoes, you can't know."

Almost eloquently, this writer's posting captures the rhetoric of exigency, of reasonableness, of mistake, that has been used to justify the police officer's killing of Amadou Diallo. On a surface level, this rationale convinces. It pulls us into the moment of four police officers, adrenaline rushing, in fear of their lives as they faced a suspicious character in a dimly lit hallway. A man who reached into his pocket and retrieved an item that appeared to be a gun. This explanation also captures the directive of the court. As Newsweek put it, "[u]nder the law, the officers were justified in shooting if they thought Diallo had a gun, even if they were wrong."

As long as we bask in the traditional rhetoric of reasonableness, more insidious issues can be avoided. Americans can indolently ponder notions of the hazards of city living, of life on the cop beat, of the heat of the moment. And in the most escapist maneuver of all, we can sidestep the issue of race. Under traditional rhetoric, the police officers are innocent because they conformed to a particularized "reasonable officer" standard. This rhetoric boils a situation down to its facts and wipes away general principles.

Particularized reasonableness standards are a powerful tool for justice. By concentrating on the individual instead of general ethical principles, they allow us to forgive good people who do bad things. Thus, the battered woman is exonerated for killing her

brutally violent spouse.

But particularized standards also come at a price. Because our "reasonable police" standard so often tolerates officers singling out African-Americans because of their physical characteristics, innocent people are repeatedly pulled into hazardous confrontations. Black Americans, and especially black men, pay the price for this standard with our blood, with our dignity, with our civil rights.

The justifying rhetoric plays like a broken record. Politicians, police officers and everyday people say, "Look, it's a simple fact that proportionally, blacks commit more crimes, so crime enforcement upon their community needs to be more vigorous. Anyhow, the police are looking for suspicious behavior, not skin color. It's not their fault that the two can be correlated."

This logic, so simple, has insidious ramifications. It means that black skin becomes probable cause. It means that we tolerate it when police officers reasonably perceive black skin as the characteristic of a criminal.

This page could fill itself with anecdotes. This editorial could wax on about Semell Williams, who while driving through an affluent neighborhood, was pulled over by an 11-car police convoy, and told to lie face down on the street while officers surrounded him with guns aimed. This editorial could recall La-Prell Drumming, who pulled over for a police car and moments later suffered a concussion as a baton smashed through her window and pepper spray doused her face. This page could rage about Rodney King and other innocents brutalized by police acting "reasonably."

While anecdotes go to the heart and incite emotion, statistical evidence plainly unmasks the "reasonably racist" standard that pervades our criminal justice system. The insidious result is that, as a class, African-Americans neither enjoy the same rights to privacy, nor to freedom from arbitrary police harassment as their

white counterparts.

The reasonably racist standard that pervades our criminal justice system is evident when criminal sentences for blacks are six months longer than those for whites charged with the same crimes, and when blacks constitute 13 percent of drug users, but 55 percent of those convicted on drug charges. It is evident from a 10,000 percent sentencing term differential between crack and powder cocaine, and when, depending on the district, blacks are two to 43 times more likely than whites to have their cars pulled over, searched, and cited. The irony is that a police officer is not more likely to find drugs when he pulls over a black or Hispanic driver than a white driver. And when fitting a physical profile is the sole information an officer uses to stop, question and frisk an African American, the officer's effectiveness is akin to searching for a needle in a haystack.

Tolerance of this standard is an American pathology. It even bleeds across color lines. The result is that both black and white police officers disproportionately brutalize and harass the innocent. The result is that a jury of seven white men, four black women, and one white woman could deem riddling Amadou Diallo with 41 gunshots and 19 bullet wounds reasonable.

Americans tolerate a reasonableness standard that places the burden of truly acting reasonably not on the professionally trained police officer who stops an innocent person, but rather on the innocent person being stopped. Amadou Diallo, late at night, in the doorway of his own home, found himself faced by four plainclothes men with guns. Was it reasonable for him to reach for his wallet, whether to identify himself (if he understood them to be police officers) or to hand it over to them (if he understood them to be muggers)? Was it reasonable for four trained officers, in plain clothes, to fail to recognize that any person in Diallo's shoes would have been confused and acted nervously?

In hushed murmurs, Americans ask, is it worth the price to ask our police officers to distinguish nervous behavior from suspicious behavior? To refrain from stopping and searching black men who drive or walk through affluent white neighborhoods or stand on their stoops "too" late at night? To look for more than "fit to a physical description" before drawing their guns?

The ugly truth is that until we enforce a new standard of reasonable behavior between law enforcement officers and African Americans, there will be more "terrible mistakes."

In the criminal justice system, rights are often systematically and predictably whittled away by notions of exigency. Warrantless searches of homes and cars and Miranda-less interrogations are condoned when police officers claim exigency. As long as police officers are permitted to treat black skin color as a generalized exigency, our rights as individuals will be abrogated. Blacks will bear the residual risks of "reasonable" police behavior.

Black Americans are acutely aware of this. This is why when our children reach driving age, we sit them down. We inform them that they will be unjustifiably stopped. We give them advice on how not to act "nervous," we tell them to be "polite." We tell them not to open their glove compartments and reach for their registration, lest the officer open fire. We tell our 16 year-olds to act reasonably because we know that a professionally trained police officer may not.

We tell our children that it doesn't matter whether they earn degrees from Harvard, or Stanford, or Yale, whether they take jobs at McKinsey, or Cravath, or Wachtel. We tell our children who they are as individuals does not matter because our society has chosen a law enforcement standard that equates black skin with probable cause, a standard that neither grants them equal protection under the law, nor equal protection from the law.

And that is unreasonable.

Vino & Veritas

By Justin Dillon '02
Wine Columnist

MAGICAL SHIRAZ FROM THE ANTIPODES

Wine knowledge tends to proceed in stages.

Roughly, there are four: grapes, regions, producers and vintages.

Particularly in America, where almost all wines are named according to their dominant grapes, the first thing to learn about wine is what the grapes are. From there, you can figure out which ones you like best, which makes wine-buying easier by orders of magnitude.

Most people are familiar with the most popular grapes: Merlot, Cabernet Sauvignon, Zinfandel, Pinot Noir, Sauvignon Blanc and Chardonnay (the latter two are white grapes).

But there are some grapes you may not have heard of, or perhaps you thought they were places, not grapes. Reds include Syrah/Shiraz (same thing), Sangiovese, Cabernet Franc, Carignan, Dolcetto, Grenache, Malbec, Mourvèdre, Nebbiolo, Barbera and Gamay. Whites include Riesling (my favorite white grape), Gewürztraminer, Viognier, Pinot Gris, Pinot Blanc, Muscat, Semillon and Chenin Blanc.

Got that? (And this list is nowhere near comprehensive.)

After you figure out which grapes are which, you can try different wines made from them and start to narrow your wine world.

From there, proceed to regions. As with grapes, you'll already have heard of many of them, such as France's Bordeaux and Burgundy, which contain myriad regions that you only need to know if you're spending serious money on wine — which, if you're reading this column, is probably not the case. (If it is, please invite me over.)

From there, the regions can get complex. Did you know, for example, that Chianti is the name of a region in the Tuscany region of Italy, and not a grape? And that Rioja is a place, not a grape, in Spain?

Since wine, like an interesting woman, is never easy, there are of course a zillion other wine regions — few of which, thankfully, you need to know for a casual, informed browse of a wine list. In France, for example, there are Beaujolais, the Loire Valley, the Rhone Valley, Languedoc/Roussillon, Chablis, Alsace and, of course, Champagne. In Italy you have Montepulciano d'Abruzzo, Valpolicella, Soave, Bardolino, Barbaresco, and, perhaps the greatest of all, Barolo.

All of these regions, needless to say, make wines from some of the above-mentioned grapes, but what they come up with can vary as widely as Dean Clark's commitment to public service.

When you have a general idea of wine regions under your belt, you can move on to the third stage of wine knowledge — producers. This is the easy part. After you've tried a few bottles of wine from a particular producer, you should generally have a rough idea about whether you like their wines or not. Reading about wine can help you along this path as well.

If, for example, you're one of my eight readers (this week we welcome Blayne Grady to the fold), you already know about the three R's of Zinfandel — Ridge, Ravenswood, and Rosenblum. Since it's almost impossible to go wrong with wines from these producers, and since most restaurants and wine shops carry at least one selection

from them, you already know a safe bet if you're looking for Zin. From there it only gets easier, and you'll be surprised at how many producers' names you remember.

This brings us to the last stage of wine knowledge — vintages. If you're buying wines from France or Italy, the year can make a huge difference. Chianti, for example, had a banner year in 1997 but a mediocre one in 1998. And Châteauneuf du Pape, in the Southern Rhone, was brilliant in 1998 but only middling in 1997.

Vintages tend to matter more in Europe because of the way wine is made. Many of the top European producers have been plying their trade in a particular, nonscientific way for centuries, and how the grapes grow in a season can make a world of difference in what they can produce in a given year.

In America and Australia, on the other hand, winemaking is often more science than art, so even when vines take a hit from the weather, newfangled winemaking techniques can make up the difference. Of course, vintages are still important — Oregon, for example, produced astonishingly good wines in 1994 but made many barely passable ones in 1995 — but they're not quite as important as in Europe.

Learn vintages, then, only if you really want to. Far more important is knowing what grapes, regions, and labels you like. How do you do it? Nothing beats pulling corks and a little bit of light reading every, oh, two weeks or so.

Tasting Notes

This week I went Down Under, tried

a little Aussie Shiraz (what the French call Syrah), and came up happy. Best of tasting was the 1997 McGuigan The Black Label, a Shiraz/Grenache blend and a piece of light, sweet fruit that I bought for \$10.99 at the Harvard Provision Company in Harvard Square. After I had enjoyed a couple of glasses, my roommate sneaked the rest of it to a couple of French oenophiles and didn't tell them how much it cost. They raved. For the price, this is good stuff.

The Black Label was better than the \$12.99 McGuigan Bin 2000 Shiraz, which was good enough but lacked that slurpy fruit. It opened up after a couple of days but still lacked the tasty finish of its cheaper counterpart.

Next came the Thomas Mitchell 1998 Shiraz, also \$12.99, which I bought (along with the following two) at the University Wine Shop. With cherry flavors on the palate but none of the faint spiciness that good Shiraz often has, it was innocuous but not great.

The final two wines I would not recommend at all. First is the \$13.99 Penfolds Bin 2 Shiraz/Mourvèdre, which had a bit of leather and road tar on the nose (which is, I swear, often good) but little if any fruit in the middle. Penfolds is one of the top producers in Australia and I have enjoyed many of their wines, so this was a slight surprise.

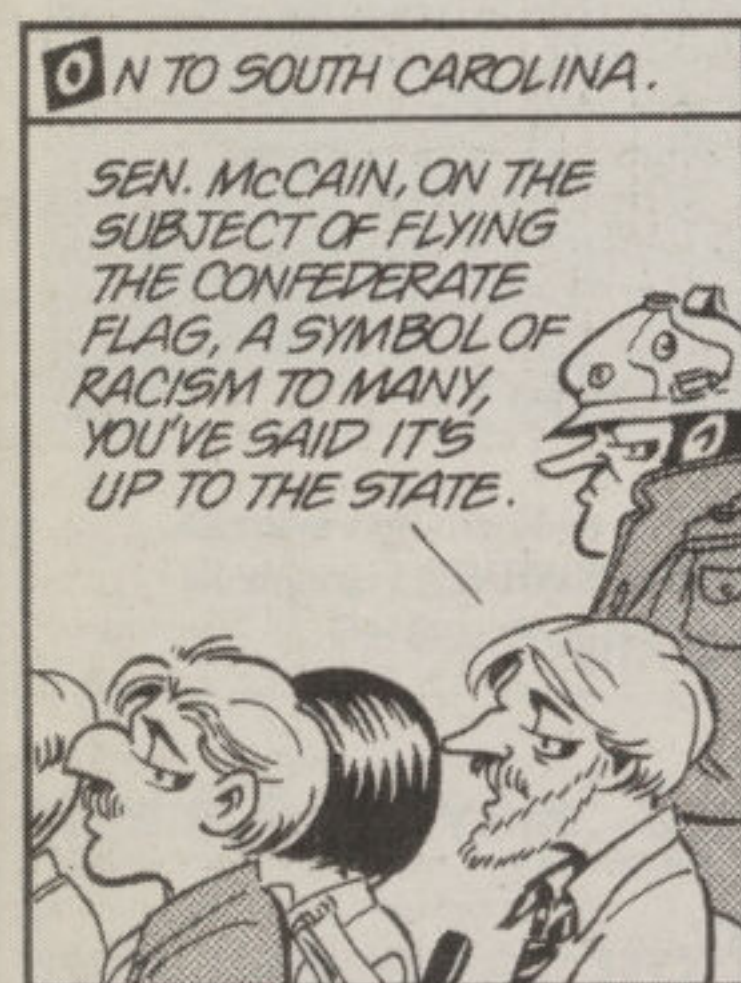
The second wine was an admitted risk — a \$7.99 Black Marlin Shiraz 1998. I drank it last week with people at the RECORD, few of whom liked it and may have wondered why I gave them swill. That's a good question.

Maybe if they upped my wine budget I'd be able to answer it.

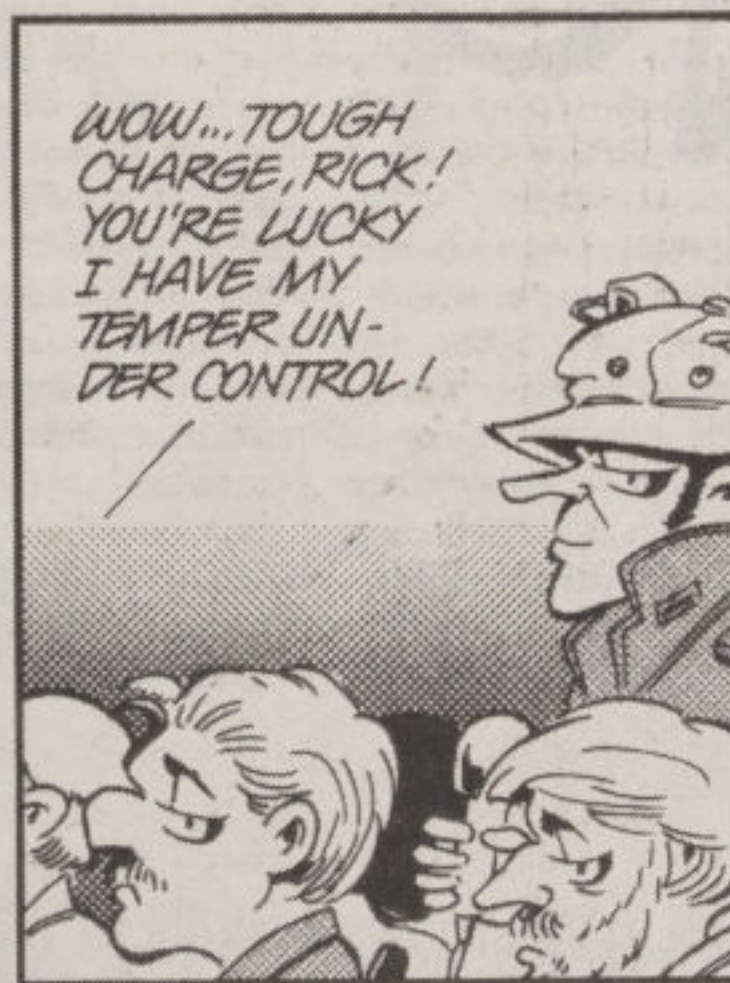
Comics

Doonesbury

BY GARRY TRUDEAU

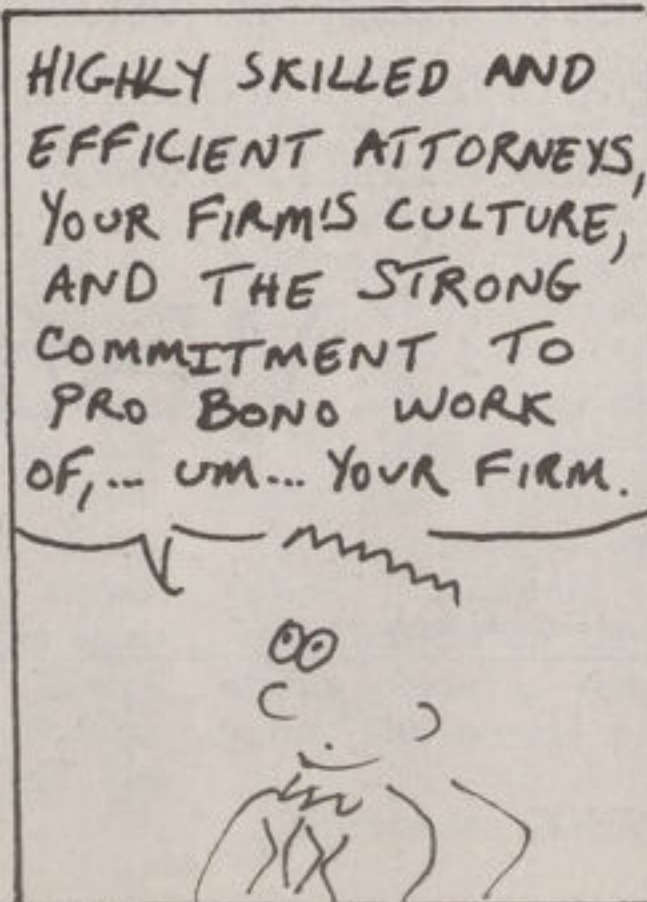
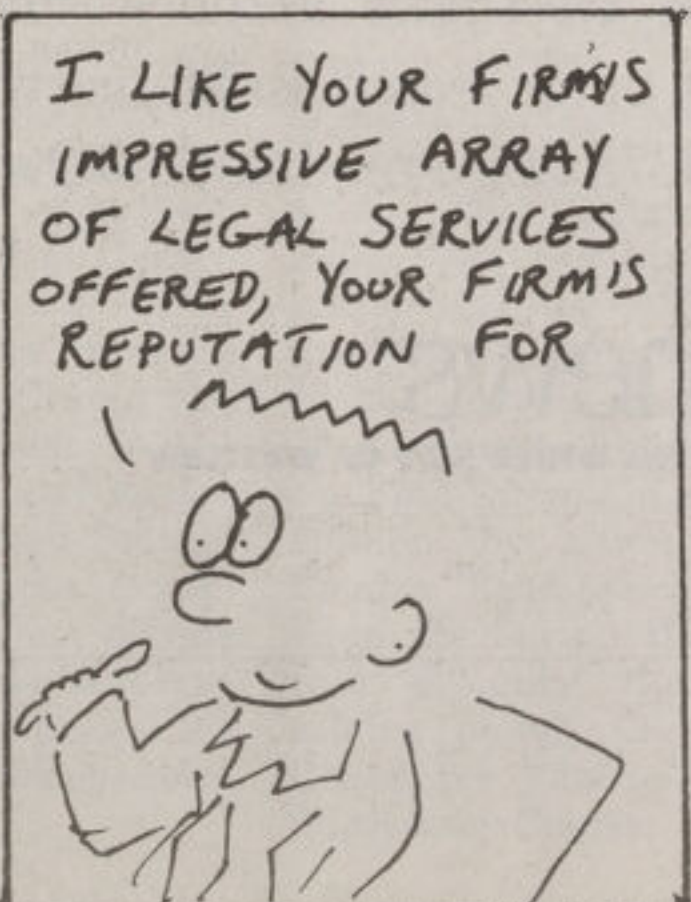


FOR A GUY IDENTIFIED WITH INDEPENDENCE AND PERSONAL COURAGE, ISN'T YOUR REFUSAL TO TAKE A POSITION PRETTY COWARDLY?



BEFORE THE LAW

BY DEREK WINDHAM



Ambitious law students go beyond the law to gain competitive edge.

The law never exists in a vacuum. That's why successful law students and attorneys go beyond legal research to learn as much as possible about the people, places and things involved in legal matters.

In Westnews™, you can find news and background information about virtually any person, company or issue.

The extra information you find in Westnews gives you the extra edge in writing assignments, classroom discussion, law review articles, moot court competitions and job searching—and throughout your legal career.

Westnews

THE OTHER SIDE OF WESTLAW

"What is the starting salary of a summer associate?"

"What are the principal uses for recycled titanium?"

"What are analysts saying about General Mills?"

To search in Westnews, just click "Westnews" in the Westlaw® Directory.

For search assistance, call 1-800-REF-ATTY (1-800-733-2889).

To search in Westnews, just click "Westnews" in the Westlaw Directory.

For general or technical questions, or for search assistance with Westnews, call 1-800-850-WEST (1-800-850-9378). Or e-mail student@westgroup.com

Westnews™
THE OTHER SIDE OF WESTLAW

