

Brave New Hemenway



Photo by Francesco Barbera

Wednesday marked the official reopening of Hemenway Gym after installing new equipment. Robert Haas '72 provided a gift to support the \$100,000 project. Above, a student crunches abs in the refurbished basement. Dean Clark '72, at left, struts his stuff while Manoj Mate '00 grins.



Number three with a bullet — to the ego

Harvard falls to Stanford in U.S. News poll; Clark dismisses rankings

by Justin Cooper

While popular culture may not associate Harvard Law with third place, that's exactly where the nation's most renowned ranking of law schools has placed it. Both Yale Law School and Stanford Law School topped HLS in this year's U.S. News and World Report ranking of top law schools.

Dean Clark '72 said that he strongly disagrees with U.S. News's findings, which were released on Friday, March 31. "I think Harvard Law School is the best. The breadth and depth of experiences is astonishing here. They don't begin to measure that in any way," Clark said.

According to Clark, being the largest of the top law schools works against HLS in the U.S. News rankings. The rankings take into account

reputation (40 percent), selectivity (25 percent), placement success (20 percent) and faculty resources (15 percent). Being a large school may disadvantage HLS in both the selectivity category and the faculty resources category, where student/faculty ratio is taken into consideration. Clark considered it debatable whether so much emphasis should be put on student/faculty ratio and other factors that favor smaller schools.

Clark explained, "U.S. News gives a lot of weight to certain mechanical factors, one of which hurts us, the student/faculty ratio, which is a soft number — you can calculate it in many ways. But the more important point is how much weight you give to that. This is an evaluational exercise, not a scientific inquiry, so everything depends on what you look at, what factors, and what weights you give them."

Several student leaders echoed Clark's sentiments. Law School Council (LSC) President Jay Munir '01 said, "I think the fact that Yale and

Stanford are ranked higher than us is a direct result of their having smaller classes. Beyond that, I think we all know that HLS is the top law school." Former LSC Vice-President Ashley Morgan '00 agreed that HLS's student/faculty ratio hurt it in the rankings, but that HLS is still "a great school."

Student/faculty ratio counts for 20 percent of a school's score in the "faculty resources" category, which makes up 15 percent of the school's overall score. In other words, student/faculty ratio accounts for three percent of a law school's overall score in the U.S. News rankings. Less than one percent of a law school's overall score is determined by the number of volumes in the library, a category in which HLS would clearly have an advantage. Student satisfaction is not considered in the U.S. News rankings.

Clark said that the rankings do not account for the many advantages that come with size. "The thing that I think is

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Winter discontent may spur calendar change

by Justin Herdman

For future generations at HLS, first year students may not be the only members of the campus community who hang their exam anxieties by the chimney with care. They could be joined by second and third-year students, as well.

A report issued by the Calendar Committee has concluded that the academic year at HLS is in desperate need of change. Despite the existence of "ornery facts," such as scheduling conflicts created by date-shifting holidays like Labor Day, the report determined that students and faculty would be best served in a system without a winter term.

This would mean that all students, not just 1Ls, will return to

campus in January for exams. The proposal will face a faculty vote in the upcoming weeks.

The last modification to the academic calendar occurred in 1975, when the faculty voted to approve the current two semester "plus" system. But as explained by Prof. Charles Donahue, who chairs the Calendar Committee, the current academic calendar has since proven to be "crazy" and "totally insane."

The committee's report lists five problems with the current annual



Charles Donahue

calendar, all of which contribute to the perceived need to alter the academic schedule. Primarily, the report states that 1Ls are on an entirely different schedule from second and third-year students, "making it difficult to use 2Ls and 3Ls to assist with 1L instruction."

The winter term itself is singled out as a problem due to difficulty in scheduling and coordination. And, as Donahue said, schedulers have trouble "getting enough courses that make sense there."

This in turn leads to a third problem, which the report cited as insufficient time for students to properly prepare for winter term exams and papers. The current system also

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Lessig leaves HLS for the West Coast

In a blow to Harvard's prestige in the Internet age, Prof. Lawrence Lessig, one of Harvard Law School's most prominent scholars, is leaving for a post at the nation's new number-two law school.

On Wednesday, Lessig circulated an email to the HLS faculty announcing his decision to accept a position at Stanford. The details of the email message and of Lessig's appointment at Stanford were unavailable at press time.

Lessig has recently been in the national spotlight due to his work on the Microsoft antitrust case. In 1997, he was appointed special master in the case by District Judge Thomas Penfield Jackson '64. While Lessig was later dismissed as special master after Microsoft protested against his perceived bias, his influence continued to shape Jackson's view of the dispute.

Lessig's ties to the case do not end with Jackson. Lessig also served as a judicial clerk to Judge Richard Posner of the Seventh Circuit Court of Appeals. Posner was in charge of mediating a settlement to the case until talks broke down late last month.

As the author of "Code and Other Laws of Cyberspace," Lessig has crafted a reputation as a revolutionary thinker in the field of Internet law. On leave from HLS during this academic year, Lessig is currently a fellow at the Wissenschaftskolleg zu Berlin.

From 1991 to 1997, Lessig was a professor at the University of Chicago Law School. He graduated from Yale Law School in 1989, and then clerked for Posner on the 7th Circuit Court of Appeals, and Justice Antonin Scalia '60 on the Supreme Court. At Harvard, Lessig taught and wrote in the areas of constitutional law, contracts, comparative constitutional law, and the law of cyberspace. In the fall of 2000, he was to teach "The Law of Cyberspace: Open Sources."

Lessig was the Jack N. and Lillian R. Berkman Professor of Entrepreneurial Legal Studies.



Lessig

NEWS ANALYSIS: SUPREME COURT UPDATE

Court upholds university's fees for campus speech

by Francesco Barbera

Despite a lapse in the RECORD's publication schedule, the Supreme Court proceeded with business as usual, announcing decisions in the past two weeks in a range of important civil liberties disputes. The rulings underscore that, despite its conservative stance in matters of federalism, the Court remains resolutely moderate when it comes to civil liberties, particularly the First Amendment.

Freedom of Speech

The Court ruled unanimously that the University of Wisconsin does not violate its students' First Amendment rights when it collects a mandatory fee to fund politically-active student groups. Justice Anthony Kennedy '61, writing for the majority, held that a public university may charge the fee so long

as the method of disbursing the funds to student groups is "viewpoint neutral."

The justices' decision in the case, *University of Wisconsin v. Southworth*, reverses a Seventh Circuit ruling which found the political activities of student groups like Amnesty International were insufficiently-related to the University's interest in education to overcome the First Amendment rights of objecting students. In reaching the conclusion, the Circuit interpreted Supreme Court precedents which hold that mandatory fees withstand constitutional scrutiny only if used for purposes that are "germane" to the core mission of the charging organization. In reversing, the Court refused to extend the "germane" analysis to the University context. "It is not for the Court to say what is or is not germane to the ideas to be pursued

in an institution of higher learning," Kennedy wrote.

Instead, the justices held that the First Amendment rights of objecting students are protected so long as there is "viewpoint neutrality in the allocation of funding support."

The decision affirms the University's practice of allocating funds through a democratically-elected student governing body. The parties had stipulated that the procedures employed by that body are viewpoint neutral. But the Court remanded the case for a determination of whether a separate provision allowing for funding decisions by student-wide referenda meets the new standard. "It is unclear to us what protection, if any, there is for viewpoint neutrality in this part of the process," Kennedy stated. "The whole theory of viewpoint neutrality

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• Briefs •

LL.M. garners research prize

Justin H. Chan LL.M. '00 has received the American Society of Pharmacy Law/Knoll Pharmaceutical Company Legal Research Award for 2000. His prize-winning paper was entitled "Mixing The Old With the New: Chinese Traditional Medicine and the Regulation of Food and Drugs in the United States." Chan is at HLS on a Singapore Academy of

Law Postgraduate Scholarship. After graduation, he plans to clerk for a year with the Court of Appeal of Singapore, the nation's highest court.

Chan prepared the paper for Harvard Law School's Food and Drug Law course. Lecturer Peter Barton Hutt, who is a partner with Covington & Burling in Washington, D.C., taught the winter term 2000 course.

Program on Negotiation hails Mitchell as 'Great Negotiator'

Former Senator George Mitchell, chairperson of the Northern Ireland peace negotiations, will receive the inaugural Great Negotiator Award from the Program on Negotiation on April 7 in Pound Hall.

The Program on Negotiation at Harvard Law School (PON) has established the "Great Negotiator Award" to honor individuals of extraordinary achievement in dispute resolution. In addition to honoring the accomplishments of outstanding negotiators, the award is

designed to focus public attention on the important role of negotiation as society faces increasingly complex disputes in all sectors. Mitchell is being honored for his role as master builder of coalition leadership at home and abroad.

Mitchell served in the U.S. Senate from 1980 to 1995, spending the last six years as Majority Leader. Recently, Mitchell served as Chairperson of the Peace Negotiations in Northern Ireland and was instrumental in the signing of the Good Friday Peace Accord in 1998.

Tim Russert to address grads

Tim Russert, the moderator of "Meet the Press," and political analyst for NBC News, will be the speaker at the graduation ceremony for Harvard Law School's Class of 2000.

Russert first appeared on-air for NBC News in 1990, and he took over the helm of "Meet the Press" in December the next year. Since then, "Meet the Press" has become the most watched Sunday morning interview program in America, and the most quoted news program in the world. Now in its 52nd year, "Meet the Press" is the longest-running program in the history of television.

In 1998, Russert was the first to break the story that House Speaker Newt Gingrich (R-Ga.) would

resign from Congress and in 1999, he was the first to report that Hillary Rodham Clinton might consider running for the U.S. Senate from New York. Before joining NBC News, Russert observed firsthand the inner workings of the executive and legislative branches of government as counselor in the New York Governor's office in Albany from 1983-1984, and a special counsel in the United States Senate from 1977-1982. Russert was born in Buffalo, New York, on May 7, 1950. He is a graduate of Canisius High School, John Carroll University and graduated with honors from the Cleveland-Marshall College of Law.

Logan Smith '00 is the student contact for the class day speaker.

Tribe says NRA may be guilty of misleading American public

A group of law and history professors have accused the National Rifle Association of misleading the public by suggesting that proposed gun-control laws would violate the Constitution. In a letter to NRA president Charlton Heston, the professors said the NRA's "repeated suggestions that the Second Amendment somehow stands in the way of effective and reasonable regulation of guns and gun ownership is a distortion of legal precedent and a disservice to all Americans." The letter said the Second



Amendment "plainly permits reasonable firearms regulations," including bans on certain types of weapons, requirements for safety devices and gun registration and licensing. "The Second Amendment does not guarantee an unregulated supply of cheap handguns to all," law professor Laurence Tribe '66 said in a telephone news conference.

Fisher tells war (and peace) stories

by Doug Sims

Everyone needs to feel useful and appreciated — from the modest paper sorter to the omnipotent head of Allied operations in post war Europe. Such was one of the many colorfully-illustrated truths offered by Professor Emeritus Roger Fisher '48 at his lecture Monday afternoon entitled "Getting It Done: How to Lead When You're Not in Charge."

Professor Fisher is a world renowned negotiator, peacemaker, author and is also the Samuel Williston Professor of Law, Emeritus at HLS. He is also a former Director of the Harvard Program on Negotiation. Professor Fisher has worked on some of the most difficult issues of the post-war era, including the rebuilding of Europe under the Marshall Plan, the negotiation of the Camp David Accords, and the Iran Hostage Crisis.

Fisher's problem-solving technique, known as "win-win negotiation" begins with clear problem diagnosis. He worked off a simple chart, dubbed the "all-purpose tool for clear-thinking." The tic-tac-toe-type board separates theory from practice, symptom from diagnosis, fact from opinion and potential from actual. At an early stage, the tool enables one see what a negotiator can and cannot achieve. Fisher said, "When you see a problem, say look at the Arab-Israeli conflict — a couple thousand years of history and differences between ethnic Jews and Arabs — I can't enter that history, I am not going to change that division. Give me a cause about which I can do something... that's my job."

Once the problem has been defined, the purpose of a specific negotiation must be nailed down. Using the example of the multi-lateral conflict in Colombia, Fisher said "Peace is not a piece of paper."

"There's no master plan that can be applied throughout Colombia against the will of the paramilitaries or the army of the PLN... and if you did get something, the President would be terrified of fragmenting the country," Fisher

said, "So the first thing that makes it hard for [President] Pastrana to lead his negotiating team is the question that I had: 'What's the purpose of this meeting? What's the purpose of this negotiation?' If the purpose is unclear or doesn't help, my advice is formulate a purpose to give it direction."

Professor Fisher applied his "basic thinking tool" to the various stages of the negotiation process. Many prescriptions produced by the system seemed commonsensical, but Fisher's anecdotes showed the potency of the simple in the hands of a master. Describing the now well-recognized importance of visual aids and "being on the same page," Fisher used an example from one of his negotiations with a high-ranking North Vietnamese official during the war.

Fisher said, "During the [Vietnam War] we persuaded the Speaker of the North Vietnamese Assembly and arranged a visa for him [to come to] the United States. We met in secrecy in the Harvard Club here in Boston... I put four flow charts up: One flow chart: 'What's the problem?' Second flow chart: 'What's causing it?' Third flow chart: 'What's our big picture?' Fourth flow chart: 'Who should do what next?'"

"And [The Speaker] said, 'What if my ideas don't fit your chart?' So I said, fifth chart over here, 'Ideas that don't fit.' By the end of day, he said, 'All those ideas over there [on the fifth chart], I can put them back on your chart.'"

The event was sponsored by the Consortium on Global Leadership, a group new to the Law School, but with branches already in existence at Harvard Business School and the Kennedy School of Government. The group's vice president, Josh Kurland '02, said students in the group "aim at making a difference globally." Kurland said the group plans "social activities, workshops on skill building and community service." Kurland invited interested members of the HLS community to come to the spring meeting on Wednesday, April 12 at 5 p.m. in Pound 102.

Obama '91 loses bid for Congress seat

by Timothy Kiefer

Barack Obama '91, the first African-American to serve as president of the Harvard Law Review, came up short in his bid to unseat U.S. Rep. Bobby Rush (D-Ill.). Obama placed second out of the three major candidates in the Democratic primary held March 21.

With 89 percent of precincts reporting, Rush had 60 percent, Obama 31 percent and Donne Trotter 7 percent. The district covers the South Side of Chicago and is predominantly black.

During the campaign, Rush had criticized Obama's educational background, claiming that Obama had an "ivory tower" mindset.

"He went to Harvard and became an educated fool," Rush said in a pre-election interview with the Chicago Reader. "We're not impressed with these folks with these eastern elite degrees."

Obama, 38, currently serves in the Illinois state senate and practices law at the Chicago law firm of Miner, Barnhill and Galland.

The son of a black Kenyan father and white American mother, Obama grew up in Hawaii and Indonesia. He earned his undergraduate degree at Columbia in 1983.

After graduating from Columbia, Obama moved to Chicago to work as a community organizer. He returned to Chicago after law school to run a voter registration drive and to teach at the University of Chicago.

In a pre-election interview published in the Chicago Reader, Obama said that he was committed to serving the South Side.

"I really have to want to be here," Obama said. "I'm like a salmon swimming upstream in the South Side of Chicago. At every juncture in my life, I could have taken the path of least resistance but much higher pay. Being the president of the Harvard Law Review is a big deal. The typical path for someone like myself is to clerk for the Supreme Court, and then basically you have your pick of any law firm in the country."

Obama's campaign strategy emphasized reaching out to whites, who make up 30 percent of the district's voters. On election night, Obama alluded to the diversity of his coalition when he conceded defeat to Rush.

"We just had such support with such a diverse base of folks that we can walk away from this feeling proud," Obama said. "What it tells us is people are hungry for a new kind of politics."

BEFORE THE LAW

What were you like Before the Law? Tell us in pictures.
Draw for the RECORD.

Catalyst comes out punching, puts law firm on the ropes

by Sarah McGonigle

A chemical catalyst is an agent that speeds a reaction without changing itself. Embracing the symbolism surrounding that term, a group of nearly 75 HLS students have formed an organization — Catalyst — in the hopes of inciting widespread change around the Law School. And already the group is claiming victory after triggering a modification to the agenda for the upcoming Admitted Students Day.

For the second year in a row, the itinerary of the two Admitted Students Weekends had initially included alumni receptions at the offices of two Boston law firms. But action on the part of Catalyst members, who objected to the perceived channeling of admitted students into corporate law, resulted in a change of plans for this year.

On March 20, admitted students were slated to visit the offices of Hale & Dorr. And for the upcoming Admitted Students Day on April 10, the original agenda planned a trip to Ropes & Gray. The visits were arranged by the staff of Dean of Admissions Joyce Curll.

A March 3rd letter sent by Catalyst member Raj Goyle '00 to Dean Clark '72 outlined the group's objections to these visits. Taking admitted students to firm offices was tacit confirmation of Catalyst's suspicion that there exists an "imbalance in the presentation of career paths outside of corporate serv-

ice," the letter said. Additionally, Goyle noted that the National Association of Legal Placement (NALP) guidelines explicitly prohibited firms from recruiting students until December 1 of their first year. "Does it not follow," Goyle wrote, "that admitted students who are not even law students yet should not be exposed to...corporate recruitment?"

As an alternative, Goyle suggested that the receptions be held at a neutral location such as the Federal Courthouse, the John F. Kennedy Presidential Library, or another "venerable Boston landmark."

The result of this letter was two-fold. First, the March 20 event at Hale & Dorr proceeded as planned. But the admitted students were also bused to the Legal Services Center in Jamaica Plain en route to the reception.

As for the plans to hold the April 10 reception at Ropes & Gray, Admissions Officer Anders Yang '94 said that the event's location was chosen with an eye towards cost, convenience to visiting alums, and introducing prospective students to the city of Boston. In place of this original plan, admitted students will now be invited to an on-campus appearance by Assistant Attorney General Joel Klein '75, who led the government's antitrust case against Microsoft. A reception is to follow in the Ropes & Gray Room.

Evan Norris '02, one of the Catalyst members who worked on the issue, explained the group's concern. "There

are a lot of resources donated to public interest opportunities, clinical programs, and the like, but that may not be reflected in an event like [the reception at] Ropes & Gray. There's nothing to be gained from reinforcing the idea that HLS is a predominantly corporate school," Norris said.

Indeed, Norris worried that the perception that the HLS administration places a heavy thumb on the scale of corporate practice may negatively impact recruitment efforts. "We are concerned that [HLS is] losing students," Norris said, "We had anecdotal evidence of students who opted to go elsewhere."

Arkadi Gerney '02, a second student closely involved in the project, pointedly noted that Ropes & Gray and Hale & Dorr are "two of HLS's major donors." Gerney suggested that the appearances were "unseemly."

Norris agreed, saying that the perception may be that "HLS is tied to its big donors." He continued, "Even if nothing is going wrong, you can't escape the appearance of a quid pro quo feeling about it."

Norris also said that steering students to a large firm could have a limiting effect on their career plans. "We want students to know all the options they can go into... academia, government, public, as well as private practice," he said.

The HLS Admissions Office declined to offer an official comment on these

allegations, but flatly rejected suggestions that alumni events were established with any interest in mind other than those of prospective students. Catalyst members were quick to agree that the administration was receptive to their concerns about appearances.

Gerney said, "I feel very good about the administration's response. We expressed our concern about the present situation and some hopes of how to change it, and they responded very positively."

Norris was similarly positive about the response. He added that Catalyst's concerns on this issue overlap with those of the Office of Admissions and the entire school. "This [reception] appeared to make HLS seem more narrow than it is. The new program can make HLS look more diverse and open, as it truly is," Norris said.

According to Gerney, the change will be a lasting one. "One of the most constructive things that came out of our meeting was a firm promise from Dean Curll that there would never be an event at a firm for admitted students in the future," Gerney said.

In the future, Catalyst intends to work with the Office of Admissions to establish an event at a "neutral" downtown location for practitioners from all public and private spheres. Gerney said that such an effort would be "more reflective of the spirit and the ideals of the Law School, and a much more balanced event."

The RECORD welcomes admitted students.



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'Actual Innocence' authors discuss DNA and death penalty

by Steve Scali

On Wednesday, March 15, the Harvard Law Forum sponsored a panel discussion to discuss the causes and remedies of wrongful convictions.

The impetus for the discussion was the recent release of the book *Actual Innocence*, written by Barry Scheck, Peter Neufeld, and journalist Jim Dwyer. The book describes ten men who were wrongly convicted due to factors such as sloppy police work, corrupt prosecutors, and mistaken eyewitnesses.

Scheck and Neufeld are former public defenders who started the Innocence Project at Benjamin N. Cardozo School of Law to seek the release of wrongfully convicted persons. They have uncovered 70 cases since 1992. According to Scheck, they "take cases only on the basis that DNA could prove innocence of guilt."

Professor Charles Nesson '63 acted as moderator, asking the six panelists to respond to a variety of challenging and open-ended questions.

"The law flies under the flag of truth," started Nesson. He said that *Actual Innocence* suggests the "flag is false... when you look at the evidence, there is not a great connection between the verdict as truth and the verdict as the end of the process, the value of which is to come to a conclusion."

"You've seen the way a trial tries to come to the truth," Nesson said. "The lesson from [*Actual Innocence*] is different."

Neufeld said that "DNA was the trivial solution to the problem of unjust conviction. But it's more complex, how did [the 70 unjustly convicted individuals uncovered by the Innocence Project] get convicted?"

Neufeld mentioned that one serious problem is conviction based on sincere, but erroneous, bystander testimony. He also explained that one impediment to the use of DNA to exonerate the wrongly convicted is that "in 75 percent of cases, biological evidence has been lost or destroyed."

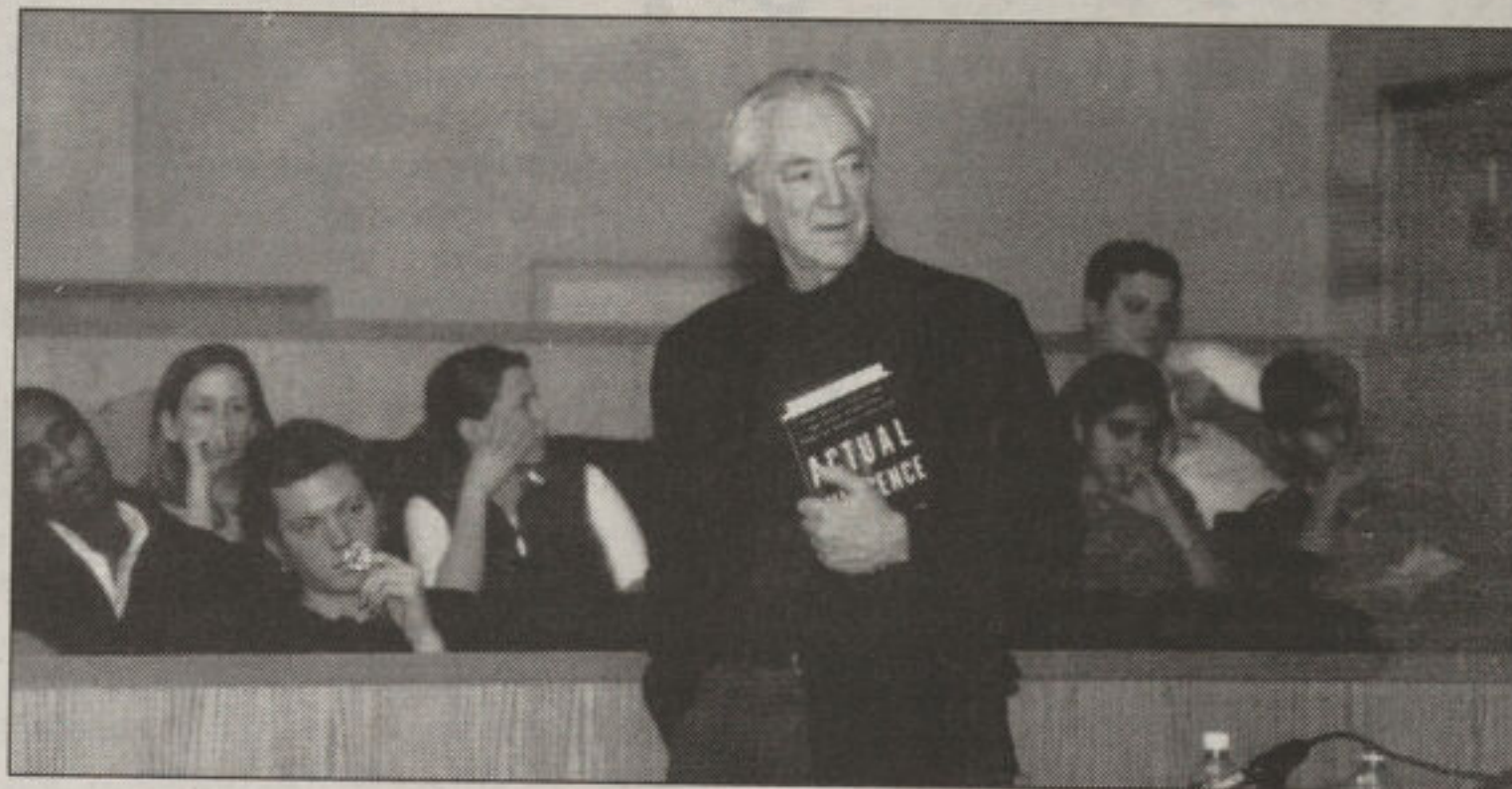


Photo by Murad Kalam

Prof. Charles Nesson '63, above, clutches his personal copy of *Actual Innocence*.

At right, author Barry Scheck, center, expresses frustration with strong-arm police tactics.



Regarding the number of people wrongfully convicted, Scheck said that "even if it is 1 percent, or 0.1 percent, that still amounts to thousands of people."

"This is the system, but by the time you get to the jury, it's too late," said Scheck. "DNA is a way to literally exonerate the innocent, with a better chance of getting the guilty."

Nesson asked the panelists whether "law is at risk of losing its credibility" if people no longer accept verdicts as the truth.

Journalist Bill Kovach said that "journalists should read this book and think about how we cover criminal law and criminal prosecution." For the criminal justice system to regain credibility, it is necessary to "examine fundamental principles, articulate them clearly, and make sure you abide by

them," Kovach said.

Nesson posed the following question to the panelists — "What is law about? Truth? It's really about resolving disputes."

Kovach disagreed with Nesson, arguing that "the pursuit of truth in every case should be the goal, like the pursuit of truth is the goal of every journalist in a story." Claiming there is widespread prosecutorial misconduct, Kovach said "there is no question we're in a state of crisis."

Louis Michael Seidman, a law professor at Georgetown University, said that the criminal justice system still retains more credibility than it deserves. "If we are going to have a criminal justice system, there has to be an optimal level of innocent people convicted," Seidman said.

"Whether a level is optimal is a

political question. The answer is, read [*Actual Innocence*]," Seidman said.

Seidman also said that the country's adversarial system "suggests that anyone who gets through the system must be guilty — it isn't true!"

Kovach expressed his desire for innocence commissions. "If a plane crashes, with the death of a patient, we do retrospective analysis of what went wrong. Also, there are recommendations to avoid tragedy. We don't do this in the criminal justice system. There is no word written about why people are unjustly convicted. The defendant moves to dismiss, and the judge issues one sentence vacating the charge," Kovach said.

Playing devil's advocate, Nesson said that the introduction of scientific evidence into criminal trials is potentially destabilizing. "If I as an expert get on the stand, and am qualified by the court, what I say as a scientific expert has great credibility," said Nesson.

"The problem is that the rate at which errors are made is increased by the use of experts and scientific evidence," said Nesson.

Seidman spoke of the corrosive effect of the adversarial system. "It is easy for the prosecutor to fall into the adversary role, and ensure the person is convicted and stays convicted," said Seidman.

Nesson said that "the problem is that we had a credible system as long as no one knew what the verdict was. Then with technology, the curtain goes back, and we see law revealed."

Nesson asked Scheck whether his involvement with the defense team during the O.J. Simpson trial "undercut the credibility of DNA evidence at the same time you're advancing DNA and the Innocence Project?"

"Exculpation is not as problematic as proving the person is the perpetrator," responded Scheck. "The suspicion is where DNA is used to incriminate someone."

RANKING

Continued from page 1

overlooked and that is of most importance to me is trying to assess the depth and breadth of an institution in its faculty, in its students and in its programs," said Clark.

"What I like about the Harvard faculty is that there are groups of superb faculty in a variety of areas. We have a fantastic tax group, a great corporate group and a fantastic constitutional law group," Clark said.

Clark also praised the size and diversity of HLS's student body. "[Harvard Law School] is like a city with a lot of great parts. The same is true of the student body. We have a critical mass of students who are interested in a lot of things," said Clark. "We have a great human rights group, and a great Federalist Society, too. We also have a great drama society, I might add."

Associate Dean Frank Sander '52 said that the U.S. News rankings should be taken in stride, especially by prospective students, as there are many factors that determine the quality of a law school. "Choosing a law school is a very complex thing that depends on a student's background and expectations and interests, and I don't think it can be reduced to a simple ranking," Sander said.

Clark also expressed concern that too much emphasis may be placed on the U.S. News rankings. "You might read the Consumer Reports ranking on coffee," he said, "but don't bet the farm on it. Go out there and taste them."

Clark said that he would prefer to see a variety of journals publish rankings of law schools, using different criteria, so that the legal community could look at law schools from a variety of perspectives.

For the past three years, the deans of most of the nation's law schools have signed a letter, sent to everyone who takes the LSAT, protesting the influence of law school rankings on the choices of prospective students. After declining to sign this letter two years ago, Clark signed it both last year and this year.

Clark said that watching the effect of rankings on the legal academic community convinced him to change his position. "I signed it recently because of some experiences that I had," he said. "I saw the kind of pernicious effect of the U.S. News ranking. I saw another institution that was basing its long-term plan on hoping that certain numbers would bounce them upward in the rankings."

A school's long-range planning should not rely on the rankings, according to Clark. "This is a bad way to think about your school's future," he said in referring to the U.S. News criteria.

HLS's current strategic planning process will not be affected by the school's drop in the U.S. News rankings. Clark said, "I think it would be a bad idea to try to base one's long term plan or mission statement on what will get us up in the U.S. News rankings."

Nonetheless, some of the factors that have hurt HLS in the U.S. News rankings will be addressed in strategic

The U.S. News & World Report algorithm

The rankings for 174 accredited law schools are based on a weighted average of the measures of quality described here. The specialty rankings are based on reputation. For an overview of our methods, click here.

Reputation (40 percent): Measured by two surveys. The dean and three faculty members at each school were asked to rate schools from "marginal" (1) to "distinguished" (5) for 25 percent of the rank. Lawyers, hiring partners, and senior judges rated schools for 15 percent of the rank.

Selectivity (25 percent): Combines median LSAT scores (50 percent), median undergrad GPA (40 percent), and proportion of applicants accepted for the fall of 1999 (10 percent).

Placement success (20 percent): Employment rates at graduation for 1998 graduates (30 percent) and nine months after (60 percent), and the bar passage rate (10 percent).

Faculty resources (15 percent): Based on average 1998 and 1999 expenditures per student for instruction, library, and supporting services (65 percent); student/teacher ratio (20 percent); and average per-student spending in 1998 and 1999 on all other items, financial aid (10 percent); and total number of volumes and titles in library (5 percent).

planning. "The one thing that leads to the kind of ridiculous result that we're ranked below Yale and Stanford is the student/faculty ratio," said Clark. "It turns out that for independent reasons, we want to change that, but that's the way to think about it."

Clark added that HLS has many other goals that are being addressed in strategic planning, but which would have little or no effect on the U.S. News rankings. For example, Clark said that HLS wants to continue to build on its international presence and its tradition of influencing the legal world outside of the United States.

"I feel very strongly that we have to chart our own path, and not let these

kind of things affect our goals or discourage us," Clark said.

HLS alumni have noticed the drop in the rankings. Clark said that he has already received numerous e-mails from alumni saying that they do not put any stock in the rankings.

Clark sounded confident that alumni fundraising will not suffer. "I think it's going to be positive," he said, "I think [the alumni] are going to say 'we will spend our rivals into dissolution.' Once we get going on fundraising, in a big way, there's no other school that can keep up. As long as we have good plans for what to do with the money when we get it, [fundraising] is going to have effects that no one can ignore."

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Harvard Law RECORD

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FOUNDED IN 1946

Three?

Finishing third is supposed to be a motivator. Think about the Olympics. The bronze medal winner is just one step above mortal soil, barely removed from the anonymous shroud of mediocrity. And while the silver medalist may be obsessed with thoughts of a slip or a half-hearted effort — the 'but for' causes of a second place finish — the winner of a bronze is likely to be thankful just to be on the elevated platform.

Of course, it's ultimately a poor analogy. The U.S. News & World Report rankings are not the Olympics. And if Dean Clark were to vocalize a goal to be first in the rankings, and subsequently took steps to make it so, the school would no longer offer much of what brings talented students to Cambridge. Harvard would be smaller, leaner, and less diverse (in every sense of the word). Out of necessity, it would not be HLS anymore — it would have to become more like Stanford.

That, however, will not happen. The HLS community has seemingly come to a de facto acceptance that the holy trinity of law schools has firmed, and three is not a crowd. Whereas movies and, because of them, the guys who fix your car, think that Harvard Law is tops, few at this school are so smitten. There is certainly a recognition here that HLS is firmly planted beneath Yale in the U.S. News rankings, mostly because of student selectivity. And this will not change anytime soon, short of the administration's shearing admitted classes at Harvard down to far lower levels. No, the status quo is set in stone as far as U.S. News is concerned.

But note this: the magazine does not account for student satisfaction. Here at HLS, however, that very vital statistic is still up for grabs. Weekly proposals are streaming from Strategic Planning Committees, and every aspect of the school's operation is subject to change. From doing away with Property as a first-year required course to moving toward a modified "pass/fail" system, these plans (if adopted) stand to radically alter the educational landscape of Harvard Law. Whether these reforms end up boosting HLS's standing in the estimation of U.S. News is not irrelevant. Harvard's stature and history, however, make it largely immune to the judgments of a news-magazine. Far more important is whether these changes will cast a different light upon Harvard Law in the eyes of its students.

—Justin Herdman

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• Letters •

MELSA lacks tact in selection of speakers

The RECORD's coverage of Noam Chomsky's appearance at Harvard Law School ("Chomsky Says US Reliant on Force, World Obedience"; March 10) was distressingly incomplete. Chomsky's reputation as a linguist is matched by his reputation for adherence to paranoid conspiracy theories spun around — to paraphrase Chomsky — the fateful triangle of the United States, multinational corporations and Israel.

The place of Israel — a country that is home to 40 percent of the world's Jews and most Jewish Holocaust survivors — in Chomsky's evil fantasies is distressingly prominent, and smacks of a deeper antagonism that suggests bigotry. The feeling of bigotry is only deepened by Chomsky's snide anti-Jewish remarks, such as his comment at Harvard last Monday that Jews are responsible for anti-Semitism in the U.S. because they insist on too prominent a role in American politics.

Chomsky's address, like his books, was full of impressive-sounding,

but completely false assertions of fact designed to illustrate the evil of his triangle of targets. Chomsky goes for the big whoppers as well as the little ones. In the past he has written in support of studies denying that the Holocaust took place. Indeed, Chomsky even went so far as to write that Pol Pot's massacres in Cambodia were an invention of the American media.

The real question is why the Middle Eastern Law Students Association thought that Chomsky had anything positive to contribute to the Harvard community. MELSA has only invited two speakers to campus this year to discuss the Arab-Israeli conflict and both have spouted the same venom against Zionist conspiracies, overly powerful Jewish lobbies and a media controlled by shadowy forces in league with the evil Jewish state.

When MELSA's earlier speaker — self-styled human rights activist Shawqi Issa — was challenged on his own remarks about the con-

spiracy controlling the media, he responded in typical Chomsky fashion by both denying that he had said what he had said and asserting that it was true anyway. Thus, Issa began his speech with the comment, "and I came here to say that people here have one-sided coverage of the conflict and this goes by their control of the media," and Issa later explained the "their" by stating that no one could deny the strength of the pro-Israel lobby in Washington. Issa nevertheless wrote to the RECORD some weeks later [Jan. 14 issue] that "[n]ever did I intimate that a 'cabal' was secretly manipulating the press[. a] basic reading of Chomsky, however, will inform as to how the media serves particular interests in this country."

Two speakers emitting the same offensive bile is not only redundant; it is noxious. Perhaps MELSA ought to reexamine its process for inviting speakers.

Avi Bell, SJD
March 15, 2000

Rose '00 missed mark on Noam Chomsky

The discussion to date in the RECORD regarding the Middle Eastern Law Students Association's invitation to Noam Chomsky has been distressingly beside the point. It has utterly failed to address the concerns that make Chomsky's speech on Middle East policies at HLS disturbing and even offensive.

The issue is not, as Jon Rose alleges, one of censorship. We do not question Chomsky's right to deliver political opinions that strike us as uninformed and wrong. Nor do we question Chomsky's right to distort the facts to match those opinions, as he is wont to do. Nor do we question Chomsky's right to make remarks that smack of bigotry in his political writing and speaking. Nor do we question MELSA's right to invite Chomsky in its pursuit of a single-minded campaign against the Jewish state. Nor, even, do we question MELSA's right to invite speakers to deliver remarks that we may deem offensive. The question is not one of right. It is a question of judgment and sensitivity.

Regrettably, it is precisely good judgment that Chomsky lacks as a political pundit. Despite his

important work in linguistics, Chomsky expresses views most appropriate for the X-Files. His views consist of paranoid and contrarian (née radical Marxist) fantasies about the alleged power of particular supposed villains — most prominently the U.S. and Israel. Chomsky's loyalty is to maintaining the purity of the villain status of his targets, irrespective of the facts. So, for example, disturbed by the possibility that the "evil" U.S. might be behaving better than the "good" Khmer Rouge (who murdered 2 million), Chomsky wrote the Cambodian genocide out of history, chalking it up to U.S. media propaganda. Similarly, to maintain a thesis of the "evil" Israel oppressing its "good" Arab foes, Chomsky air-brushes out of history various Arab actions against Israel, and invents alleged Israeli brutalities, complete with bogus citations.

More disturbing yet is the miasma that clings to many of Chomsky's comments. Chomsky's support for Holocaust deniers, his questionable remarks about "Jewish-run media," his suggestion that Jewish political consciousness is responsible for antisemitism in America, and his patho-

logical fixation with the "evil" of the Jewish state all suggest that it is intolerance rather than ideology that lies at the heart of much of Chomsky's politics.

This letter is not about absolving anyone — American, Israeli, Arab or Cambodian — of their sins. Indeed, although we cannot share Chomsky's blinkered views, we must acknowledge that all of the above have engaged at various times in acts that are wrongful and brutal. Many of us disagree with various policies of the United States and Israel, as of course we do with many policies of many of the Arab regimes opposing Israel and of the deposed Khmer Rouge regime in Cambodia. It is conceivable to have a valuable and enlightening discussion about the past and present shortcomings of American and/or Israeli policies in the context of a rational dialogue about Middle East policy. It is difficult to see, however, how Chomsky's paranoid fantasies could contribute to any such dialogue. It is to this question that we ought to address ourselves.

Aharon Friedman '01
Elliot Lowenstein '02
March 22, 2000

Write for the RECORD

Letters

HLS course selection ain't a bundle of love

It was with great interest that I examined the packet for fall course selection. I found it quite odd that, especially in light of the recent Microsoft decision, Harvard Law School would attempt to flaunt free market principles, and perhaps the law, by engaging in the anti-competitive practice of course bundling. I have

already sent a request to Lawrence Lessig, asking him to write an amicus curiae on the evils of class bundling, and I would hope that HLS ceases its anticompetitive behavior before this brief is ever written.

Perhaps it is the case that Harvard, being what it is, with the legal resources it has, can persist in activities that

a company such as Microsoft, which does not have quite the same legal tradition and reputation, can not. Or perhaps it is the case that Harvard Law School, in its arrogant stupor, has simply failed to see the eventual consequences of its wayward actions.

David K Min '02
April 4, 2000

Campaign finance more than a catch-phrase

In response to the columns written [March 17] by the HLS Democrats and Republicans, I want to point out that neither mentioned campaign finance reform. After McCain and Bradley, you'd think the party establishments would get it.

Unfortunately they don't. The omission was especially glaring in the Democrats' column when one considers that Al Gore has said that campaign finance reform will be the cornerstone of his campaign, and presumptively a cornerstone of his administration. So why did it not merit a mention from the HLS Dems?

What we got instead was mention 1,000,001 of the "bridge" and a bunch of rhetoric on the economy and health care. It is essential that the future leaders of the Democratic party realize that traditional Democratic constituent issues cannot be solved

unless there is meaningful campaign finance reform. (Note that this excludes George W. Bush's "plan." But then Gov. Bush making a campaign finance reform proposal is like John Rocker making an affirmative action proposal.)

Issues like health care and consumer protection might as well not exist in the absence of campaign finance reform. HMO reform has been effectively killed by members of Congress who have taken thousands of dollars from HMOs and insurance companies. Gore has mentioned the ridiculous prices of prescription drugs. Has he mentioned how much money pharmaceutical companies have given to politicians? Wonder why your cable bill is rising at four times the rate of inflation and it costs money to get your money via ATM? Check how much telecommunications companies and the banking industry have

given to Congress. (Hint: it is in the tens of millions.)

These are Democratic issues that affect Democratic voters (i.e., everyone who's not rich). As a matter of fact, these are general economic issues that affect ALL voters. Campaign finance reform is a pocketbook issue as much as it is an ethical one.

Furthermore, it is the party establishments' self-interested choice to whistle past the graveyard on this issue that has contributed to electorate dissatisfaction and low voter turnout. John McCain showed how electoral reform can energize the American political middle. You'd think that one of the major candidates would be interested in their votes.

Apparently not.

Adam Hirsch '01
Political Director,
Appleseed Center for
Electoral Reform
March 21, 2000

Alum offended by George W.'s depiction

The condemnation of the Governor of my state, published in your March 3 edition ["Bush rejects woman's plea"] was unfair, unjust and completely inaccurate. Unfortunately, the head of the Death Penalty Project is herself disconnected with [sic] realities and her declarations are fueled by her own prejudices against the death penalty as punishment for heinous crimes.

The majority of Texans (and citizens of many other states) believe that the death penalty is punishment that fits the crime of vicious murder. Betty Beets forced two of her children to aid her in burying the bodies of the two husbands she killed in the backyard of her home. The death of two of her previous husbands were [sic] shrouded in mystery. Cold

blooded killing for financial gain is repugnant to most law abiding citizens. The domestic abuse in Betty Beets' marriages cast her in the role of the abuser. Karla Faye Tucker, also mentioned in the article, killed her two victims with a pick axe.

Even if you do not believe in the death penalty, it is not fair to condemn our Governor, George W. Bush, for the execution of convicted murderers. By law, his discretion is limited to only a 30-day reprieve and he has exercised that discretion when it has been clearly demonstrated that due process has yet to be completed. As a native Texan and as a graduate of Harvard Law School, I have nothing but respect for our Governor who has shown complete compassion in the enforcement of our

laws. He has brought on reforms that have benefited many who have been deprived. He has gained the respect of the vast majority of our citizens, both old and young, Democratic and Republican, who have had their fill of our elected leaders without integrity and honor and without the resolve to govern with compassionate respect for all individuals, whether they be perpetrators of vicious crimes, families of victims of those crimes, or whether simply law abiding citizens.

It offends me deeply that any one in my law school would call my state "disgusting." Hopefully, the citizens of our country will reap the real benefits of a George W. Bush presidency.

Harold B. Berman '50
March 17, 2000

Parody reviewers who live in glass houses...

Your column [in the March 17 issue] reviewing the Parody claimed that "most of the Drama

Society 'performers' are type-A, attention-hogging amateurs." What do you make of

RECORD writers?

Norm Cappell, '02
March 16, 2000

Rose misrepresents letter, chills free speech

I write to respond to Jon Rose's unfortunate misrepresentation of my position on free speech. I am, and have always been, an ardent supporter and defender of free speech. By criticizing the contents of Noam Chomsky's lecture and questioning the decision of the Middle Eastern Law Students Association to invite him, I was exercising my right to free speech.

On February 28th, Noam Chomsky, at the request of the Middle Eastern Law Students Association, delivered an anti-Israel and anti-U.S. tirade that contained significant factual distortions and omissions. In his one hour presentation, Chomsky rewrote the history of the Middle East through a series of convoluted conspiracy theories and provided no credible evidence supporting his "version" of events. I wrote a letter to the RECORD to share with the HLS community some of the facts that Chomsky conveniently omitted — such as the fact that Israel is a tiny country barely 15 miles wide, that Israel is surrounded by belligerent dictatorships that do not recognize its right to exist, and that Israel has been subjected to repeated invasions and countless acts of terrorism throughout its history. In addition, I wrote to ensure that the HLS community knew that Chomsky had contributed a preface to a book by neo-Nazi Robert Faurisson that denied the occurrence of the Holocaust (2/14/93 Washington Times B8) ["Defending 'Memory' of the Holocaust from Deniers" by Deborah E. Lipstadt]. (According to Chomsky, incidentally, even Faurisson's claim that the Holocaust was a "Zionist lie" was not proof of his anti-Semitism.) Finally, in light of Chomsky's background — which includes suggestions that anti-Semitism is caused by the existence of Israel and that Jews do not deserve a homeland because they already have New York (12/1/94 Jewish Advocate 9) ["Dance

Tonight at MIT" by Hillel Stavis] — I wrote to question why an HLS organization would invite this speaker instead of inviting somebody that could offer more thoughtful and balanced comments on the Middle East peace process. While I did question the choice of speaker, I never stated that Chomsky should not have been permitted to speak.

Needless to say, I was surprised that Jon Rose would irresponsibly mischaracterize these criticisms as censorship in an article he maliciously titled "Shame on Censorship and Jordan Malz." As Rose should know, criticizing an individual and/or an organization for advocating certain political positions is not censorship. To the contrary, such political criticisms are the essence of free speech.

Although Rose may believe that free speech simply involves inviting extremists to speak on campus, the true hallmark of free speech is the capacity to speak out against such extremism. In the marketplace of ideas, truth can only prevail when all people have the right to criticize those that spread falsehoods. For example, if an HLS organization invited David Duke to speak on campus, I would expect enlightened students to criticize his remarks and question the organization that invited him. Far from being censorship, such political criticisms are precisely what enable the marketplace of ideas to function effectively.

Rose should note that, under principles of free speech, no individual or organization is immune from criticism on the merits. While Chomsky had the right to speak at Harvard Law School, I certainly had no less a right to criticize those remarks and question the organization that sponsored his appearance. The students at HLS have a right to know about Chomsky's factual distortions and his associations with a Holocaust-denier, and I had every right to make that information known.

It is truly unfortunate that Rose chose to misrepresent my position and malign my name in an attempt to censor my criticisms. Our school treads on dangerous ground when someone in our community, such as Rose, irresponsibly accuses those that exercise their right to free speech of engaging in censorship. Rose might ponder how he, by mischaracterizing my letter and typecasting me with inflammatory and inaccurate labels, has engaged in the very type of censorship and demagoguery that is anathema to the free exchange of ideas.

Rose's name-calling only serves to chill free speech and stifle substantive debates. Instead of participating cordially in a political debate on Chomsky's revisionism, Rose chose to engage in a mean-spirited-and, in my opinion, highly unethical-personal attack. Perhaps Rose should consider directing his outrage at Chomsky's anti-Israel and anti-U.S. extremism rather than at me for speaking out against it.

Let me repeat myself one more time so that even Jon Rose can understand: I do not believe that Chomsky should have been prevented from speaking here. I do, however, have the right to question the remarks of extremists that are invited here and the intentions of an organization that continuously invites them. In the future, I would encourage Rose to support my right to speak out against such extremists rather than attempt to censor my criticisms through an inflammatory rush to judgment. Rose's tactics of smearing opponents with sensationalistic headlines and misrepresenting their positions are unbecoming of Harvard Law students and future members of the bar. I can only hope that Rose's unfair attack on my exercise of free speech will not dissuade others in our community from expressing their own thoughts.

Jordan N. Malz '00
April 3, 2000

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Rude Awakening

By Elizabeth Falk '00
RECORD Columnist

SECURITY BLANKET BY THE CHARLES

I almost never attended the Harvard Law School.

It was early May, on the Duke annual pre-graduation Myrtle Beach drink fest that I made my decision, at 2 a.m. walking home from Swells Bar and Grill on a strip-mall-lined road, that the five-month fight between my mother and my then very serious Berkeley-dwelling boyfriend about where my best future path lay had to end. I was tired; the months of arguing with both of them about life and love, opportunity, forever, and most of all, regret while trying to write a thesis had taken its toll. Love had to be more important; I couldn't imagine myself as a person out of balance enough to sell out true love to a corporate icon. Who really needs Harvard for eternal happiness, I thought, carefully writing and mailing a polite note on pineapple-embossed "Jamaica Motel" stationery to the admissions committee, telling them a sincere thanks, but no thanks.

Graduation, a horribly defining moment in my life came and went, with my furious Ivy-loving grandparents referring to me only in the third person, as if their real granddaughter had been kidnapped by aliens. My mother was upset, but at least better. "Security is a nice thing" was all she said. "And at your age, constantly searching for and clinging to it will kill your soul."

After repenting to Joyce Curll profusely, my ultimate decision to come here after all was grounded in the realization that Mom, as usual, was right; my fear of relinquishing the comfort of a known and trusted life was narrowing paths at the very moment they should have seemed endless and limitless. My ex did not understand, arguing up until the end that people go to law school as a means to the same vision, a lucrative lifestyle in which people find eternal happiness in a pri-

vate, family-ready relationship. We have what everyone is looking for, he argued. What more do you need?

This has been the question plaguing me over the course of three years here, as it became increasingly apparent that my initial expectation of HLS as a training ground for visionaries looking to utilize their many talents in world-altering and exciting ways had been sorely misplaced. People here want everything about their lives figured out now or close to now, aiming for the day all their ducks are lined up neatly in a row. There's certainly nothing wrong in wanting a family and kids and a nice house and money to take care of them, but to hear it repeatedly cited as the ultimate, "higher" end of years of education threw me for a loop. Following my colleagues' popular consensus about their futures, I tossed a happy five-year relationship, a legal education at an excellent state school, and pretty damn good job security for an HLS education that would grant me "even better" financial and job security when I got into another, longer-term happy relationship (if I was lucky enough to find it again). In these terms, the trade-off didn't seem to make much sense. In fact, it seemed rather silly.

If the quest for the perfect security blanket was what I thought HLS was all about, I would have hightailed it to California in 1997 and never looked back. It was security I craved when I was walking on Myrtle Beach as a scared college senior; I came here after deciding I wanted more out of life. But looking around at most of my classmates five weeks from graduation, they're craving that exact same thing now. The degree is an impressive step in a predetermined plan of how life will play itself out, the "perfect life" of \$150,000 a year, marriage, kids and BMWs, where one has no regrets

because one chooses not to see the paths one forgoes.

Oddly enough, most people will say that they came to HLS because it was "the best." The best? So what? 'Cause there suddenly ain't nothing left to apply for after 20-something years and if you look around at your starting classes at law firms, there are plenty of people who didn't need Harvard to get to the exact same place you're going and life you'll live.

The experts are right; Harvard does mean something different. It's the second look, the first-round flag that saves you from the garbage bin, that glaringly obnoxious yet regal bold print on a résumé that can force the interview to happen. It opens doors, but only those doors we are willing to see, explore, and risk failure to get through. It can give our passions a tangible, lucrative form, but only passions we are willing to realize within. In June we all will hold the means to open 550



doors to incredible lives that have never before been lived. Why we all reach so quickly for the security of the same doorknob when we hold such a powerful key to the adventure of the unknown is something I will never understand.

And thus, the second important lesson of my HLS tenure: an awareness of the incredible stronghold that craving for security and assurance has on our thoughts and actions, and the importance of resisting them at critical junctures in order to fully realize what drew me here — my conception of HLS as "the best." I did not come here to live the good life; I came here to make a surreal life. A surreal life without regret doesn't exist; straying from the "correct" path to find the sublime one means wrong paths will be taken. But what this degree means to me is not the guarantee of mundane success, but rather the security to be insecure in choosing those paths, knowing that somewhere, someone will give me a second look, and I will survive. The HLS degree does have that power. But it's our decision whether that power will ultimately free or enslave us.

Quote of the Week

'I think [the alumni] are going to say, 'We will spend our rivals into dissolution.'

—Dean Clark '72, commenting on Harvard's third-place ranking.

Fenno

Fenno sat in the Lemann Lounge, staring incredulously at the most recent law school rankings in U.S. News & World Report.

"Third? You've got to be kidding me."

Fenno couldn't believe it. She had to get to the bottom of this little mystery. Time for Fenno to do what she did best—get drunk and do a One-L.

But what would that accomplish? So she'd have to resort to her other talent: asking the questions that no one else was brave enough to ask.

Such as: Did the rankings drop have anything to do with the fact that the Berkman Center was about to lose Larry Lessig and Jonathan Zittrain? Fenno had heard that Lessig was heading to Stanford and Zittrain was considering a move to P.S. 207 in Boston, where he could meet girls closer to his age. Coincidence?

Fenno decided to do a little legwork. She headed outside to see if she could find someone to help her figure this out.

Ah! Darren Schlanger was walking up the Langdell steps.

"Darren!"

"Hello, Fenno. What is happening?"

"What do you think about this U.S. News thing?"

"Well, Fenno, it's quite simple. Previously, the magazine possessed a quasi-uxorious regard for all that which emanated from Harvard University. As the inexorable Father Time marched on, however, this effusive excitement began to decline — even to drop, to fall,

to go down, if you will."

"Uh huh." Fenno was getting sleepy.

"Well, then, as I was saying, as this decline — here I refer not to Gibbous-like decline but to a more graduated, modulated decline, such as that experienced by the Crits in the part of that which we call the 'Greed Decade' — namely, the 1980s. As this decline began to increase in its graduation — by which I mean a slope-like grading, naturally, and not the event dominated —"

"I know what you mean, Darren."

"Oh. Well, the affection that U.S. News maintained for Harvard, the uxorious —"

"You already used 'uxorious.'"

"No, I didn't."

"Yes, you did."

"That's impossible. I mean, what do you think, that I couldn't think of another word? What are you saying, that I have some kind of Word of the Day calendar, and that I try to use those words so people will think I'm smart, when everyone who reads my column knows that I have a mastery of the quotidian that is exceeded in its tedious supremacy only by Joseph Singer? Is that what you're saying, Fenno? Is that what you think?"

"Never mind, Darren. Listen, I'll see you later."

"What?"

"I'll see you later."

"I don't follow you."

Fenno sighed. "I'll occlude the manifestation of your presence at a time subsequent to that which is the current."

"Okay, see ya."

Fenno continued down the stairs and turned toward Gannett House. Surely someone there could help her.

Fenno walked in the front door and was about to head up the stairs when

Raj Goyle slammed into her.

"Hey! Sorry! But have you seen this U.S. News thing? This is gonna be huge! Seriously, man."

"I'm not a man." Fenno lifted her shirt. "See?"

"Right. Anyway, I've gotta go see Dean Clark about this. You know what happened, right? It's Catalyst. We did this. Seriously, man. Nader's gonna love it, and I can't wait to tell Duncan about it either."

"Um, Raj, you ever think that Catalyst is something that, ah, gives liberal navel-gazers a chance to feel like they're making a difference when, in fact, everyone knows they're not?"

Goyle looked puzzled. "Hey, man, seriously. You saw what we did with getting rid of the Hale & Dorr reception. How about that, man? Seriously. Nader loved that. So did Duncan, man."

"Um, Raj, you do Legal Aid, right?"

"Yeah."

"How do you think places like that raise money? You think maybe it comes from, I dunno, people who have money? You know — people who work for places like Hale and Dorr?"

"Yeah, man, don't you think I know that? But you know what? You get a lot more attention if you pretend you don't. See what I'm talking about, man?"

Fenno smiled. She had to admire the guy. Selling out your principles for your principles. That was a new one.

"All right, Raj, I'll see you later."

"Later, man."

Fenno climbed up the stairs and headed for Anne Small's office. A girl that smart had to know what was going on.

Fenno stopped outside Small's door. Small seemed to be on the phone.

"Listen, Bob, don't give me that crap. You and I both know that judges pay

attention to those rankings, and if you think I'm going to let your moneyed complacency screw up clerkships for next year's editors, you've got another thing coming. What? You'll see what you can do? I don't think so, Bob. I've got two words for you: Bobby Haas."

Fenno grinned. Haas had donated \$100,000 to redo Hemenway just so his hot 2L daughters could glisten in better surroundings.

"I've talked to Bobby, Bob—am I losing you here? Bobby said he'd spare no expense to get HLS back on top—or at least on top of Stanford. I could have gone there, you know. So it's payback time, Bob. You figure out something, you find a way to make Bobby's money count for something, or you and I, Bob, you and I are going to have a problem. You know who the Review's last 'problem' was? Clare Dalton. You know where she teaches now? Exactly. Get the picture?"

Small was quiet, so Fenno figured Clark must be saying something.

"Meltzer? You're giving me Meltzer? The Strategic Planning schmuck? This guy's head is so far up his ass he farts when he burps! He thinks HLS is perfect and that we don't need to change a thing around here! Is that what you think it'll take to get something done around here? Dan Meltzer? Bob, don't pee on my leg and tell me it's raining."

Fenno smiled. She liked this Small girl. Funny how sweet she looked in public. And now this? Nice.

Small seemed to have things well in hand. No need for me to stick around, Fenno thought. She crept away from the door and headed back down the stairs. This time next year, thanks to Anne Small, the chant would rise up from all over the campus: "We're number two! We're number two!"

INTERVIEW

by Arash Saedinia '00

Transmission: A Conversation with DJ Spooky

Editor's Note: This is the first part of a RECORD interview conducted with DJ Spooky in conjunction with the Berkman Center's "Signal to Noise" conference in February. The remainder of the interview will be published in a later issue.

As a recording artist, DJ and journalist, DJ Spooky That Subliminal Kid (a.k.a. Paul D. Miller) occupies a number of roles as creator and cultural critic. Last month, Spooky gave the closing address at the Berkman Center's "Signal To Noise" conference. The speech was followed by a compelling performance at the House of Blues after-party. His latest project, a collaboration with Scanner, "The Quick And the Dead," is the first release from Sulphur Records' Meld Series. The RECORD had a chance to catch up with Spooky, appropriately enough, via cyberspace.

RECORD: As a performer who relies on the complex recontextualization of sounds to create new compositions, what legal regime do you envision as it pertains to intellectual property, and more specifically, the art of "sampling?"

Spooky: When you combine terms like "fact" and "fiction" you get a perfect example of the generation clash this kind of aesthetic war signifies. The equation "fact + fiction" equals a new form of information control — you get "faction." I think a lot of the issues around sampling is a play on different perceptions of time, ya know? It's mainly about how people replay their own memories of sounds and situations they lived through. Who controls the environment you grew up in? Who controls the situation that you engage? At the end of the day, it's all about re-processing the world around you, and this will happen whether companies and older artists try to control the process and its cultural "entropic" "open system" implications. As with both jazz and the blues, where everyone had access to the same songs, but flipped things until they made their own statement (think of the classic blues motif of "goin' to the cross-roads" or the jazz performance situation of "call-and-response").

An Asymmetric Parable: Jacob Lawrence paints a collage of jazz photos while Ornette Coleman sits down and has a conversation with Afrika Bambaataa, who sends a transmission to Kraftwerk, who riffs on Alan Turing's notion of the computer as "Universal Machine" and sends the message to Hendrix who acts as a search engine for higher frequencies in the studio while he looks for reflections of Little Richard... meanwhile, Elvis, The Rolling Stones, Eric Clapton etc. etc. get paid and chill out... it's a boring equation if the "appropriation" is "one way" and the sampler, reflecting an American tradition of cultural appropriation, is merely a mechanic engagement with the same logic of "cultural hybridity" (Turing, the fellow who came up with the computer as "universal machine" reflects off the surface of the sampler — it can approximate any sound, and becomes an instrument meant to be any instrument...).

It's really a generation gap, but at the same time, if things are "recognizable" then, yeah, somebody should get some loot. Art and the everyday: the boundaries between the two are what the major cultural movements of the last century — Pop Art, Surrealism, Futurism, Jazz, Be-Bop, Blues — destroyed. At the same time, there's so many ways to alter the palette of "found sounds" you work with — in a world existing in a post-Duchamp, post-Warhol aesthetic/cultural landscape why bother to play something the exact same way as before? Even a slight flourish or frequency pitch shift changes the original elements you bounce off of, but it's all about reconfiguration and customization — this is why I always refer to sampling as "dematerialized sculpture." Intellectual property is a foundation for an information economy — but in the sense of scarcity and the interplay of the complex variables of how people construct their identities. I think anyone in their 20s has a sense of growing up in a world of media saturation, and we're just the beginning. If I internalize the environment around me, who is going to control how the information eventually resurfaces? It's an uncanny situation — it

almost makes the creative act become a kind of "dispersion of self." Like I always say, back in the day, people used to call it "alchemy," but in our modern hyper-fluid world of cybernetic culture, people simply call it "the mix." Sampling seen in this light? Personally, I like to call it "cybernetic jazz" — algorithmic composition... playing with beats — it's all about patterns...

R: In your address to the participants at the conference, you spoke of urban youth culture as a template for internet culture. Could you elaborate?

S: Yeah, there's the whole issue of identity. African American, Irish, Jewish, Hispanic: anyone in America's surface level homogeneity and deep ethnic schizophrenia is going to face an identity clash if they bounce off of the "received culture" of commercialized information. Identity — the way I see it — is

tural ghost for tourists..." Sounds like hip-hop to me... no longer exists, except as a cultural ghost for tourists..."

R: Does "ILLbient" fit what you're doing in 2000? Played out, useful, what's your take on the term today?

S: ILLbient started out as a critique of a lot of the conservatism in the NYC music scene. Everyone is all about "orthodoxy": keeping the boundaries between music styles in a world of total flux seems crazy to me, and I wanted to figure out a way to flip things so that people could check the vibe. I started a series of events with a woman named Karen Levitt that was meant to be a kind of inheritance of the "Happenings" tradition of the '60s scene around John Cage/Nam Jun Paik/Joseph Beuys/Allan Kaprow artist scene based on "indeterminacy." Needless to say, a lot of people don't read about that stuff, and in a sense, they shouldn't have to, so illbient became regarded as being super artsy and most people get turned off by that. I'm still into a lot of the ideas: digital media, multiculturalism (I have to admit I'm a fanatic when it comes to making absolutely sure that things are DIVERSE) — at the end of the day, you realize that a lot of the ideas we've formed of the notion of the "avant garde" are obsolete. People these days simply want to get paid, figure out different ways to create a forum for their zone to flow, and then leave it at that. Illbient was kind of flying in the face of this kind of social logic, and yeah, it's something I still do. But what's in a name? A lot of the situation I was working on took up so much time, and I had to deal with people in an annoying way (people tend to get really stupid when it comes to music.... I could tell ya some stories...), so I remixed into a more conventional art-historic "tableau vivant" type situation: i.e. a little more dry, a little more academic, where the situation could be taken as a kind of conceptual art project. On one hand, it opened up several other zones for me, and on the other, it allowed me to create "DJ Spooky that Subliminal Kid" as a "living" engagement with an ultra media saturated youth culture environment. In essence, it let me create a narrative on several fronts at the same time... Persona as shareware... or something like that.

R: So what's the trouble with the avant-garde? That is, how does work that at some level aspires to be radically democratic, reach and engage collectivities outside the rarified "art world" and its privileged constituencies? It seems to me that music, particularly hip-hop (read expansively) can and often does transcend long standing boundaries. It also seems as though "Riddim Warfare" was/is, on some level, addressing this issue in attempting to reach a broader audience.

S: It's incredibly important to flip things and be open, and that's one thing the conventional art world is completely ignorant off. For the artworld and a lot of the academic world, they use the rhetoric of the "Left" and then are ultra obsessed with class, race, and hierarchy divisions. It's an appalling state to see... but at the same time, that's the way it's always been in most cultures. What makes digital media so intriguing is that it simply becomes a kind of meritocracy: you either have the information or you don't, but we all breathe the air, eh? Splice and dice, flipmode, opensource... Riddim Warfare for me was a critique of a lot of the hypocrisy and sheer conservatism that drives a lot of the culture scenes — hip-hop, dancehall reggae, academia, you name it. People are so programmed to accept a media construct that if something isn't affirmed by their peers and or media, then it might as well not exist. It's a hyper consumerist mentality, and sometimes my generation's approach to the whole situation is utterly passive... which is frightening. Music is a universal language. So is mathematics. So is the basic sense of trying to foster a real sense of plurality... and that's what Riddim Warfare was about. I felt like I was at war with what I like to call a "one track mind" mentality of my generation. Flip the script, delete the crypt... mind and rhyme... it's all about time...

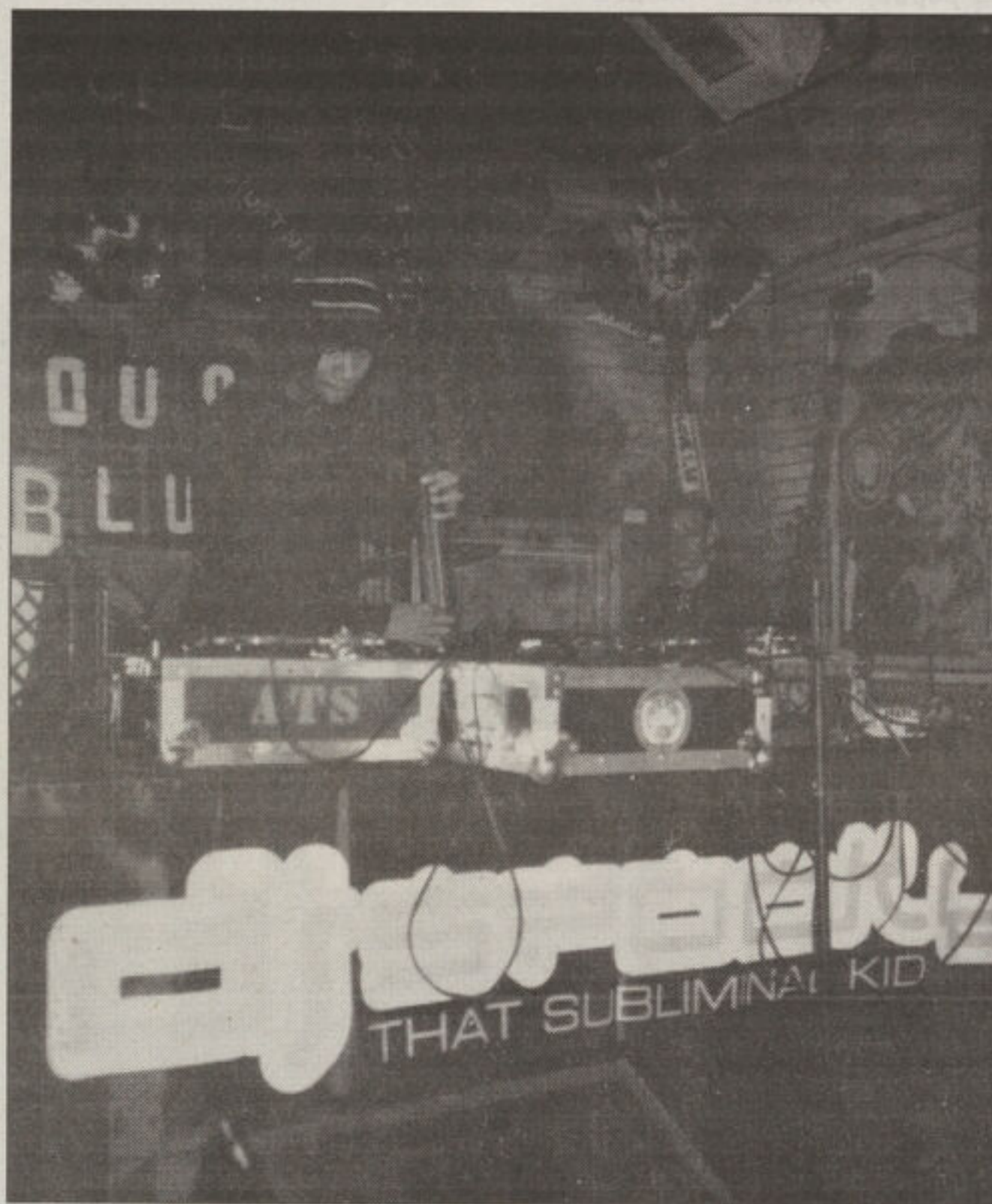
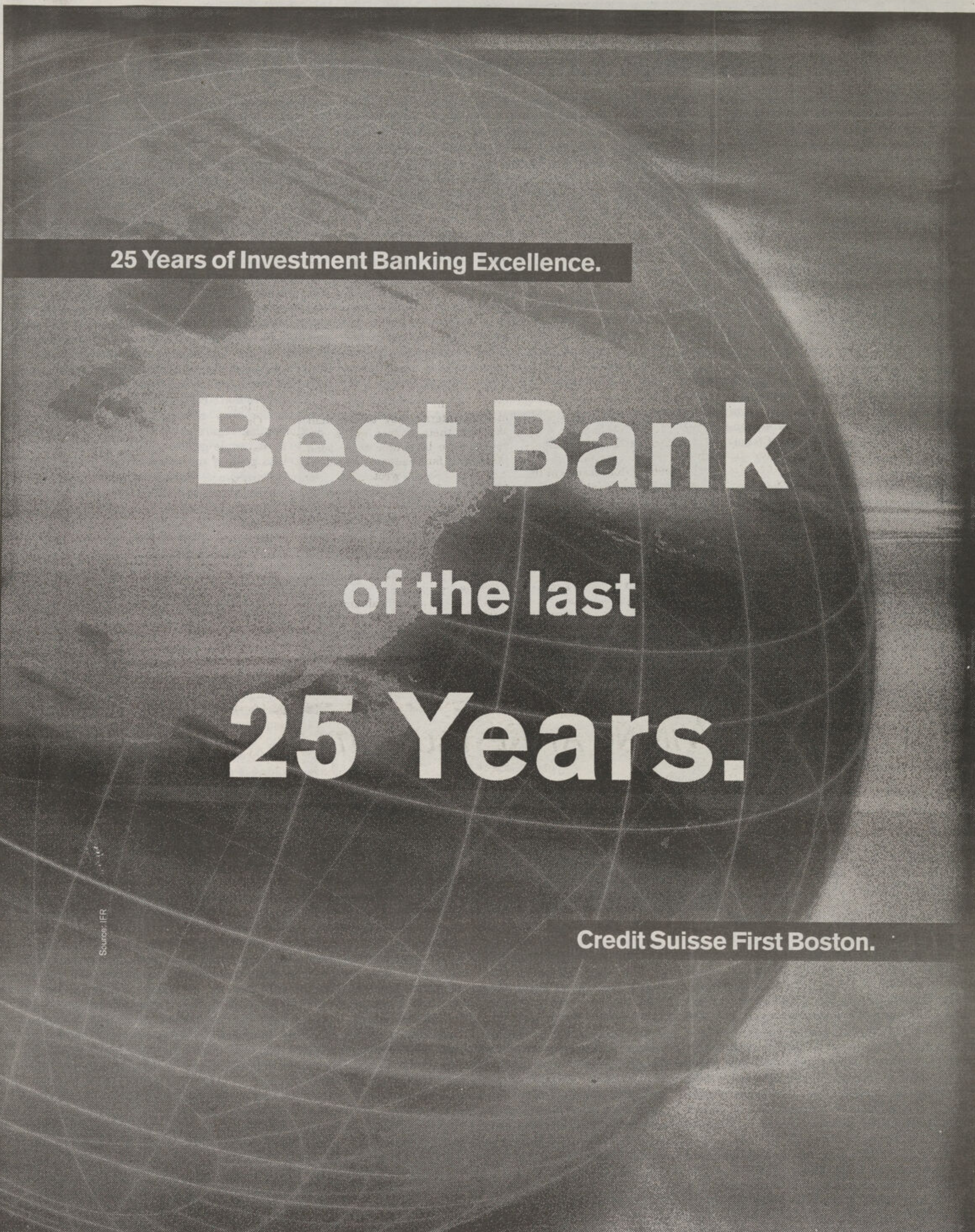


Photo by Arash Saedinia

DJ Spooky, left, in concert last month.

all about creating an environment where you can make the world act as your own reflection. I look at contemporary electronic culture as a situation where Dubois's concept of "Double Consciousness" has become multiplex: African American culture went through a cycle of extreme flux during the slave period to create a milieu where everything, down even to the words you spoke, were the equivalent of a "found object". It's an environment that mirrors on-line culture in the sense that people have to make things up as they go, textual poaching with no coaching... it's a rhyme of how the "urban crucible" shapes our environment. Next corner, next intersection, switch... Generation X becomes Generation Y in this context: the slave experience of cultural erasure, the immigrants experience of identity reconstruction: the city moves away from the melting pot model, and becomes a frequency centrifuge... cultures in conflict, messages etched and pasted on every street corner, images raining down... thoughts like rain... yeah, the city fragments and coalesces... Freud used to call the situation "unheimlich" or "uncanny" but the sense of alienation and familiarity — it all reminds me of the Situationist critique of the urban landscape. They simply called it "psychogeographic" — the layers of the city unfold in the mind of the person who moves through the landscape. What could be a better parallel to "systems culture" where everyone is an element of what theorist Mikhail Bakhtin would have called "dialogic" narrative: whether its Linux or mix tape culture.... I can only think of the city as a dispersed situation. Like McLuhan said back in the day in a section of his 1967 essay "Verbi-Voco-Visual Explanations," called "The Alchemy of Social Change," "the city no longer exists, except as a cul-



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THE INDEX WORLD

MOLDY PUMPKINS AND A DESERT OASIS

By Suzanne Carter '00
RECORD Columnist**Machina: The Machines of God**
The Smashing Pumpkins
Virgin Records America 2000**Standing on the Shoulders of Giants**
Oasis
Epic 2000

When I became aware of the Smashing Pumpkins' existence, back in the early nineties, I was in love for the first time, namely with Michael Stipe, and highly sensitive to anyone who wanted to co-opt Michael's image.

Enter Billy Corgan — skinny, sexually ambiguous, and concurrently idealistic and disillusioned. My post-adolescent "faker" antennae immediately detected a Stipe rip-off, and I dismissed Corgan as a wannabe.

My opinion was thus cemented, even as Corgan recorded with Wisconsinian Butch Vig and produced a couple of pretty fine singles. Then "Mellon Collie and the Infinite Sadness" came out, and I had to admit, even as Corgan emulated Michael's baldness in the "1979" video, that the boy might have some talent.

"Talent? Hell," I thought, as I played "Mellon Collie" for the 456th time, "he might even be a genius!"

I should've learned to trust my initial instincts.

Granted, "Mellon Collie" had its moments (most of them eventually released as singles), but the band has only gone downhill from there. Their 1996 boxed set, "The Aeroplane Flies High," included some intriguing songs (notably the vicious cover of the Cars'

"You're All I've Got Tonight"), but mainly served as yet another exercise in self-indulgence. The "official" "Mellon Collie" follow-up, "Adore," featured three good songs — conveniently placed as tracks 1-3 and subsequently released as singles — and a lot of dirge.

And now we get "Machina: The Machines of God," which certainly features the most pretentious album title in my memory, along with the ugliest, most meaningless cover art I've ever seen (bring back the tuxedo-clad kitty cats of "Mellon Collie").

I can practically read Corgan's mind on this one — hey, maybe if we put really unattractive pseudo-medieval pictures of people committing suicide in the liner notes and title the album so it sounds like a theological reading of "Modern Times," people will think the music is really deep!

Nice try.

Per Pumpkins standard-issue guidelines, the album includes three decent tracks, conveniently front-loaded in the 1-2-3 position. Two of them, "The Everlasting Gaze" and "Stand Inside Your Love," have been released as singles. The third, "Raindrops and Sunshowers," is a nice enough song about running between raindrops, until you realize that the songs imagery is seemingly duplicated from a similar, much better, song by Tom Waits.

The rest of the disc is angry noise of the sort that can be found on any album, except this angry noise consists mainly of Corgan's irritation at the failure of those of us who loved "Mellon

Collie" to respond in similar fashion to "Adore."

In this regard, the disc hits a definite low point with "Of the Mourning," in which Corgan shrieks "radio/radio/radio/please don't go.../what is it you want to change/radio."

Never mind that the imagery from this song is seemingly duplicated by a similar, much better, song by Elvis Costello (am I sensing a pattern of unoriginality here?), the lyrics indicate how out-of-touch Corgan is. Corgan's mission shouldn't be to reach out to the kids who are buying Mandy Moore and Eminem albums, it should be to keep the fans who flocked to Pumpkins shows in the band's heyday. These fans are kids no more, however — they're likely using their "zero" tour shirts for dust rags and are more interested in making internet day trades than in shaking their zipper blues. Other artists have been able to respond to their aging fan bases — Michael Stipe, for instance, wrote a song, "Daysleeper," about a finance industry drone, and another about a "Sad Professor" who "hate[s] where [he] wound up." If you respond to your ex-fans' newfound maturity, you may not get radio airplay, Billy, but at least people will use your music for more than a punching bag again.

As for the new Oasis album, it's perfectly pleasant pop from the brothers Gallagher. Oasis isn't technically a duo, but it may as well be, so tied it is to the siblings that fake it so real they are beyond fake (the other members of

the band are barely mentioned in the album's liner notes).

There isn't all that much to say about "Standing on the Shoulders of Giants," but does it really matter? Even though their sophomore effort, "What's the Story (Morning Glory)" was one of the unabashedly beautiful albums of the '90s, Oasis are more soap opera characters than musicians, and the new album makes you hunger more for another chapter in the Great Pulp Novel That is Oasis (e.g., how is it that Liam gets to pen songs, something he's not really good at, and Noel gets to sing lead vocal, something that he wasn't made to do?). To this extent, it's more worthwhile than 90 percent of what you'll find on the new release racks at Newbury Comics but still not something you'll listen to more than a few times.

Oasis always struck me as one of the bands that sounded the death knell for alternative rock as we knew it. Alt rock as stylized by Corgan et al. was supposed to be music by the class bullies' prime victims; its patron saint was Kurt Cobain, who was so determined to look hulky that he reportedly wore four or five layers of clothes during high school.

Then Oasis showed up, and they looked, talked and behaved like nothing less than the types of rude boys who would've pummeled Cobain, who by then was dead by his own hand anyway. Say what you will about the chosen morals of mid-'90s hipsters; at least the Gallaghers have the dignity not to beg for radio airplay.

Vino & Veritas

WINING AT RESTAURANTS

By Justin Dillon '02
Wine Columnist

A little knowledge is a dangerous thing, and in few places is that more true than in the wine world.

Let's say, for example, that you write a wine column for a small but saucy little newspaper. Your friends know that you spend more time, and way more money, on wine than you do on most things. (Like, oh, reading for Crim. Which explains why you know more about the differences between Australian and French Syrahs than the differences between attempt and accomplice liability, and why you think *mens rea* would make a cool name for a grape.)

Then, while you're on spring break, you go to a fancy Italian restaurant you have been to several times in a town you used to live in (for purposes of anonymity, let's call it "Washington, D.C."). The waiter delivers the wine list, and your friend gives you a look that says, "Showtime."

Gulp.

You end up picking a \$40ish Italian red that the waiter recommends over your own instinct of a slightly less expensive Chianti that you'd heard good things about. You figure, this guy must have tasted half the wines on the menu, so maybe I should just go with him. (Also, you'll have someone else to share the blame with.)

The wine comes, you taste it, and... It's fine.

Fine. Not great, not even that interesting, but just fine. And your friend knows it. He smiles, tells you he likes it — which he probably does, since you do, too — and you proceed to order your food.

You know that you could have done better, but you tell yourself, "Hey, I've got limited funds here, and the waiter told me this was good." You promise yourself that next time, you'll trust your instincts, even though you know that a good waiter who seems to know his stuff can usually — and often rightly — persuade you to try something new.

Now, lest Jay McInerney file a lawsuit for theft of trendy narrative device, let's get out of the second person and start talking about wine.

The point, of course, is that wine lists can be intimidating, even for people who know something about wine. There's pressure to pick a wine that everyone will like, while not taking the easy way out and going with a midrange Merlot (unless you're on a tentative first date and she says she just loves Merlot, in which case a quick BPL will tell you to sacrifice your principles for a nobler cause).

So how should you go about it? Perhaps the best introduction to this little conundrum I've seen is from *The Wall Street Journal Guide to Wine*, by Dorothy J. Gaiter and John Brecher. (The bulk of the book is composed of their sprightly, jointly written wine columns from the *Journal*.) They offer several tips on ordering wine in a restaurant, which I'll here boil down to the top four.

First: Decide whether you and your guest(s) want red or white. That should get rid of half the list.

Second: Check to see what kinds of wines dominate the list. American? French? Italian? The restaurant owner's heart will usually be where the quantity is, so, for example, choosing Italian wine at an Italian restaurant is a good bet.

Third: Figure out your price range. By that time, you should be left with just a few wines. Gaiter and Brecher then recommend eliminating the ones you've heard of, unless you're on a high-stakes business or social outing. I agree. Being adventurous can often be fun, especially if your dinner companions are up for it. Sometimes, however, going with a safety wine is the better part of valor — if, for example, you're out on a recruiting dinner and are asked to pick the wine — so if you're feeling that kind of pressure, it makes

sense to go with something you know.

Fourth: When you've narrowed the list to the bare bones, ask the waiter for guidance. And here's where Gaiter and Brecher hit a home run. Instead of asking the waiter which wine he recommends — a softball that even a waiter who knows nothing about wine can fumble through convincingly, especially if he's greedy and wants you to spend more money — ask him, "What can you tell me about these wines?"

That's the key. A good waiter will be able to tell you, for example, that the Oregon Pinot Noir you're considering came from the abysmal 1995 vintage, whereas the 1996 Zin on your list came from the fantastic Rafanelli Winery, whose offerings can be hard to find in wine stores. A bad waiter will be more vague, using adjectives like "smooth" and saying that the wine "sells very well." Trust the good waiters, or go with your gut; ignore the bad waiters and ask politely if there's a wine steward on hand. If not, go with your gut. That tends to be more fun, anyway.

Tasting Notes:

But for a few selections from France's Languedoc-Rousillon region, this week's wines have no real unifying theme. (This is what impulse-buying gets you.)

By far the best of the week was the **Chateau Mas Neuf 1997** from the Costières de Nîmes in the aforementioned Languedoc. This wine is a stunner — one of the best I've tasted all year. It's also a steal: **\$8.99** at Martignetti's on Soldier's Field Road in Brighton. The nose also was enough to make me fall in love: overtones of bacon fat (I'm serious — smell it and you'll see), smoke and earth.

It tasted even better — no rough edges, but not flabby or unstructured. It's quintessentially French, by which I mean the fruit, while strong, does not dominate, and the brilliance of the wine is in the *terroir*, or soil. This is,

quite simply, the best wine I have ever tasted at this price, and it beats most others I've encountered in the bargain category.

Two other selections from the Languedoc — whose most widely planted varieties are Carignan, Grenache, Syrah and Mourvèdre — are also solid values. The **Chateau La Roque 1996**, from Pic Saint Loup and selling for **\$10.99** at the University Wine Shop, shows a cassis-like nose and has a somewhat rough, rustic feel to it. The **Domaine de L'Hortus Classique 1995**, also from the Pic Saint Loup by way of the University Wine Shop for **\$8.49**, is a similarly easy-drinking, "country" wine that would go well with burgers or pizza.

Shifting to America, the **Guenoc Petite Sirah North Coast 1997**, **\$16.99** at the University Wine Shop, has a jammy, chewy quality that makes you want to roll it around in your mouth and figure it out a bit. Somewhat "tight" at first, it opened up somewhat after 24 hours, as the tannins started to mellow and the Zin-like fruit became more prominent.

The **Ridge California Coast Range II 1997**, which I bought at Fresh Fields in D.C. for **\$19.99** and which should be available here, is up to Ridge's usual standards and went great with pizza and the Oscars. On the other hand, the **Gallo Sonoma 1996 Frei Ranch Zinfandel**, **\$16.99** at the local Bread & Circus, needs a little more maturing to reach its peak. The fruit was there but buried, and the blackberry slurpiness would start to show more after a couple of years in the cellar.

Finally, there was the **Pepperwood Grove 1998 Syrah**, **\$8.99** at the loosely named Harvard Wine Company. As fat and happy as your favorite uncle, this is a good pizza wine that gets better after 20 minutes in the fridge, but for the money I'd suggest a trip to the Languedoc.



INSTANT CLASSIC FOR GEN X EX-SLACKERS

By Tanya Marsh '00
RECORD Columnist

Five minutes into *High Fidelity*, I decided that I would buy it when it was released on DVD. *High Fidelity* isn't a spectacular movie (like, oh, I don't know, *American Beauty*!) but it does fit into a small cadre of films (*Reality Bites*, *Clerks*, *Say Anything*, *Singles*) that genuinely speak to me as a late-twenties-Gen-X-former-slacker-entertainment-junkie. (Who am I kidding — I'm still a slacker.)

Actually, this realization arrived in less than five minutes — the actual moment of decision occurred when main character Rob Gordon (played by John Cusack) dourly mused to the audience that he wasn't sure if he listened to pop music because he was miserable or if he was miserable because he listened to pop music. This is admittedly not an earth-shattering dilemma, but it resonated with me.

Based on the cult novel by Nick Hornsby, *High Fidelity* follows Rob Gordon (Cusack) in the aftermath of his breakup with girlfriend Laura (Iben Hjejle). Fed up with Rob's selfishness and inability to grow up and take control over the course of his own life, Laura leaves Rob for their former upstairs neighbor Ian (played by Tim Robbins). Not since *Seinfeld* left the air has one character spoken another's name with such derision. Imagine Jerry opening the door and finding Newman. Now imagine John Cusack's character finding out that his girlfriend left him for a pony-tailed, Indian-food eating, incense-burning freak. Ian. You get the picture.

Rob, a certified music snob with a massive personal record collection, owns his own record store. Now when I say "record" store, those younger readers among us should know that I am

actually referring to those large black discs that spin on a turntable and are read by a needle. No, this is not a historical film — it takes place in the present day. Honest, they even refer to Green Day. Why would anyone prefer records over CDs, you may ask? Because they are PURE. That's pretty much the essence of the music snob mentality as expressed in *High Fidelity*. They only respect what is genuine and disregard the rest, including people who have bad taste, people who aren't as certifiably hip as they are.

"Working" alongside Rob at his store, Championship Vinyl, are Barry (Jack Black) and Dick (Todd Louiso). Like so many of Jack Black's quirky characters, Barry is a powder keg. The previews of *High Fidelity* contain a clip where he sarcastically dismisses a customer looking for "I Just Called To Say I Love You." Beware if Barry perceives you as less knowledgeable or cool as he, because your name may as well be mud. Barry is, of course, a complete jerk, but he is awfully funny. The final scenes of *High Fidelity* give Jack Black an opportunity to strut his stuff on stage with Barry's band, the Sonic Death Monkeys. Trust me, his performance will surprise you unless you are already a fan of Black's real-life pseu-

do-band Tenacious D. (Free MP3s of the band can be downloaded, legally, at www.sidehatch.com.)

Just as wallflower Dick is overshadowed by the boisterous Barry, Todd Louiso's quiet comedic performance is overshadowed by Jack Black. But Black tends to dominate every scene he's in, so this isn't really Louiso's fault.

Part of the reason that *High Fidelity* works so well is that it stars John Cusack, Gen X's answer to Tom Hanks's everyman. Cusack got his start in John Hughes's movies in the early 1980s (remember his nerdy background character in *Sixteen Candles*?) and has since starred in some classic movies including *Say Anything* and *Grosse Pointe Blank*, the most underappreciated film of 1997. (By the way, Cusack co-wrote *Grosse Pointe Blank* with the same crew that penned the screenplay to *High Fidelity*.)

While John Cusack is certainly pleasant to look at, he ain't no Brad Pitt. But I don't perceive this as a problem — Cusack can play roles believably that Pitt or other pretty boys would have a difficult time pulling off. In *High Fidelity*, for example, Rob Gordon is obsessed with the idea that he has been rejected by women his entire life. Could we believe that from someone who looks like Brad Pitt?

In addition to Rob, Barry and Dick, *High Fidelity* features a wonderful cast of supporting female actresses, although none get as much screen time as their interesting characters deserve. This isn't a criticism, it's a compliment. Minor characters are rarely as interesting as those in *High Fidelity*: Catherine Zeta-Jones and Lili Taylor play two of Rob's ex-girlfriends, Lisa Bonet is a current love interest and

Sara Gilbert pops in as the girl who captures Dick's heart.

The soundtrack is also first-rate. I never buy movie soundtracks, but after sitting through the pop-obsessed *High Fidelity*, I had no choice. Although the movie features over 50 songs, the soundtrack narrows it down to fifteen including two from The Velvet Underground (sans Lou Reed). The best tracks are the infectious "You're Gonna Miss Me" by The Thirteenth Floor Elevators, "Always See Your Face" by Love, "I Believe (When I Fall in Love it Will Be Forever)" by Stevie Wonder and, best of all, "Let's Get It On" by Jack Black. Yes, I know, I am developing an unhealthy appreciation for all things Jack, but come on, he once guest-starred on *The X-Files* with Giovanni

Riblisi. What could be cooler than that? *High Fidelity* has gotten rather mixed reviews from the "established" press, but the sold-out crowd last Friday night at Harvard Square seemed to uniformly enjoy the flick. Perhaps to really appreciate *High Fidelity* you have to have lived through part of what Rob and his friends struggle with — trying to break out of a rut to embrace what you really want out of life. I love *Reality Bites* and

Singles because I feel like, in some ways, I lived those movies. Because *High Fidelity* resonates just as strongly, I would recommend it to anyone who

between Tony and his compulsive yet compassionate therapist all have high stakes.

The Sopranos isn't afraid to sacrifice characters, a fact that became all too clear last Sunday when Richie Aprile, the thorn in Tony's side and his sister Janice's fiancé, began the episode plotting with Junior to take down Tony and ended it being ground into hamburger — literally — by Christopher and Furio. Richie made the mistake of ending an argument with Janice by punching her in the face. Ever the feminist, she responded by shooting him twice in the chest as he ate his ziti. Tony helped her clean up and then put her on a bus to return to Seattle. "All in all," he glumly told her, "it

was a good visit." Richie and Janice were central characters in the second season and their abrupt departures ensure that the season finale and the third season will be fresh and daring.

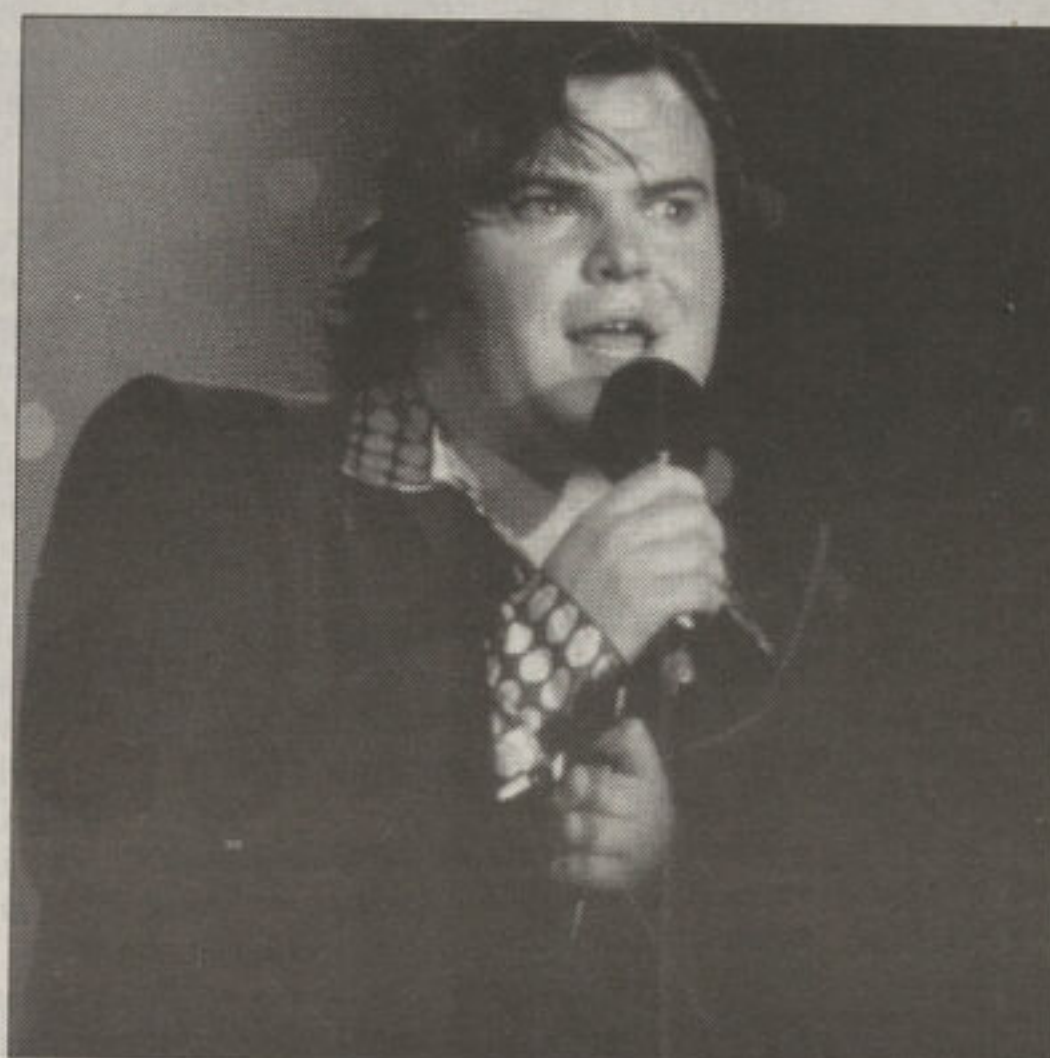
The finale of the second season of *The Sopranos* airs this Sunday, April 9, at 9 p.m. Of course, there is a new episode of *The X-Files* at the same time, so try to catch an encore showing of *The Sopranos* instead. Check out the official Web site (<http://www.hbo.com/sopranos>) for the full schedule.

While you wait for the start of the third season next fall, don't cancel your HBO subscription; instead, spend the summer in the Oswald Correctional Facility with the excellent cast of *Oz* (especially Dean Cain as Ryan O'Reilly) and hang out with Carrie and her friends in *Sex and the City*. Both should begin with new episodes in June.

Bits O'Buzz

The WB won't decide on the future of *Roswell* or *Felicity* until May. Their newest competitor for a slot on the WB's fall schedule, *D.C.*, premiered last week. The power of the young adult market was revealed when Dick Wolf, creator of old stalwarts like *Law & Order*, developed the new show for the netlet. Starring *Saved By The Bell*'s Mark-Paul Gosselaar and *The Real World*'s Jacinda Barrett, the show wasn't actually as bad as I expected it to be. (High praise, eh?) I'd watch it if nothing else was on, but it ain't *Roswell*.

Finally, don't forget that the fourth season of *South Park* premiered on Wednesday on Comedy Central. I ignored this series in the past because I thought it was mindless, raunchy comedy but after catching the movie this weekend, I'm now convinced that it is searing social commentary. Seriously.



Jack Black channels Marvin Gaye.

ever didn't know what they wanted to do with the rest of their lives but wanted a job with cool perks (like free records).

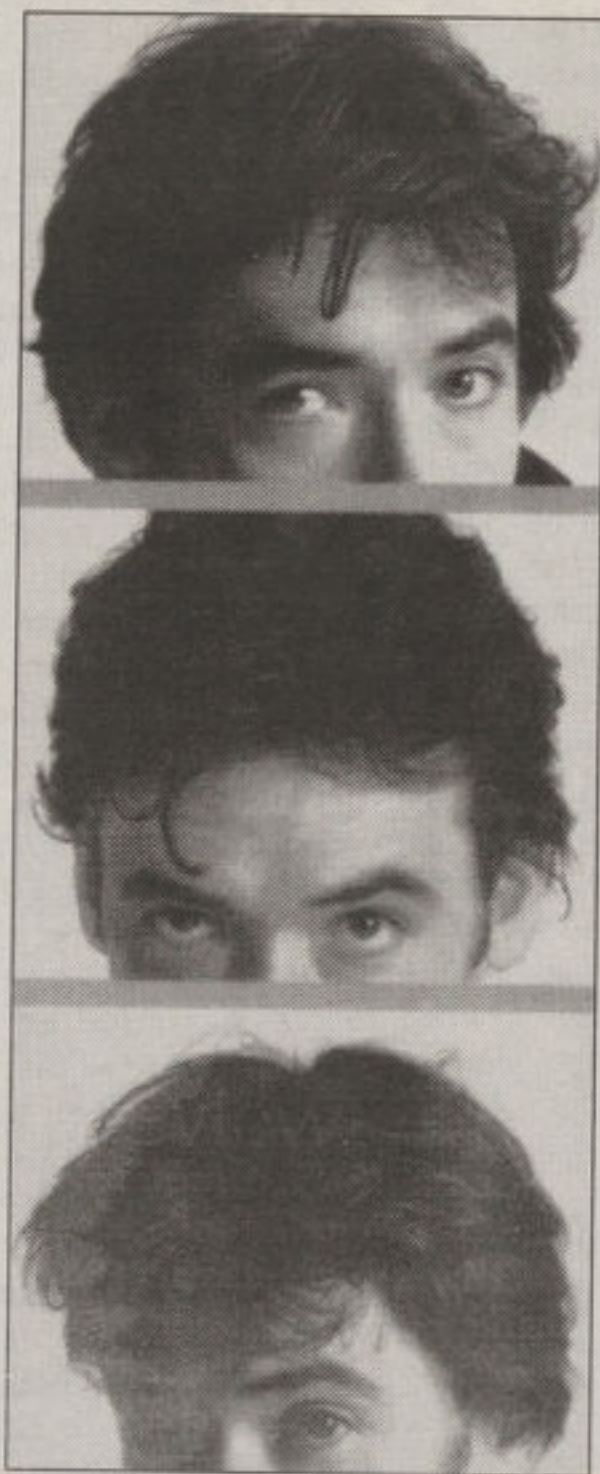
Shameless plug: visit my own compromise between a responsible life and pop culture junkie dreams at www.the-buzz.com.

Meet The Sopranos

Last summer, while staying with friends, I got hooked on two HBO shows: *Sex and the City* and *Oz*. So when I returned home, I grudgingly signed up for the pay channel so that I wouldn't miss these two excellent shows. Meanwhile, although HBO's flagship series, *The Sopranos*, continued to rack up awards, I refused to watch it because I assumed it was an overrated fad. (Plus, it runs opposite *The X-Files*. I am nothing if not loyal.)

Anyway, at some point this winter I was vacantly channel-surfing when I came across a re-run of a *Sopranos* episode. I figured I'd give it a chance. Although I was a little lost because I was unfamiliar with the characters or plotlines, I was intrigued enough to tune in the next week. After a few episodes, *The Sopranos* had joined the rank of my weekly must-see shows. (I can hear your snickering out there; yes, I'm up to 12.)

Many of the characters in *The Sopranos* have significant flaws. Tony has murdered people, slapped his wife Carmela, ridiculed their son A.J., and had cheated with a number of Bada Bing girls. And he's the protagonist. Still, despite their lumbering physiques and questionable morals, these mobsters are engaging and appealing characters. I'm not usually a fan of mafia stories, but the entangled relationships between Tony and his two families, between the FBI and the bad guys, and



John Cusack steals the show as music snob Rob Gordon in *High Fidelity*.

Congratulations to the two winners of the RECORD's Oscar contest!

Sarah Vincent '00
Paula Rose Stark '01

Both guessed all six winners and received dinner and a movie for two, courtesy of the RECORD.
Thanks to everyone who played.

BOOK REVIEW

By Francesco Barbera '01

Verdict on 'Rehnquist Court': Remand

The Rehnquist Court and the Constitution

By Tinsley E. Yarbrough
(Oxford University Press, 2000)

In 1980, early in his bid for the presidency, Ronald Reagan made a brief stopover in Philadelphia, Mississippi, site of some of the most violent civil rights conflicts in U.S. history. There, Reagan declared his commitment to "states' rights" and vowed to "restore to state and local governments the powers that properly belong to them." For the next twelve years, President Reagan, and his successor George Bush, sought to make good on that promise. The Republican presidents, guided by their conservative mission, appointed five of the nine justices now sitting on the U.S. Supreme Court, and elevated one of its most conservative jurists, William H. Rehnquist, to the highest judicial office in the land.

In his wide-ranging study of the Court under Rehnquist's watch, Tinsley E. Yarbrough, a judicial biographer and professor of political science at East Carolina University, seeks to assess the legacy of Reagan's project. Yarbrough casts a wide net in the book, examining legal developments in virtually every area of constitutional law, from abortion rights and habeas corpus to relatively lesser-known subjects like the Fifth Amendment's takings clause. In the end, Yarbrough concludes that the "moderate pragmatism" of justices like Anthony Kennedy and David Souter have rendered Reagan's legacy a mixed one. Though the justices have constricted federal authority and subjected economic regulation to increased scrutiny, Yarbrough argues, the Court continues to recognize unenumerated personal rights which run inimical to the conservative agenda.

Yarbrough begins the book with a review of the political controversies surrounding the Senate confirmations of each justice. He examines the political maelstrom aroused by Rehnquist's

infamous clerkship memorandum arguing against the *Brown v. Board of Education* holding, the remarkably uneventful ascension of Justice Antonin Scalia, the bitter accusations of the Clarence Thomas nomination, and, of course, the firestorm surrounding Robert H. Bork. The stories are entertaining of themselves, but Yarbrough's retelling of them suffers from a sense of disjointedness. The author's dry, humorless style does little to enliven the controversies, and even less to weave them into a coherent political narrative. He recounts the details of the Bork episode, for example, but makes nothing of the powerful irony that the debate virtually assured the failure of Reagan's project, as presidents since then—including Reagan himself—scrambled to nominate moderates whose low-key jurisprudence would quell opposition Senators.

This uneasy combination of stylistic rigidity and narrative looseness extends through much of the book, which can feel more like a series of case comments than a dynamic, integrated argument. The bulk of Yarbrough's analysis focuses on the Court's historically divergent treatment of legislation impacting economic and property rights (which, since *Lochner*, have been reviewed with deference) and "noneconomic personal rights" (which have been subjected to heightened judicial scrutiny). Yarbrough's central premise here—the backbone of the book—is that recent decisions suggest a decline of this "double standard," as the Court's conservative jurists push for heightened judicial scrutiny of state action impacting economic and property rights. To support the argument, Yarbrough points to a range of cases based on the commerce clause (*U.S. v. Lopez*), the Tenth Amendment (*Printz v. U.S.*), the takings clause (*Eastern Enterprises v. Apfel*), and a smattering of "economic due process" rulings like *B.M.W. v. Gore*, which invalidated an award of punitive damages as exces-

sive. Though Yarbrough's argument is an interesting one, its presentation—extended over three chapters and explicating a range of often marginally-related holdings—suffers the same lack of narrative cohesion. More importantly, Yarbrough's exegesis seems divorced entirely from its scholarly or socio-political context. He makes no reference, for example, to the copious literature exploring *Lopez* in the context of the justices's federalism principles, or to broader trends in jury awards as underlying the Court's decision in *Gore*. Instead, Yarbrough acknowledges the gaps in his analysis by casting his conclusions in tentative terms:

The *Lopez* and [*Printz*] decisions can ... be construed more as states' rights rulings than as signs of a rebirth in strict judicial scrutiny of federal regulatory authority. Even so, the dual federalism rhetoric prominent in the latter cases, a majority's application of economic due process in *Gore*... the Court's expansive construction of the takings clause, and its willingness in *Lopez* and the Brady Act cases to second-guess congressional regulatory judgments offer considerable evidence of a fundamental change in the Rehnquist Court's attitude toward the double standard.

After the "double standard" analysis, the book loses its already precarious moorings and becomes a series of isolated arguments on the merits of the Court's position in areas like equal protection, criminal justice, and the First Amendment's speech and religion clauses. In these chapters, Yarbrough is at his best when he engages the scholarly literature, and argues from a specific point of view. His critical perspective on the Court's Religion

Clauses jurisprudence, for example, is quite engaging. More typically, though, Yarbrough expounds the holdings of a series of cases, and concludes with a paragraph or two of unsupported commentary. Take, for example, his one-paragraph dismissal of the Court's First Amendment public forum jurisprudence:

Rather than engage in the type of analysis Kennedy has recommended, or narrowly restrict the public forum concept in the manner the Court has adopted, the justices might be better advised to drop the categorical approach, of whatever variety, and return to the general balancing of interests analysis that the Court arguably applied to content-neutral regulations on public property until recent years.

Even if the arguments have merit, their glib insertion, without context or explication, makes them feel more like afterthoughts than the product of sustained critical reflection. Similarly, Yarbrough's discussion of the cases provides little sense of the personalities and ideological perspectives animating the justices' decisions. Although Yarbrough suggests early on that Justice Scalia's abrasive mannerisms paved the way for Rehnquist's unexpected influence among the justices, for instance, the provocative suggestion is dropped entirely during discussion of the Court's jurisprudence.

Yarbrough is to be commended for undertaking a study of such wide-reaching breadth. But, ultimately, he reaches both too far and not far enough. In choosing to cover everything lightly, rather than a few things with a more critical eye, his book catalogues the course of the Rehnquist Court, but fails in the end to convincingly capture its spirit.

Can you spare a Razor Blade?

FIORENTINO IS MONEY, FOREST NOT A DOG

By Dusan Stojkovic '00
RECORD Columnist

Where the Money Is

Even though it's being marketed as Paul Newman's latest film, you've seen "Where the Money Is" before, lots of times, mostly on cable. Most probably it was called "The Sting," which, incidentally, was produced three years before I was, and also featured the aforementioned Paul Newman, as a con artist attempting a grand heist. Speaking of eons, this is director Marek Kaniévski's first film in 13 years.

And still, variation on an old theme that it may be, "Where the Money Is" also is endearing and well worth a look. Newman plays Henry Manning, an imprisoned bank robber who feigns a stroke as part of a ploy to escape from jail. His plan is working fine until he is transferred to a nursing home and arouses the suspicions of Carol, a nurse portrayed by the stunning Linda Fiorentino. You heard right, Fiorentino in a white uniform. Review over.

Although it doesn't break much new cinematic ground, "Where the Money Is" succeeds as a star vehicle for Newman and Fiorentino. Of course, Fiorentino does not yet have anywhere near the pull of a Julia Roberts, but she darn well ought to; she is one of the most photogenic women on screen out there. If they made a documentary about her crossing the street, I'd be there on opening night.

So anyway, the plot thickens as Carol

busts Henry's game wide open and they wind up collaborating on a scheme to rob a money-transportation truck, making like an updated, pacifist Bonnie and Clyde tandem. Make that Bonnie and Clyde and Bonnie's annoying husband, Wayne (Dermot Mulroney).

Wayne is a boring jock who had little imagination but to marry his high school sweetheart, Carol, and start a nondescript life in their small hometown somewhere in Oregon. Although he is not made out to be totally unlikely (he does get to show off a very nicely built back) it doesn't take Sherlock to discern that Wayne is nanoseconds away from being kicked to the curb.

Equally tedious are a few attempts to offend the viewers' intelligence, for example by insisting that the setting of the movie be Oregon when international road signs left and right reveal the shooting location to lie a little more to the North. The end credits confirm that the film was in fact shot entirely in and around Montréal, and given the sunny weather, presumably in August.

Not only the geography was confused. Although cell phones indicate that the film is set in the present day, the general feel is more reminiscent of bygone decades. For example, the soundtrack prominently features two songs by the Cars. And screenwriter E. Max Frye must have enlisted Lloyd Weinreb as

script consultant to come up with much of Henry's circa-1968 gangster argot.

But overall, "Where the Money Is" proves fun to watch, much like Fiorentino's calves.

Ghost Dog

Forest Whitaker is a fine actor. Now there's something one doesn't hear every day.

To be sure, Whitaker has had bad acting days in the past. He was nowhere near "all that" in "Species," a thoroughly forgettable film in its own right. But the native Texan has had memorable supporting turns in a wide range of films, from the critically acclaimed "The Crying Game" and "Smoke" to "urban" gems such as "A Rage in Harlem" and "Jason's Lyric." (You remember, Jada Pinkett's last challenging role.)

And let us not forget that Whitaker is a filmmaker, having directed two, if you pardon the oxymoron, watchable Hollywood movies, "Waiting to Exhale" and "Hope Floats."

So, it should come as no surprise that Whitaker is understated, brilliant in the starring role in "Ghost Dog: The Way of the Samurai." Written and directed by Jim Jarmusch, who previously made indie cult favorites such as "Night on Earth" and the "Coffee and Cigarettes" trilogy, along with the 1997 Neil Young documentary "Year of the

Horse," the surprisingly funny "Ghost Dog" tracks the adventures of the title character, a low-key, spiritual gangster who is inspired by the writings of ancient Japanese warriors. And he breeds pigeons to boot.

What sounds like New Age mumbo jumbo on paper is brought to vivid life when Ghost Dog's path crosses with Pearlina (Camille Winbush), a young girl, local Italian gangsters and Raymond (Isaach de Bankolé), a francophone African ice cream vendor. Can you say multi-culti?

The car plates reveal that the characters hail from either "The Industrial State" or "The Highway State," and many other references to New York and New Jersey abound. Ghost Dog's run-ins with the mob are captured well, creating a warped sense of "Boyz in the Hood" meets "The Sopranos," which has incidentally become my frigg'n favorite television show, if for no other reason than that people on it talk normally.

The soundtrack, penned by RZA, is mostly comprised of wonderfully edgy hip hop and beautifully complements the action on screen.

Although some of the running gags in "Ghost Dog" get tired early on, like one of the mafiosos' penchant for Flava Flav, types who are prone to go out on a limb, say, by declaring Forest Whitaker a master thespian, are bound to enjoy this film.

HE SAID HE SAID

Nothing bespeaks rich, unabashed surplusage quite like foie gras. It fills your mouth with its abundance, disarms you entirely with its tenderness, curls up seductively against your palate, kisses away your worries about calories and cholesterol into a melting soup of sweetness, and then slides gracefully, almost imperceptibly down, until it alights in your stomach, where it sits; while you grow fat, very fat, but impatient for the next helping. And there is a lot of foie gras at No. 9 Park, so much so that the two of us ordered three appetizers. The first is a plate of cold and hot foie gras: nothing spectacular here. I have never been a fan of cold foie gras, and No. 9 Park's rendition does not change my mind on that subject. However, the

prune-stuffed gnocchi, laced with, yes, pieces of seared foie gras, is a masterful piece. The restaurant's chef, Barbara Lynch, who is a James Beard nominee this year for the Northeast, is said to consider every appetizer a meal in itself, and such attention shows. The prune filling is just sweet enough to lighten the richness of the liver.

Finally, a diver scallop, sitting proudly on a chair made from roasted artichoke, inserted some balance into a heavy, meaty entrée into our evening.

My main course was a crispy duck. The blood orange glaze, though not too unconventional, added a fruitier, candied touch, not to mention painting a much brighter color. The master stroke of the duck course, however, was a side of braised endives. Their hint of bitterness, made emollient—it seems inevitable, doesn't it?—by melted foie gras, cast away the admittedly self-inflicted excess of the evening, and lifted the appetite when it most needed lifting. My only possible regret was the absence of wine: a Château d'Yquem would have gone most excellently with our foie gras-centered menu. But, exhausted already by my own exertions at the table, I felt any drop of alcohol would have pushed me over the top.

In any case, even a roommate's hospitality has its natural limits beyond which one who is being indulged should fear to push.

While we awaited dessert, whose relative lateness in coming was a digestive opportunity for which I was grateful, I was strategically seated to overhear much of the conversation at the next several tables. No. 9 Park is designed oddly: a rather formal looking dining room on one side, a café-cum-lobby on the other, and a cozy, informal area of banquettes in the rear. We were, naturally, not quite grand enough to be in the formal-looking dining room with many a suited Brahmin. So onto the banquettes, among other yuppies, yuppie aspirants, and yuppie pretenders. It was a happy, satisfied, and, at times, rather noisy crowd. A few southern belle accents here and there, a discussion about forthcoming trips to London bizarrely characterizing Earls' Court as a suburb (and a notable absence of any mention of the Berkeley, incidentally), and of course an inevitable flurry of IPO acronyms.

The final arrival, strawberries with mint glacé buried in a lavender cake was therefore a welcome conclusion to a very full evening. Evelyn Waugh apologized for the self-conscious gluttony in *Brideshead Revisited* as a way of remembering a splendid past in a bleak time of rations, middle class accents and war. I write this now, some three weeks after my visit to No. 9 Park, and on the night of NASDAQ's precipitous tumble and then even more improbable semi-recovery: it is a touching reminder, really, of how fortunes can turn, how surplusage can evaporate, and how even the longest parties must end. But I shall of course always have an evening of foie gras to remember, to help me through the difficult moments in the life ahead that our mothers have always warned us about.

Davis Wang '02

I did not have particularly high expectations for the Boston restaurant scene. Undoubtedly my two years as an investment banker in New York gave me great disdain for what one of my former professors (who was a New Yorker) described to me as a "provincial outpost." But I had heard good things about No. 9 Park, and I had promised my roommate Davis that I would take him out to dinner. It seemed like a good choice—relatively trendy and not outrageously priced, when compared with Ajourd'hui, 200 Boylston St.

And so, perpetually late, Davis and I arrived at the restaurant. Quelle horreur! What décor! The restaurant has two dining rooms. One is formal, and is quite attractive. As for the other: I believe that at the time I described its appearance as "a somewhat upscale Denny's." (In the spirit of full disclosure, I should mention that I have never actually BEEN to a Denny's, but I don't see why that should preclude me from making the comparison.) I was not optimistic.

Despite our being 20 minutes late, our table was not ready. Hmph. I ordered my usual — Bombay Sapphire Gibson, dry. Truly, in this day and age it is a drink that you have to be a complete moron to screw up. At least they didn't.

We were, after a not-too-unreasonable delay, seated and brought menus. Things started looking up. "Unexpectedly inventive," said your two faithful critics. It quickly became apparent that the chef was as much a devotee of foie gras and black truffles as I am. I agree wholeheartedly with author

Stephen Fry's assessment: "It is one of the highest pleasures known to man." (Just a little quote from my vacation reading...)

Unable to decide on appetizers we ordered three: Hot and Cold Foie Gras, Prune Stuffed Gnocchi, and the Diver Scallop. I have to say — we were planning to write this restaurant review as a "loved it-hated it" sort of affair. But I think both of us were totally shocked that the restaurant was so good — that is to say, it could survive in New York. The foie gras was quite good — meltingly decadent — but the hot was much better than the cold. Yes, quite decent, although perhaps not quite reaching the level of its New York comp Café Boulud, 20 E. 76th St. (New York 212-772-2600). The scallop was fair-to-poor in my opinion, altogether lacking in flavor. Not nearly as good as peers like Jo Jo, 160 E. 64th St. (New York 212-223-5656). Perhaps it should have been provided with a liberal dose of the foie gras treatment, as well. But the gnocchi was the real surprise — masterful! The combination of gnocchi with foie gras won me over, causing all my other doubts about the restaurant to melt away in a rich, creamy delight.

After such an array of appetizers, I felt like something lighter for a main course (although the Slowly Braised Lamb Shank was tempting). I decided on the Black Bass, which did not fail to please. The sauce was quite delicate and flavorful — altogether very well executed. My interest was most piqued, though, by the dessert wine list: there is an excellent Vin Santo on the menu. In my tour of Tuscan vineyards last year, I had tried unsuccessfully to purchase a good bottle of Vin Santo but, alas, was unable to find a suitable specimen. (You really should buy a bottle of Avignonesi Vin Santo if you ever find it — quite the thing. But I digress...) Unfortunately, this particular establishment did not have the promised Vin Santo. Shameful. We ordered an ordinary Plum Tart Tatin and Vanilla Scented Strawberries instead: reliable, but a far cry from Aureole, 34 E. 61st St., (New York 212-319-1660).

In the end, I must admit that I was pleasantly surprised by the experience. (And indeed, a good meal should be an experience!) No. 9 Park was certainly better than anything else I've had in Boston, and can hold its own against its New York peers. Not flawless, but very good.

Andrew Jacobs '02

IT'S ALL ABOUT THE FOIE GRAS

NO. 9 PARK
9 PARK STREET, BOSTON
617-742-9991

COST: WE ARE FAR TOO YOUNG TO WORRY ABOUT MONEY.

RATINGS (OUT OF 30):

FOOD: 25	FOOD: 23
ATMOSPHERE: 19	ATMOSPHERE: 15
SERVICE: 23	SERVICE: 22

FINALS

Continued from page 1

leads to "unbalanced semesters," whereby first year students actually end up spending the least amount of time in class per semester. Regarding this feature of the current calendar, Donahue said, "If anyone needs class minutes, it's 1Ls in the fall semester."

Finally, the committee concluded that the law school's calendar is out of sync with other schools at the University. This causes even more complications for cross-registered students and professors who teach in other schools.

Solutions to these problems are not easily uncovered. Because any given year has a host of holidays, most notably and intractably the break over Christmas and New Year, the committee's task was anything but simple. Adding to the arduous nature of the assignment was Harvard's late commencement date, which falls on the first or second Thursday in June (depending on how early the first Thursday comes). As the report humbly notes regarding these dates, "The considerable power of the faculty of the

Harvard Law School does not extend to making changes in these dates."

The committee's answer — a uniform academic calendar for all years, with fall semester classes beginning in mid-September and ending immediately before Christmas. The winter term would be eliminated. Instead, all students would return to campus in early January for a reading period of approximately one week and an expanded exam period, which would cover ten working days instead of the current system's eight. Class days off for "fly-out" week and the Thanksgiving holiday would be retained in the autumn, while the spring semester would remain essentially the same.

By phasing out the winter term, the committee casts into doubt the future of such intensive winter courses as the Negotiations Workshop or Trial Advocacy Workshop. The report acknowledges a need to accommodate these courses that require intensive instruction and has proposed a "module" option as a substitute.

The most workable module option would allow instruction in applicable courses for a six week period during the regular semester. Thus,

Negotiations could begin with other courses during the fall semester and end after six weeks, with classes meeting four or five times per week in the afternoon. The modules could also be used, somewhat less intensively, for courses taught by practitioners and faculty from other schools who are unable to teach for an entire semester. Under the current calendar system, Donahue pointed out that many students already take workshops during the fall or spring semester. "Students do it, and it's tough while they're doing it," Donahue said, "But they do it."

Prof. Robert Mnookin '68 teaches the winter term Negotiations Workshop. And as would be expected, Mnookin is not a supporter of the committee's proposal. "I think abolishing the winter term would be a terrible mistake," Mnookin said, "I'm very concerned about the impact it would have on Negotiations offerings."

The winter term allows for a "monopoly" of student and instructor time, Mnookin said. He said "this has proved to be a very effective way of teaching this course." And by substituting the winter workshop with a fall semester module, Mnookin fears that the course's

required attendance would inevitably conflict with interview season.

Additionally, Mnookin offered a perspective on the plan to move second and third-year exams to after the Christmas break. He felt this would also be a "mistake," as such a system would only encourage "procrastination and cramming" when it comes to studying.

The Calendar Committee held a town meeting with the faculty to discuss the proposed changes on March 24, the Friday before spring break. While Donahue has received some feedback from the faculty and staff, he has asked for student input. "I want to hear from you," Donahue said to the HLS student body.

The committee's proposal is available at <<http://internal.law.harvard.edu/its/results>>. The threaded discussion reached on the same page can be used for student comments. Plans are also underway for convening student focus groups on the topic.

But for now, HLS students can plan on the status quo. If the plan is adopted by the faculty within the next several weeks, it will not go into effect for at least two academic years, according to Donahue.

COURT

Continued from page 1

ty is that minority views are treated with the same respect as are majority views."

The Court also revisited its tortuous precedents regarding sexually-explicit speech. In a decision announced March 29, the Court attempted with only partial success to clarify its position on nude dancing, upholding an Erie, Pennsylvania statute banning public appearances in a "state of nudity." The public nudity provisions of the statute were struck down in 1998 by the Pennsylvania Supreme Court, after *Kandyland, Inc.*, a nude dancing establishment, challenged it on First Amendment grounds. The statute requires that nude dancers wear "pasties and G-strings" to avoid prosecution.

Writing for the majority in the case, *City of Erie v. Pap's A.M.*, Justice Sandra Day O'Connor concluded that, despite its express purpose of "limiting a recent increase in nude live entertainment," the statute is a content-neutral restriction on speech and therefore subject to the more lenient standard of review announced in *United States v. O'Brien* (1968). In reaching that conclusion, O'Connor noted the statute was primarily directed at certain alleged "secondary effects" of nude dancing and that it "bans all public nudity, regardless of whether that nudity is accompanied by expressive activity." O'Connor concluded the opinion by finding that the statute satisfies the four-part *O'Brien* test and is hence constitutional.

Although Justice David Souter '66 joined O'Connor's decision to apply the *O'Brien* standard, he dissented from her application of the the standard to the case, rendering that portion of O'Connor's opinion a non-binding plurality holding. In his partial dissent, Souter argued that Erie should be required to produce a greater quantum of evidence linking nude dancing to negative secondary effects. The splintered majority ironically recalls the very precedent which the Court sought to clarify in the Erie case. In *Barnes v. Glenn Theatre, Inc.* (1991), the Court produced three separate rationales to uphold an Indiana ordinance upon which the Erie statute was based. Souter's current dissent represents a retreat from his position in *Barnes*, where he stated the government could essentially assume the negative secondary effects. "I may not be less ignorant of nude dancing than I was nine years ago," Justice Souter said in his opinion, "but... I have come to believe the government must toe the mark more carefully than I first insisted."

O'Connor's opinion inspired a heated dissent by Justice Stevens (joined by Justice Ruth Bader Ginsburg '56-'58), who characterized the statute as a "total ban" on constitutionally-protected speech, which the Court's secondary effects precedents have never before upheld. The error of characterizing the statute as content-neutral, Justice Stevens argued, was further compounded when the majority "dramatically [reduced] the degree to which the State's interest must be furthered" by the restriction imposed on speech. "To believe that the mandatory addition of pasties and a G-string will have any kind of noticeable impact on secondary effects requires nothing short of a titanic surrender to the implausible," Stevens wrote.

Establishment Clause

Also on the First Amendment front, the justices heard oral arguments in a Texas case challenging the constitutionality of student-led prayers prior to school football games. The case, *Doe v. Santa Fe Independent School District*,

comes from the Fifth Circuit which struck down the practice as a violation of the First Amendment's Establishment Clause. Under the School Board's policy, students elected a representative to give a pre-game address, secular or religious, prior to the games.

The Circuit Court, per Circuit Judge Jacques Wiener Jr., analyzed the policy under the three standards — the *Lemon*, endorsement and coercion standards — articulated by the Supreme Court at various points in its conflicted Establishment Clause jurisprudence. In a prior decision, the Fifth Circuit upheld a school policy allowing for student-led prayer at graduation ceremonies, largely because the policy allowed only "non-sectarian" and "non-proselytizing" prayers. The Santa Fe policy did not include those limitations, a distinction which the Circuit found dispositive in its analysis. "[W]e simply cannot fathom how permitting students to deliver sectarian and proselytizing prayers can possibly be interpreted as furthering [Santa Fe's] averred secular purpose of solemnizing the event." In addition to absence of the limiting criteria, the Circuit Court noted that a football game is not the "significant, once-in-a-lifetime event that could appropriately be marked with a prayer." The court accordingly concluded that the policy violated both the *Lemon* and endorsement tests (it declined to reach the coercion analysis) and thus is unconstitutional.

At oral arguments, held on March 29, the Court's moderate justices appeared skeptical that the Santa Fe policy will withstand constitutional scrutiny. "What we're interested in avoiding is the schools becoming a forum for religious debate," Kennedy said, further expressing concern that the election provisions may result in the domination of majority religions. Santa Fe's attorney, Jay Alan Sekulow of the American Center for Law & Justice, founded by evangelist Pat Robertson, argued that the election rendered the speaking student "independent" and thus precluded a violation of the Establishment Clause. Justice Ginsburg rebutted the argument, asserting that the students "are acting as an electoral body that the school has designated." Contesting Santa Fe's assertion that the policy is content-neutral, Souter said he doubted a student could get up and say, "religion is bunk."

Criminal Procedure

In a surprising show of unanimity, the justices rejected the State of Florida's contention that an anonymous tip alleging only that a person is carrying a gun should be enough to justify a police stop-and-frisk. The case, *Florida v. J.L.*, arose when Florida police officers responded to an anonymous tip alleging that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." The Florida Supreme Court suppressed the weapon discovered in the subsequent pat-down search, holding that the tip had not raised the reasonable suspicion required for a *Terry* stop under the Fourth Amendment.

Current Supreme Court precedent requires that, in order to justify a stop-and-frisk, an anonymous tip must exhibit "sufficient indicia of reliability." Justice Ginsburg, writing for the majority, rejected Florida's proposed "firearms exception" to that requirement. Noting that the exception would "rove too far," Ginsburg said the rule would enable "any person seeking to harass another to set in motion an intrusive, embarrassing police search... simply by placing an anonymous call." Ginsburg also observed that, since several courts have already held that it is *per se* foreseeable for

people carrying large quantities of drugs to be carrying guns as well, the "firearms exception" would logically extend to bare-boned tips involving narcotics.

In another criminal procedure decision announced last week, the Court reversed an Eleventh Circuit opinion holding that the retroactive application of a Georgia law extending the interval between parole hearings violates the *Ex Post Facto* Clause of the Constitution. The case, *Garner v. Jones*, is a *pro se* appeal brought by a Georgia inmate, Robert L. Jones, who is serving a life sentence for a murder committed after he escaped from prison. In 1995, 13 years into Jones's sentence, Georgia's parole board amended its regulations to provide that reconsideration hearings should be scheduled every eight years after a denial of parole rather than every three. The change was based on the U.S. Supreme Court's decision in *California Dep't of Corrections v. Morales* (1995), affirming a similar California parole provision.

Justice Kennedy, writing for the six-member majority, stated that the *Morales* decision announced that the controlling standard in the case is whether the change in law creates "a sufficient risk of increasing the measure of punishment attached to the covered crimes." Two provisions in the new law mitigate that risk, Kennedy stated. First, the law grants the parole board the discretion to set reconsideration hearings at more frequent intervals, with eight years being the maximum. And second, the board's policies permit expedited reviews "in the event of a change in [the inmate's] circum-

stances or where the Board receives new information that would warrant a sooner review."

Justice Kennedy asserted that the inmate, as well as the Circuit Court, which prohibited retroactive application of the amendment, had not properly considered those elements of the law. "The essence of respondent's case, as we see it, is not that discretion has been changed in its exercise but that, in the period between parole reviews, it will not be exercised at all," Kennedy stated. Despite all but deciding the case, Kennedy concluded with a remand for a determination of whether the Board's amendment "creates a significant risk of increased punishment."

Justice Souter, joined by Justices Stevens and Ginsburg, dissented, arguing that "[a]t some point, common sense can lead to an inference of a substantial risk of increased punishment, and it does so here." Souter pointed to statements made by the parole board and its chairman indicating that the change was intended to "increase time served in prison" as well as to the lack of evidence that the parole board had exercised its discretion in the way suggested by the majority.

Justice Antonin Scalia '60 concurred in part in the judgement. He argued that, since the grant of parole is a matter of "mercy or clemency," the amendment would not violate the *Ex Post Facto* Clause even if it did increase the risk of punishment. "[A]ny risk engendered by changes to the length of [the reconsideration] period is merely part of the uncertainty which was inherent in the discretionary parole system," Scalia stated.

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