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Future of class action lawsuits in debate at JOL symposium

by Justin Herdman

A panel of attorneys moderated by Prof. Arthur Miller '58 debated the future of class-action litigation yesterday in Ames Courtroom. And while none of the panelists expressly agreed with Prof. David Rosenberg's assessment that "the class action is broken, and the Supreme Court broke it," there was heated debate about the role of courts in charting the nation's policy.

The discussion comprised the second half of the Harvard Journal on Legislation's symposium on "Social Reform through Class Action." Joining Rosenberg on the panel were: Dudley Oldham of Fulbright & Jaworski's Houston office; Jeff Reh, general counsel to gun manufacturer Beretta USA; and Melvyn Weiss of Milberg Weiss Bershad Haynes & Lerach LLP in New York City.

While Rosenberg preferred to dwell on a theoretical plane that Weiss at one

point deemed "ridiculous," the panel engaged most heatedly when real world situations were brought to the table.

One member of the audience commented on the pending class action lawsuits against gun makers. Timothy Shannon '01 stated that although he supported a ban on all short-barreled weapons, in effect putting manufacturers like Beretta out of business, he was uncomfortable with resolving the issue outside of the political process.

Reh, the lawyer for Beretta, agreed with Shannon on this latter point. "In the courtroom, narrow facts are usually related to the accident involved. There are no broader policy considerations," Reh said.

At one point in the discussion, Miller posed a question to Rosenberg: whether he has "any big beef" with class action lawsuits. "There are no class actions anymore,"

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They want you to want them, too

Munir '01 will likely stroll to LSC top job

by Justin Herdman

With the memories of Super Tuesday still fresh in the minds of HLS voters, this week, students tore their eyes from national politics and cast votes for next year's crop of campus leaders. Elections were held on Wednesday and Thursday for positions in the Law Student Council (LSC) leadership, Student Advocate, and Marshals for the Class of 2001.

Jay Munir '01 ran unopposed for President of LSC. This marks the second year in a row that the President will assume office without an electoral challenge.

Munir did not divine any negative signs from his unobstructed path to power. "We have tough, contested elections for other LSC officer positions," Munir said, "and voter turn-out among students today was great, so I believe that students are participating and support the LSC."

And as he looks forward to his tenure at the head of LSC, Munir also paid homage to the outgoing third-year leaders. "Manoj Mate and Ashley Morgan were the most effective LSC officers we've had in a long time," he said, "and I'm looking forward to continuing their work." Munir placed particular emphasis on maintaining the LSC's participation in the strategic planning process, academic reform, refurbishment of Hemenway gym, and diversity initiatives.

The battle for LSC vice-president was being waged between Justin Cooper '01 and T.J. Duane '02. Along with the obligatory handshaking outside Harkness Commons, Cooper campaigned on his two-year record of "fighting for pro-student reforms," such as changing the grading system, implementing on-line registration for courses, and improving the student/faculty ratio.

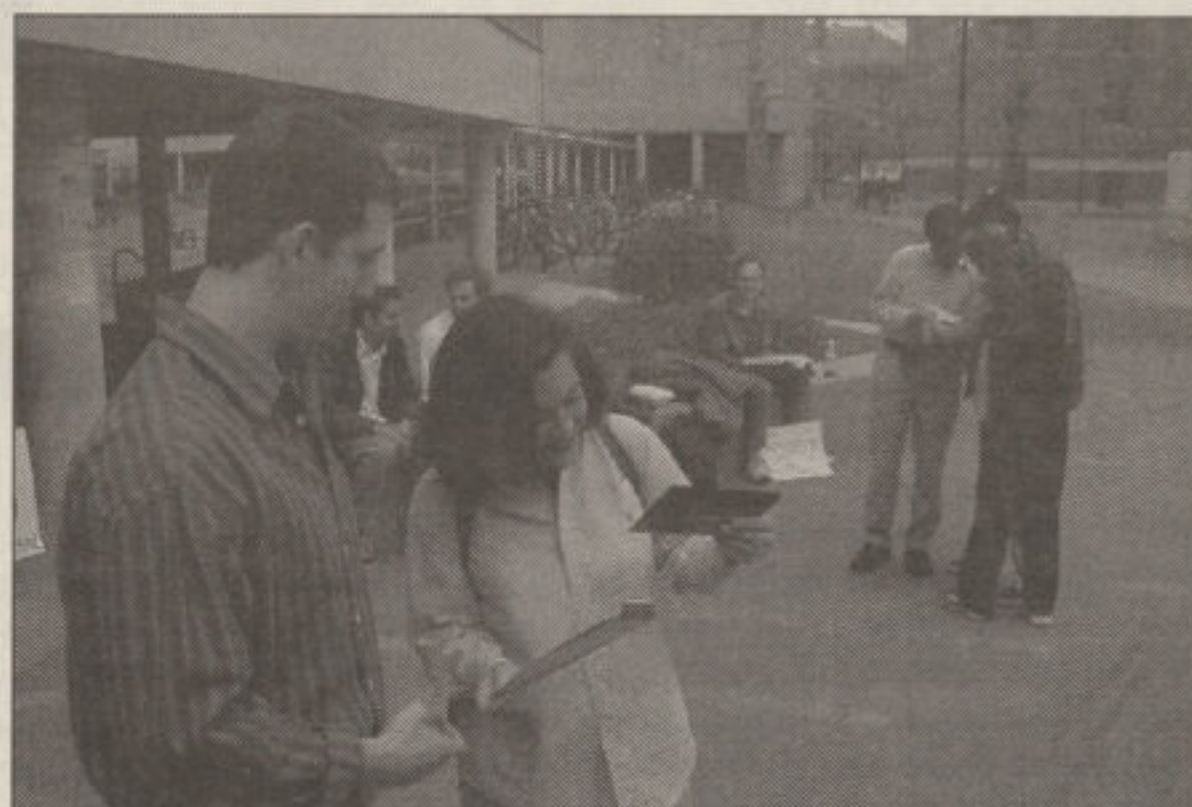


Photo by Justin Herdman

Aaron Hutman '01 drums up support for his class marshal candidacy.

Duane ran on his "rapport" with administrators, a pledge to organize course outlining, and a guaranteed reduction in the prevalence of paper in student Harkboxes.

A new position this year, Student Advocate, was coveted by three students: Len Kardon '01, Mike French '02, and Danny Grooms '02. The post

contested amongst 2L candidates. Out of 11 candidates, only four would be selected for the honor. Students were allowed to vote for four of the candidates, and the top overall vote-getter would also be charged with delivering an address at the commencement ceremonies in June, 2001.

The responsibilities of Class Marshal include planning social activities for the third-year class, as well as active planning for the graduation ceremony. Additionally, the Marshals' duties continue past commencement, when they will be expected to act as liaisons between the Class of 2001 and Alumni Relations.

In truth, the official duties of a Class Marshal are vaguely defined. The candidates, however, were able to provide ample description of the post's responsibilities.

"I think the position of Class Marshal is about drawing our class together in our final year of school," said Sarah Szalavitz '01.

Most Class Marshal candidates echoed this sentiment, focusing primarily on the duty of providing adequate social outlets during the third year. "A Class Marshal is someone the class can turn to when

McKinsey survey leads to creation of Student Advocate position.

was created in response to the survey conducted by McKinsey & Co. The Student Advocate, which French admitted was "relatively undefined in its infancy," will ideally create a direct link between students and the administration.

Kardon passed out a Top 10 list of short-term improvements. In his flyer, Kardon pledged to personally pay visits to late-grading professors and to offer "accounting without Herwitz."

The position of Class Marshal was being fiercely

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Diallo vigil



Photo by Francesco Barbera

Members of the Harvard community gather Wednesday for a candlelight vigil to protest the death of Amadou Diallo.

NEWS ANALYSIS: SUPREME COURT UPDATE

Justices gear up for challenge to state's Burma sanctions

by Francesco Barbera

The Supreme Court is scheduled to hear oral arguments in two cases next week that offer the justices a chance to fine-tune their evolving view of federal-state relations.

On Mar. 22, the Court is scheduled to hear one of the most interesting cases of the term — a challenge to the Massachusetts Burma Law, passed in 1996 in response to the human rights abuses of the country's military regime. The law penalizes companies that do business with Burma (which renamed itself Myanmar in 1989) by restrict-

ing the ability of state agencies to purchase goods or services from them.

A few months after Massachusetts enacted the law, Congress passed its own sanctions. These were given effect when President Clinton issued an executive order declaring that the Burmese Government constituted "an extraordinary threat to the national security and foreign policy of the United States." The federal sanctions, however, specifically exempt private contracts for goods and services unless they promote the development of Burmese natural resources.

The law was challenged in federal district court by the National Foreign Trade Council (NFTC), a non-profit organization representing corporations engaged in foreign trade. The District Court found that the law was an unconstitutional infringement upon the foreign affairs power of the federal government. Massachusetts appealed, and the First Circuit, in a rigorous opinion by Circuit Judge Sandra Lea Lynch, struck down the law on three separate grounds: the foreign affairs power, the Foreign Commerce Clause and the Supremacy Clause.

First, the court found that the law infringes on the foreign affairs power of the federal government. "For local interests the several States of the Union exist, but for national purposes, embracing our relations with foreign nationals, we are but one people, one nation, one power," the court said, citing the Supreme Court's 1889 decision in *Chae Chan Ping v. United States*.

As the citation indicates, recent Supreme Court jurisprudence on the foreign affairs power is remarkably scant. The central precedent

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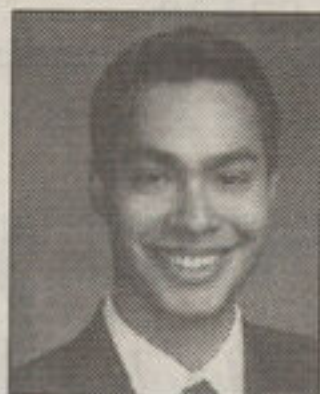
3L Julian Castro enters race for San Antonio city council

by Darin Johnson

Campaign season is in high gear and Julian Castro '00 has joined the ranks of candidates vying for political office in upcoming months. A native of San Antonio, Texas, Castro recently filed his papers to enter the race for his hometown's city council. Castro seeks to represent District Seven, the community in which he was raised, and will face only one other candidate in a nonpartisan race. The incumbent in

the district is barred from running by term limits.

For Julian and his twin brother Joaquin Castro '00, who also serves as Treasurer of his campaign, public service and commitment to San Antonio are family traditions. Their mother, San Antonio Housing



Julian Castro

Authority ombudsman Rosie Castro, is a veteran of the Chicano movement of the 1960s and '70s. The Castro brothers cite their mother's commitment to promoting issues of education, civil rights, minimum wage, and working conditions for migrant workers as the inspiration for their political activism.

While at Stanford, the Castros co-chaired the student senate. After graduation, the Castros returned to San Antonio where they spent a year working for the city on neighborhood devel-

opment issues. During their second year at HLS, the Castros established a program known as E-PALS (Electronic Partnership of Aspiring Law Students). The program links students in a high school's pre-law magnet program with email mentors at Harvard Law School.

The elections for the San Antonio City Council will be held on May 5, 2001. Darin Johnson '00 recently spoke with Julian about his hopes for the election.

INTERVIEW

RECORD: Why did you decide to enter politics in San Antonio?

Castro: I could comprehend the gap between the potential of the community that I came from and its reality. The community I came from was underprivileged and heavily Latino in urban San Antonio. The more I realized the gap between our potential and our reality, the more I had a desire to change that.

R: Did you view a legal education as a means for getting involved in changing your community?

C: An understanding of law is an understanding of the baseline rules of society and is very helpful to advancing the community's interests in general. Historically, some of the biggest gains have been made through the law and through the courts. The law has been used to improve the lot of important communities.

R: It seems like there is a lot of cynicism out there about the ability of the courts or even politicians to bring about lasting social change. How would you respond?

C: You're better off trying than not trying, asking than not asking, doing than not doing. It's incumbent upon us at HLS, who've actually proven that we have the skills to succeed, to go out and change their cynicism.

R: Have you found our generation to be cynical?

C: Not as much as we're made out to be, more misunderstood than cynical. We're painted with a broad brush, I find it's more a generation waiting to be inspired.

R: Would you say that's the difference between our parents' generation and our own?

C: They had actual clearly defined legal encumbrances to challenge. Actual in-your-face barriers. Many of [those barriers] have dissipated. But you look at things like the Diallo case and the LA and New York police brutality cases and you see there are a lot

of things to be overcome. I think they had leaders who focused on principles more than our leaders today.

R: Do you think that's because so many social problems today are perceived as being nuanced and difficult to confront?

C: Sure, many challenges that we face today are subtle challenges. They're just as important challenges [but] in some ways, they're not as obviously poignant as our parent's generation with the Vietnam War, Cold War, Civil Rights Movement, Watergate.

R: What challenges do you view as being of utmost importance today?

C: Issues such as economic progress for all Americans and racial reconciliation.

R: People have widely divergent views on how to accomplish those goals. How do you get people to come together for progress?

C: Pursue policies and espouse views that take into account a diversity of perspectives and look for leaders that build coalitions well.

R: Do you think the difficulty is in getting people to agree about the ends or in getting people to agree about the means?

C: The means. Most people are intelligent and good-hearted enough to agree on many of the same ends but because of our different experiences, it's often a challenge for us to agree on the means.

R: How does one get public support behind policies that do not simply promise a quick fix?

C: That's definitely a huge challenge. Don't underestimate the intelligence of people. I think that many times politicians act upon what they believe is popular will when the popular will may be something a little different or even may be something entirely different. To the extent that a politician can make rational and intelligent arguments for a position

that might not be popular at point A, following through on the issue could make it more palatable at point B.

R: How do politicians represent the interests of minority constituents without losing their popular support?

C: By educating the general public, for minority politicians specifically, on the experiences of our communities that's lacking [from common understanding] a lot of the time. And pursue policies that appeal to the better angels of the community instead of things like [California's] Prop. 187 and 209 that stir a witch's brew of negative emotions.

R: Some would argue that class and not race is the factor we should be looking at.

C: I think that both play a dynamic in terms of community power but I think that people do still make irrational decisions based on race in areas such as lending, home ownership, law enforcement, employment and in classrooms.

R: Do you think the most important thing is changing people's hearts?

C: I don't know that it's changing hearts. Most people have good hearts, it's assuaging their fears and getting them to realize how similar we all are in actuality.

R: What are some of the specific issues that you'd like to address in San Antonio?

C: The most important issue I'd like to address is moving San Antonio from a smiles-based economy dependent on tourism to a files-based economy powered by biotechnology and computer-engineering — a knowledge economy.

R: What are some of the ways that you would like to help this transition?

C: Targeted job-training to high tech industries as a short-term means and improved local education as a long-term means. [Technology-based positions] are the jobs of the future.

I'd like to see more of our young people rewarded for using their brains instead of their hands.

R: How would you suggest that we minimize the so-called "digital divide"?

C: In San Antonio, I'd like to invest in creating community technology centers throughout the city to increase access to technology and integrate into neighborhoods the means to thrive in the knowledge economy.

R: What is it about your upbringing that has fostered such a strong commitment to your community?

C: A strong sense of family that generalized to the entire community. When I think about San Antonio, I often think about the Spartan and Athenian deep identities that the ancient-Greeks had based in their city-states. An identity so strongly tied to your place of birth.

R: So, do you think that your education at HLS has adequately prepared you for public service?

C: I think it's prepared me to analyze law and public policy but the spirit of commitment to public service should be nurtured with more fervor here.

R: Do you think the proposal for a pro bono requirement will help foster this commitment?

C: I think it's a significant first step and that HLS should continue moving in that direction.

R: Did the potential to parlay your significant educational background into big bucks ever factor into your decision to enter public service?

C: Financial obligations make the plunge a bigger one but I still will be practicing law and all of us have learned by now that money fills the wallet but it doesn't fill up your soul. It's imperative that we devote our talents to help others reach their own potential because we've been so fortunate and blessed to reach our own.

ELECT

Continued from page 1

they have a social concern in what has been termed the most boring year at [HLS]," said Frank Rossi '01.

The candidates agreed that the position's ambiguity left much room for opportunity, and for error. "The position is indeed vague," said Cale Keable '01, "and thus requires that it be filled by a motivated and dynamic individual."

Unlike LSC elections, where campaign promises pasted upon the concrete walls of Harkness Commons call for change and reform, the Class Marshal candidates were decidedly good-natured about their objectives. Tori Jueds '01 said that she would not guarantee her classmates a new gym any more than she would promise "the elimination of bad ties from the Harvard faculty."

Indeed, most of the campaign

pledges focused upon entertainment for bored, burnt-out third-year students. Szalavitz, who ran a coordinated campaign with Patricia Torres '01, planned on providing 3Ls with access to ski trips and white-water rafting weekends. "Why should we have to endure the same old weekly events, when there is much more fun to be had?" Torres said.

Keable's campaign centered around his reputation as a fun-loving host of parties, referring to the candidate as the "Cheerful Chipmunk." On a more serious note, Keable said, "It is the duty of the Class Marshal to provide an opportunity for the class to do what mere admissions cannot do: encourage students to be friends."

Monu Bedi '01 and Sonu Bedi '01, who are identical twins, used a slogan based on their unique similarity. The Bedis urged their classmates to "Double Your Pleasure, Double Your Fun" as they handed out sticks of Doublemint chewing gum.

"Since we're two of the same, that's double the energy and double the partying," the Bedis said.

Alex Barry '01 also vowed to ply his supporters with libations. "I have an extensive knowledge of the nightlife in Cambridge and Boston," Barry said. He also claims "a history of providing copious amounts of alcohol to my classmates."

In regards to the most sobering duty of a Class Marshal — delivering the commencement address — the candidates agreed that the honor was an aberration, buried as it is within plan-

ning keg parties, bar reviews, and sky-diving trips.

"In my opinion, that honor is better left in the hands of the LSC president," said Barry.

Torres agreed. "What we want in a Class Marshal may not be what we want in a class speaker," she said.

"I don't think the highest voter should automatically speak at graduation," said Sheila Vera Flynn '01. "I think there are so many amazing public speakers at this school, they deserve a shot at giving the address," Flynn continued.

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INTERVIEW

By Doug Sims '01

Portrait of an HLSer turned Yale

Andrea Armeni transferred to Yale Law School after spending his first year at HLS. RECORD reporter Doug Sims asked Andrea a few questions about his motivations for leaving, his new life at Yale and whether, all things considered, it was worth it.

RECORD: Why did you choose to transfer? Was it more due to the negatives of Harvard or the positives of Yale? What were your expectations of Yale and have those expectations been met?

Armeni: I would not have transferred to any other school, so I guess Harvard was not that bad. It's just that Yale offered more of what I was looking for.

Specifically, I had noticed when I visited Yale (which I had not done before accepting HLS the first time around) that students here seemed to form more of a community, both among themselves and with the faculty. I was expecting, in this sense, a more collegiate experience, or perhaps one more akin to a graduate than a professional school. My expectations were not only met, they were exceeded. This may be considered both a positive and a negative. In a sense, that is, this school can be seen as too much of a medieval or renaissance, patronage-style learning institution, rather than a pure meritocracy as those you find up north.

My biggest expectation, which featured greatly in the calculus of the costs of HLS and the benefits of YLS was the possibility of forging stronger faculty ties here despite having the transfer disadvantage — that is, having not been a member of the first year class, where most of the initial faculty contact is created.

This [expectation] was absolutely fulfilled. In fact, in less than one semester I already dealt on a steady basis with more faculty than I did with at HLS after a full first year. What changed was not my willingness to search out such interactions, but rather that the institutional structure facilitates this, both class-wise (I had a class with four fellow students, one with twelve...) And architecturally — the school is small, the library is centralized, faculty workshops and other meetings and lectures are well attended by the faculty — that it would have been hard to avoid the interaction if one wanted to.

The faculty seems to take an active interest in the students, from getting to know them to advising informally on one's future — particularly if academic. I remember seeing former dean and now Judge Guido Calabresi in the corridors of the school during my first week, and having him come up to me introducing himself as "Hi, I am Guido, are you a new student?" Current Dean Kronman somehow manages to remember most names after the first week.

R: What exactly is the grading system? Do you think it makes any difference in the atmosphere?

A: First semester grades are on a pass-fail basis. I have not heard of any recent failures. As I understand it, the pedagogy behind it is that grades detract from the "real study" of the law. Evaluation after the fact does not assist learning. An evaluation might offer guidance if it came before the end of the semester and was not based on a spurious three-hour exam. Guidance here is offered by the professor, and by one's peers, through constant, non-competitive interaction.

Hence the lack of grades in the first semester does not seem to lead either to a lack of guidance as to one's performance nor to a complete slacking off. Sufficient other incentives are in place, such as the awareness that the knowledge gathered first semester will constitute the basis of all subsequent learning and the unwillingness to make a fool of oneself under the Yale version of the Socratic method, which, incidentally, is remarkably mild.

A drawback in the lack of first semester grades is that the courses are seen more as a conversational path than as actual imparting, Socratically or otherwise, an extant body of knowledge. For example, students are heard criticizing strict liability even before having read one case on the matter. This seemed to be less prevalent at HLS — though I wonder the extent to which this is brought about by grades.

Subsequent semesters are graded on an honor, pass, low-pass basis. I believe low passes to be extremely rare. In general there is never any talk of grades, and they don't seem to be meaningful. In a very important sense, though, this requires an even more profound commitment to the class. Because of the class size, it is easy for the instructor to form an opinion on the student. Because of the uselessness of grades as a device to tell one student from the other, the overall performance and participation, reputation, style, whatever, becomes part of the evaluation. The instructor will carry it with herself and across to

other faculty members who may inquire as to the student's abilities.

If a student is a clear honor, or a clear pass, this less precise grading scale takes away the incentive to do the last bit to go from the B+, say, to the A-, but again, you don't want the professor to associate you with a really crappy exam and I believe it is at the professor's discretion to have anonymous or signed exams.

As for the direct impact on the atmosphere, it is not going to be a grade, or a performance, that "makes" you good. It is a reputation that is built on who you are, not what you've done in class, or how your abilities have been objectively evaluated.

So a grade is not going to jeopardize a friendship, or make the air tense. On the other hand, clerkships are going to. Clerkships are key at Yale because in a sense they give an objective measure of where you stand. The equivalent of the Sears Prize at Harvard may be a Calabresi clerkship at Yale. So things can get nasty, especially as a tight group of people is going to compete for a limited number of "star faculty" recommendations.

R: How big is biggest class, how small is your smallest class? What kind of access do you have to professors?

A: I got the official data today from the registrar, and it seems that most classes are under 30 people. I had a class with five, one with 12, now a seminar with 22 — but it is taught by two professors at once. Generally speaking, most classes are small enough to permit "conversations" to take place: a student can exchange with a professor three jibes or so without the rest of the class becoming overly impatient.

R: Contrast any notable differences in the infrastructure and administration. Classrooms, computers, libraries, registration procedures...

A: Differences? Find me the similarities, and it's easier that way. The most notable difference, which goes beyond bureaucracy and infrastructure, is that the students are quite directly, that is, without much need for representation or outside consultants, part of the process of decision of what will happen to the school. That is to say, if you notice that the library is open during exam times only until 2 a.m., you can mention your concern in the corridors to Dean Kronman, who will do his best to accommodate your needs.

The bureaucracy seems to be in place to serve the intellectual community, and not as a self-perpetuating engine in the guise of some European countries. That is to say, whatever will streamline the life of the intellectual community will be implemented. For instance, I was allowed to take one of my take home exams really "home," that is, sitting in Italy "with my family. I simply asked the registrar, and the professor's secretary, to fax me the exam at a predetermined hour, and I vowed to fax it back within the allotted time period. No one was bothered by the extra work this required, and I got two wishes of a happy trip.

Further, every office seems to be extremely well staffed, and the student demand is low enough, so that you can always get a competent answer within seconds. The librarians are outrageously good. In terms of infrastructure, I cannot underscore sufficiently the role played by the architectural unity of the place. It really creates a sense of cohesion, and you don't need to go to somebody's office, or use the telephone, in order to communicate with someone. This takes away some of the stigma and the pressure of formalized interaction. Hence a question for which I would not bother going to office hours, or writing an e-mail, may warrant a conversation with a professor in the corridors or the dining hall.

"The Wall" is an important feature of the school, and it has been ably described by Larry Lessig, YLS '89, in his book "Code." On it, students can post messages pertaining to anything, and can expect other students to react by adding either extensive notes or simple handwritten comments on the original. It is a public debate which, because of its location, cannot easily go unnoticed. I believe most students check the wall for new items very frequently, as this requires only a quick glance while moving between classes.

One may be lead to wonder which view, or philosophy, of the student is at the root of the Yale method of treating the student, as opposed to Harvard method. It would beg the question to say that it is merely a matter of size, for then one would ask why HLS is so obstinate in retaining a class size three times that of Yale, if there are "diseconomies" associated with size. Here I think the student is treated more as a peer than a source of revenue. The respon-

sibility placed on the student in such a setting is clearly bigger: not only is the student required to determine for herself that kind, and amount, of work that has to be done, beyond the grade, but also because the faculty truly listen to student comments and suggestions. It is not rare to see students contribute substantively to faculty research either directly or through class discussion. On the other hand, when you see that the professor takes seriously what you say, you bear a much higher burden of saying things you believe in, rather than things that are simply meant to impress the professor. You will be held accountable for your view — you may in fact hear another professor come back to you some other day and imputing to you the view you had expounded to the first.

R: The conventional Harvard wisdom says that Yalies don't work and learn nothing of relevance to the practice of law. True or false?

A: I don't think any student who is making the most of a legal education at one of the top law schools is meant to learn much of relevance to the practice of law, if by that we mean the ability to draft a will or tell a client off the bat whether LLP status will be better tax-wise than professional corporation status. The question of Yalies not working has some possible bite, in the sense that, once admitted, a student could get away with exceedingly little work. It does not seem to be a pervasive thing, though, and I believe the admission process pretty much screens out free riders. If one is good enough to get into a top school and yet is a free rider, I would recommend to her that she spend her time chilling in the Caribbean, as her abilities will get her where she wants and she won't have to spend three years on the miserable East Coast.

The broader point is that Yale does not purport to train people for the practice of law. Rather, it endows one with intellectual skills that can be applied to the practice of law as well as a million other pursuits. It is, decadently enough, a graduate school in the study of law. This is the root of all its differences with Harvard and other law schools. I don't mean, however, that the graduate study of law as one engages in at Yale is not conducive to outstanding practice. It merely casts a fuller perspective on what the law is, objectively as well as a tool.

R: Can you detect any differences in the approaches of Yale-trained versus Harvard-trained 2Ls?

A: Harvard-trained 2Ls seem to ground their comments or intuitions much more in actual legal doctrines, if not in blackletter. At Yale, I think that Alexander Bickel, Ronald Coase and John Rawls may be cited more than any combination of outstanding cases. The discussions at Yale would fly less into goo-goo land if there was such grounding, so it's a drawback. Sometimes people say things because they really just don't know the state of the law, or of market forces, or have not paid sufficient attention to factual considerations but have jumped straight for the policy.

R: You went through 1L recruiting at Harvard and 2L recruiting at Yale — can you comment on the differences? Does a different class of employers come to Yale?

A: I don't think a different class of employers come to Yale. Even though I know that employers look for different things in Harvard and Yale guys. A New York practitioner once told me that if he wanted an excellent brief or memo, he would hire the Harvard kid, but if he wanted a fascinating discussion, he would go for the Yale guy. In the end, much of it comes down to what one can afford. If one can afford the conversation, one goes for the Yale. If one just needs the gig done, one looks in other places. Personally, if I really wanted the thing done, I would hire a Fordham graduate.

R: Do you think, compared to Yale, Harvard is anti-intellectual?

A: Harvard Law? It is not in the position where it can afford to do what it does and remain fully intellectual. But because of sheer numbers, there are probably more intellectuals at Harvard than at Yale. They may find each other, I don't know. I certainly don't think Harvard fosters pure, decadent intellectualism in the way Yale does. The latter may be seen as an indulgence of the upper cultural echelons while they could be out saving the world, but there is something to be said for small pockets of the world not dominated by efficiency concerns.

A dean of [Yale] once commented on some of the more intellectual aspects of the school as being something that most schools cannot afford, and that to those who can afford them, they cannot do without.

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Justin Herdman

FOUNDED IN 1946

Laws of Science

In general, law students are a highly unscientific lot. Baffled by Rosenberg's averaging schemes and flummoxed by Nesson's embrace of "e", most students tune out when numbers enter the classroom. Of course, HLS has its fair share of math majors and M.D.s, but for every law student who truly understands the intricacies of recombinant DNA, there are likely two who derive the extent of their information on that subject from Michael Crichton novels.

This point is powerfully driven home by Barry Scheck and Peter Neufeld, co-authors with journalist Jim Dwyer of "Actual Innocence". Using DNA evidence to exonerate the wrongly convicted, Scheck and Neufeld's Innocence Project has cast light upon the criminal justice system's shadowed cracks and faults.

Even more insightful than this condemnation of American criminal law, however, is what the book says implicitly about legal education. Scheck and Neufeld make this simple point: lawyers are afraid of science. Fleeing to the wordy world of law school was a choice made by all law students, but a choice made out of necessity for most. Law schools are populated with great writers, excellent analytical thinkers, and skilled orators. But relatively few budding lawyers are schooled in hard science before entering HLS, and certainly none of them receive it while enrolled.

An easy answer to this problem is that litigators will learn what is needed to handle a case — including science — as the subject is required. Lawyers are intellectually curious by nature, and gaining mastery over complex scientific issues will be done by those whose livelihood demands it.

On the other hand, it can be argued that an interdisciplinary approach to forensic science is long overdue in legal education. Whether it be in a classroom setting or involves a rigorous quasi-medical clinical experience, the importance of science's influence on the court system cannot be withheld from independent, legal scholarship.

At a school where courses are devoted to the relationship between law and psychology, law and politics, even law and literature, can the absence of a course centered around forensic science be excused? With a new generation of lawyers poised to argue the future of science, whether it be genetics or the Internet, the need for such instruction is obvious. While law schools continue to ignore this fact, lawyers will likewise flinch from electrons and chromosomes. And in the next century, that will quickly mean more than just ignorance. It will result in obsolescence.

—Justin Herdman

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—First Amendment, U.S. Constitution

• Letters •

Malz's letter on MELSA missed mark

Without going into the merits of Prof. Chomsky's lecture (which I was unable to attend) or his scholarship in general (with which I am familiar), I would like to respectfully disagree with Malz's letter to the RECORD last week.

In his letter, Malz channels a mix of anger, dismay and outrage, which often animates those touched by the Arab-Israeli conflict, whichever side they may embrace. Malz highlights a series of facts and events which have plagued the Israeli state since its inception — facts which are probably somewhat familiar to most RECORD readers. In the process of doing so, he reproaches Chomsky for having "failed to mention" these facts; however, it seems — from the synopsis of the lecture provided by the RECORD itself — that Chomsky's purpose was to raise exactly the issues unfamiliar to the public, *inter alia* that the story of the conflict has been "only partially told

by the U.S. media." Indeed, at the risk of mentioning an example, as recently as last month, when Israel bombed civilians and three power plants in Lebanon, the U.S. media's reports proved wholly inadequate and had to be complemented by foreign sources.

My point here is not to engage in an exercise of rebutting each of Malz's facts with countless examples of gross atrocities inflicted on the Arabs — Christian and Muslim alike — during this continuing conflict. Nor do I seek to expose shameful anti-Arab biases in U.S. politics and U.S. media (not to mention film-making). But I do want to underline that especially for a public that is highly educated and in a position of (future) power and impact (i.e., the HLS student body), a voice like Chomsky's, which pushes us to question the information put before us, to seek more nuanced sources and to exchange alternative viewpoints should not threaten

Malz. Nor should he feel that Chomsky's lecture was an attempt to indoctrinate his audience with an anti-Israeli slant.

To the contrary, Chomsky's message runs deeper than the factual surface of such an emotional debate, and a constructive dialogue can only emerge by raising awareness of challenging viewpoints and alternative sources of information. This will lead us to exactly the Harvard Law School which Malz seems to desire: "an institution that encourages free thinking and the free exchange of ideas." It is not by categorically dismissing all that Chomsky has to offer that such an environment is created or enhanced. In my view, Malz's letter exhibits the same "intolerance and extremism," and the same hurried dismissal of equally important issues, for which he reproaches Chomsky in the first place.

Caline Mouawad '01
March 13, 2000

In defense of 1L optimism and alcohol

I write in response to Liz Falk's ill-mannered column in last week's RECORD. While I am, of course, flattered that the Great One deigned to read my little 1L piece, I do wish she had bothered to read it properly. Had she done so, she might have written something closer to Dave Min's letter (also in last week's RECORD), which struck me as both proportionate and fair comment.

Concerning the matters touched upon in my article it seems that Falk and I can now agree on two out of the following three.

First, we both like Justin Dillon, Merlot bigotry notwithstanding. Second, Falk now agrees that there needs to be some counterbalance to what I called the "consistent negativity" of most RECORD columnists. It was gratifying to read that she intends to "close out [her] RECORD career on a positive note." While I am unsure if she is capable of achieving this aim, I applaud her attempt to do so. If I have had to prod her ever so slightly in that direction, so be it: my work there is done.

Where we disagree is

over HLS students generally. I think they're great; Falk does not. I think they're supportive; Falk does not. According to Falk, HLS students are "incapable of talking outside a mechanical level." Yet the pages of this newspaper and Falk's own actions indicate that it is Falk's view that is the least accurate.

Consider this: Reese Pecot writes what can fairly be described as a negative article about the HLS experience. It is thoughtful, candid and articulates a view doubtless shared by a fair number of people. I happen to disagree violently and say so, in print — primarily because the opposing view is at least equally valid and yet seldom represented in the pages of this newspaper. What I write is interpreted by some as a personal attack on Pecot herself. Pecot is upset and doubtless in need of comfort/validation. What then happens? Is she, as Falk would have it, left twisting in the wind while her fellow students, too self-absorbed for anything other than the most perfunctory social discourse, pass her

by in pursuit of shallow little lives? Of course not. People who know her rally round to provide support; mutual friends come up to me in class and assure me that Pecot is a much more positive person than her article would suggest; Dave Min takes the trouble to write the RECORD to the same effect; and Falk... Well Falk draws herself up to the full extent of her Olympian height and hurls a heartfelt, if somewhat inelegant, thunderbolt in my general direction.

These are the actions of good, decent and supportive people. With friends like these I have little doubt that Pecot's time at HLS is and will be much better than the one she described in writing. I am delighted to take Dave Min up on his advice to give Pecot and all in Section II a rousing toast at the earliest opportunity. I do so not just because you're all too busy to do so yourselves but because, unlike Falk, I think you're terrific.

Adam Oyeibanji
March 12, 2000

Something on your mind?
Write to us at
record@law.harvard.edu.

Shame on Censorship and Jordan Malz

In his March 7 letter to the RECORD, Malz opens: "Shame on the Middle Eastern Law Students Association for inviting infamous Israel-basher and discredited political radical Noam Chomsky to campus this past Monday." He explains that "Israel-bashing" is unacceptable at Harvard Law School and therefore the "outrageous" Chomsky should never have been invited. Ironically, he closes with the following remark: "I would like Harvard Law School to remain an institution that encourages free thinking and exchange of ideas. Others, apparently, would like to take Harvard Law School in the direction of intolerance and extremism."

I hardly need point out the inconsistency of these positions. How denying Noam Chomsky, one of America's most prominent linguists and political theorists, a forum at Harvard Law School would encourage "free thinking and exchange of ideas" is beyond this writer's understanding. The only intolerance and extremism evident in Malz's letter is his own desire to censor certain ideas from public debate at HLS.

Malz's plea would be ignored easily enough were it not the case that such censorship has, on numerous occasions, been exercised against potential HLS speakers. Rather than mounting a rhetorical defense of the "academy" as a wide-open marketplace of ideas — that has been done often enough before — I present three examples of such censorship.

Malz is not the first to suggest that those who dare oppose Israel should be denied a HLS audience. Former Secretary of State George Shultz would undoubtedly agree with Malz's self-serving conception of free speech. In 1986, Shultz (through Alan Keyes, then Assistant Secretary of State for International Affairs) refused to allow Zudhi Terzi, the Permanent Observer of the PLO at the United Nations, to

participate in a Harvard Law School Forum debate titled "Prospects for Peace in the Middle East." He was free to travel to Massachusetts only so long as he did not engage in "political activity," namely public speaking. In the resulting lawsuit, *Harvard Law School Forum v. Schultz*, 633 F.Supp. 525 (D. Mass. 1986), in which the Forum was represented by Prof. Alan Dershowitz, Keyes admitted the sole reason for the denial: "Terzi's proposed participation in a political debate with American citizens." Judge Skinner sided with the Forum in finding that "[i]t may well be that the public interest will, in some respect, be adversely affected by affording a forum to a PLO representative whose policies are in conflict with those of the United States and indeed are anathema to many citizens. The public interest in preserving free and open debate on precisely such subjects, however, must be regarded as of overwhelming priority, as mandated by the First Amendment, and as being at the heart of the survival of a free people." Unfortunately, the Schultz/Keyes/Malz point of view prevailed when the First Circuit vacated Judge Skinner's injunction as moot due to the passage of time.

The Terzi affair was not the first time the State Department muzzled a potential HLS speaker. When the Forum invited Soviet Premier Nikita Khrushchev to Harvard during his 1960 visit to the United States, the State Department denied him permission to visit Cambridge. In his telegram of regret to the Forum, Khrushchev explained that "the State Department deprived me of the possibility to enjoy the freedoms of a democratic country, the United States of America." He concluded prophetically: "However, I am confident that better times will come in the relations between our countries, that the sun will rise at last, dark clouds will disperse and all the people will understand the necessity of friend-

ship and cooperation among nations."

Speaker censorship on the HLS campus has also originated internally. In 1973, the Forum invited Roy Innis, director of the Congress on Racial Equality, to speak. Innis requested that Nobel Laureate and Stanford University Prof. William Shockley also be invited so that the two might debate the topic of intelligence and genetics. The Forum granted Innis's request and Prof. Louis Loss agreed to moderate the debate. As the debate date drew near, Prof. Derek Bell and the BLSA demanded that the Shockley invitation be withdrawn. By a 5-4 vote of the Forum board, the invitation was withdrawn. As a result, "newspapers on both sides of the Atlantic reported that Harvard Law School gave in to intimidation," as reported by the Law School Council. Ironically, the denial of a forum at HLS and the resulting national media attention led to a televised debate between the two. To the surprise of those who would have suppressed Shockley's speech, what would have been a platform of a few hundred at HLS became a platform to millions nationally. Such is often the irony of censorship.

Fortunately, would-be censors of public discourse have lost more battles than they have won. This campus, at the invitation of the Forum and other groups, has heard such controversial speakers as Ross Barnett and Marvin Griffin (segregationist Governors of Mississippi and Georgia, respectively), Senator Strom Thurmond (opposing the Civil Rights Bill), Fidel Castro, Soviet Ambassador Mikhail Menshikov, Madame Nhu of Vietnam, Malcolm X, Lt. Gen. Lewis Hershey (Director, Selective Service System), Daniel Ortega, Caspar Weinberger (who was peppered with fresh produce at his Sanders Theater appearance in the wake of the Grenada invasion), Jerry Falwell (introduced by Professor Tribe) and John Cardinal O'Connor.

Most recently, former Rep. Bob Dornan, Charlton Heston and Rep. Asa Hutchinson — speakers whose views are unpopular with many students — have been subjected to tough questioning at HLS.

I wonder if this campus was better off for not hearing Zudhi Terzi. Would his speech have set off a rash of anti-Semitism on campus? Would a dialogue with Khrushchev have sparked a Communist Revolution in Cambridge? Would Prof. Shockley's position have withstood the pulverizing effect of a Harvard audience? Was exposing HLS students to the ideas of Noam Chomsky truly shameful?

The importance of open debate cannot be underestimated. Open discussion should be welcome at HLS, not only when innocuous topics are proposed, but especially when speakers espouse extreme, radical, even repugnant views. There is no more powerful weapon against bad ideas than good ideas, against lies than the truth. Surely "outrageous" speech is more dangerous unchallenged than when subject to open debate. If the university, the academy, is not a proper place for this marketplace, or battlefield, of ideas — the airing and consideration of all sides of all issues — then where is the proper place? Malz might ponder Justice Holmes's words in *Abrams v. United States*: "When men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas — the best test of truth is the power of the thought to get itself accepted in the competition of the market, and that truth is the only ground upon which their wishes safely can be carried out. That indeed is the theory of our Constitution." It is equally the theory of the academy.

Jon Rose '00 is president of the Harvard Law School Forum.

Letter

'Non sub homine sed sub deo et lege': Latin words for HLS students to study by

Langdell legend should reflect change

When I first arrived in Cambridge in September 1935, I explored the Harvard Law School grounds. I stopped a long time before Langdell Hall, reading and pondering the noble legend carved deep into the gray limestone, high over the central doors (not a Latin scholar, I hope I remember the spelling) — "NON SUB HOMINE SED SUB DEO ET LEGE" — Not under Man but under God and the Law. It made a deep and lasting impression upon me.

I understood the statement to embody the distilled essence of a free society, as envisioned by the great thinkers of antiquity, developed by the brave English judges who dared to put limits on the power of the crown, and essentially incorporated in our Constitution by the founding fathers. As a History major I had been exposed to those concepts but had never known them to be stated so profoundly and concisely. I experienced a feeling of awe and pride that I was about to enroll in a great institution, dedicated to such ideals.

"NON SUB HOMINE" clearly

means that the people are not to be subject, without their consent, to the exercise of power by any king, tyrant, dictator, despot, autocrat, general, executive or bureaucrat, which may affect their life, liberty, freedom and property.

By "SED SUB DEO" the author of the statement gives expression to the need of most people to believe in some divine being or force to validate our reason for being, or to give spiritual support to the contemplation of the ultimate mysteries of infinity, eternity, our place in the cosmos, and how we shall live our brief lives. In response to that need all the great religions have evolved codes of moral conduct and right living, with the thought of possible divine retribution for transgression. In our country such moral codes and precepts derived from the Judeo-Christian religions, and held society together in civil community by voluntarily living in accordance with, or making a reasonable effort to accept, such moral strictures.

By "LEGE" there was clearly meant a body of principles, rules, and processes to protect a free people in its life, liberty and property and in their relations

with one another, collectively referred to as The Law, relatively constant, understandable, knowable, predictable and applied by impartial judges of integrity to all people, without discrimination, and regardless of outcome. That being so, there was no injustice in the rule that "ignorance of the law excuses no one."

And during my three years of study, I continued to feel that the splendid ideals expressed over Langdell hall did exist.

Today, I no longer think that. God has been judicially expelled from the public place, and with Him the restraints which led most people to observe the moral codes. Now everyone is deemed capable of right judgment. (As a recent philosopher observed: If God is dead, all things are possible). Any expression of those ancient codes in a public place, as, say, the Ten Commandments, is viewed with horror and cause for seeking injunctive relief. Believers in a Divine Being are now often deemed quaint, if not dangerous to the body politic.

Law is no longer knowable, or certain. It is in violent flux. The judicial process is increasingly used to advance visionary agen-

das, compel certain modes of thinking, conduct and association, and to reach outcomes neither duly adopted nor contemplated by the constitutionally designated legislatures. A torrent of litigation, unheard of in any other country, has replaced the religiously inspired moral codes by which people formerly resolved and accommodated their minor conflicts and difference. The public increasingly looks upon lawyers as predators. A deluge of rules, regulations, directives, orders, mandates, and guidelines has issued from the Executive branch, the Departments, the agencies, and from the Judiciary, which no one person can hope to know or understand, putting the citizens at risk of their freedom and property. Outcomes are manipulated to achieve politically correct ends, of the old principles of law. The legislative rejection of Bills or Treaties is now all too frequently circumvented by Departmental or Agency rule-making action, or by litigation, in which the people have not had their say.

Recent Presidents have created a large armory of Executive Orders under which, in the presence of a real or contrived emer-

gency, as defined by the Order, and then declared by the Executive, all our liberties and property may be subject to Executive decision and force, and we are then back to rule by Man, not Law. As an advisor to the current President has been reported to have said with respect to Presidential Orders: "Stroke of the pen, law of the land, pretty neat."

Since the motto of Harvard is "Veritas," and since the statement carved over Langdell Hall may no longer be true, I would suggest that the time has come for the student body and faculty to consider whether "NON SUB HOMINE SED SUB DEO ET LEGE" should be chiseled out, or, at least, decently boarded over.

Herman T. Van Mell '38
March 1, 2000

The maxim referred to in the above letter stems from Henry de Bracton's *De legibus et consuetudinibus Angliæ* (c. 1250): "Rex non debet esse sub homine, sed sub Deo et lege." "The king ought not to be under any man but under God and the law."

—D. Stojkovic

PERSPECTIVE

By Oran Doyle LL.M. '00

Irish America, ideology and fascism

I must begin with a confession. I am an LL.M. student and I am told that I speak with a "strange" (which I think means "non-American") accent. I am not sure whether this betrays itself in my writing style; but the more xenophobic and racist readers of this newspaper are advised to stop reading, just in case their charming stereotype of LL.M. students is reinforced. To celebrate Saint Patrick's Day, I want to offer some reflections on Irish America and its impact on politics and peace back home in Ireland. Of necessity, the account that I offer is a generalisation. Many Irish Americans whom I have met are decent people and do not share the opinions which I am about to attribute to Irish America. Nevertheless, the mindset I describe exists and needs to be confronted.

There is a belief within Irish America — and possibly in America generally — that the separate existence of Northern Ireland represents a colony. The British arrived 400 odd years ago and are still hanging onto some land, contrary to the wishes of the local inhabitants. From this, it is but a short step to the belief that a war pursued against these British colonisers is a just war of national self-determination. In the context of the current peace process, these views are repackaged by those who blame the impasse wholly on unionist intransigence: decommissioning is seen as an unwarranted demand/request for IRA surrender. These myths need to be exploded.

The situation in Northern Ireland cannot be understood as a colonial situation. The British plantation of Ulster began in 1609, some eleven years before the Pilgrim Fathers arrived in North America. Regardless of the initial legality of the settlement (or, indeed, of the establishment of

the Northern Ireland statelet in 1922), after nearly 400 years, Ulster unionists cannot be seen as colonists. They must be taken to have a right, in some sense, to the land on which they live. This right is not respected by corralling them into an Irish state which, rightly or wrongly, they view as anathema to their traditions: their identity needs to be accommodated, not subsumed. Unionists are not an aberration to be excised from an ethnically pure, united Irish state; they are people with legitimate interests, well worthy of our respect. Self-determination does not mean making war on your own people.

Even if one believes that the colonial account was at one stage a valid description of the situation, it has been definitively superseded by the referendum that ratified the Belfast Agreement of 1998. These Referenda, carried by a 95 percent majority in the Republic of Ireland and a 71 percent majority in Northern Ireland, constitute the most recent and direct expression of self-determination on the part of the Irish people. As regards the status of Northern Ireland, the basic statement is that set out in the amended Article 2 of the Irish Constitution, "It is the firm will of the Irish nation, in harmony and friendship, to unite all the people who share the territory of the island of Ireland, in all the diversity of their identities and traditions, recognising that a united Ireland shall be brought about only by peaceful means with the consent of a majority of people, democratically expressed, in both jurisdictions in the island." Thus any war against "the British presence" is not a war of self-determination, but a war against the clearly expressed, democratic will of the people of Ireland, North and South.

The beauty of the current peace agree-

ment is that it transforms the situation from a zero-sum argument over land, into a productive and ongoing dialogue as to how people can best live together. What matters is not a line on the map, but the lines which people draw between themselves. (This is increasingly the case in a European Union where national borders are fast becoming irrelevant.) The peace settlement recognises the cultural affinity that many people living in Northern Ireland have with the Irish State, while simultaneously granting them a direct political stake in Northern Ireland. In turn, the position of Northern Ireland within the UK is copper-fastened, for as long as the majority in Northern Ireland so wish it. The tragedy is that this peace settlement is consistently undermined by the Irish-American mindset I have described, because it gives credence to the notion that self-determination means not the will of the people but the will of whoever is inclined to fight for a united Ireland.

The current impasse in the process stems from a disagreement over the issue of weapons decommissioning, an issue which has huge symbolic importance for both republicans and unionists. The impasse, although deeply regrettable, should not detract from the progress that has been made to date and the extent to which both sides have been prepared to step back from previously entrenched demands. What is needed is a time for reflection on what has been gained and what could be lost. On the one hand, unionists — particularly rejectionist unionists — must recognise what they have gained from the agreement and question whether they will ever again be in a position to negotiate such a fair deal. On the other hand, the republican community must attempt to understand the impor-

ance of decommissioning for unionists. As an Irish commentator recently observed, it has been the IRA, with its infinitely expandable definition of "legitimate target," that is largely responsible for the siege mentality of unionists (and others); the IRA must accept that it, with others, bears a considerable amount of responsibility for the conflict. The British and Irish governments are well capable of devising honourable ways to move the process forward to its conclusion, but unless unionists and republicans truly want to move forward together, such ways will not be followed.

My contention is that the simplistic attitudes of Irish America make a successful resolution of the peace process more difficult. A naive view of the unionists as colonists provides (even if one personally disavows the use of violence) moral support for those elements of republicanism opposed to any settlement. The challenge for Irish America, and for republicanism, is to internalise fully the message of the Belfast Agreement, recognising the legitimacy of unionism as a political viewpoint and seeking ways in which people can live and work together. As an Irish person I am exasperated by the way in which the future of my country can be held hostage to a falsely idealistic vision maintained primarily by people, and their descendants, who have chosen to leave my country and need not live (or die) with the consequences of their beliefs and actions. But I recognise that the real challenge is to educate people about a more positive notion of what it means to be Irish. The Irish diaspora and the current global identification with things Irish is a powerful force, which should be harnessed for the good of all. It should not be put at the service of murdering fascists.

PERSPECTIVE

By Tanya D. Marsh '00

Lasting peace demands we understand roots of violence

St. Patrick's Day, that giddy American holiday of green beer and leprechauns, also provides an opportunity to reflect on the continuing Troubles in Northern Ireland. The day also asks the United States to ponder what role, if any, America should play in bringing lasting peace and justice to the Emerald Isle.

The conflict in Northern Ireland is routinely described in the American media in religious terms; it's Catholics versus Protestants in the final round of the Reformation. Viewed through this lens, the Troubles seem like an anachronism and the motivations of the opposing communities seem unsympathetically medieval. But the roots of the conflict are, of course, much more complicated. Religion is not the reason for the violence, but merely a shorthand method used to categorize two communities who are better characterized by ethnic, political and economic terms.

In order to understand the Troubles, one must have more than a cursory appreciation of the long unhappy history of Ireland. Between St. Patrick's visit and the 16th century, both England and Ireland were Catholic countries. Then Henry VIII and the Pope had a little disagreement over the king's divorce from Katherine of Aragon and England broke away from the Vatican to establish the Anglican Church. Over the next few decades, English monarchs switched back and forth between Protestantism (Henry VIII, Elizabeth I) and Catholicism (Mary I). As all good imperialists do, the English tried to force their Irish subjects to follow the official state religion. They were largely successful in converting those with land or title to lose — the native aristocracy. But the vast majority of Irish held fast to Catholicism.

Fast forward to the middle of the 17th century when two royal candidates for the throne of England — the Catholic James II and the Protestant William of Orange — fought a famous battle in Ireland's Boyne

Valley. William and his wife Mary prevailed at the Battle of the Boyne, extinguishing James's claim to the British crown, and Protestantism was cemented in the English national identity. The religious interpretation of the present Troubles places great significance on The Battle of the Boyne, an idea embraced by the Protestants who parade triumphantly through Catholic areas in the annual "marching season" to commemorate the battle.

But religion is only really significant to the extent that it identifies two opposing groups: the descendants of landless Irish peasants on one side and the descendants of 1) the propertied Irish aristocrats who largely intermarried with English nobility and 2) the Scottish peasants who were given land in Northern Ireland to help the English monarchs subdue the native population. With this in mind, the Troubles are about power — about the ownership of capital and the inevitable consequences of a system which favors one group at the expense of another. (I'm not really a Socialist — I just call them as I see them.) Compare this description of the situation to the state of the American South before the Civil Rights Movements (and to a less extreme extent, today).

There are no laws against discrimination in Northern Ireland. Thus, Protestant employers are free to intimidate Catholic employees or refuse to hire them in the first place. Theoretically, Catholic employers are free to do the same, but three centuries of laws which forbid Catholics to own property have had a dramatic impact on the current distribution of capital — the reality is that few Catholics own significant assets. The unemployment rate for Catholic men in Belfast is over 70 percent. Is it any surprise that many seek to emigrate or try to resolve their frustration through paramilitary groups? While it is easy to dismiss those who have taken up arms as murderers and terrorists, that does little to remedy the sit-

uation. Until we understand why desperate people turn to violence in Northern Ireland, we cannot correct the underlying problems and prevent future generations from being consumed by political violence.

The major Catholic/nationalist paramilitary organization, the Provisional Irish Republican Army, was named and patterned after Michael Collins's guerilla group which forced the British to recognize the Irish Free State (now the Irish Republic) in 1922. The modern IRA was formed in the 1960s originally as a defensive force to protect the Catholic populations in Belfast, Derry and the countryside from the British Army, hostile police and armed Protestant mobs. The Catholics drew the anger of the British and Protestants in the late 1960s for their peaceful protests against discriminatory housing and employment laws in the North. Inspired by Martin Luther King Jr. and Gandhi, the Irish Civil Rights Movement began as a non-violent endeavor, but after protestors were beaten and shot, the IRA took over. So rather than naively wonder how violence triumphed in Northern Ireland, we should be thankful that a similarly brutal response in the American South did not result in our second civil war.

The important point here is that the IRA did not surface in the 1960s as a romantically patriotic attempt to "Get the Brits Out." Instead, the IRA's emergence was due to the Catholic community's vulnerable position at the hands of its Protestant neighbors, from the police and from the army which was ostensibly brought in to protect them. As the IRA grew stronger, it took a more aggressive posture; but if the IRA's defensive origins are overlooked, it is impossible to understand the level of support it still maintains.

In the past three decades, violence has become regrettably commonplace in Northern Ireland. Protestant and Catholic paramilitaries have been locked in a deadly

game of tit for tat and far too many innocent bystanders have been caught in the crossfire. Neither party is blameless, and the task now should not be to distribute guilt but to find the path to peace.

One ugly truth remains — the law of Northern Ireland reinforces the inequality between Catholics and Protestants, thus leading to institutionalized discrimination. There will be no peace in Ireland until there is justice for all of its citizens, until a government which can truly share power is created, and until both sides feel safe enough to lay down their guns.

Forty million people identified themselves as Irish Americans in the 1990 census. This ethnic group, second in size only to German Americans, has historically played both disruptive and mediating roles in the Troubles. Americans have bankrolled paramilitary groups (especially the IRA) for years and we have much to atone for. Just as the British government has a moral duty to disentangle itself from the conflict and remove legal impediments to a just peace, America should do all it can to help broker a peace that ensures the safety of Catholics and Protestants in Ireland.

A "settlement" which mandates that the IRA disarm as a pre-condition misrepresents the fundamental nature of the conflict and does not address the legitimate security needs of both communities — it is doomed to failure no matter what David Trimble does. To insist that the IRA disarm without requiring the same of Protestant paramilitaries or, for that matter, the British Army and the police, is not only patently unfair, it is based on a dishonest reading of the history of Northern Ireland. Peace can only come with compromise from both sides, but peace without security is an unenforceable pipe dream. America should play a vital role in resolving the conflict in Northern Ireland by insisting that disarmament be mutual and that institutionalized discrimination be eradicated.

• Elephants v. Donkeys •

The new American majority

by John W. Bartlett '01
and Maura Dalton '01

Thanks to seven years of Democratic leadership in the White House, America crossed the bridge to the 21st century in a state of prosperity and stability unimaginable when George Bush left office in 1993. Since then, more than eight million new jobs have been created. Unemployment is the lowest it's been in 30 years; African-American unemployment is at an all-time low. Crime is down in each of the last five years, and fewer children — but still too many — are growing up in poverty.

The HLS Democrats are working to get law students involved in the political process and in state and national policy debates. More than three dozen of us spent a day or more in New Hampshire volunteering for the Gore and Bradley campaigns. Our Campaign Research Teams are drafting policy papers and conducting opposition research for Democratic challengers who don't have the benefit of a Capitol Hill staff. And next fall, we'll be among the army of Boston-area student volunteers that will help put Al Gore over the top on Nov. 7.

We are also giving all students the chance to learn first-hand from the Democratic leaders who shape state and national agendas, including Common Cause president and former Massachusetts Attorney General Scott Harshbarger, former White House policy adviser and D.C. Circuit Court nominee Elena Kagan and others. Our Mentors Program links current HLS Dems with those who blazed the trail for us — Dems alumni who are now politicians, prosecutors, private attor-

neys and community leaders.

Perhaps most important, we are trying to live out the Democratic commitment to improve the lives of all Americans by sponsoring community service projects, including a successful holiday food drive last fall and an upcoming Habitat For Humanity day of service.

Today's Democratic agenda is America's agenda. Polls show Americans trust Democrats on the economy, education, child care, Social Security, guns and other issues. They know Democrats will steer a course that will build on our economic success in ways that make all Americans better off, and will seize the unprecedented opportunity created by our budget surplus to protect Social Security for our parents' generation and make revolutionary improvements in our children's schools.

Democrats support common-sense regulations that protect the rights of sportsmen, while keeping junk guns out of the hands of children and assault weapons off the streets. The NRA paid good money for the GOP's laissez-faire approach to guns. Not only do Republicans continue to oppose expanding Brady Bill background checks to gun-show purchases and requiring trigger locks to protect our children, but they would whittle away at the current Brady Bill provisions that have prevented more than half a million felons, fugitives and wife-beaters from buying a gun.

The Democratic Party wants to preserve and protect Medicare and Medicaid, and to ensure all Americans access to affordable, high-quality health care. Our Patients' Bill of Rights puts doctors back in charge of

health care. It provides protections for patients enrolled in managed care plans, including guaranteed access to the emergency room closest to you, improved access to specialists, smoother transitions if your doctor should leave your health plan and better access to prescription drugs.

On education, the Republicans want to take money away from public schools through a voucher scheme that will help the rich more than the poor. A Gore Administration would expand education and lifetime learning tax credits, make major investments in our deteriorating public schools and make sure kids reach kindergarten ready to learn by boosting investment in the crucial pre-school years.

What counts as educational innovation in George Bush's Texas? Well, Houston's public schools now have a smog-detection system to let teachers and principals know when air pollution is so bad, it's not safe for children to go out on the playground. That happened 46 days last year, making Houston America's most polluted city. (Of course, if there's one guideline that most of us can probably agree on, it's that we should think twice before voting for a candidate whose environmental policy is praised by Texas oil magnates.)

After being trounced in New Hampshire, Bush finally showed his true colors by dropping "compassionate" from his vocabulary. The label never really fit the governor, who vetoed a bill giving people who are arrested in Texas the right to speak to an attorney within 20 days of their arrest. Twenty days was too generous a guarantee for Bush, even though arrestees in most other states get counsel within 72 hours. Bush also shut

down the most extensive in-prison drug-and-alcohol rehabilitation program in the country, and while asking us to ignore his "youthful mistakes," he signed a bill giving mandatory jail time for possession of even tiny quantities of illegal drugs. All this while cutting the investments in kids that are proven to keep them from becoming criminals in the first place.

Bush pays lip service to inclusion, but his actions speak louder. A few well-rehearsed Spanish phrases can't make up for embracing the president of Bob Jones University, where interracial dating is banned and the Catholic Church is taught to be a Satanic cult; or for refusing to meet with the Log Cabin Republicans, a gay group, while engaging in back-slapping with hateful and divisive men like Jerry Falwell and Pat Robertson. The Democratic ethos is fundamentally different. We are the party of inclusion, trying always to be like America itself — growing in strength by increasing in diversity.

But we are the party that Americans agree on. The Republicans are about "us" and "them" — where "us" is the rich and the religious right, and "them" is we who believe in protecting the environment and the economy, being strong at home and a leader abroad, preserving a woman's right to choose, and making sure the rising tide does indeed lift every boat. The HLS Democrats are proud to be part of the new century's American majority.

The authors are co-chairs of the HLS Democrats <democrat@law...>.



by Beth Collins '00

A few weeks ago, the Harvard Law School Republicans made our annual journey to Washington, D.C. in order to meet with politicians, judges and campaign staffers. This year, we were fortunate enough to meet Senators McConnell (R-Ky.) and Cochran (R-Miss.) and Representatives Fowler (R-Fla.) and Paul (R-Texas). Every one of these members of Congress began the discussion with the exact same comment: "I didn't know there were Republicans at Harvard!" It was with great pleasure and pride that we could respond in the affirmative, and let these people know that there is in fact a large and active Republican population on campus.

One of our goals over the last few years has been to take a small and silent organization at HLS, and make it into a group capable of offering opportunities to all who might be interested. Although I might be a bit biased, I think we've succeeded. From our kick-off event this year, the Republicans have shown that we are willing and eager to work with other groups in an effort to raise our profile on campus, and to provide opportunities for involvement. We began the year with our Big Tent Party, which was co-sponsored by: the Harvard Journal of Law and Public Policy; the Harvard Society for Law, Life and Religion; the Harvard Federalist Society; and introductory words were provided by the co-chair of the Student Public Interest Network. The great attendance, as well as the cooperation between these

The Republican experience: 1999-2000

groups, set a positive tone for the year, and one that has stuck with us.

Throughout the fall, we continued our efforts to become engaged in campus debates such as the LIPP reform proposals, in addition to providing opportunities for off-campus and community involvement. Just to name three, this fall we ran a blood drive in conjunction with the Red Cross, provided help to a candidate for Cambridge City Council, and compiled information and contacts for HLS students wishing to participate in the 2000 presidential race. For instance, members of our organization planned trips to New Hampshire, organized meetings with the candidates, and provided access to local events.

We also began efforts to get to know the HLS faculty a little better, primarily through small lunches with individual professors. Our new lunch series has been very popular, and we plan to continue hosting the lunches. All kidding aside about the number of Republicans on campus, the response from the faculty has been superb. Of course, two invitees were the only two professors who admit to voting for President Reagan, so that could have something to do with the response.

The 2000 year has gotten off to a great start as well. During the winter quarter we renewed our commitment to local politics by sponsoring a talk and dinner with the Counsel to the Massachusetts Republican Party. As a practicing lawyer who also devotes time to state-wide politics, Evan Slavitt was able to share his thoughts on a lifestyle appealing to many of us. Then our emphasis, like many others

interested in politics, shifted to the national scene and we made our trip to Washington. In addition to Members of Congress, we were also able to meet with recent graduates whose current positions include Counsel to the Rules Committee and former Counsel to the Elizabeth Dole Campaign. The trip was a very inspirational one, providing our group with a glimpse of short and long-range possibilities.

Most recently was our annual Ronald Reagan Birthday Party. An event that many of us look forward to, this year's event exceeded our expectations. In a fitting way, former Congressman Mickey Edwards, the speaker at the first of the celebrations, was also our speaker this year. Congressman Edwards was able to articulate what many of us instinctively feel about President Reagan: sometimes, nice guys really do finish first. For most of our members, myself included, President Reagan was the first president we truly experienced, and his presidency has set the standard ever since. Other candidates or presidents may seek to inherit his legacy of national and individual pride, but there will only be one President Reagan.

One of the most important features of our group, and other groups I would imagine, are our efforts at membership outreach. It is through our e-mail list, meetings and events that we have been able to pass along job opportunities, requests for help on briefs for impact litigation, and contacts for local and national campaigns. Our meetings and e-mail interchanges have also helped to increase the free flow of opinions and

information within our group and with respect to the Harvard Law School community. The discussions also help to foster a sense of community, and provide proof positive that there really are Republicans on campus.

We hope to continue our efforts to raise our profile on campus and are looking forward to a series of great events. First and foremost, on March 22, we are focusing our energies on an upcoming debate we are co-sponsoring with the Democrats between Chairman Nicholson of the Republican National Committee and Chairman Rendell of the Democratic National Committee. After the debate, we will be hosting another Blood Drive, and co-hosting a job panel on how to run for public office, to name just a few events.

As my tenure as President of the Harvard Law School Republicans draws to a close, I can look back at this year with a sense of pride. Working together as an organization, we have provided a significant amount of opportunities for our membership and the community at large. The Republicans have increased our ties to other organizations, co-sponsoring multiple events with the Democrats and working closely with groups such as SPIN. As I look to next year, it is with a great sense of optimism. We have a fantastic group of 1- and 2Ls eager to continue our efforts next year, and three of our officers will be returning. I invite all those interested to become involved and find out what's out there in terms of Republican events and opportunities.

The author is the president of the Harvard Law School Republicans.

Carpe Pollo

TAKING THE HIGH ROAD

By Jake Zimmerman '00
RECORD Columnist

It has often been said that there is nothing quite like the experience of being on stage. But there is *really* nothing quite like the experience of being on stage next to an actor who is mimicking your every gesture and vocal inflection with alarming accuracy. This is even more true when the actor who is supposed to look like you is wearing clown shoes and a freakish red wig, and carries a rubber chicken and a goofy horn as props.

I mean, come on. When the lights come on, the Parody begins, and I've got a crucial job to do — making fun of someone. But it was awfully difficult to focus on that work, what with having some carrot-topped freak next to me making a complete fool of himself.

Talk about an eye-opener. I know that many of you are frequently forced to sit next to me in classes, meetings, and such. But this was the first time that I've had the experience of sitting next to me. Is this what it's like every day for the Castro and Bedi brothers? When you think about it, it's really a miracle that twins don't kill each other in blind fits of homicidal rage more frequently.

This is not to suggest, of course, that I am displeased with my, er, dual appearance in this year's HLS Parody. After all, I do enjoy the attention. (Which is good because, as you may have noticed, I seem to avoid attention at HLS about as effectively as would an eight-foot-tall hermaphrodite running naked across the campus while screaming something like "the cows are eating my brain.")

Perhaps more to the point, however, is the old maxim that if you dish it, you'd better be able to take it. After my two-plus years of dishing it more than almost anyone else at this campus, anything less would be hypocritical. The way I take it (and, indeed, the way I hope that all of the show's "characters" take it) is that being featured in the Parody is a high compliment. I mean this sincerely.

But, still, it is tempting to get the last word. Justin Levitt may have gotten to dress up in my clothing and prance about the stage, but I still get to write a column the morning after. A lesser man might be tempted to use this space to exact a bit of sweet, sweet vengeance. For instance, a columnist more petty than I might take advantage of the opportunity to inform the world about the details of Justin's curious romantic obsession with marmots and ibexes.

But that's just not my style. Similarly, it would be childish and undignified to reveal which member of the "League of Justice" is featured prominently in Justin's extensive wardrobe of Underoos. Nor will I sully the pages of this august publication by spreading distasteful stories about what Justin did during the three months last summer when he was employed by RuPaul.

Besides, Justin hardly deserves such treatment. It's not like he chose this role, after all. Sure, he may have



thrown himself into it with gleeful abandon, but that's no more than one should expect from someone like him who has already been diagnosed with a newly discovered variant of the flesh-eating virus. Given that Justin doesn't have much time left before the highly contagious nature of this disease makes him a total pariah, I think his *joie de vivre* is really quite admirable.

No, if I wanted revenge, it would make far more sense for me to go after the people who actually wrote this year's Parody. And believe me, I could tell you things about Tori Jueds and the Chinese Food Truck Guy that would instantly destroy her Class Marshal candidacy. I could reveal the horrible details of the recipe that John Fagan uses to cook his nightly dinner of human flesh.

But, really, what's the point in getting worked up over just a little harmless fun? Why waste precious newsprint describing the finer points of Seph McNamara's emu excrement fetish? I highly doubt that many of you would really care that much, just as I'm sure you are entirely uninterested in learning exactly why Jordy Singer likes to dress up as Nancy Reagan when he emcees at illegal cockfighting matches.

So I won't do it. I will, at least, have the satisfaction that comes from doing the honorable thing. My personal sense of ethics and decorum remains intact. In the end, that is really far more important than any juicy details I could tell you about David Bigge and Rachel Skiffer's "lost weekend" in Tijuana.

In any case, this will probably be the last time I get to write about the Parody in the RECORD. So, if I may, let me get corny for a moment and use this space to thank all of you who have been fans and boosters of the show during the last three years. The level of professionalism and community support that the HLS Parody enjoys is almost certainly unique when compared with the "follies" or "law revues" that one finds at other major American law schools.

In three years I've been here, whether as a director, an actor or a "target," I have — again and again — found the Parody to be the healthiest and most worthwhile thing at this place. But I am still always amazed at the way you people turn out, every year, and spend perfectly good money to join us for an evening. Well over 1,600 of you shelled out to come see us this year. I know that I speak for both myself and many other members of the HLS performance community when I say: THANK YOU for making the best experiences of my law school career possible.

And that, needless to say, is more than enough sincerity, so I'll end it here. Make sure to look for my next column, in which I will emphatically *not* be revealing which HLS professors Dusan Stojkovic fantasizes about wrestling in a pit filled with mayonnaise [*Entertainment Editor's note: And don't forget the peanut butter, yummy.*]. Yes, he wrote a nasty review of the Parody last year, but I would have to be pretty pathetic to hold a grudge for that long, wouldn't I?

Fenno

Fenno sat at the Mac clusters in the Hark, legs wrapped around the back of the high chair, staring in disbelief at his screen. This was too much.

Someone had decided to run attack ads for a Lincoln's Inn campaign.

A Lincoln's Inn campaign.

Fenno harbored an affectionate disdain for Lincoln's Inn members. The Inn was sort of a structural homage to beer-goggling, a place where people who had never been quite pretty enough or cool enough could go and feel a sense of belonging. (Harvard did that for a lot of people.) All that, plus free beer, for a couple of hundred bucks a year. Fenno could see the appeal.

That said, he could hardly believe what someone had forwarded him: an e-mail from "thainstagata@hotmail.com" telling certain (but not all) Lincoln's Inn members not to vote for a few particular people "who felt it necessary to inundate our Harkboxes with additional useless nonsense. Like we care. And if that's not reason enough, they all snorted coke with George W. Bush and just won't come clean about it."

Fenno sighed.

"Thainstagata"? This, Fenno thought, is what happens when white boys with no black friends buy too many rap CDs — all of a sudden the think they can pull off a verbal gangsta-lean. Whoever this guy was (and only a guy would be this moronic), he probably thought Dre was "da bomb" and entered rooms saying "Instagata in da house!"

Fenno could scarcely believe that someone would care enough about being a Lincoln's Inn "governor" (please) to pull this kind of prank. Fenno also couldn't help noticing that this little incident happened on the same day as

the MPRE. Thanks, Bar/Bri!

What's next on the ethics list for the brightest legal minds of the future: political consultants for LSC elections? Vote-buying for class marshals? Trading the world's finest legal education for \$150,000 a year and the chance to lick bankers' boots? (Oh, right.)

Fenno did have to give Thainstagata credit for one thing — he made Anne Cunha think she lost the election because of the e-mail. It's always nice to spare people the truth.

That was enough. Fenno closed OpenMail, eased himself off his chair and walked outside to enjoy the slowly improving weather.

He got about 10 feet before he was hit with a barrage of election fliers.

Fenno groaned. Would it never end? Hadn't people learned yet that student councils are for high schools? Empty promises, Fenno thought, are best left in the bedroom, where they belong.

Fenno looked over the various slogans. "Vote for Cale Keable, the Cheerful Chipmunk." Hmmmm. Keable had decided to go for the happy rodent angle. Fascinating strategy. Well, Fenno thought, if you're a chubby, funny-looking drunk with two homonyms for a name, you gotta go with what works.

Then there was "Double your pleasure, double your fun," from the Bedi twins. "Since we're two of the same, that's double the energy and double the partying," they told the RECORD. That's deep. That's what Fenno thought of when he thought "Harvard."

Fenno quivered at the thought of that sweet Subcontinent lovin'.

Someone named Mike French was running for something and claiming to have saved Hemenway. Sure, thought Fenno. Everyone knew that One-L complaints were the driving force for change at HLS. It was all you, buddy.

Then Fenno saw his favorite: "T.J. Duane: He just wants to be loved, is

Quote of the Week

'I'm a technician. I can build a class action that will crush anything in its path. But it won't resemble anything that's walked the face of the Earth.'

—Prof. David Rosenberg, speaking at the Journal on Legislation Symposium Tuesday

that so wrong?" At least he's honest, Fenno thought. The Appetizer Pimp was finally hitting up his bitches for payback. Good for him.

Fenno couldn't help noticing, however, that T.J. had put Fenno's name on one of his campaign fliers. Fenno, endorse a candidate for the LSC?

It made sense, Fenno thought. Jay Munir and Frank Rossi were a full-employment act for irony. If Fenno could do his small part to help people like T.J. Duane stay in the spotlight a little bit longer, that might help everyone concerned....

Nahhhh. Fenno couldn't do it. Then T.J. might try to be his friend, and that possibility scared Fenno more than the fact that someone had once actually *listened* to the Crits. Besides, Fenno was

considering a vote for Justin Cooper. Anyone bold enough to claim that he'd reduced HLS's faculty-student ratio deserved serious consideration. First, though, he'd like to hear more about how Cooper helped bring peace to the Congo and how he'd convinced David Rosenberg to abandon solipsism for vegetarianism. Maybe Cooper could lend his prodigious talents to the Northern Ireland peace process.

Ireland! Fenno suddenly remembered that St. Patrick's Day was less than a day away and he was still sober. He shuddered at his own complacency.

As he ran to hop a train to Southie, Fenno wondered: If everyone's Irish on St. Patrick's Day, does that mean everyone's Canadian on Boxing Day?

Talk about scary...

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Can You Spare a Razor Blade?

Suzanne Carter and Tanya Marsh steal a bit of my column this week to report on the Parody. Tanya?

Tanya: Thanks, D. Last week, the Harvard Law School Drama Society presented "I Know What You Made Last Summer," the first parody of the century (although math geeks may contend it was the last parody of the century). Inspired by recent slasher flicks, as well as life at good ol' HLS, the Parody was often quite funny, if a little harsh. The RECORD, with columnists Liz Falk, Jake Zimmerman, Darren Schlanger and Fenno, was briefly mentioned, but we don't hold a grudge.

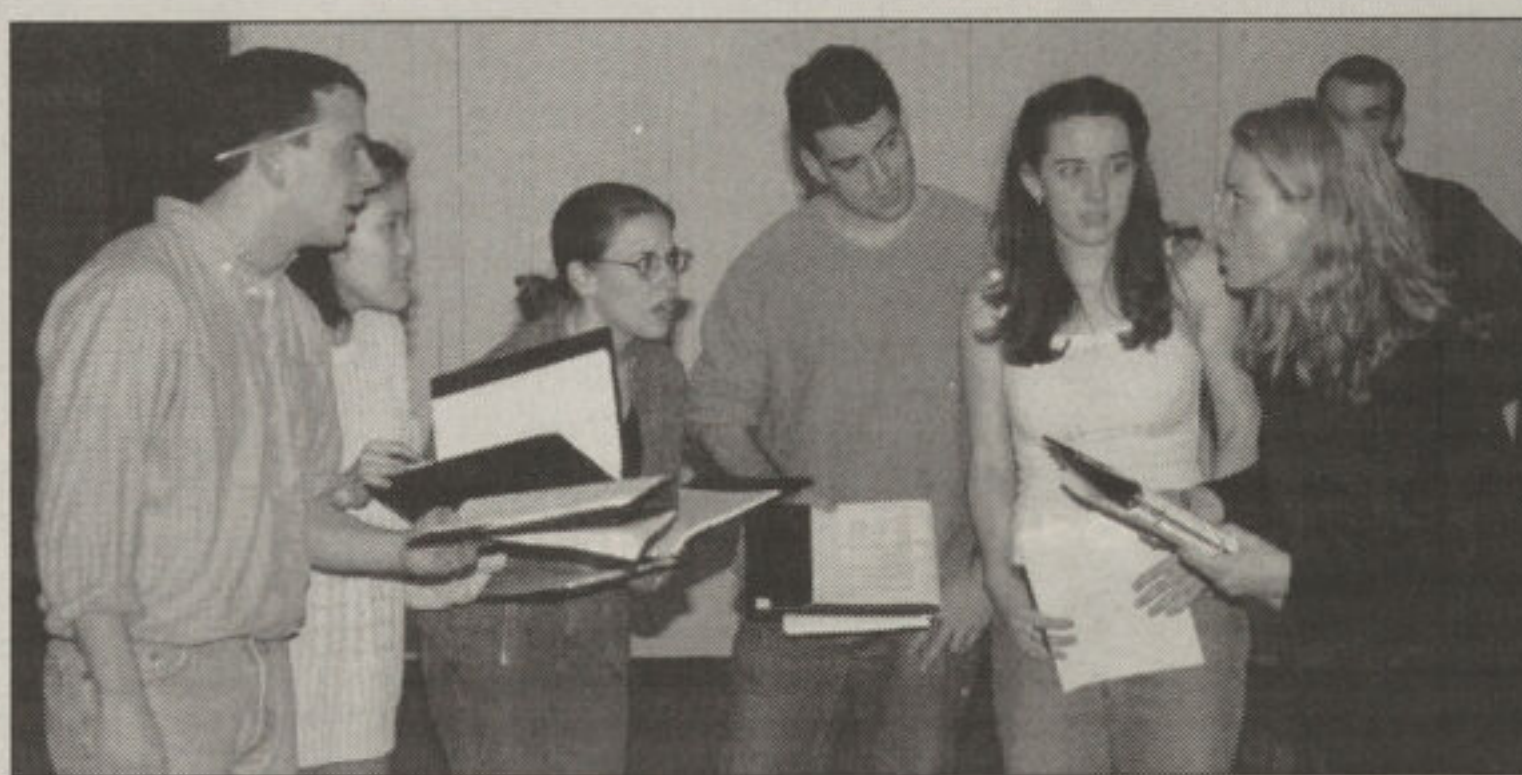
I am impressed with the imagination and work that went into this year's Parody, resulting in great one-liners and memorable songs, including my personal favorite, "Age of Our Arrogance." I also loved the Bar Review/Law Review battle on the "Family Feud," and I wish I had a copy of the script to relive some of those witty questions. Unfortunately, the Parody suffered from SNL-syndrome — the perceived need to fill a certain time period so they throw in the bathroom sink, funny or not. At two hours rather than three, the Parody could have been much improved. But these are minor quibbles. Overall, I thought the show was well worth the price of admission and the three hours on a Thursday night (even with the MPRE the next day). Special kudos go to Ann Lipton for aiming the spotlights well. Dusan, Suzanne — what did you think?

Dusan: The names were really lame this year.

Suzanne: Yeah. I couldn't even figure out who half the people were.

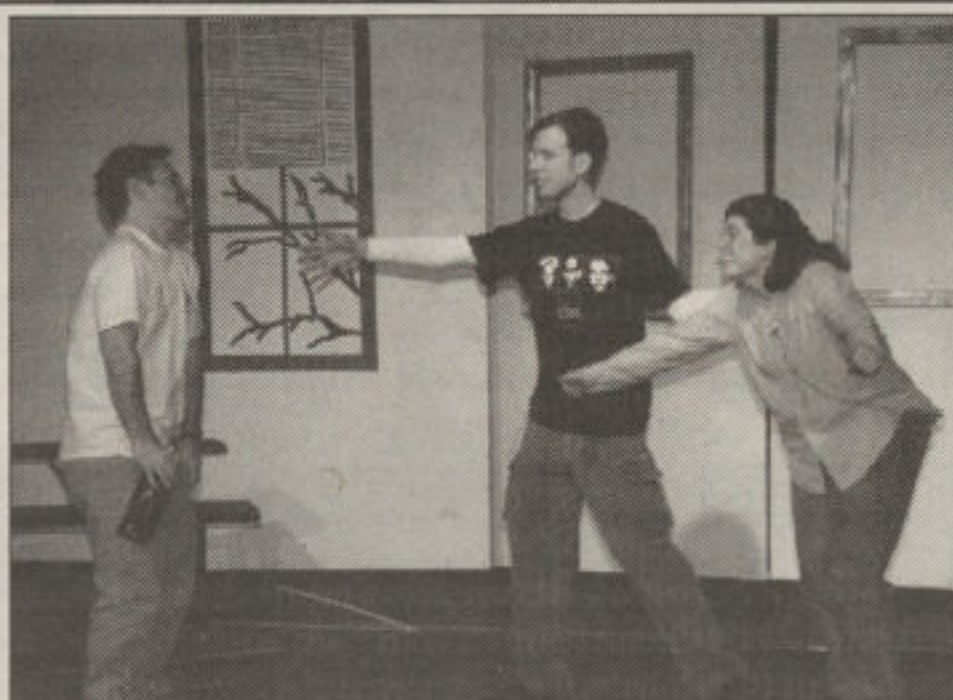
D: But it was so much better than last year.

PARODIC BANTER



Photos provided by HLS Drama Society

Above, cast members (L to R) Chris Everdell '01, Emily Kuo '00, Jess Mayer '00, John Boyer '00, Taryn Fielder '02 and Kelly Hartline '02 run through their lines. At right, (L to R) Seph McNamara '00, Lee Payne '02 and Leslie Ballantine '01 emote.



S: You're saying that cuz Jake directed it last year.

D: And your point is...? Truth be told, it was directed better this year: with David Bigge in charge, it flowed more smoothly and the production was impressive for a Law School performance. Tori Jueds and John Fagan did a good job. Marginally good, but good.

S: Well, I'll get my praise out of the way early. The music was generally good. John Renahan worked that band like he was Dave Grohl, especially dur-

ing "Smells Like Teen Spirit."

D: Perhaps the band was more than adequate. But the Bruce Hay cameo was so perfunctory.

S: What was that up with Gil Whined & Yelled? I whined and yelled to Jake because I thought they were making fun of him for using an inhaler, but then I found out it was some prop inserted because Gil talks so fast. But it came across as a mean and tacky joke against asthmatics, don't you think?

D: Agreed, particularly since it did nothing for the story line or humor.

S: Oh, was there a story line?

D: Why sure, people were mysteriously disappearing one by one and the rest were freaking out. And unlike in prior years, the Parody did not commence with Orientation Day and go through the "greatest hits" of life at HLS. The "stylized" depictions of firm life were pretty inventive — that never really came out in previous years.

S: But the best part of that was they gave Rachel Skiffer a chance to strut her stuff. Most of the Drama Society "performers" are type-A, attention-hogging amateurs, but she has talent.

D: Yes, she kept it very real. She is one member of the Law Review who has potential for getting a life. Speaking of Law Review, there sure were plenty of jokes about them, plus Lincoln's Inn and OPIA-bashing.

S: Lincoln's Inn always gets it. But I don't recall that Law Review took this many hits before. What does that say about how hated they are among mere civilians in our class? As for OPIA, my favorite line in the parody was when Sierra Club Weaver came to the realization that "the world can't be neatly divided into black and white."

D: Some people around here pay tuition to realize that. There was a little much OPIA-negativity. Not that I'll be working in the public sector any time... ever.

S: Well, I will say Alexa Shabbecof sat in front of me at Friday's show and took all the ribbing in very good stride.

D: Oh, I meant it was excessive, but still tame. Overall there were few really nasty "jokes."

S: Well what about their plagiarism?

D: Whatever do you mean, Suzanne?

S: You know exactly what I mean. They took our personal Terry Fisher experience, which materialized in last year's parody issue and passed it off as a tawdry one-liner.

D: But they said in the Parody that nobody reads the RECORD. So they must've gotten it on their own.

S: Right. Like they didn't run to their Hark boxes to read this review of their "work"? Puh-leeze! Jake is panting at the prospect of seeing his name yet again in the RECORD. You listen to me, whoever you head-writer people are, the next time y'all mess with Terry Fisher's butt, you better give it its proper due. As Tom Cruise might say, "Respect the butt!"

D: She said it, she meant it! Now, ripping on Anne-Marie Slaughter for not saying "hi" to students? Whence did that come?! I can't avoid the woman when passing by her on campus.

S: Same goes for Elena Kagan.

D: Would that be your third-year paper adviser, Elena Kagan?

S: One and the same. She's a wonderful, wonderful woman, and personally I think she's a very snazzy dresser.

D: Speaking of cutting-edge fashion, Nesson was portrayed well, I thought. John Boyer did a great job there.

S: The "pot for teacher" concept was muy original. And Jim Greeley had Rosenberg down to a tee.

D: Nancy Trainer channeled Liz Warren pretty well, too. But that was nothing compared to John Fagan's Roberto Unger.

S: I liked that they called his class "My Way or the Highway." And Trainer knows feisty because she played me last year.

D: You got off so easy last year.

S: Not as easy as some people did this year.

D: Well, most of the usual suspects mitigated the damage by joining the company. Manoj Mate played his ass off on the bongos to not to be ridiculed again. And Jess Player was such a diluted caricature; that doesn't even count.

S: But I thought that the Jake character was pretty funny. He took more abuse than any other cast member.

D: And how noble of him to lend his wardrobe for the performances.

S: Not to mention his wig.

D: Heidi A.A.nian and Ezra Gross were a tad too cruel and not really funny.

S: Talk about not funny. And what about that ripping on the elderly proctors? Cheap laughs much? But I'll tell you who was funny and who made all the women swoon. Glenn Otis Brown and his Elvis impersonation.

D: When I saw the Parody there was a man in the audience bugging out big time over Glenn's singing, jumping up and down. And no, it was not I.

S: I was thinking... But Glenn is another "normal" person on Law Review. Kudos to him.

D: And even though the year is yet young, the 2000 Courtney Love Award for Self-Portrayal has got to go to Seph McNamara. That shit was convincing.

S: One last shout-out for another of my personal friends. Vivian Wong's choreography was tight.

D: Mmmhmm, I saw a lot of dancer, um, talent, and I was way in the back.

S: You mean Jess Mayer and Dean Clark's shenanigans during the stage call? All the elderly people in my section were shocked and horrified. Isn't that supposed to be covered by the school's sexual harassment policy?

D: You should know; that was assigned in First Amendment! Sorry, I was having a Dan Erkel moment there.

S: Mike Ginsberg's performance was right on. And fellow Law Reviewer Mike Jetfighter's "Braniac" dance routine was ripped from his real-life antics in Prof. Guinier's class last semester.

D: Yeah. I think I was there that day.

SPORTSGUY

by Phil Barenolts '01
RECORD Columnist

Hoopsters Catch B-Ball Fever

While many of us sat around watching college basketball this past weekend in preparation for the upcoming NCAA tournament, some were bold enough to play the game themselves. This week's Sportsguy honors those hardy souls who ventured off the couch and into the gym.

C-league action featured a tight game between What's Happening Now and APALSA. APALSA had a two-point lead at halftime that would have been bigger if not for a beat-the-buzzer three-pointer by Craig Bust Her Cronheim '01. What's Happening Now went on a run to open the second half led by Rebecca Roto-Reiter '01 and her quick hands. APALSA came back behind the strong shooting of Buddy Holly Chung '00 and flashy moves of Apple Cory Wong '02, but with APALSA down one, Tony Arch-Angel Gabrielson '01 hit a big three to ice the game and give What's Happening Now a 46-43 victory.

Phi Slamma Labba dominated the Flying Dershowitzes, 93-63, behind another strong performance by Nerlyn the Nagician Gonzalez '00. The Dershowitzes made a comeback attempt, but Sandy Goats Go Bah and Cows Go Musumeci '01 sealed the deal with a bomb to squash their chances.

In B-league action, Sendero Luminoso beat the Hammers in commanding fashion 78-25. Sebastian Bach and Skid Row Jerez '01 provided the scoring and Ryan Goode To The Last Drop '00 dished out some nifty assists, but Josh Slide It In Snyder '01 was the real hero, collecting

boards, getting to loose balls, and playing tough D. The Hammers got most of their scoring from Dan Mi Casa Es Tu Kassabian '01 while Herschel Please Hamner Don't Hurt 'em '01 gave a valiant effort on the defensive glass.

Contempt of Court defeated Weekend Warriors 46-34 in a hard fought game. Contempt led throughout, building a twenty point first half lead on the back of Keven Brough Hard's '01 sweet touch. The Warriors battled behind Jeff Cypress Hill '01 to bring it within 10 before the end of the half. In the second half, Shawn Travis Tritt '01 took over inside, dominating the boards and scoring in the paint, but the Warriors held tough, relying on David Protocols of the Elder of Zion's '02 hot shooting. Unfortunately they came up a little short.

Factory made a 20-point swing on the Cavemen as Darren I'm Not Margo Schlanger '00 led Factory from a 10-point deficit to the 58-48 victory.

In A-league action Moot Court beat the Fuzzy Grapes 81-39. Steve Mason Dixon '02 and I Need To Go To the Jon Mitchell '02 paced Moot Court. The Grapes did beat Supreme Court in their other game behind Mike Smoked Salmon '00. Supreme Court was led by Steely Dan Williams '01 and his tri-fectas. Supreme Court also lost another close one to the Harvard Law Stars 57-45. Jay Charlotte's Webber '00 dominated the paint and Tom Cotton Underpants '02 showed off some acrobatic moves to power the Law Stars.

HE SAID HE SAID

It is very strange what an ego can make one do. Rupert Everett, the co-star with Madonna of *The Next Best Thing*, once clipped off bits of his pubic hair and mailed them to an amateur critic who had suggested that he did not project his voice sufficiently on the stage. Here, in his newest effort, Rupert is dissatisfied with reprising the croon-along he made famous in *My Best Friend's Wedding*; he is also claiming writing credit. It is difficult to see why. Rupert starts off as an improbably expensive gardener selling floral arrangements and top soil: "Dirt cheap is just an expression, madam. It doesn't apply to a city built on a desert." That is, I am afraid, rather the high point of the script. We also find him with his cardiologist boyfriend — the obvious pun is repeated a few times for the less subtle in the audience — who complains, "You are like a hologram. You are there, but you are not there. Stay, don't stay. Love you, hate you." There was not that much lyricism in conversation even when Rupert was Lord Goring.

Realism, fortunately, is not a fault from which the movie suffers. By now, of course, everyone knows the general plot: Madonna has a baby with her best gay friend Rupert. What I did not know is that Madonna also falls in love with a straight investment banker from New York. The chief difficulty, at first, is that the camera is indeed a very cruel thing. It is obvious to all that, despite Yoga and Sanskrit mantra, Madonna's best years are behind her. The investment banker, however, is not a great catch: one should not abandon one's gay best friend to bottom-fish in the hetero pond. Apparently, our banker friend has not made partner yet, and is not able to get a reservation at one of the more exclusive restaurants in L.A. As my banking friend commented to me, "What kind of loser takes 15 years to make partner?" Indeed, Rupert, dirt merchant and all, always dresses better. His two-button suit with peak lapel is one of the saving graces that make the whole two hours (!) a defensible waste of time.

The Next Best Thing comes very close to being the next worst thing. It's campy, cheesy, ridiculous and horribly written and therefore funny in all sorts of unintended ways, but of course one should go see it nevertheless because everyone will be talking about it; and because, well, it is Rupert. And in regards to Mr. Everett, I will be checking my mailbox rather diligently over the next few weeks.

Davis Wang '02

Davis, you ignorant slut.

It is three years after *My Best Friend's Wedding*, and Rupert Everett has traded in Julia Roberts for Madonna. In revenge, Julia sends her boyfriend, Benjamin Bratt, to ruin Rupert's life.

What follows is perhaps the worst movie of our generation. *The Next Best Thing* begins as a gender comedy, poking fun at sexuality and stereotypes. Madonna has just been dumped by Tom Selleck's dentist son from *Friends*. She rebounds with her gay pal Rupert, becomes pregnant, convinces Rupert to raise the child with her, and then gives birth to an improbably wise and well-adjusted five year-old.

Yes, this all sounds hilarious, and I was among those duped by the set-up. Unfortunately, the jokes are flat, the acting feels like improvisational run-throughs, and neither star looks particularly good. Madonna seems to be doing an impersonation of a geriatric Sheryl Crow; Rupert's already-long neck is emphasized by his sleeveless t-shirts, and he wanders around the screen looking like a wisecracking tube of toothpaste.

Now, if you happened to go to the bathroom at this point, you would have been right to expect this insipid comedy to continue. Instead, you would have returned to a courtroom custody battle so agonizing that it makes Todd Solondz seem like Frank Capra.

Luckily, the film-within-a-film ends just in time for a happy ending even more implausible than the first two

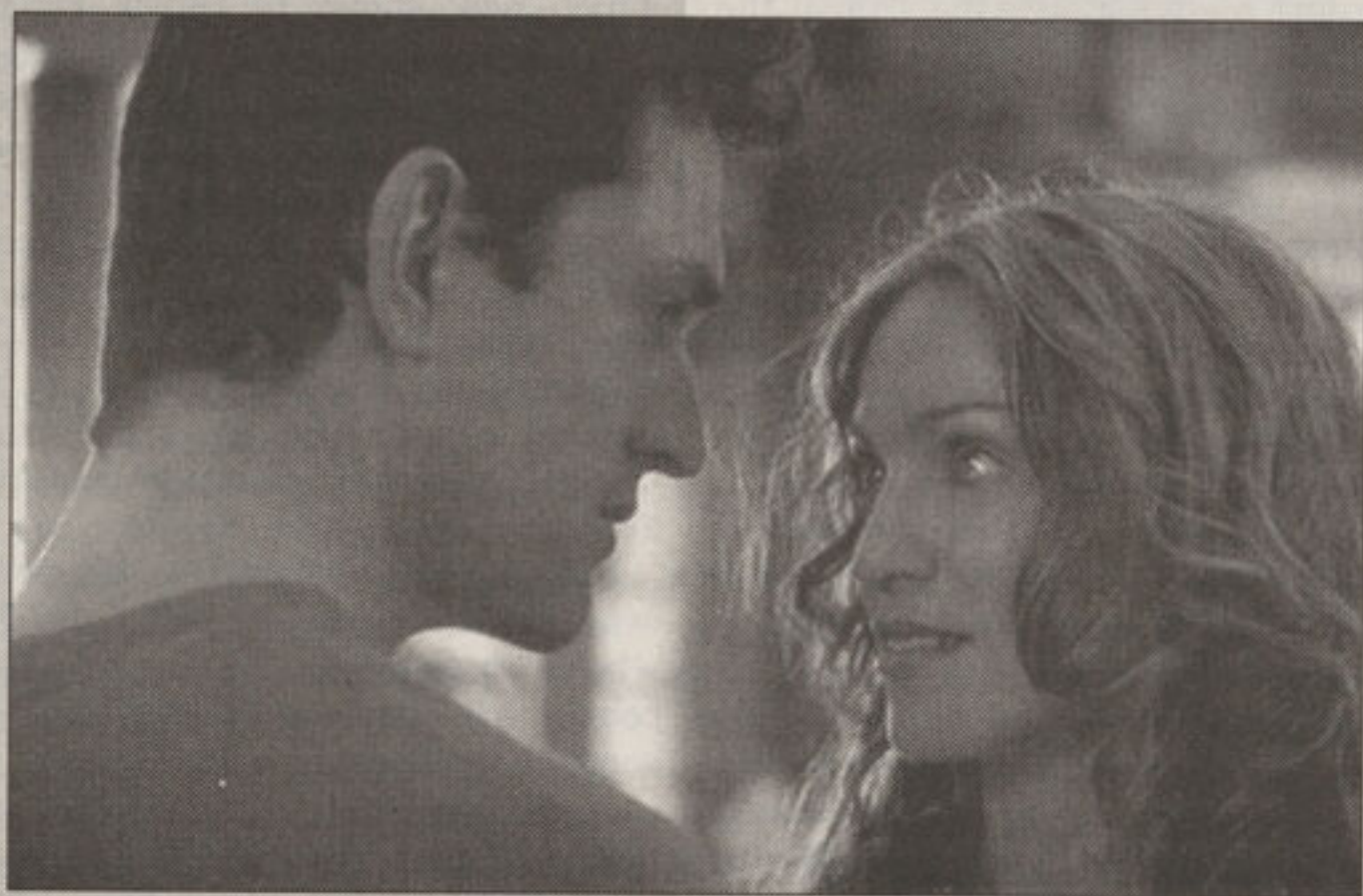
hours. If I am giving away the ending, it is merely to encourage you not to see this movie. I do however, leave the following questions unanswered:

- 1) Why did they choose "American Pie" as the anthem for this movie?
- 2) What are those four oddly spaced stigmata on Ben Bratt's chest?
- 3) Why on Earth would Rupert Everett claim a writing credit for such trash?
- 4) What is Doogie Howser doing in this movie, and shouldn't he, of all people, know about safe sex?

There are many better uses for \$8, such as flushing it down the toilet, buying the deluxe Hark sushi, or contributing it to my exploratory committee.

David Bitkower '02

THE NEXT WORST THING



Legal Lexicon

OBITER Dicta

By Tamara Piety LL.M. '00

RECORD Columnist

When I was first in law school one of my classmates told me that he would like to be a judge. I told him that I had to say the idea appealed (sorry!) to me as well. Then, But we thought that becoming a judge was really difficult — you have to be elected or appointed and, either way, it seemed sort of a longshot. Since that time, and thousands of opinions later, I've come to the conclusion that certain factors improve your chances. It helps if you have a weird name. So, you see, I have an inside track.

Come on! Admit it! It must have struck you at some point, even if you are a first-year student, that there seems to be a greater number of weird names in the judiciary than can be attributed to mere chance. Look around you in your section or class. How many people are there with really weird names? (Foreign names don't count!) Now peruse your casebook, any casebook. How many really weird names do you come up with there? Is there anyone you know, in or out of class, with a name as weird as Learned Hand?

Not only does the judiciary seem to be awash with more weird names than occur randomly in the population as a whole, it actually seems to be correlated to fame and prominence. (So just cool your jets if any of you readers have unusual names because it just means

you are destined for greatness!) For instance, there's the aforementioned Learned Hand. And how about Felix Frankfurter? This is even funnier when you remember there was also a Burger on the Court. What next? Fry? Shake? One thing about this observation. It offers us an attractive alternative basis for choosing Justices than the one currently employed.

Then there's Minor Wisdom. This is a man who had cruel parents and great determination. Imagine choosing the law as a career with a name like "Minor Wisdom!" I mean, how would you feel coming before a judge with a name like "Minor Wisdom"? I don't know about you, but before law school I think I'd have felt a little uneasy. I would have been afraid that it was like some kind of rating or something. "Psst! Can't I have Major Wisdom?" Of course, today I'd be reassured, knowing that with a truly unusual name I was getting a top notch judge!

Some judges' names inspire confidence right off the bat. Who, for instance, could be afraid of Judge Friendly? (Many actually were, but that is beside the point.) What about J. Christ Seraphim? Talk about justice from "on high!" Other names, like Judge Lynch, just don't sound quite so good some how. Sounds like an order. I'd be distinctly uncomfortable if I were

a defendant in that court. And let's not even talk about Judge Lawless. Someone to be afraid of no matter which side you're on!

I need to reassure you at this point, because I'm about to list a bunch more names, that (as Dave Barry says) I am NOT making this up. I have researched this. (And the firm thought I was actually working that summer!) These are (or were) all real people! And I've found that the names fall into three basic categories: names that call to mind a characteristic or personality, names that mean something else and names that are just plain weird.

Let's start with the first category, names that call to mind a personality or characteristic. (And remember, I'm not making this up.) Some of the ones I've run across are: Bland, Sharp, Cross, Lively, Learned and Friendly. In the second category are: Burger, Frankfurter, Marshal, Teller, Mountain, Booth, Pond, Yawn, Blackbird, Crale, Swan (there does seem to be a preponderance of bird names doesn't there?) and Coffin. Really. Now there's a name to give one pause!

Finally, in the third category we have the just plain odd: Qua, Quirico, Cuddeback, Hiscock, (don't even think about it), Cockburn, Tjoflat (who I've met and is a really nice man, despite his fixation on antitrust), Scheb,

Cowart, Gee, Upchurch, Boardman and my top favorites of all time — Skelly Wright, Bushrod Washington, Barefoot Sanders (another nice man) and — Salmon Chase! Sounds like somewhere you'd go on vacation doesn't it?

Who can explain the undeniable prominence in the judiciary of some of these folks with the strangest names? It is not just that people with unusual names seem to appear with greater than normal frequency in the judiciary in general, but there are more of them that are actually REALLY prominent judges. I don't think anyone has come up with an explanation for this phenomenon. But there it is. So do you have an unusual name? Do you curse your parents thrice daily? Fear not! Console yourself with the thought that you have a better than average shot at the bench where you will finally be able to wreak revenge on a heartless society for any of the suffering it may have caused you!

I defend this characterization on the basis that my judge (you always say "my judge") used to say the most powerful person in the United States government was a federal district court judge. Many of the above were or are in that position. The other ascended to levels of higher prestige, if at the sacrifice of greater power.

Free food, sexy people. What more could you ask for? Work for the RECORD.



'THE NINTH GATE' IS A HORROR

By Tanya D. Marsh '00
RECORD Columnist

I can sum up the experience of watching Johnny Depp's new movie, *The Ninth Gate*, with one word: Hell. Based on the novel "El Club Dumas" by Spanish author Arturo Pérez Reverte and directed by exiled pedophile Roman Polanski, *The Ninth Gate* centers on Dean Corso (Depp), a maverick rare book dealer hired by a spooky millionaire obsessed with the occult to track down two copies of a book published in 1666 and reportedly co-authored by Lucifer himself.

The first fourth of the movie does little more than establish Corso as an empty man driven by money rather than morality. He drinks and chain smokes throughout the movie, habits used by Polanski as shorthand for Corso's decadent lifestyle. Despite his profession, Corso handles valuable and ancient tomes with an amazing lack of concern — turning pages roughly, allowing his cigarette ash to mar a cover. As a bibliophile, I was aghast. As a movie fan that appreciates consistent characters and decipherable plots, I was offended.

So Corso's mysterious benefactor, Boris Balkan (Frank Langella), sends him to Portugal and Paris to examine copies of "The Ninth Gate" and the "Kingdom of Shadows," a book whose engravings reportedly have the power to summon the Devil. Intrigued by both the mystery and the generous paycheck, Corso sets off on his adventure, but he soon notices that death isn't far behind. His employer keeps close tabs on him and instructs him to obtain the books "by any means neces-

sary" (a phrase which he growls menacingly in a string of phone conversations). Another mysterious man attempts to kill Corso several times and only the intervention of a mysterious girl (Polanski's wife, Emmanuelle Seigner) saves the weak and cowardly Corso. Said girl is apparently otherworldly, as evidenced by her floating and strange glowing eyes, but one cannot guess at her motivations until the bitter end of the film.

So far so (barely) good. Decent plot. Grungy yet sophisticated Depp spouting Latin, Spanish and French. Looking very Euro-trash chic in his greasy hair, goatee and ever-present unfiltered cigarettes and brandy. But then, just when the mystery got mildly interesting, *The Ninth Gate* disintegrated into a weak, weird knock-off of *Eyes Wide Shut* and then completely fell apart with an unsatisfying and disappointing conclusion. It is difficult for me to describe the depths of stupidity present in the last 30 minutes of *The Ninth Gate*, but I shall valiantly attempt to do so. Apparently, Polanski thinks that it is sufficient to introduce a variety of mysterious characters, spend zero time attempting to explain their backgrounds or motivations, and then expect the audience to: 1) care about them, and 2) understand the irony of their reactions to moral tests. Johnny Depp is undeniably attractive and a fine actor, but even he could not make me care one iota about his character or, honestly, whether any of the myriad of mysterious characters were successful in summoning the Devil or

bringing about the end of the world.

The disappointment of *The Ninth Gate* is that it could have been an interesting movie. Just in case I've been too subtle: It wasn't good. It stunk. I only wish I could reclaim those lost two hours of my life.

Save Roswell

Networks are currently deciding which new shows to renew for next year and which to ditch. NBC has renewed *Law & Order: Special Victims Unit* and *The West Wing*. Tragically, the charming *Freaks and Geeks* will most likely get the ax. FOX appears to be in danger of having no shows left next year, *90210* and *Party of Five* have called it quits and it is still unclear whether David Duchovny and Chris Carter are willing to commit to an eighth year of *The X-Files*.

But the real drama is happening over at that other netlet, the WB, whose ratings have plummeted 24 percent since last year. The plunge was somewhat expected after Chicago station WGN dropped the WB last summer, costing it 11 percent of its national viewership, but teens have apparently soured on the once-hip *Dawson's Creek* and newly shorn *Felicity*. Facing threats from FOX to steal two of its highest rated shows, the WB renewed *Buffy the Vampire Slayer* and *Angel* recently and mentioned that the freshman show *Popular* will be back for another year. That leaves at least three shows battling it out for one remaining renewal slot on the fall schedule: *Felicity*, *Jack & Jill* and *Roswell*.

Ironically, *Roswell* has the highest ratings of the three, but it is likely to lose out to *Felicity* because its viewership is — ready for this? — too old. That's right, with a median age of 27.2, *Roswell* is too successful outside the coveted 12-17 demographic. I am a big fan of the WB and their targeted approach, but I will have to reconsider my support if they cancel *Roswell*, one of the brightest stars in a bleak network television landscape.

Co-produced by *Star Trek's* Commander Riker (a.k.a. Jonathan Frakes) and created by David Nutter (*The X-Files*) and Jason Katims (*My So-Called Life*), *Roswell* follows a group of teens in Roswell, New Mexico. Three of the gang are aliens who look like humans (Jason Behr, Katherine Heigl and Brendan Fehr), survivors of

the famous crash. A few humans are in on the secret (Shiri Appleby, Majandra Delfino and Colin Hanks) and have paired off with their dishy otherworldly classmates.

Like *Buffy*, *Roswell* explores the nuances of high school life through this ultimate metaphor for teenage insecurity over fitting in. An intelligent and classy show, *Roswell* does not condescend to its audience or disrespect its characters, which probably explains why it does so well with adults. I'd tell you all to tune in, but too much support from our demographic would probably sound *Roswell's* death knell. So find some teenage girls and urge them to check it out. New episodes start in April on Mondays at 9 p.m.

Oscar Odds Update

American Beauty got a big boost this month when three trade organizations, the Writer's Guild of America, the Directors Guild of America (DGA) and the Screen Actors Guild (SAG) announced their own coveted statuettes.

At the beginning of the month, the writer's group named Alan Ball's *American Beauty* as the best original screenplay of year and selected the quirky Reese Witherspoon/Matthew Broderick movie *Election* as best adapted screenplay.

American Beauty's director, Sam Mendes, won the DGA's award for work in a feature film last Saturday, giving him a big boost in the Oscar race. Only four of the 51 DGA honorees have failed to take home the Oscar.

At Sunday's SAG awards, Kevin Spacey took home the best actor award, Annette Bening was named best actress, and *American Beauty* completed the sweep by taking home the award for best ensemble in a feature film. Spacey and Bening's awards propel the two actors into the front-runner spots in their respective races. In its five years of presenting awards to the best actor and actress of the year, SAG has a 100 percent accuracy rate in predicting the Best Actor Oscar but a single misstep in the Best Actress category when, in 1995, Jodie Foster took home the SAG for *Nell* but Jessica Lange won the Oscar for *Blue Sky*.

Don't forget to turn in your ballots for the RECORD Oscar contest by 5 p.m. on Friday, March 24!

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Guess the most categories correctly
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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.

HER INDIE WORLD

AND HERE'S TO YOU, MS. MANN

By Suzanne Carter '00

RECORD Columnist

Music from "Magnolia"
Songs by Aimee Mann
Reprise 1999

Bachelor No. 2
(or, the last remains of the dodo)
Aimee Mann
SuperEgo Records 1999

I am eagerly anticipating Aimee Mann's loss of the Best Song Oscar next week. Why? She has promised to boo Phil Collins, who's bound to collect another award for what Mann refers to as "the cartoon monkey song." (By that she's referring to that shlocky thing from "Tarzan," which I haven't heard, but I know it's shlocky because a) it's Phil Collins, and b) it's Disney, and what more incontrovertible proof could one have than that?)

I mean, just think of it, when Phil Collins wins an Oscar with his hairline that looks like Gorbachev's birthmark and his repertoire of "songs" that would constitute war crimes in a just world ("Sussudio," anyone?) there will be no better revenge for us music snobs than to see critically favored but publicly ignored one-time Somervillean, Berklee student and Newbury Comics "sales associate" Mann lose ungracefully to Collins (who probably doesn't have the musical knowledge to be hired at Comics, given that he admitted on the Grammy pre-show broadcast that he had no idea who his co-presenter Macy Gray was. Doesn't he read my column?!).

Make no mistake, Collins will win — he's won a Grammy and a Golden Globe, and since all award voters think alike, an Oscar can't be far behind. But Mann deserves to prevail for "Save Me," her wonderful song from "Magnolia." Don't get me wrong, I love "Blame Canada" from "South Park," and were I an Academy member, I might be tempted to cast my vote for it. But the Oscar rightly belongs to Ms. Mann, if for no other reason than the seamless integration of her music in the brilliant "Magnolia."

You see, "Magnolia" was my second favorite film of last year (after "American Beauty"), and while it would have been a good film without Mann's music, it was made great with it (much like "The Graduate" was made great by its Simon and Garfunkel soundtrack). Those of you pansies who heretofore have avoided "Magnolia" because of its long running

time — and in that category I include every RECORD staffer who did not pick Tom Cruise to win the Best Supporting Actor prize in last week's issue, except for Dusan, who thought Jude Law was talking to him, and only him, in "The Talented Mr. Ripley" — should give up your fears of restlessness and go. "Magnolia" will show you just how music can provide film with its emotional resonance as well as how the hodgepodge soundtracks so popular today diminish film's possibility. (What is up with that horrible Madonna cover of "American Pie"? Better so to diminish the horribleness of the movie, which I haven't seen, but I know is horrible just the same?) Besides, "Magnolia" can't possibly seem longer than the average Antitrust class, can it?

No doubt, "Save Me" is a great song, with some of the best lyrics in the Aimee Mann catalog (the piece's opening line, "you look like a perfect fit for a girl in need of a tourniquet" is one of the best opening lines in the whole pop music catalog; its chorus, in which Mann pleads, "save me from the ranks of the freaks/who could never love anyone but the freaks/who suspect they could never love anyone except the freaks/who could never love anyone" is enough to make me cry). And it provides "Magnolia" with a satisfying emotional conclusion.

But it's not the obvious best track on the "Magnolia" soundtrack. That honor might befit Mann's cover of Harry Nilsson's "One" (also used to great effect in "Magnolia," as we meet each of the characters), with its sadness that refuses to brood; or the Mann original "Momentum," which, true to its title, punches you with its brawny chorus; or the ballad "Deathly," from which writer/director Paul Thomas Anderson stole one of his film's most memorable lines: "now that I've met you/would you object to/never seeing each other again?"

Mann's refusal to conform to the cookie-cutter female singer-songwriter mode hurt her with music execs; however, who couldn't understand why she wouldn't deliver easy-listening Paula Cole-esque "singles" instead of the intellectually satisfying fare she served up on her two solo debuts, "Whatever" and "I'm With Stupid," and her efforts as the lead singer of '80s new wave band 'Til Tuesday of "Voices Carry" fame. (Don't forget that behind



that long braid there was some pretty cogent women's libbing: "he loves me but only part of the time/he wants me when he can keep me in line." Cindy Lauper it wasn't.) Mann was shuffled from one music company to another in the '90s entertainment merger haze. To paraphrase one of her songs, it was not going to stop, and she was ready to just give up, until her pal Paul Thomas Anderson (Fiona Apple's boyfriend, by the by) asked her if he could use her music in his upcoming film.

Anderson's backing gave Mann the incentive to take her incredible new album, "Bachelor No. 2," which was held in limbo for over a year at Warner Bros., her last (and, to hear Aimee tell it, lamest) music company, and release it on her very own label, appropriately titled Superego Records.

"Bachelor No. 2" will almost certainly hold a spot as one of my five favorite albums of 2000 (just as I listed the "Magnolia" soundtrack as my fourth favorite disc of '99, right behind Macy, Fiona, and Fountains of Wayne). Fans of the "Magnolia" soundtrack will find a few duplicates here — the aforementioned "Deathly," "You Do," and "Driving Sideways." The real treat for "Magnolia" soundtrack-lovers is the newly vocalized version of "Nothing is Good Enough," which was featured as an instrumental on the soundtrack. Mann's vocals give this song a Bacharach flair (I know I compare everyone to Bacharach, but I can't help that the greatest songwriters find him to be the genius I do, and besides, in

Mann's case, the influence is true — she admitted she brought in a recording of "What the World Needs Now" and tried to copy the signature Bacharach style for this album). The swirling melody is there, but it doesn't undermine the stridency of Mann's lyrics, which are aimed at music-label hacks: "It doesn't really help/that you can never say/what you're looking for/But you'll know it when you hear it."

Many of Mann's songs are similar to "Nothing" — seeming bitter break-up songs that take on a new context when one accounts for Mann's troubling record-label history. "Bachelor No. 2" highlights include "How Am I Different" (similarly asking: "cause what do you care/about the great divide/as long as you come down/on the winner's side") and the Elvis Costello (a Bacharach contributor; I'm just saying...) co-write called "The Fall of the World's Own Optimist."

But there are a few lovely pieces devoid of office politics on "Bachelor No. 2," too, like "Ghost World," a bitter-sweet recollection of a drifter's high school graduation day, and the wonderful "Susan," a half-resigned, half-argumentative paean to a friend who has warned the singer about an emotionally abusive man. Both songs resound with such intelligence that it's no wonder Mann has been ignored by the dreck-lovers that compose much of the album-purchasing public.

These are not jingles. They won't stick in your brain unless you listen to them a number of times. Few of Mann's songs are verse-chorus-verse structured, and when they are, the device is used ironically. Admittedly, no Aimee Mann song will become the new theme for "Dawson's Creek." But if you want music that's more than background noise, Mann's your woman.

You can buy Aimee Mann's soundtrack for "Magnolia" anywhere, but until Mann settles on a distribution deal, you can only purchase "Bachelor No. 2" from Mann's Web site, <http://www.aimeemann.com>. It's well worth the shipping costs to support this artist who's been long ignored by the masses. Best to buy "Magnolia" from Mann's website, too. If you eliminate the middleman and purchase directly from the singer herself, a bit more profit will make it directly to Aimee's pocket. And doesn't she deserve as much for all that Phil Collins-bashing?

Letter

On March 8, the Harvard Society for Law, Life and Religion held a widely-publicized, open-to-all event designed to answer any questions or criticisms regarding the work of A Woman's Concern pregnancy health centers. While neither Harvard Law RECORD staff nor Avery Gardiner '02 attended this event, the latter party has again promulgated false and defamatory statements regarding A Woman's Concern. [See Gardiner's March 9 Letter to the RECORD, in which she wrote:] "Fear should not be a counseling technique."

It is ironic that Gardiner expresses deep "outrage" on behalf of women, yet did not find it worth her time to stand up in their defense at Wednesday's public forum. Of course, at that forum Gardiner would have been asked to provide evidence for her assertions regarding A Woman's Concern, assertions that are entirely undocumented in her March 9 letter.

Unlike Gardiner's claims, which echo equally shrill complaints made last year by members of the Reproductive Freedom

Project, counseling information and materials provided by A Woman's Concern are meticulously researched and documented.

Does AWC "claim" that abortion raises the risk of breast cancer? No. We simply share the fact that more than 25 published, prospective and retrospective studies from around the world reveal a consistent, significant positive association between induced abortion and breast cancer incidence. One of those studies, published in the November 1994 Journal of the National Cancer Institute, was led by Dr. Janet Daling of the Fred Hutchinson Cancer Research Center in Seattle, Washington. Daling, who is pro-choice, found that having even just one induced abortion raises a woman's risk of contracting breast cancer by 50 percent.

This is vitally important health information for women, especially since half of all abortions in the United States are repeat abortions — meaning repeated risk exposures. [Contact the author for specific citations to academic studies on

the issue.]

It should be noted that abortion is an invasive, irreversible procedure that — like any other medical intervention — poses inherent risks and complications. To deny women access to information about those risks is fundamentally demeaning. (Let it be noted here that A Woman's Concern of Dorchester is duly licensed by the Mass. Department of Public Health — the entity that licenses Boston area abortion clinics).

Women are likewise entitled to detailed information about the abortion procedure itself. In her letter to the RECORD, Gardiner fails to explain why it is acceptable for abortion providers to do what they do, but not acceptable for pregnancy health centers to describe it. Does Gardiner believe that women are only capable of undergoing abortions, but not strong or courageous enough to understand them? Exactly what information about abortion would Gardiner have us censor or withhold from women?

In counseling women who might be considering termination, A Woman's Concern

abides by accepted standards for obstetrical decision-making, including the right of the pregnant woman to make those decisions without haste, duress or lack of informed consent. Implicit in the right of informed consent is the right to refuse treatment.

It should be noted that, unlike those facilities that sell abortions (beginning at a minimum of \$350 for first-trimester procedures), A Woman's Concern has no financial interest in women's reproductive choices. In their near-paranoid references to "fear," "deception" and "intimidation," what dark motives do Gardiner and members of the Reproductive Freedom Project ascribe to the staff of A Woman's Concern?

A Woman's Concern thanks and commends SLLR for its commitment to fair open, and rational discussion of the facts.

Teresa Donovan
Director, A Woman's Concern,
Metrowest
March 10, 2000

EXPOSE

by Bryonn Bain '01

Walking while black: a different Bill of Rights in action

After hundreds of hours of legal reasoning and analysis in law school, I have finally had my first real lesson in law. Like so many other students, my overnight crash course in the rules of criminal procedure practiced in this country has given me first-hand insight into another bill of rights.

On Oct. 18, 1999, I was arrested on the corner of 96th street and Broadway in New York City and held overnight in a jail cell at the 24th precinct. After spending several hours at the Latin Quarter, my cousin Red, K, my younger brother, and I walked over to the only bodega marring an affluent white block just west of Broadway.

We had no idea that class was about to be in session. The lesson for the day: There is a special bill of rights used by the police when dealing with black men. It has never had to be ratified by Congress because, in the hearts of those with the power to enforce it, the Bill of Rights for Black Men is held to be self-evident.

As we left the store, armed only with sandwiches and Snapples, the three of us saw a group of young men sitting around a parked car on the corner. The men in the car were arguing with someone in an apartment above the bodega. Without any warning, one of the young men began pelting glass bottles at the apartment window. Several other people who had just left the club, along with a number of random passers-by, witnessed the altercation and began to scatter in different directions to avoid the raining shards of glass.

AMENDMENT I: Congress Can Make No Law Altering the Long-Established Fact that a Nigger Has No Rights.

Red, K and I quickly began walking up the street toward the subway to avoid the chaos that was unfolding. Another bottle was hurled. This time, the apartment window fell to the floor in pieces. We were halfway up the block when we looked back. The bottle-throwers were all getting in so they could drive off as quickly as possible. We kept walking toward the subway and were met by an avalanche of about six or seven bouncers who had come running down the street to see who caused all the noise. "Where do you BOYS think you're going?!" yelled the biggest of the muscle-bound band of bullies in black shirts as they came at us with their arms outstretched. They tried to corral us together so that we couldn't continue walking. "To the 2 train." I answered. I thought to myself that according to the ratified amendments to the U.S. Constitution, only a law enforcement officer had the right to physically restrain us against our will. Common sense told me that any authority the bouncers had inside their club did not extend out into the middle of a public street around the corner from it. "You have no authority to put your hands on us!" I resisted with a sense of newly found conviction. This clearly pissed off the bouncers — especially the big, bald, white bouncer who seemed to be the head honcho.

AMENDMENT II: The Right of Any White Person to Apprehend a Nigger Will Not Be Infringed.

The fact that the bouncers' effort at intimidation was being disregarded by three young black men much smaller than they were (each of us is under five feet 10 inches and no more than 180 pounds) was apparently very embarrassing for them. "You BOYS better stay right where you are!" barked the now-seething bouncer. I told my brother and cousin to ignore him. We were not in their club. In fact, we were among a small crowd of club-goers diffusing from the site of the disturbance

which had occurred an entire block away from the bouncer's "territory." They were clearly beyond their jurisdiction. Furthermore, the bouncers had not bothered to ask anyone among the many witnesses what had happened before they attempted to apprehend us. They certainly had not asked us. A crime had been committed and someone black was going to be apprehended — whether that black person was a crack addict, a corrections officer, a preacher, a professional entertainer of white people or a student at Harvard Law School. Less than five minutes after we had walked right through the bouncers' barricade, I was staring at badge 1727. We were being screamed at and shoved around by Officer Connelly and company. "That's them, Officer!" The head bouncer indicted us with a single sentence.

AMENDMENT III: No Nigger Shall, At Any Time, Fail to Obey Any Public Authority Figure — Even When Beyond the Jurisdiction of Their Authority

"You boys out here throwin' bottles at people?!" shouted the officer. Asking any of the witnesses would have cleared up the issue of who had thrown the bottles. But the officer could not have cared less about that. My family members and I were now being punished for the crime of thwarting the bouncer's unauthorized attempt to apprehend us. I tried to explain that we were innocent bystanders; we were just stopping at the store for something to eat. I might as well have not opened my mouth.

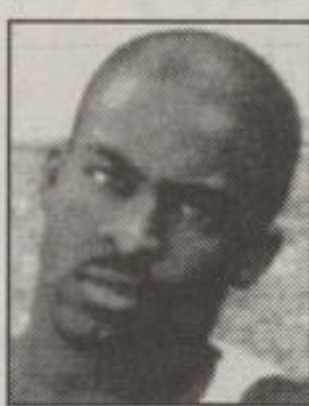
AMENDMENT IV: The Fact that a Nigger is a Nigger is Sufficient Probable Cause for Him to Be Searched and Seized

Having failed to convince the chubby, gray-haired sergeant of our innocence, we were slammed against the wall in a matter of minutes. Each of us had the legs of our dignity spread apart, was publicly frisked down from shirt to socks, and had all of our pockets rummaged through. Red tried to explain that they were making a mistake. He thought informing them that his brother is a NYPD officer might have some sort of positive impact on the situation, but Officer Connelly simply shouted that he had better "Shut up and keep facing the wall!" or else he would get dealt with like anyone else who "...was trying to fight back." The Officers then searched through my backpack and looked a bit surprised when they found my laptop and the casebook I had with me. "I'm trying to catch the last bus back to school in Boston," I responded to their unasked question. We were shoved into the squad car in front of a crowd composed of friends and acquaintances who were in the club with us and had by now learned of our situation. I was almost certain the cops were in the wrong for failing to read us our rights. I tried with little success to play back the facts of the famous Miranda case in my mind...

AMENDMENT V: Any Nigger Accused of a Crime May Be Punished Without Any Due Process of Law Whatsoever

We were never told that we had a right to remain silent. We were never told that we had a right to an attorney. We were never informed that anything we said could and would be used against us in a court of law.

AMENDMENT VI: In All Prosecutions of Niggers, Their Accuser Shall Enjoy the Right of a Quick and Easy Apprehension. The Accused Nigger, on the Other Hand, Shall Enjoy a Dehu-



manizing and Humiliating Arrest

After our mugshots and fingerprints were taken at the precinct, Officer Connelly laughed to himself as he took a little blue and white pin out of my wallet. "This is too sharp for you to take into that cell. We can't have you slitting somebody's wrist in there!" he chuckled in a feeble attempt at condescension. The pin he was confiscating had been given to me as I walked into the Metropolitan Museum of Art the day before.

Earlier that morning on the bus ride to the museum, an elderly white woman remarked to the man beside her how much safer Mayor Giuliani has made New York City feel. I remembered thinking to myself, "Not if you look like Diallo or Louima! It's about as safe as L.A. was to Rodney King. About as safe as the South was for Emmitt Till."

The sad thing is that this list could go on for days. Even when I went to the nation's capital to visit Georgetown Law School for admitted students weekend a few years ago, I was detained by two officers, frisked down in public, and had them go through my bag because "they were looking for a black male from New York bringing drugs into D.C." My complexion, combined with my baggy pants and big black jacket just fit the description enough for them to publicly humiliate me (they never seem to be looking for a white guy with blue jeans and a cap for some reason). The Ku Klux Klan may feel safe enough to march in the midst of a multi-ethnic Manhattan, but millions of black men cannot walk down the street outside the shadow of the police brutality and harassment that exists in epidemic proportions in cities around the country. In the context of the non-evasive incidents that have recently gained the attention of the mainstream media, I thought to myself that we would be lucky on this night if we were only abducted, degraded, pushed around and humiliated in front of our peers.

AMENDMENT VII: Niggers Must Remain Within the Confines of Their Own Neighborhoods. Those Who Do Not Are Clearly Looking for Trouble

Indeed, I had come from Brooklyn with my younger brother and cousin that evening to get our dance on at the Latin Quarter. Having gone to college in the same neighborhood, it is more of a second home for me than a place where I escape to unleash the kind of juvenile burning for mischief to which the officers were alluding. At 24, having graduated from college over four years ago, worked with high school students from Harlem for a year, and completed both a masters degree and my first year of law school, that kind of adolescent escapism has been behind me for some time. But that did not matter. While doing our paperwork several hours later, Officer Macowski, who realized how absurd our ordeal was and treated us with the utmost respect, explained to us why he believed we had been arrested.

AMENDMENT VIII: Arresting Any Nigger at the Scene of a Crime is Just as Good as Arresting the One Actually Guilty of the Crime

Officer Macowski informed us that after repeated incidents calling for police intervention during the last few months, the 24th precinct and the Latin Quarter have joined forces to help deal with the club's "less desirable element." They wanted to set an example for other potential wrongdoers, and we were just in the wrong place at the wrong time — and happened to fit the description of that "element." Despite all of the attacks against affirmative action in recent years, cops still seem to be filling arrest quotas with very lit-

tle backlash. As officer Connelly joked about how this was the kind of thing that would keep us from ever going anywhere in life, I wanted to hit him upside his uninformed head with my big ass Property textbook. I wanted to Chinese water torture him with the sweat and tears that have fallen from my mother's face for the last 20 years during which she has held down three nursing jobs to send six children to school. I wanted to tell everyone watching just how hard my mom has worked to give us more control over our own destinies than she had while growing up in her rural village in Trinidad. I wanted to tell everyone how she has sacrificed so we could be free to live for our "want-to's" and not be enslaved by our "have-to's."

AMENDMENT IX: Niggers Will Never Be Treated Like Full Citizens in America — No Matter How Hard They Work to Improve Their Circumstances

I still haven't told my mom what happened. Seeing the look on her face when I do will only make this experience even worse. I can already hear her crying when she thinks to herself that none of those years she labored in hospitals through sleepless nights mattered at all on this particular evening. It did not matter to the policeman or the bouncers that Red's stepbrother is a cop. It did not matter that K is going to graduate from Brooklyn College this June after working and going to school full time for the last five years. They didn't give a damn that I had lived in that same neighborhood when I attended Columbia University and was the president of my class for the four years before giving my graduation speech about my mom working harder than anyone I know so the lives of her children would be unobstructed by the obstacles she met here in 1972. It did not matter that I'm a second-year law student at Harvard. And in a fair and just society, none of that should matter. While my knowledge of this fact made me wonder whether or not I should mention any of these things, I am also acutely aware of the sad fact that most Americans would read this and not think anything unjust happened to us if I did not mention things that signal to them "work ethic" or "educated Negro" Some of my classmates still believe black men only get treated this way when they deserve to be. To those who share this view, it may be only an afterthought that our basic civil rights should have been respected no matter what our values or with which institutions we were affiliated. Even before we were arrested, Officer Connelly checked all three of our licenses and found none of us had ever been convicted of a crime. But again — that did not matter.

AMENDMENT X: A Nigger Who Has No Record Just Has Not Been Caught Yet

It should have mattered that none of us had a record. It should have mattered that none of us had done anything wrong. It should have mattered that other people who witnessed what had happened were still standing there while the cops chose only to speak to the bouncers. All that really mattered was that we were black and we were there. That was our only crime. Yet that was enough to warrant our arrest. That was enough for us to be put in jail. Enough for us to be guilty until proven innocent.

ADDENDUM

Last week, after five months and four appearances in New York City Criminal Court, the case against Red Vazquez, Kristofer Bain and Bryonn Bain was dismissed. No affidavits or evidence in support of the charges against them were produced.

COURT

Continued from page 1

in the area, *Zschernig v. Miller*, handed down in 1968, has proved to be an unstable guide to lower courts, and the justices are likely to use this case to announce a clearer standard. In *Zschernig*, the Court invalidated an Oregon statute that made testamentary disposition dependent on the estate laws of a beneficiary's country of citizenship. The Court concluded that "[State regulations governing estates] must give way if they impair the effective exercise of the nation's foreign policy."

The First Circuit found the Massachusetts law failed this test, since it was explicitly designed to influence another nation's policy, has sparked "serious protests" by the European Union and other nations, and diverges in its approach from federal sanctions, "thus raising the prospect of embarrassment for the country." The court rejected several novel arguments advanced by Massachusetts — that the Tenth Amendment insulates the law from scrutiny, for example, and that there is a "market participant exception" to the foreign affairs doctrine, analogous to the exception in the Court's Commerce Clause jurisprudence.

Judge Lynch also found that the law violated the Foreign Commerce Clause, derived from Congress's power to "regulate Commerce with foreign nations." That clause prevents state laws from facially discriminating against foreign commerce absent compelling justification, and requires that even non-discriminatory laws not excessively burden foreign commerce in relation to local benefits derived from the law. The law fails both standards, the court said, since moral protest of foreign human rights abuses is not a legitimate local interest, and since the law interferes with the federal government's ability to fashion a uniform foreign policy.

The Circuit Court again rejected Massachusetts' argument for a market participant exception, this time to the Foreign Commerce Clause. The Supreme Court has yet to address whether that exception extends beyond domestic application of the Clause, and may use this case to clarify its position.

Finally, Judge Lynch found the law was preempted by the Supremacy Clause when Congress and President Clinton imposed their own sanctions on the Burmese regime. The crucial inquiry here, the court said, "is whether a state law impedes a federal effort." The court noted several differences between the approaches. For instance, the Massachusetts law bars all investment in Burma, not just new investment promoting natural

resources. And the Massachusetts law, unlike the Federal law, applies to foreign companies as well as domestic ones. These differences, the court concluded, "upset" the "balanced, tailored approach" of the federal government, and rendered the law unconstitutional.

From the Seventh Circuit

Dewey Jones tossed a Molotov cocktail into his cousin's living room. The house burned down. The result: a Commerce Clause dispute from the Seventh Circuit.

Jones was convicted in Indiana of arson, a federal offense, and on appeal argued that the federal arson statute exceeds Congress's authority under the Commerce Clause when applied to the destruction of a residence rather than a commercial property.

The Seventh Circuit rejected the same argument in 1990, but, as Judge Frank Easterbrook noted in his brief, conversational opinion, intervening Supreme Court jurisprudence has cast some doubt on that holding. Easterbrook pointed in particular to the Court's decision in *United States v. Lopez* (1995), which struck down a federal law criminalizing gun possession near schools. Rehnquist, writing for the Lopez majority, held that the Commerce Clause requires that a regulated activity "substantially affect" interstate commerce to justify Congressional action.

The federal arson statute, Easterbrook wrote, requires a lesser showing of effect on interstate commerce than the Lopez holding. Easterbrook nonetheless upheld the statute. Citing an earlier case in which the Circuit had upheld the statute as applied to commercial properties, Easterbrook refused to draw a constitutional distinction with residences. Instead, he pointed to several aspects of residential housing markets — such as markets for utilities and construction products — that impact interstate commerce.

In examining whether arson of residential homes evinces the "substantial effects" required by Lopez, Easterbrook noted that the proper inquiry is not whether a single residential arson affects commerce, but the extent to which residential arsons as a class do. Easterbrook cited data showing that almost 20,000 residential arsons occurred in 1997 alone, with damages amounting to \$280 million. "This collective effect, plus proof of a slight connection between the particular arson and interstate commerce, permits the national government to establish substantive rules of conduct," Easterbrook wrote.

Oral arguments in the case, *U.S.A. v. Dewey J. Jones*, are scheduled for Mar. 21.

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

CLASS

Continued from page 1

Rosenberg responded.

Still, Rosenberg said that any class action that called upon his litigation skills would be successful in the lawsuit against gun makers. "I'm a technician," Rosenberg said, "I can build a class action to crush anyone."

The courts are not the proper testing ground for policy questions, according to Rosenberg. "Courts don't know what they're doing when it comes to running society," he said.

The two firm lawyers, Oldham and Weiss, emerged as the staunchest defenders of the current class action system, especially regarding settlement classes. "I don't think class-action is broken. It's got nicks and

dents, it's been abused and misused," he said. But Oldham ultimately concluded that the principle behind class-action litigation is "sound."

"We need settlement class actions because of reality," said Weiss. "These companies don't want to pay the big bucks unless they can get peace," he continued.

Rosenberg insisted that a litigation class action is superior to a settlement class. "The Supreme Court is wrong to make the litigation class action more difficult to certify," he said.

Reh sounded off on the issue of threatened litigation. In reference to what he called the "tyranny of legal expenses," Reh agreed with Weiss's assessment that the prospect of litigation was what ultimately brought tobacco companies to the bargaining table.

• Brief •

Byse garners accolade from alma mater

Clark Byse, Harvard Law School Byrne Professor of Administrative Law, Emeritus, has received the Distinguished Columbian in Teaching Award from Columbia Law School.



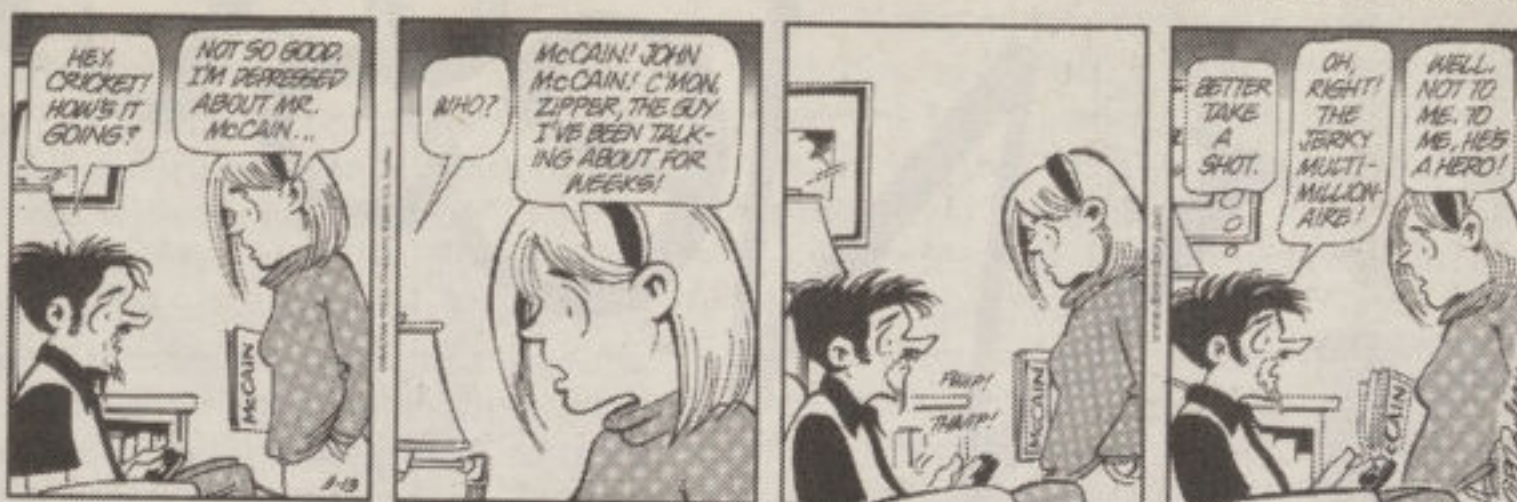
State Teachers College in Wisconsin in 1935 in History, and an LL.B. from the University of Wisconsin in 1938.

Byse, who is a specialist in administrative law and contracts, taught at the University of Iowa and the University of Pennsylvania before joining the Harvard Law School faculty in 1957. He has also taught at Boston University School of Law.

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BY GARRY TRUDEAU



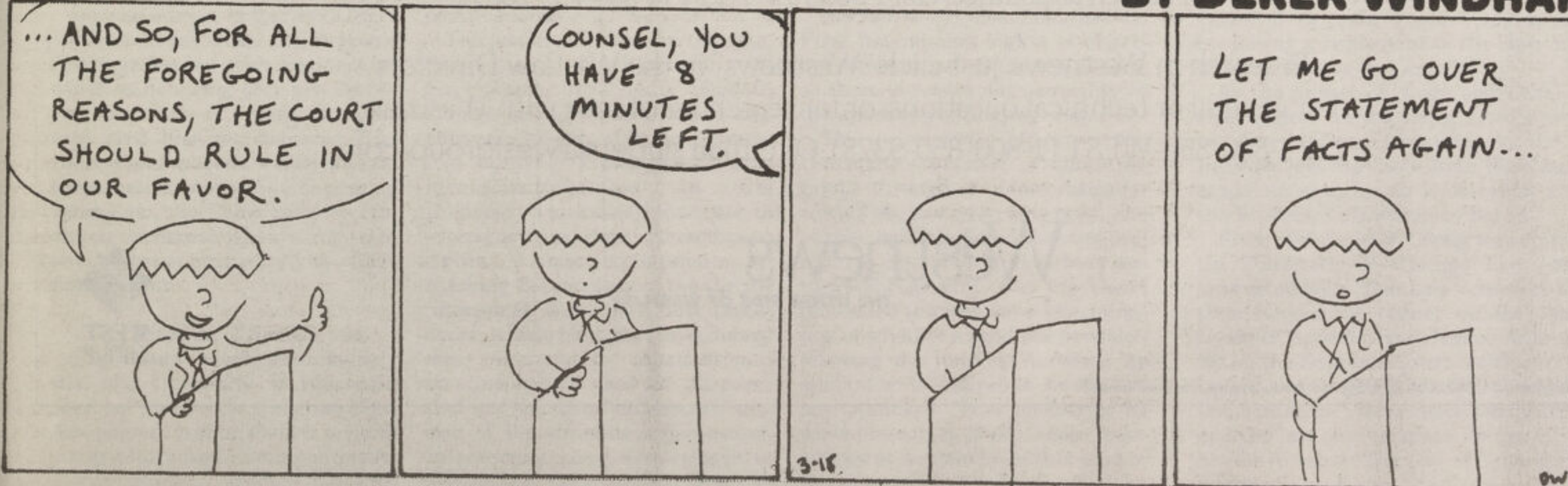
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BY GARRY TRUDEAU



BEFORE THE LAW

BY DEREK WINDHAM



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