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Alums get mixed messages in bids for office

With several alums running for public office, HLS was well-represented at the polls Tuesday. A survey of the races shows that while an HLS degree doesn't guarantee a victory, it might help.

Though Ralph Nader '58 succeeded in drawing attention to the Green Party, his bid for the presidency failed to meet the five percent threshold that would have secured federal funding for the party. While acknowledging that he was disappointed, Nader said that federal matching funds were important "more as a convenience than as a necessity." Nader viewed his possible role as spoiler to Al Gore with equal nonchalance. "Gore had all the advantages of an incumbent administration, but ...

many voters cast votes for him out of the least-worst attitude, not out of conviction," Nader said.

Political upstart John Cranley '99 was also unsuccessful in his attempt to win a Congressional seat in Cincinnati. Cranley, a first-time Democratic candidate, was turned back by incumbent Rep. Steve Chabot. The young politician's challenge was bolstered by spirited campaign ads that derailed Chabot as beholden to special interests.

In the Los Angeles suburbs, Democratic candidate Adam Schiff '85 unseated incumbent James Rogan with 53 percent of the vote. The campaign received national attention because of its hefty price tag. With

combined spending of at least \$10 million, the campaign may go down as the costliest House race in history. In nearby South Bay, Jane Harman '69 edged her Republican opponent for a Congressional seat.

California's statewide race for senator also featured an HLS alumnus. Former Rep. Tom Campbell '76, a Stanford law professor and former state legislator, fell easily to incumbent Sen. Diane Feinstein. Campbell, who is a fiscal conservative with liberal social views, alienated much of his conservative base in the state. As a result of this less-than-enthusiastic party backing, Campbell struggled to raise money against his well-entrenched opponent.

Is it Gore or Bush? Lawyers win either way, panel decides

by Michael Wiser

The question posed by Prof. Chris Edley '78 may have summed up the feelings of the American electorate — "Who cares what happens to lawyers?" Oddly enough, some people at HLS seem to agree with him.

Edley's question was posed to a panel of law professors and practitioners on hand to discuss the impact of the 2000 Presidential election on the legal profession. Prof. Arthur Miller '58 served as moderator for the October 24th event entitled, "First, Will They Kill All the Lawyers?" Miller opened the discussion by asking the panel "Do you think you'll be better off personally under a Gore presidency, a Bush presidency or a Nader presidency?"

Karen Green '81 and Jeffrey Rudman '75 of Hale & Dorr LLP both indicated that a Gore presidency might drum up more legal problems for their corporate clients, but that fact did not necessarily mean that a Gore presidency would be best for them. "If you were defending crooked politicians you might have more to do under a few years of a Gore administration," Prof. Charles Fried added.

Prof. David Rosenberg — an Alan Keyes supporter who claimed to have lost his security clearance in 1965 — pronounced it to be a draw between which candidate would create the most interesting tort reform discussions.

"I expect Gore to make some silly decisions when it comes to tort reform. I expect Bush will do the same ... Either way I win," he told the audience of about fifty.

The only panelist who seemed to know for sure that they would benefit more under one of the candidates was Prof. Elena Kagan '86. Kagan, who served in the Clinton White House, said that she'd probably get invited to more White House parties under a

FELONS AND THE FRANCHISE

State laws withhold voting rights from four million

by Zachary Price

By all appearances, Thomas Johnson is a model citizen. A 51-year-old father of five, Johnson once worked for a homeless mission. He is now the executive director of a non-profit Christian group that helps rehabilitate former prisoners. Johnson follows politics closely, yet he was not able to vote this week.

Since Johnson spent eight months in prison nearly a decade ago, he may never vote again. Convicted of selling crack cocaine in New York, he is currently a resident of Florida. And because that state prohibits convicted felons from voting, Johnson sat home on election day.

Johnson said that his sentence has been served, thus his "debt has been paid to society." Of the judge who sentenced him, Johnson said "When he dropped that gavel, he did not say that he was taking away my right to vote."

Nationwide, 3.9 million Americans are barred from voting as a result of felony convictions. That's roughly two percent of the adult population.

Since minorities account for a disproportionate share of convictions, they are also overrepresented among the disenfranchised. Approximately 13 percent of African-American men have lost the right to vote. In ten states, that figure is above 20 percent. Some analysts predict it will reach 30 or 40 percent if current criminal justice trends continue.

Johnson and seven other plaintiffs have filed a class-action lawsuit challenging the constitutionality of disenfranchisement policies in Florida. Though voting restrictions remain popular — this week Massachusetts voted in favor of a state constitutional amendment stripping prison inmates of the right to vote — Johnson's case is part of a growing effort to challenge disenfranchisement policies. The RECORD conducted interviews with lawyers and activists on both sides of the issue to assess the likelihood of reform.

For many Americans, restrictions on the voting rights of former criminals make intuitive sense. Roger Clegg, a former Deputy Assistant

Attorney General in the Civil Rights Division, has testified before Congress on this issue. "There are all kinds of ways in which even though you've served your sentence it still makes sense for the state to... take into account [the fact] that you've committed a crime," he told the RECORD. Clegg sees felon disenfranchisement as a common-sense restriction similar to, for instance, federal laws restricting firearm ownership by former criminals. "I think that a rule that law-breakers can't be lawmakers is a logical one," he said.

Reform advocates, however, see their efforts as part of America's historic struggle for equality and justice. "Voting rights [were] at the heart of the civil rights movement," said Marc Mauer, who serves as the Assistant Director of The Sentencing Project, a leading criminal justice reform organization. "When the country was founded 200 years ago, it was only white male property holders who were permit-

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Come on down!



Photo by Murad Kalam

Bob Barker, host of "The Price is Right," implores the HLS community to spay and neuter their cats and dogs.

Grades, scores, the black box and public service

by Michael Wiser

Does a high LSAT score mean that you will be more successful? Probably not. Will it make you a better lawyer? Doubtful. Does it mean that you'll contribute less to society? Possibly. At least, that's what a recent study by the University of Michigan Law School suggests. As a result of that survey, some professors and students are asking whether this should begin viewing their applicants differently.

The study, entitled "Doing Well and Doing Good," sets out to examine the results of affirmative action at Michigan Law School. Besides examining the careers of its minority graduates, the researchers asked whether LSAT scores and undergraduate grade point average (UGPA) correlated with success after graduation. Published in the Spring issue of Law and Social Inquiry, the study compared LSAT and UGPA to post graduation income, job satisfaction and community service.

While an applicant's LSAT/UGPA was found to be an accurate indicator of law school performance, the study failed to find any statistically significant relationship between LSAT/UGPA and career satisfaction or level of income. But the study did find that a negative correlation could be drawn between LSAT/UGPA and public service. Therefore, the higher a student's

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admissions index, the less likely that student would be to work in public service. The study's authors — David Chambers '65, Richard Lampert and Terry Adams — wrote, "In all decades those with higher admissions index scores tend to contribute less unremunerated service to society, as measured by our service index, than those with lower indices, and this negative relationship is statistically significant among graduates in the 1970-79 and 1990-96 cohorts."

Why? The authors of the study are not sure. According to their report, one possible explanation may be that Michigan is more willing to accept students with weaker numerical credentials but who have demonstrated a commitment to public service.

Grading Grades and Scores

In an article that appeared in the same issue of Law and Social Inquiry, Prof. Lani Guinier argued that the Michigan study showed that conventional admissions criteria are "predictive failures." She writes that the current criteria do not predict success after law school and fail to identify candidates who advance the mission of schools that have a commitment to public service.

Guinier has some ideas as to why a high LSAT/UGPA leads to graduates who fail to give back to society. Under one explanation, the fact that "the winners" of a test-centered

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FELONS

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ted to vote. Women couldn't vote, African-Americans, illiterates, and also felons and ex-felons. Now all those other restrictions have been done away with, and we look back on that with a great deal of national embarrassment," he said. The nation should be similarly embarrassed by felon voting policies, Mauer argues. "There's no other democratic nation that disenfranchises ex-felons for life as we do in 13 states ... In a democracy, we don't normally institute criteria of morality determining who should vote," Mauer said.

Reform proponents argue that in many states there was clear racial animus that originally prompted felon voting prohibitions. While felon voting has been restricted since colonial times, voting prohibitions became much more widespread during Reconstruction when states expanded bans on felon voting so as to prevent former slaves from gaining the vote. Since the Fourteenth Amendment protects the suffrage of former slaves, but specifically permits disenfranchisement on account of "crime," states were free to use criminal law as a means of controlling voting rights.

As Thomas Johnson knows full well, Florida adopted a constitutional provision in 1868 that grants the legislature broad power to restrict the voting rights of citizens convicted of crimes. Gillian Metzger is a staff attorney at NYU Law School's Brennan Center who is handling Johnson's case. She is convinced that the Florida provision was based on intentional discrimination. "If you start looking at the history of when this provision got enacted and its effect at the time, and at [how] the South was [using] criminal law at the time, after the Civil War, as a way of recreating the labor pool and controlling its former slave population," you end up with a "strong basis for a claim" that Florida's constitution violates federal law, Metzger said.

Metzger speculates that other states' voting bans may be similarly open to challenge on the basis of discriminatory origins. "Felon disenfranchisement [has] this long history of intentional racial discrimination that you can document, certainly in the South," she said. "I expect that if you put in the time and resources you could also find it in many of the states that have felon disenfranchisement laws, [in] certain images about who it was that was going to be affected," Metzger concluded.

Some reformers feel that federal law should settle the issue by banning felon voting restrictions entirely. Representative John Conyers of Michigan is the ranking Democrat on the House Judiciary Committee. Last year, Conyers introduced legislation that would "secure the federal voting rights of persons who have been released from incarceration."

At present, each state determines its own policy on voting qualifications. Article I, Section 2 of the Constitution provides that, for the House of Representatives, "the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature." The Seventeenth Amendment applies this same language to qualification for Senate elections. Article I, Section 4 states that "the times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regula-

tions."

States have adopted widely varying policies on the voting rights of convicted felons. Two states, Maine and Vermont, allow prison inmates to vote. Massachusetts did as well before Tuesday's referendum. Some states impose disenfranchisement for a limited number of years following prison. Felons on parole are barred from voting in 32 states; probationers in 29. In two states (Maryland and Arizona), two felonies lead to lifetime disenfranchisement; in another 11 states, a single felony leads to permanent loss of the vote. Voting rights in these states may be restored only through gubernatorial pardon, which is rarely granted. Thus citizens may lose the right to vote for life even if their sentence required no prison time and even if it occurred in a different state.

Conyers believes that Article I,

'Felon disenfranchisement [has] this long history of intentional racial discrimination that you can document, certainly in the South.'

—Gillian Metzger

Section 4 grants Congress the power to override state franchise policies, at least as they apply to federal elections. In an interview with the RECORD, Keenan Keller — the House Judiciary Committee Democratic Counsel — noted that "Congress has not ever really used this authority." According to Keller, prior laws affecting ballot access either operated "as a condition of receipt of funding," relied on the Reconstruction amendments, or involved amendment of the Constitution itself. Nevertheless, Keller is confident that qualifications for federal elections fall within Congress' Article I powers.

Not all commentators agree. During hearings in October 1999, Clegg argued that the founders clearly intended to leave elector qualifications to the states. Absent a showing of discriminatory intent, he argued, the federal government has no power to override a state's decision to strip felons of the vote. Metzger, who appeared as a witness for the Democrats, argued to the contrary that the founders intended only to prevent Congress from overriding states with permissive voter qualifications. The founders were anxious to prevent limitation — not extension — of voting rights, she argued. Metzger also pointed out that the Supreme Court has upheld Congress' power to lower the voting age for federal elections.

Prof. Heather Gerken, who recently clerked for Justice David Souter '66, said she is skeptical that the Rehnquist Court would accept Congressional efforts to regulate felon voting. "Although one can certainly make a good argument that Article I, Section 4 offers a basis for congressional action, that argument is more difficult to make when Article I is read in conjunction with the Fourteenth Amendment," Gerken said. The Fourteenth Amendment's explicit mention of "crime," she noted, affords a "serious constitutional basis for restricting the voting rights of convicted felons."

Regarding a possible Fourteenth Amendment basis for the bill, Gerken observed, "The Supreme Court is quite likely to say that Congress doesn't have the power to enact this

requirement nationwide in the absence of compelling evidence that [felon disenfranchisement] laws were enacted with a discriminatory purpose or incredibly strong evidence that they have a discriminatory impact." Gerken expressed "doubts as to whether the latter argument would succeed no matter how good the congressional record is in light of the Supreme Court's recent rulings on federalism issues, the limits of congressional power and the scope of the Constitution's antidiscrimination provisions."

At the moment, questions of constitutionality are entirely academic, since it is politically unlikely that Congress will take action on felon voting rights. The Judiciary Committee has not voted on Conyers' bill, so the legislation will die at the end of the current Congress. "We pretty much expected that," Keller said of the bill's

those voices, we also lose an opportunity to build connections to a group that is clearly alienated from the broader community, and we deny those individuals an opportunity to pursue constitutive goals or self-realization by participating in the political process." Gerken described this exclusion as "a fairly harsh result."

Other commentators on felon voting rights disagree that disproportionate impact makes a strong argument against the policy. In a Boston Globe column on the Massachusetts referendum, HLS Research Fellow Jennifer Braceras wrote, "A large number of the felons in Massachusetts prisons are minorities. So, the argument goes, taking the vote away from incarcerated felons will dilute the political power of minority communities." But Braceras rejects this argument. She posited instead that "the idea that average minorities share a community of interests with incarcerated felons who have the same skin color is insulting, at best. At worst, it is racist."

Clegg extends this view to apply to felons released from prison. Referring to the disproportionate impact on particular communities, Clegg said, "I think that argument cuts both ways. Those are neighborhoods where there really could be significant blocks of people that really are not trustworthy as voters, and since a lot of local issues revolve around law enforcement and things like that, I think that that's actually an argument for being worried about felon disenfranchisement." As for the view that voting encourages community participation and rehabilitation, Clegg thinks the better policy is to use voting rights as an incentive for good behavior. "Why should we be sending the signal that, oh gee, committing a felony, it's not that big a deal? To the contrary, we ought to be reinforcing the message that committing crimes is a big deal and that there are consequences," Clegg said.

Regardless of the message disenfranchisement sends, some research has questioned whether the policy has any practical effect on elections. Thomas Miles '03 studied this issue while working on a Ph.D. in Economics at the University of Chicago. After analyzing data on election participation in November elections between 1980 and 1996 in states with and without restrictions on voting by former felons, Miles concluded that felon voting laws are unlikely to affect election outcomes. The reason, he said, is that "persons who are likely to be convicted of a felony are also persons who are less likely to vote."

"Social scientists have long known," Miles noted, "that persons who are younger, who have lower income, lower educational levels and who move more frequently are both more likely to be involved with the criminal justice system and less likely to vote."

For the moment, this correlation appears to nullify the effects of felon disenfranchisement on the voter pool. Miles conceded, however, that "if incarceration rates continue to grow at the pace they have in recent years, they might some day, in the perhaps not so distant future, have an effect on statewide elections." Moreover, Miles stressed that his statistical inferences do not provide a "complete answer" to the "normative question" of whether felon disenfranchisement is desirable on policy grounds.

Prof. Lani Guinier has pointed out that disenfranchisement laws may impact the distribution of political power even if they don't influence voter turnout. In a recent column in Essence magazine, Guinier observed that "the nationwide prison population of about two million — now almost 70 percent Black and Latino — is ... being counted by the Census

impending expiration. Conyers introduced the bill in order to call attention to the issue, Keller explained. "As a general matter," he said, "Congressman Conyers thinks the criminal justice system should focus on rehabilitation, and get away from this emphasis on retribution that we've had [since about] the 1980's. If you look at a lifetime ban — that's a very strong statement that folks can never be fully rehabilitated, because you've taken away their constitutional right that forms the essence of being a citizen."

Keller said that disenfranchisement is especially topical in light of other trends in criminal justice. "If you combine that with the fact that over the past twelve, fifteen years you've had a change in policy with regard to how juveniles are handled in the criminal justice system, it is now possible for a person to lose their vote for their entire lifetime before they ever actually attain majority," Keller added. "That's just nonsensical."

Gerken agrees that felon disenfranchisement sends a strong message of distrust to convicted felons. "It is a message that they are no longer welcomed in the political community," she said. "I think reasonable minds can differ on the issue," she said. Some may think "it's a good idea to shut felons out of the community, either as a deterrent or as punishment"; others feel "the goal after incarceration ... is to re-integrate felons into the community and encourage participatory habits so that they build bonds to the community."

Johnson would tend to agree with the latter sentiment. Because he works with recently released felons, Johnson believes that the withholding of voting rights has no deterrent effect on behavior. "That's garbage," he said of the deterrence theory. "That is not a deterrent. It's ludicrous."

In any case, Gerken said, "the existence of a disproportionate impact on racial minorities is a cause for concern because it means that a number of different voices from those communities are being shut out of a key part of the political process. As a community, we lose the benefit of having

to allocate legislative seats. The strategic placement of prisons in predominantly White rural districts often means that these districts gain more seats based on the disenfranchised people in the prison, while the inner-city communities the prisoners come from suffer a proportionate loss of political power and representation." Guinier notes a parallel to the situation in the United States before the Civil War when "the infamous Three-Fifths Compromise also enabled the South to count each disenfranchised slave as three-fifths of a person, and thus inflate the number of seats assigned to plantation owners and other southern White male elites in the U.S. House of Representatives."

Reformers are hopeful that continued litigation, lobbying and grassroots engagement will produce changes in the policies that have disenfranchised former felons and disempowered communities. Cynthia Chandler '95 has helped found and direct two criminal justice reform groups in California. Chandler told the RECORD that "a positive change in our definition of social justice" is on the way. "There's been in the past five years, I think, a marked change in trends around the media, and also what funders are looking to fund and what politicians have been willing to say," Chandler said.

"I don't think people feel safe," she added, "and I don't think people feel like our criminal justice system is very just ... So I look forward to a real overhaul of our criminal justice system, an overhaul which actually starts looking at how communities can be better served, and provides positive solutions that help people become productive members of their

society."

Mauer is also optimistic that voting rights policies and other aspects of the criminal justice system will change. Two years ago, Mauer joined Human Rights Watch in preparing a report on felon disenfranchisement in the United States. "That report received significant national attention," Mauer said, "and it's been picked up by many civil rights organizations and others," leading to "quite a bit of activity and prospects for change." Mauer noted that Delaware passed a statute last June which permits convicted felons to vote five years after release from prison. Delaware previously had a lifetime ban. Mauer also pointed to successful litigation challenging a 1995 law that imposed new restrictions on some former prisoners in Pennsylvania. A state court judge issued an injunction against the law, and the state Attorney General has decided not to appeal, Mauer said.

Metzger is hopeful that the Florida case she is preparing will meet with similar success. "I think [the case] has strong prospects," she said. Nevertheless, Metzger feels that the prospects for felon voting reform in general are uncertain. "Outside of the judicial arena," she observed, "there have been more attempts, I believe, to remedy these types of provisions, and perhaps [there is] a possible movement on that front, [but] obviously defending felon rights is often not a politically popular task."

Recent developments in Massachusetts and other states appear to indicate that, whatever the policies toward voting by former felons, voters draw the line at voting by convicts in prison. An estimated 76 percent of Massachusetts voters

approved of amending the state constitution to eliminate voting by convicted felons serving time. Utah passed a similar referendum in 1998.

This spring, the New Hampshire Supreme Court struck down a lower court's ruling that the state's constitution grants prisoners the right to vote. The New Hampshire state constitution appeared to guarantee the vote to all citizens over the age of 18, including incarcerated felons. Joshua Gordon, the lawyer who argued the case, said that state statutes barring inmate voting seemed "unarguably" unconstitutional to him. "I felt it was incontrovertible," Gordon said. "I was confident I had a strong case."

Gordon's client, David Fischer, was convicted in 1996 of first degree assault and witness tampering. According to the court's findings, Fischer throttled a former girlfriend and threatened to kill her. Later, Fischer attempted to persuade the former girlfriend to soften her testimony against him, delivering her "scripts" that detailed his version of events. While in prison, Fischer conducted research on the state constitution and contacted the New Hampshire ACLU about a possible lawsuit to restore his voting rights. As a result of the suit, Fischer was able to vote in 1998 and in the 2000 New Hampshire primary.

The provision Fischer relied upon was added to the New Hampshire constitution by a 1974 amendment. According to Gordon, while "nobody specifically addressed felon disenfranchisement in the constitutional convention [of 1974], it was addressed enough that it was my sense that the conferees knew this could have an effect on felon disenfranchisement."

Martin Honigberg, who argued the

case for the state as Senior Assistant Attorney General, said that he viewed the evidence differently. "The constitutional amendment should not be construed to have limited the legislature's authority," Honigberg said, since "the amendment's language and history, as well as the literature provided to voters, [was] silent on the issue of voter qualifications."

The New Hampshire Supreme Court sided with the state, but took "a slightly different path" from the state's argument, Honigberg said. "The Court ruled that the amendment's language change would limit the legislature's authority but refused to give effect to the change because the record showed that that was not the intent of the amendment." In effect, the Court looked beyond the immediate text of the provision, reasoning that the voters who passed the amendment had no intention to grant the franchise to felons in prison.

Gordon said he was "shocked" by the decision. "It's a pretty unusual thing for a court to unamend a constitution," he said. "It leads me to believe that it was a decision perhaps based more on the court's distaste for felon voting than on the language of the constitution or the history of the constitutional convention."

Gordon speculated that other lawyers challenging voting restrictions may encounter similar hostility from courts. Honigberg said, "Our state's constitutional provision is unique, so I think it's unlikely this case will have ramifications elsewhere." Gordon draws a different lesson. If lawyers want to challenge inmate voting bans, he said, they should be sure to have "at least as strong a case as I had."

• Brief •

Direct Action Food Fest a success

On October 19, Direct Action, a student-run charitable organization, held a Food Fest Fundraiser to raise money for impoverished children in Haiti. The event raised \$1064.53 for Advocacy Assistance International, an organization that benefits orphans in Haiti. The event raised awareness about impoverished communities around the world and demonstrated proved that humanitarian impulses have not died in the Harvard community, according to the evening's sponsors.

Direct Action extended its thanks to the Black Law Students

Association, the South Asian Law Students Association, the Harvard Asia Law Society, La Alianza, the Asian Pacific American Law Students Association, the Korean Association of Harvard Law School, and the Jewish Law Students Association for donating food dishes to the event. Direct Action also extended thanks to the Skewers, Cafe of India, Friday's, Brew Moon, Young & Yee, Three Aces, Cambridge Common, John Harvard's, Ben & Jerry's, Fire & Ice and the Chinese Food Truck for their support.

Scoreboard, Baby!

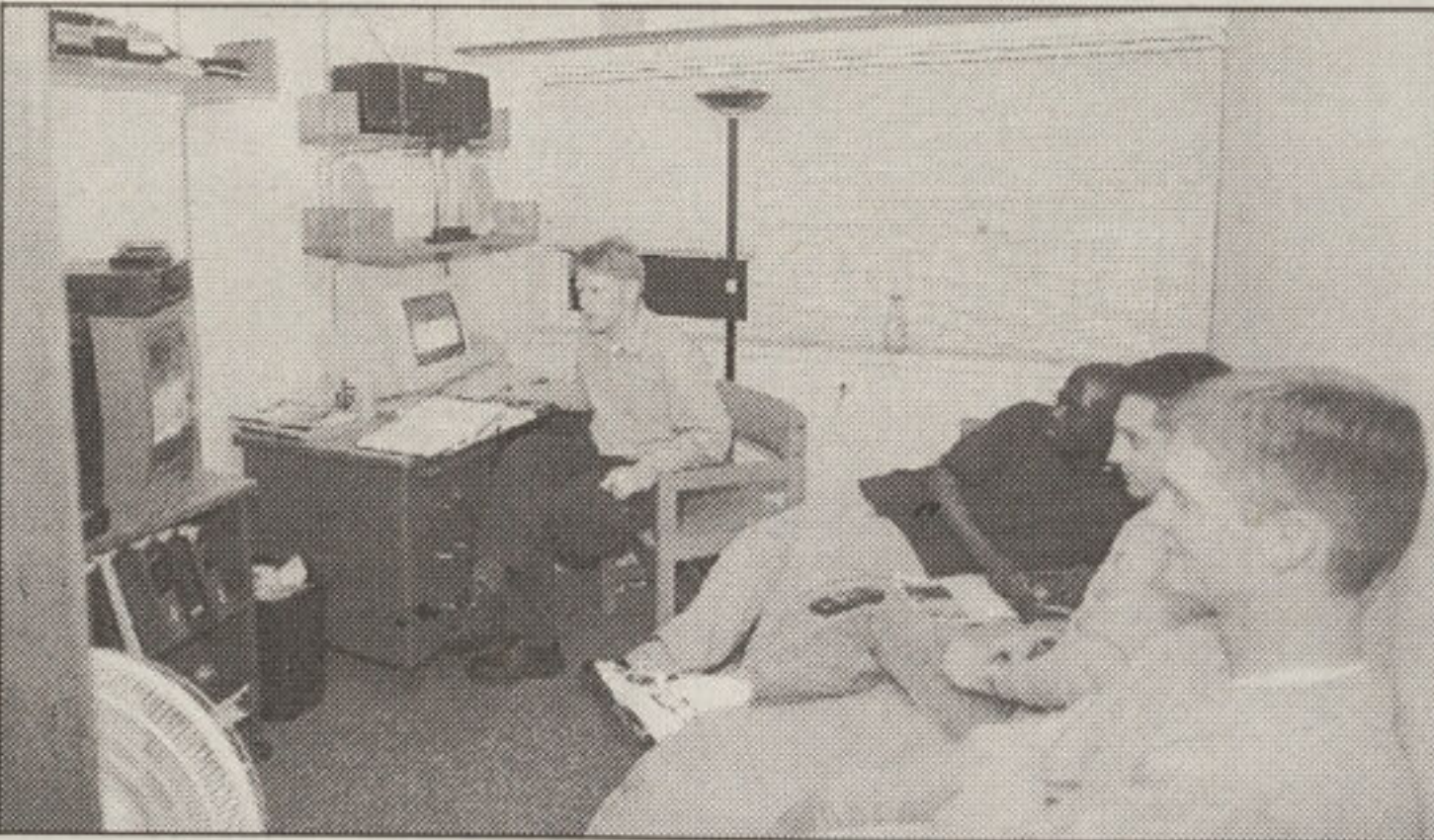


Photo by Murad Kalam

One-Ls watch Florida's 25 electoral votes get batted about like a beach ball.

LSC update

We are down to the home-stretch as we finish off a busy first semester, and are attempting to complete the following projects aimed at improving daily student life on campus:

- **THE HARK** will remain open until 2 a.m., effective immediately, from Sunday through Thursday evenings. The late closing is meant to address the lack of study space on campus after Langdell Library closes at midnight. In addition, we are ordering recreational amenities, like a pool table, for one corner of the student center pursuant to the Student Life 2000 Proposal approved by the Dean last month. Questions may be directed to

Student Advocate Mike French (mfrench).

- **FREE COFFEE FOR ALL** — Dean of Students Richardson is working on the possibility of providing complimentary coffee to students during the first week of 2L/3L exams in December and 1L exams in January. So keep an eye out for caffeine kiosks ...

- **SUMMIT OF STUDENT ORGANIZATIONS** — On Wednesday, November 15, the LSC and Dean Richardson are sponsoring a gathering of student organization leaders to discuss ways in which our organizations can work together on projects throughout the year. We will also be institut-

ing an on-line calendar for student events to minimize conflicts between groups and advertise events more effectively. Contact LSC Secretary Taryn Fielder (tfielder) with questions.

- **LSC STUDENT SERVICES DESK** — LSC representatives will staff the Student Services Desk (next to the Sound-Off Board in the Hark) every Thursday during the lunchtime hours. We will feature an "Issue of Week" each week to collect and disseminate information and opinions regarding important issues facing the school. Contact LSC Rep. Kathy Gainey with questions (kgainey).

- **OCS INITIATIVE** — LSC reps

will be working with OCS in the months to come to explore ways to improve the dissemination of career advice to the student body, the efficiency and timing of the interviewing process, and the quality of private sector and public interest informational material. Stop by the LSC Student Services Desk next week for details. Contact LSC Rep. Stephanie Denton (sdenton).

- **CONCLUSION OF STRATEGIC PLANNING** — Students may pick up a copy of the strategic plan from the distribution center. Check out the product of three years of campus debate, committee reports and town hall meetings!

LSAT

Continued from page 1

meritocracy seem to take their privileged position for granted [which] may then explain why those who should succeed according to conventional predictors do not." Additionally, she speculates that "multiple-choice, timed testing may train successful candidates not to question authority, not to look for innovative ways to solve problems, not to do sustained research or to engage in team efforts at brainstorming, but instead to try to answer questions quickly and in ways that anticipate the predilections of those asking the questions."

Guinier argues that law schools, especially public law schools, need to admit more students based on a "whole person evaluation" that looks beyond grades and test scores to life experience, leadership and commitment to public service. Alternatively, she suggests as a "heuristic device" a system under which students meeting minimum criteria would be selected for admission by lottery.

Black Box and Harvard Law School

One difficulty with Guinier's conclusions is that the Michigan study doesn't say very much. The study lacks the evidence to prove that students with lower LSAT/GPA were admitted on "softer" non-numerical criteria that may indicate future public service. A complication is that the authors of the Michigan study found that formulae for admissions factors such as LSAT and UGPA no longer existed in the school's files. Additionally, because such admissions decisions are often made on the impression of individual faculty or admissions staff, it is difficult to know how this relationship could be quantified.

The more that a school adopts a "whole person" approach to an applica-

tion by de-emphasizing strict numerical criteria, the more difficult that it becomes to know exactly why certain students are admitted. A quick survey of top 15 law school web pages reveals that almost all of them claim that LSAT/UGPA are "important" but that the schools consider less quantifiable factors in their admissions process. The problem is that neither of the author's of the Michigan study nor the other top fifteen schools explain the extent to which they consider UGPA and LSAT, besides saying that they are important.

The procedures outlined in HLS's application are fairly typical of other top law schools. The application says that UGPA is a "significant indicator of potential success in law school" and that the LSAT is "a useful aid in the selection process."

Dean of Admissions Joyce Curll elaborated upon the admissions process for the RECORD. Curll cautions against excessive reliance on numbers. Grades need to be evaluated in the full context of a student's undergraduate institution, course of study and recommendations from instructors, she says.

The same caution should be applied when evaluating LSAT scores as well: "While the LSAT can be helpful in the context of a broad range of other information about an individual, it is like all standardized tests in that it is subject to error, both with respect to the limited number of skills it is designed to measure and with respect to predicted performance," Curll said.

How should Harvard's admissions process be analyzed in light of the Michigan study? The answer seems to be that it can't. "I think [Harvard's admissions process] is too much of a black box," said Dmitri Evseev '01, a member of Catalyst. Evseev argued that it is too difficult for members of the community to know what goes on in the admissions committee and how much

weight is accorded to different factors. Evseev believes that HLS is weak when it comes to public service, but he also noted that it is difficult to tell whether commitment to service is a factor in admissions or the way the school operates.

"I think who the people on the admissions committee are is crucial to what the school looks like, because two votes on the admissions committee get you in. A change of even one person on the committee could make a dramatic difference in who gets in," Evseev said.

The irony facing would-be admissions reformers is that while it is almost impossible to criticize or analyze a process that is a black box, among the easiest ways to make it less of a black box would be to make the process more quantitative. However, it's the quantitative aspects of the process that seem to disturb critics most.

Admissions and Public Service

There seems to be a fundamental disagreement between what Guinier sees as the purpose of the admissions process and how schools describe the purpose of their admissions process. Both Guinier and Evseev emphasized the relationship between the school's stated mission of producing lawyers who would work in the public interest and the role of the admissions process. From their point of view, the admissions process should serve the school's overall mission and admit students who will graduate to serve the public.

"The legal profession, due to the power it has in society, has an obligation to use that power in a way that is productive and should be aware of the consequences of having that power. Work in the public interest broadly defined is a natural consequence of that," Evseev says.

However, Harvard's admissions brochure and the websites of other top schools indicated that most schools place

an emphasis on how prospective students will affect the school and not what they will do after they graduate.

Curll acknowledged this tendency. "I would describe the HLS process as holistic, employing the experienced judgment of law teachers and administrators in building a class that will contribute to the education of one another through the robust exchange of ideas." But Curll was quick to point out that admissions decisions are also made based on an applicant's potential to "ultimately make a contribution toward solving the complex legal problems that confront our society."

All of the schools that had statements said that they were seeking to admit a qualified class that was also diverse and which would contribute to the learning environment of the school. None of them explicitly mentioned a commitment to public service after graduation as a criterion for admissions. Public service and leadership are simply one among several factors considered as part of a general attempt to create diversity.

"Certainly a demonstrated capacity and commitment to public service is an important consideration," Curll said, "as is evidence of such qualities as leadership, concern for the community and for others less fortunate than oneself [and] the ability to overcome socioeconomic and language and other obstacles."

What does seem clear is that it is extremely difficult even to start a discussion about the admissions process and public service. Without a greater understanding of the admissions process, it is impossible to have clear grounds for criticizing or lauding the way students are admitted to the school. The world may know what type of students are produced by the current process, but not what type of student an alternative system may produce. It is safe to say, however, that the discussion has only just begun.

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Letter

Scheer '01 supports Israeli self-defense in fight with Palestinians

We were surprised to see Hani Sayed's and Prof. Duncan Kennedy's anti-Israel and pro-Palestinian positions defended on the grounds of "secular and universalist concerns for fairness between the parties." [RECORD; October 20, 2000].

The Palestinian Authority (PA) inaugurated the current round of violence by having the PA-appointed mufti call for the destruction of Israel and to "eradicate the Jews from Palestine" in a Friday sermon the day after an Israeli politician visited the Temple Mount.

Both before and after that time, the PA has broadcast overtly anti-Semitic propaganda designed to inflame the violence and stoke a religious war. For example, two weeks ago, the official PA television station broadcast a sermon by a PA-appointed member of the "Fatwa Council," Ahmad Abu Halabiya, in which he told his listeners: "None of the Jews refrain from committing any possible evil ... The Jews ... do not have any moderates or any advocates of peace. They are all liars ... O brother believers, the criminals, the terrorists are the Jews ... They are the ones who must be butchered and killed ... Allah the almighty has called upon us not to ally with the Jews or the Christians, not to like them, not to become their partners, not to support them, and not to sign agreements with them ... The Jews are the allies of the Christians, and the Christians are the allies of the Jews ... All of them are in agreement against ... you, O Muslims ... Our people must unite in one trench, and receive armaments from the Palestinian leadership, to confront the Jews ... Have no mercy on the Jews, no matter where they are, in any country. Fight them, wherever you are. Wherever you meet them, kill them. Wherever you are, kill those Jews and those Americans who are like them and those who stand by them, they are all in one trench ... Let us put our trust in Allah, close ranks and unite our words, and the slogan of us all should be, 'Jihad! Jihad! For the sake of Palestine, and for the sake of Jerusalem and Al-Aqsa!'"

Yassir Arafat named the current campaign against Israel the "Al-Aqsa Intifada," after one of two mosques on the Temple Mount, leaving no doubt as to the nature of the conflict in the PA's view. Indeed, Arafat has specifically explained the need for violence on the grounds that Jerusalem is Muslim property of which "I do not have any right to compromise one

grain of ... sand." Thus, Arafat has explained that "all options are open, including jihad." During the summer, Arafat explained his rejection of an extraordinarily generous Israeli peace offer on the grounds that he represented the aspirations of all Muslims and he could not be expected to admit there was once a Jewish Temple on the Temple Mount. Adnan Husseini, spokesman for the Palestinian Islamic Waqf in Jerusalem, added that, for Palestinian Muslims, the Temple Mount is a "closed file. The issue has been settled by God, and there will be no negotiations. Moslems can't discuss it and can't make any compromise. This is the stance that every Palestinian and Arab and Moslem will adopt, forever."

During the years that the Palestinians have negotiated peace with Israel, they have pursued, without pause, an offensive campaign against Israel's legitimacy and against Jews everywhere.

If one had tuned in to Voice of Palestinian radio on November 20, 1998, one could hear Sheik Hayan Al-Idrisi explaining in his Friday sermon that Jews "have complete control on the political leadership, not only in America and the Western world, but also on world leaderships, including the leaders of the Arab and Muslim world. The Jewish money and media are the leaders of the nations and continents."

If one had been present at the U.N. on March 16, 1997, one could have observed Palestinian representative Nabil Ramlawi lodging a formal complaint against Israeli authorities for allegedly injecting 300 Palestinian children with the HIV virus.

If one read Al Hayat Al Jadida on November 7, 1998, one could see Nasar Ahmad, an official at the PA's Political Guidance Directorate, explaining that "[c]orruption is a Jewish trait worldwide. So much so that one can seldom find corruption that was not masterminded by Jews or that Jews are not responsible for. A Jew would cross any line if it were in his interest. From a historical perspective, one can find to just what extent the Jews have been subject to diminution and banishment following their disgraceful acts and evil conduct. Since such is their behavior, they have exerted all their efforts into developing evil schemes. They concoct scandals that would haunt leaders, letting the Jews take a firm grip and tilting leaders in favor of their interests. A survey on the legacy and cus-

toms of non-Jewish nations, taught them that the latter were afraid of money and sex. These are exactly the two instruments Zionists use."

If one opened Al Hayat Al Jadida on August 22, 1998, one could read PA Deputy Minister of Supplies, Abd Al-Hamid Al-Qudsi, claiming that "Israel carries out a clear policy of annihilating our people and destroying our national economy by smuggling spoiled foodstuff not fit for human consumption into PA territories. Israel did not change its strategy, which aims to kill and destroy our people."

If one opened the new Palestinian Authority curriculum for ninth grade Islamic Education, one would find on page 29 that "one must beware of the Jews, for they are treacherous and disloyal." If one turned to the teachers' guide for the twelfth grade history book "The Contemporary History of the Arabs and the World," one would find the curricular objective that students "should learn the following generalizations: (A) Zionism is a racist and aggressive movement; (B) Racist superiority is the essence of Zionism and Fascism-Nazism."

Non-PA Palestinian voices sing a similar tune. Just last year, the sixth best-selling book on Palestinian best-seller lists was Adolf Hitler's "Mein Kampf," bearing a new introduction in Arabic by Luis Al-Haj that stressed that Hitler "is one of the few great men who almost stopped the motion of history, altered its course and changed the face of the world. We made a point to deliver Hitler's opinions and theories on nationalism, regimes and ethnicity without any changes because they are not yet outmoded."

On September 28, 1998, Al Sha'ab published a lengthy article asserting that the "Jews are the decision makers and the owners of the media in most of the world's capitals. [T]here is no doubt that the economic crisis that infects Russia is the result of the work of the Jews that control the political and economic decisions in Moscow. The Israeli plans for activities in Greece rely on 'the hidden Jews.' [T]he Jewish schemes are currently finding the 'hidden Jews,' and helping them capture leadership positions in an effort to control Greece. America's support for Israel is based on a hidden force that always stands behind the scenes dictating that all American political decisions eventually favor Israel. Despite the fact that the accusations of the Nazi persecution of the

Jews are extremely exaggerated, the Jews have nevertheless succeeded in turning these accusations into a complex within all Germans. In addition to the phony reparations the Jews received after pillaging the German government on the issue, they also turned Berlin into the most important center of the Jewish lobby in Europe. The Jews in Germany also control the economic institutions, the newspapers, the television stations and radio."

Lest one doubt the Palestinian Authority's role in all this, it should be recalled that Arafat has ordered newspaper editors jailed for offenses as slight as placing news items in praise of Arafat on an inside page instead of the front page. Ghasan Khatib, a columnist for Al Quds, acknowledges that "The Palestinian Authority has taken several steps to frighten journalists ... The media cover what the [PA] government wants the people to see."

Given all this, it is clear that any person of good conscience guided by "secular and universalist concerns for fairness" would have to come to very different conclusions than Mr. Sayed and Prof. Kennedy.

Even more remarkably, Mr. Sayed and Prof. Kennedy fail to note that substantially all of the acknowledged "pro-Palestinian" solutions they offer for resolution of the conflict were also offered by Israel in the Camp David negotiations this summer, and rejected by the Palestinians. The Palestinian Authority itself admitted in its official website that it had rejected an Israeli offer of a first-ever Palestinian Arab state with sovereignty over all of Gaza, parts of Jerusalem and more than 90 percent of the West Bank, as well as admission of some Palestinian refugees to Israel. One might fairly conclude that the Palestinian violence against Israel is not aimed at a peaceful compromise between Israel and the Palestinians, but rather as the continuation of a holy war aimed at the ultimate elimination of Israel.

We would expect all people of good conscience, including those motivated by "secular and universalist concerns for fairness" to reject Palestinian extremism and violence and support Israel's right to defend itself in this very difficult hour.

Lawrence J. P. Scheer '01
President, Jewish Law
Students' Association
October 24, 2000

LAWYERS

Continued from page 1

Gore administration.

Edley, who described himself as a fellow "escapee" from the Clinton administration, dismissed the entire question. "I must say that I find the general topic excruciatingly boring ... I hope that there are very few people in this room this evening and in the country who make their decision based on what happens to lawyers," Edley stated.

At one point in the discussion, Edley argued that Gore was best suited to extend Clinton's record of economic success. This momentarily switched the topic to a discussion of who invented the Internet, who caused the recent economic boom, and who was responsible for NAFTA.

Annoyed at the tangent, Rudman finally said, "I think you're straying

from the topic, which is not a replay of the Bush/Gore debates, but rather what does the outcome of the election foretell for lawyers. You don't like the topic, but that's how this was advertised." As Miller looked on, Edley replied, "What's good for America is good for lawyers."

Not everyone thought there was a clear difference between either of the candidates. Prof. Richard Parker '70, who was one of the first people to ask Ralph Nader '88 to run, said that both candidates were centrist and took money from the same corporate interests.

"The real problem we have tonight is that the two people who might become president simply aren't likely to make that much difference," Parker said. He added: "I think you have to strain to find any difference. Chris [Edley] has, I know, a lot of practice at this straining." Edley responded by saying that the claim that there was no difference between

Gore and Bush was "the big lie" of the Nader campaign.

Miller, who walked around the room during the panel, finally switched the subject to the impact that the candidates would have on judicial nominations. Fried feared that a Gore victory would entrench Democrats in the White House for an extended period of time. "A four or eight year Gore term followed by four or eight years of Hillary Clinton would be thoroughly demoralizing because the Supreme Court would then look like the Harvard Law School faculty," he fretted. Fried added that while a Gore administration would create a court of people like former Justices William Brennan '31 and Thurgood Marshall, a Bush administration would not dramatically change the way that the Court decided issues.

Kagan disagreed, saying that there was a "one way ratchet in terms of how the court changes." She argued

that there would probably be more justices originally appointed by Republicans who would retire under Bush than justices that would retire under Gore.

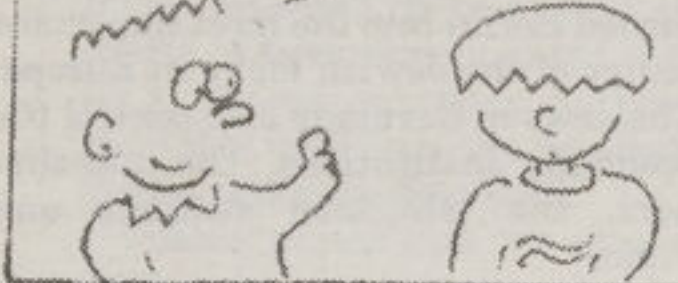
Parker disagreed with both and dismissed the "sense of high panic," which was a result of the "idolatry of the courts" and is a "kind of pathology."

While the future of abortion has been an issue in media coverage of the campaign, both Fried and Kagan agreed that the central holding of *Roe v. Wade* is secure. Kagan, however, argued that other reproductive issues, such as the partial-birth abortion ban, were less clear.

In the end, the panel agreed that neither candidate would kill all the lawyers. In fact, all contended that lawyers would be pretty well off in any situation. And even if the economy tanks, Hale & Dorr has a very good bankruptcy practice, Rudman reminded the audience.

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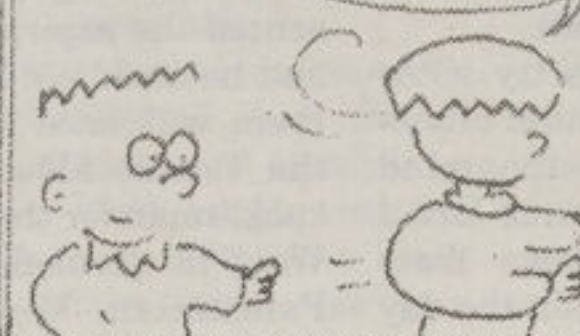
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BY DEREK WINDHAM

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• Letters •

Kennedy, Sayed ignored regional history

I write to express my disappointment and deep disagreement with the avowedly pro-Palestinian positions argued by Duncan Kennedy and Hani Sayed in their joint editorial of October 17, 2000. While I agree with the overarching sentiment of "fairness between the parties," I cannot help but wonder how a supposed amoral "fairness" is manifested by accepting biased views of the current crises and ignoring the historical and cultural backdrops that have made such clashes inevitable.

I am at a loss to understand the contention that "nothing that the Palestinian Authority or the Palestinian people have done justifies the Israeli government's reaction." By all accounts, the massive importation of illegal firearms to Palestinian Authority-controlled territory has created a situation in which Palestinian gunmen mix with rock throwing civilians to endanger the lives of Israeli citizens, military units and settlers. To claim that a government does not have a legitimate right to protect its people from the initiation of violence against them is baffling. Furthermore, the steps taken by the Israeli military to curb Palestinian casualties have displayed an admirable restraint. From warnings of impending missile strikes to the "clean" operation to arrest without harm those Palestinians responsible for the unconscionable lynching of Israeli reservists to the use of rubber bullets, Israeli restraint in the face of lawless provocation and unrest has been nothing less than remarkable.

Those who argue that even more Israeli restraint is necessary given the power imbalance miss the point; to wit, this is not a fair fight, and Israeli casualties are naturally going to be far less given superior training and weaponry. Arguing that this should be a fair fight is like arguing that the United States should have used second-rate weaponry in the Persian Gulf war to make things more "fair." To sympathize with morally indefensible aggressors simply because they are the weaker party is misplaced and casts aside traditional beliefs in the rights of self-defense and the depravity of initiating brutality.

The call for the right of return and compensation for seized lands does not surprise me, as the true history of the region has been shrouded by propaganda and lies. Largely unknown is that a Jewish community has existed in Palestine for over 500 years. Largely unknown is that every inch of land acquired by Jews prior to 1948 was purchased, not taken, from leading Palestinian families (an estimated 80 percent of

wealthy Palestinian families sold land to the Jewish National Fund during the 1920s). Largely unknown is that the U.N. partition plan of November 29, 1947 — essentially dividing up modern-day Israel into two separate entities — was accepted by Jews and rejected by Arabs, who were opposed to Jews having any sort of self-rule. Largely unknown is that modern-day Israel achieved its current borders during the 1948 War for Independence, in which no fewer than 5 Arab countries invaded Israel with the intention of eliminating it from the map at birth. Were some Palestinians displaced by Israel's stunning victory? Undoubtedly. But to allow a right of return and compensation to people whose activities were motivated by the notion to "drive the Jews into the sea" flies in the face of justice and in essence rewards those whose intolerance and desire to control 100 percent of the Middle East rather than 99.4 percent led to the initiation of bloodshed in the first place.

Lastly, I see any calls for a U.S.-brokered peace process as hopelessly naïve. Peace can only be achieved either by a common understanding of good faith or by a mutual, if unfriendly, respect. So long as Palestinian textbooks teach children biased accounts of history (including Holocaust denial), so long as a terrorist junta masquerading as a democracy runs the Palestinian Authority, so long as Palestinian propaganda continues to teach that "one can seldom find corruption that was not masterminded by the Jews or that Jews are not responsible for" (according to the November 7, 1998 edition of the Palestinian Authority's newspaper *Al-Hayat Al-Jadida*), so long as Palestinians continue to believe that the lynching of three innocent Israelis is "Godly" behavior, and most importantly, so long as a substantial minority — if not majority — of Palestinians continue to believe that Israel has no right to exist anywhere but in the ashes of history, there will be no good faith peace. Unfortunately, so long as violence is met with restraint, so long as offers of sweeping concessions are followed by carefully orchestrated savagery, there will be no peace of respect either.

I do not wish for the continuation of violence, and I do believe that the inevitable pull of history is on the side of the resumption of the peace process. However, as history has also displayed, a "peace with honor" can be far worse than continued disorder if such peace is only "honored" by one side.

Evan Belosa '02
October 22, 2000

Palestinian side forgotten in world forum

The recent letter in the RECORD ["Kennedy, student comment on Middle East," Oct. 20] highlighted some problems of the current discussion of the situation in the Occupied Territories. The recent violence has become viewed as generic and the context of the continuing Palestinian struggle has been ignored. The Palestinians have become viewed as the intransigent party in an impartial negotiation between two equal participants. This belies the true nature of what is essentially an international attempt to force a deal on the Palestinians which meets few, if any, of their historic aspirations to self-

determination and statehood.

Imagine the scenario: Squatters move into your home and forcibly eject you into the back yard. At first they deny the fact you ever lived in the house at all. After some time, disturbed by your constant harangue, they offer to take the case to arbitration. They agree to allow you access to the front and back yards. They might even concede you a path between the two. At best you are offered visiting rights, and perhaps even a comfortable chair in the living room. What would you do?

Danya Reda '03
November 8, 2000

Israel seeks peace despite Palestinians

Israel offered far-reaching concessions to the Palestinian Authority during Camp David in all areas of the negotiations, including Jerusalem and Arab refugees. Yasser Arafat has met this clear willingness on the part of Israel to compromise with the launching of a war against Israel.

The idea that Israel is using disproportionate force against the Palestinians is absurd. Israeli soldiers do not face peaceful demonstrators. They are facing firebombs, rocks and machine guns, wielded by crowds that would beat the soldiers to death if they could get close enough. Instead of maintaining order, Arafat's "police force" is turning the automatic weapons provided to it by Israel and shooting at Israeli civilians and soldiers. Israeli soldiers use the minimum amount of force necessary to repel the attacks. If Messrs. Kennedy and Sayed truly believe that the Israelis are using excessive force, I urge them to take 200 friends equipped with rocks, firebombs and AK-47's and attack the nearest police station; I am sure they will rapidly discover what amount of force is used by any democratic society to repel

mob attacks.

The suggestion that the Jewish communities located in disputed territories must be expelled and that the area must be *Judenrein* (free of Jews) is outrageous.

To suggest that Yasser Arafat should be entrusted with the holy sites in Jerusalem is to argue that the Jewish holy sites in the city be destroyed, as they were when Jordan occupied part of Jerusalem between 1948 and 1967.

As if to prove this point, the Palestinian Authority destroyed Joseph's Tomb, an ancient Jewish holy site in Nablus only hours after Israel turned it over to Arafat several weeks ago. A few days later, the Palestinian Authority destroyed the Al Shalom Synagogue in Jericho, as emphasis.

The solution to the violence is clear. Yasser Arafat must immediately give orders to his forces to stop shooting and return to the negotiating table.

Aharon Friedman '01
October 24, 2000

Fenno jumped the gun on Dunc parody

I found it extraordinary that you allowed the Fenno writer to respond to what was at the time an unpublished letter to the editor [October 20, 2000]. Fenno can say what he or she wants, and I don't object to his or her use of the usual boring anti-

Palestinian rhetoric. But it was inappropriate for a column writer to comment on a letter that had not yet seen the light of day.

Barra Little '01
October 23, 2000

Editors overlooked pride, focused on fear

Great caption RECORD! Yes, October 11th was National Coming Out Day. However, if you were to believe the RECORD, students such as Jocelyn Bramble (Lambda co-chair who was pictured in the October 20 issue) were "brave" in declaring their sexuality. Wake up and smell the latte. This day signified a celebration of sexuality and not a lone venture out of the closet. Gay, Lesbian, Bisexual and

Transgender students on campus joined our straight alliance friends in supporting the notion of equality and diversity. Maybe the caption editor should come along to our 'OUT-LAW' celebration on November 18th to acknowledge that with a new millennium we wear our identities with pride, not fear.

S. Chelvan LL.M. '01
October 25, 2000

• In Memoriam •

Eugene Liipfert '48 was name partner, Washington, D.C., transportation lawyer

Eugene T. Liipfert, 81, a longtime transportation lawyer, died Oct. 30 of a heart attack at Sibley Memorial Hospital in the District of Columbia. "Gene Liipfert was a giant in the area of transportation law. He helped to establish and build this law firm through his hard work and high professional standards," said Harry C. McPherson, a partner with Mr. Liipfert in the law firm of Verner, Liipfert, Bernhard, McPherson and Hand.

Liipfert was born in Winston-Salem, N.C. He received a bachelor's degree in political science and economics from Davidson College in 1939 and a master's degree in history from Vanderbilt University in 1941. From 1942 to 1946, he served in the Army as a navigator with the Army Air Corps' Air Transport Command. In 1948, he received a law degree from Harvard Law School.

After he graduated from law school, Liipfert joined the law firm of Turney & Turney, but left in 1958 to serve as vice president and general counsel of Consolidated Freightways

in Menlo Park, Calif. In 1961, Liipfert returned to D.C. to establish a private practice. In 1964, he joined Verner & Bernhard, which was renamed to include Liipfert as a partner. He stayed with that firm until his retirement in 1985.

Liipfert served as a national officer of the Association of Transportation Practitioners, was a member of the Public Utility Council of the American Bar Association and the Transportation Lawyers Association, and was a fellow of the American Bar Association. He owned Rocky Hill Farm in Woodsboro, Maryland.

Liipfert is survived by his wife of 16 years, Dixie Liipfert, of Chevy Chase, Maryland; two sons, John T. Liipfert of Kensington and Christian E. Liipfert of Hong Kong; four grandchildren, one great-grandchild, three stepdaughters and three stepsons. His first wife, Anne Turney, died in 1982. Memorial contributions may be made in Liipfert's name to the World War II Memorial Fund, 901 15th St. NW, Suite 410, Washington, D.C. 20005.

Harvard Law RECORD

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Justin Herdman

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Third party no third wheel

With Al Gore's White House bid seemingly thwarted by the narrowest of margins, the temptation for Democrats to spend the post-election period bashing Ralph Nader will be at its apex. The RECORD says: Resist the urge (and that's not because our editor-in-chief is a Republican). Throughout his campaign Nader has been demonized not on the basis of his political positions (however meritorious those might be) but for the threat his candidacy posed to the Vice-President's campaign. By running against Gore, this argument goes, Nader has actually undermined the very values he professes to support.

This argument misses the point of Ralph Nader's bid, which considering the scorn heaped upon him by fellow liberals, was actually quite courageous. Nader represented a series of political views that, however unpopular they may be, have every right to be heard in an open democratic polity. Nader was the only candidate unequivocally opposed to the death penalty. He was an outspoken opponent of globalization. Say what you will about these positions, but is there no room for them in the world's oldest and proudest democracy? The charge that Nader betrayed his principles by undermining Gore actually has it backwards: to drop out of the race for the sake of what he considered the lesser of two evils would clearly have been the unprincipled option.

Critics have also charged Nader with running a dishonest campaign, for being disingenuous in his insistence that Gore and Bush were indistinguishable as presidential candidates. Critics went wild rebutting this statement by outlining the mainstream candidates' positions on the issues: Social Security, the environment, etc. Again, the critics ignored the very real possibility that from the perspective of Ralph Nader and the Green Party, the two candidates really are indistinguishable. After all, it's now common knowledge that the same corporation (and other fat cat donors) will regularly contribute hundreds of thousands of dollars to both parties, to hedge their bets and ensure access regardless of the election outcome. Now, we are all shrewd enough to realize that this strategy really does work — so why do we insist on blaming Nader for simply pointing that out?

Gore might have lost, and that may be bad news for some of you, but if you're sad, blame it on Gore's tentative and weak-willed campaign, blame it on the far right's failure to produce their own Ralph Nader, blame it on astrology. Whatever you do, don't blame it on Nader. Let's have some credit where credit is due.

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—First Amendment, U.S. Constitution

• Letters •

Letter author knocks on Matt Wood

I don't want you to think that I'm against lampooning other people's political views or anything. Political sarcasm and ridicule are a big part of what makes life worth living, especially to us policy and politics geeks at HLS. But Matt Wood's column ["Looking for Love in All the Wrong Places"; October 20, 2000] mocking libertarian personals is just uninformed and gratuitous.

First Wood makes fun of a (presumably libertarian) Christian man looking "for the same in a woman," who has "done many different things" and "like[s] trying new ones." These innocuous sentences give Wood an excuse to launch into an apparently unmotivated tirade against "police departments engaging in racial profiling." I dislike racial profiling too, but what does it have to do with libertarians (who also oppose racial profiling)?

Then he makes fun of an anarcho-capitalist: "What, pray tell, is anarchistic capital? Remember, it's the federal government that prints our money ... So what're we after here? A return to the glory days of state-backed currency? The barter system? What?" If Wood knew anything about anarcho-capitalism, he would know: (a) that it's just a fancy word for anarchism (the "capitalism" is added to distinguish it from the left-wing variants); (b) that anarcho-capitalists oppose government involvement in the monetary system;

and (c) that they favor private, competing currencies, and NOT the barter system. There's a lot to criticize — and even to make fun of! — in anarcho-capitalism. But wouldn't it be nice to have even the tiniest understanding of a philosophy before mocking an innocent guy trying to find a companion who shares his values?

Wood's column ends with a note on Ayn Rand: "[W]ouldn't it be [nice] to meet something who'd admit that she was wrong?" Since Ayn Rand was primarily a moral philosopher and was low on predictions about the future, then "wrong" must mean "in disagreement with my rambling opinions expressed above." So the nicest Randian to meet is one who has renounced all his most deeply held and cherished moral beliefs. No reasons; no arguments; no honest (sarcastic! satirical!) engagement of the serious ideas of Randian philosophy. Just a dismissive, knee-jerk assertion that Ayn Rand was "wrong." Now I'm not a Randian, nor am I a Christian or an anarcho-capitalist (though I have friends in all three categories). But imagine that these were, say, personals for Christians or for blacks, and that we were talking about Jesus or Martin Luther King, Jr., instead of Rand, and maybe you'll get some idea of how offensive that must sound.

Sasha Volokh '03
October 26, 2000

You didn't waste your Nader votes

On the relatively rare occasions when Ralph Nader's candidacy is discussed in the media, it is usually to suggest the possibility that he could take enough votes away from Al Gore to elect George W. Bush. However, it has yet to be pointed out that most people need not worry about a third party vote electing one or the other major party candidate.

For better or for worse, national elections in this country work on a "winner-take-all" electoral system. Whether Bush gets 5 percent or 25 percent of the vote in Massachusetts, he will not get a single electoral vote from the state. Most states are very strongly Democratic or Republican, and are acknowledged as such by both major parties. No reasonable person believes that Al Gore will win Utah.

Unless a person lives in a so-called battleground state, it is extremely unlikely that her vote will affect the presidential election much at all. In this regard, if she merely votes for the lesser evil, rather than making a statement about what she believes in and what she expects from government, then she throws away her vote. A vote for a third party candidate often clearly expresses the voter's political views, as third parties tend to define their platforms by their contrast to those of the "conservative" and "liberal" mainstream parties.

While elections are decided by electoral votes, eligibility for federal matching funds and access to presidential debates are decided by popular vote. Thus, regardless of where one lives, a vote for a third party candidate is a vote for increased future access to public office and political debate for that party.

There are, of course, many reasonable arguments for voting one's conscience in any instance. If everyone did this, then political candidates would have to be much more responsive to constituent needs. In recent years the two major parties have become more and more similar. The vote for permanent normal trade rela-

tions with China violated the core principles of both major parties — moral and community values for Republicans and protection of labor wages and working conditions for Democrats — but accorded nicely with the values of the corporations who paid so handsomely for the votes of both parties. Each party believed they could do this on the assumption that their core constituencies would remain loyal — choosing a "lesser evil" over a "greater one."

Most Americans do not believe that the United States should sell weapons to third world dictators (the U.S. is by far the largest such merchant in the world), that it should be possible for an American family with two working parents to live below the poverty line (at the minimum wage, it would take about three working parents to exceed the line) or that unelected bureaucrats in Geneva should be empowered to overrule U.S. laws that the bureaucrats consider to be "trade barriers" (precisely the arrangements of the GATT Uruguay Round, which created the World Trade Organization). The Green Party has taken strong stances on each of these issues, and the Reform Party and Libertarian Party have taken strong positions on the first and third. The Democrats and Republicans have made no substantive response to any of these concerns. As American citizens, the only recourse we have to address the unresponsiveness of the two major parties is to vote for candidates outside those parties.

American democracy is in crisis as plutocracy slowly supercedes it. We as citizens have a duty to ourselves, to our children, and to the ancestors who fought to secure for us the blessings of liberty, to return government to the hands of the people. This may require some courage from many citizens in this country, but most of us can take a stand without any risk whatsoever.

Clifford Ginn '03
President, Law School Greens
October 18, 2000

PERSPECTIVE

By Jay Munir '01

Conclusion of Strategic Planning Breathes New Life into HLS

After years of committee meetings and town hall gatherings, countless opinion surveys and sometimes contentious debate among students and faculty, the final strategic planning proposal is now ready for dissemination to the student body. When students pick up their copies of the proposal from the distribution center, they will be reading a document that marks the conclusion of one of the most ambitious periods of self-reflection and reform in the school's history.

By addressing some of the most salient student concerns expressed in recent years, Harvard Law School completes its latest strategic planning process with a long overdue spirit of innovation and responsiveness. Four of the five planks of the Law School Council's "Student Bill of Expectations," which was signed by hundreds of students last spring and subsequently presented to the faculty, have been addressed in the last several months. Some examples include:

■ **Class size.** The faculty voted to slash 1L section sizes to under 80 students, placing our first-year class sizes below several of our peer institutions for the first time;

■ **Advising.** HLS will experiment with seven "law colleges," intellectual and social communities modeled after

those at Yale and Harvard Colleges, headed by a faculty master. One of the goals of the colleges is to increase student-faculty interaction and strengthen academic advising;

■ **Feedback.** The strategic planning proposal includes measures to provide greater academic feedback to students, including feedback on written work during the 1L year;

■ **Registration.** The registrar instituted on-line registration last spring for the first time, and is planning on extending this service to the add/drop and wait-listing process that takes place each fall;

■ **Grade Reform.** While the faculty rejected both the three-tier and five-tier grade reform proposals, they did attempt to address the problem of arbitrariness across 1L sections and 2L/3L bundles by instituting a flexible curve.

The strategic plan does not, however, limit itself to these high-profile issues. The proposal includes plans for significant financial aid and LIPP reform, increasing internationalization of the curriculum, providing 1Ls with greater flexibility to take electives, reforming the 3L paper requirement, instituting a mandatory pro bono requirement, increasing the size of the faculty, deploying greater financial resources

toward enhancing student and faculty engagement, expanding information technology, putting forth a dramatic physical space plan that will significantly alter the face of our campus and much more.

With this lengthy list of reforms, a school that has sometimes been criticized for resting on the strength of its Ivy League name places itself in a stronger position to ensure that it retains its position as the nation's top law school throughout another century. If these reforms are correctly implemented, HLS will be a leaner, more user-friendly and cohesive community than it has been in some time. Combine this with our strong academic tradition and diverse student body, and I can't think of a better place to attend law school.

The 2Ls, 3Ls and graduate students have played an active part in the strategic planning process the past few years, and while doing so we have created an environment for positive change that will constitute our legacy to this community. It is up to our 1Ls to take the lead in ensuring that these reforms are properly implemented and to continue pressing the administration and faculty to respond to student concerns.

This will require building on relationships forged between administra-

tors, faculty and students over the course of this process. A graduate student recently told me that while at first he had heard that Dean Clark was "slightly more aloof than Prince Charles," he has subsequently been impressed by the Dean's responsiveness to student concerns regarding the renovations to Hemenway Gym, the recent allocation of money for dorm improvements and diversity issues. His reaction mirrors that of many students who have worked with faculty members during the strategic planning process and helped construct a stronger connection between the faculty and student body.

Most of the proposals in the strategic plan will be implemented next year. By continuing to engage the administration and faculty on student concerns, we can ensure that this plan is only a starting point. The world has changed, and Harvard Law School must adapt as well. This special place must find a way to institute necessary change while maintaining the positive aspects of our rich history. This is a challenge the 1Ls and subsequent classes will have to take up over the course of their time here. Personally, I'm more than a little jealous of their opportunity.

Jay Munir is President of the Law School Council.

PERSPECTIVE

By Avi Bell S.J.D.

Peace Solution Requires Respect for All

Hani Sayed and Duncan Kennedy's remarks about the current Israeli-Palestinian conflict, offered in the "spirit of conversation," are actually conversation-stoppers. The positions they offer diverge so widely from the facts and from common sense that they offer no possibility for further rational conversation.

A guerrilla war is currently being conducted against Israel by the Palestinians (as well as Lebanon). On the Palestinian side, it has involved small arms, assault weapons, firebombs and grenades, roadside bombs and light anti-tank and anti-aircraft weapons. On the Israeli side it has involved assault weapons and grenades and occasional use of attack helicopters and tanks. As even such Palestinians as Bir Zeit professor Saleh Abdel Jawad have noted, the Palestinians have callously conducted this warfare in the midst of civilian riots and demonstrations, leading to needless and tragic deaths.

Contrary to Messrs. Sayed and Kennedy's assertions, Israel's response to this war has been extraordinarily restrained, so much so that Israel allowed two Israelis to bleed to death rather than introduce heavier weaponry in order to extract the wounded. Just on the day that Messrs. Sayed and Kennedy's letter was published, Palestinian snipers shot at civilian housing in south Jerusalem, civilian automobiles near the Etzion bloc and a farm in Katif; and Palestinian gunmen shot at a bus of soldiers near Anabta and several Israeli military posts in Gaza, including ones located near Gadid, Rafah and Khan Yunis. Additionally, on that same day, Palestinian gunmen engaged in pitched battle with Israeli soldiers near Beit Sahur, Israel defused a bomb placed near a military post in Kfar Darom, Israel thwarted an attempted border infiltration from Lebanon by a squad of guerilla fighters employing assault weapons and grenades, and

Israel buried a tourist shot by Palestinian gunmen at Mt. Ebal. Israel's response to each aggression was localized and limited to shooting at the sources of Palestinian and Lebanese fire. If Israel were to follow American military doctrine, it would respond to the repeated attacks by applying overwhelming force to destroy the fighting ability of the various guerrilla forces arrayed against it. Instead, Israel has allowed itself to remain the target in the vain hope of saving the lives of its sworn enemies.

The events of the last few weeks have indeed shown that the Israeli peace proposal at Camp David was misguided, but not for the reasons alluded to by Messrs. Sayed and Kennedy. Israel's proposal involved yielding to nearly all Palestinian territorial demands, including a division of Jerusalem. These proposals were made despite the fact that much of the territory to be yielded (especially on the West Bank) was vital to Israel's defense, and the fact that the Palestinians would be gaining effective control over sites that are holy and symbolically important to Jews as well as to Muslims and Christians. The Israeli negotiators had assumed that the problems inherent in such an arrangement could be resolved by joint security arrangements and Palestinian respect for the shared rights of Jews. But the actions of the Palestinians in the past weeks have demonstrated that these assumptions were in vain.

During the past weeks, the Palestinians have ended all joint security patrols, and all isolated Israeli posi-

tions have come under Palestinian fire. The Gaza international airport, where a small team of Israeli inspectors had operated for several years to prevent importation of illegal weaponry, was shut down after Palestinian police opened fire on the inspectors' bus. Israeli border inspectors have been attacked by gunfire, grenades and firebombs, and Israeli patrols have been attacked by roadside bombs and ambushes. The range of weaponry and the number of Palestinian gunmen demonstrate that all agreed-upon limitations on Palestinian military capability have been violated systematically over the past seven years. It is clear that the joint security arrangements are unreliable, especially when needed most during times of crisis. No responsible Israeli leadership could now transfer strategically important terri-

'If Israel were to follow American military doctrine, it would apply overwhelming force to destroy the fighting ability of the guerrilla forces.'

tory to the Palestinians in exchange for Palestinian promises of good will and joint arrangements.

Nor could Israel protect equal access for people of all faiths by transferring revered sites to Palestinian custody. On October 9, in an effort to defuse tensions, Israel granted control of Joseph's Tomb — a site revered by Jews in Nablus — to the Palestinian police. Within hours, a Palestinian mob had torched and destroyed the site. In the weeks following that incident, the Palestinian Authority turned the site into a mosque and declared it Muslim trust property. This has reinforced the impression among almost all Israelis that turning over any Jewish

holy sites to Palestinian custody will bear the same fruit as the Jordanian custody of 1948-1967: destruction of all Jewish sites and no Jewish access to jointly revered sites. The impression is further reinforced by Palestinian practices such as executing anyone who sells land to Jews and elementary school instruction in the alleged perfidy of Jews. By contrast, despite the fighting, Israel has maintained secure Muslim access to such shared holy sites as the Temple Mount and the Tomb of the Patriarchs. Those interested in equal respect for all peoples and faiths must favor continued Israeli custody over revered sites.

It must also be remembered that despite the constant disparagement from the Arab world and its allies, Israel is the only democracy in the Middle East, a fact acknowledged even by Palestinians. Surveys conducted over several years by Palestinian political scientist Khalil Shkaki of Nablus have shown that Palestinians consistently rate the state of democracy in Israel as overwhelmingly better than in Jordan, Egypt or the Palestinian Authority, and — interestingly — better even than in the United States and other Western countries. Surveys among the million Palestinian Arab citizens of Israel have shown that they reject by a margin of 8:1 the possibility of living under Palestinian sovereignty. While the PLO's Palestinian Authority violently rejects the rights of Jews in almost every possible way, Israel has proved a reasonably hospitable, if imperfect, home for both Arabs and Jews. An overly expansive sphere of PLO sovereignty would be a step backward for all people except extremists.

In short, anyone concerned with the concerns of fairness and peace must reject the bizarre positions offered by Messrs. Sayed and Kennedy and look instead for a solution that provides for the rights of all peoples in the region — including Israeli Jews — to live in secure peace.

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Fenno

Bush or Gore?

Fenno could understand why it was so close. Both made for a good Sharon Stone movie, but who'd be a better president?

Fenno wished she could be in the room with the candidates, watching them react to this ridiculous razor thinness. But she couldn't figure out how to get there.

As she walked into the Hark, she caught a glance of Chris Ward and Austin Bramwell smoking a pipe. *God bless Republicans*, she thought. *They wear it with pride.*

Fenno walked up to Ward, who supposedly had some interesting theories on why Gore may have won Florida. "Shalom," she said. "Mind if I have a smoke?"

The boys looked at her in a "Clan of the Cave Bear" way, grunted affirmation and offered her the pipe.

Fenno took a long drag and staggered back. Something wasn't right. Fenno realized that what she had just smoked would not mix well with the peyote she'd taken at a Green Party fur protest earlier that night. Pipe tobacco and peyote. This is what happens, Fenno thought, when you mix products from two very, very different worlds.

The room started to spin, and Fenno blacked out.

When she woke up, she found herself in an unfamiliar room. Then she looked at who was there with her.

Holy crap! Fenno thought. *I'm in the Texas Governor's Mansion!*

A clock on the wall read 4:30 a.m. Wednesday morning. The networks must have just uncalled the election for Bush. And look, there was Dubya. Jumping up and down in front of the TV, the governor was swearing up a storm. The few words that weren't of the four word variety were hopelessly garbled. "The suspenders are killing me," Dubya screamed, "Why didn't that Electrical College just give me the erection already!" On a couch, Barb and Daddy were curled up, their faces displaying a curious mix of pride and abject fear. Fenno didn't blame them. Let's just hope our country doesn't end

up like the Texas Rangers, Barb seemed to be thinking. The prospect of President Dubya trading California and Hawaii for a time share condo in Chechnya was suddenly a very real possibility.

The world got fuzzy again, and Fenno found herself in the Gore headquarters. There was ol' Al, slick with sweat, frantically stuffing an oversized metal cube labeled "lockbox" and obsessively repeating his acceptance speech ... "I have already received congratulatory telephone calls from Indian Speaker of the House Shri Ganti Mohanachandra Balayogi, Serbian Defense Minister Slobodan Krapovic and civil rights leader Mumia Abu Jamal. The American people have made the correct choice, they have selected a leader who distanced himself from the pack. My two opponents — George W. Bush and Ralph Nader — ran honorably. Unfortunately, they were unable to distinguish themselves from one another ..." Gore stopped and turned, having realized that his words may have been too hasty. "Tipper," he shouted, "Good Lord woman, this race is close! To the roof ... a little bone dance on national TV might just put us over the top in Oregon."

Fenno shook her head, clearing away the vision. Ward and Bramwell had left — she was all alone in the library. Oh well, Fenno thought, guess I'll just check my email.

OK, so maybe she didn't just want to check her e-mail. She was also secretly hoping for another of those red-hot newsflashes on the HLS homepage: "Professor So-and-So appointed Felix Frankfurter Professor of Law". Why was the school constantly 'appointing' its own faculty members to the faculty? Were students supposed to think that they were suddenly getting two Steven Shavells for one? It was like Barbie dolls — there's Regular Steven Shavell and Samuel Rosenthal Steven Shavell. Act now and receive a free talking Roscoe Pound Steven Shavell ... just pull the string and get a twenty minute lecture on rational choice theory.

Still intent on checking that e-mail, Fenno headed into the Langdell Lounge on the off chance that the HLS server would be working. If so, maybe Fenno could even check the stats on her Fantasy Gunner team. She had lost several of her best gunners to

Quote of the Week

'David is a professional outsider.'

—Prof. Arthur Miller '58, describing "Kill All the Lawyers" panelist Prof. David Rosenberg

graduation, so her team was hurting. Her only strengths were in the out-of-class positions, where she had Sheila Flynn in the "Ubiquitous Student Leader" spot and Alex Zeltser in the "Absentee" position. This last position was scored negatively — Fenno's team actually lost a point every time Zeltser appeared on campus. So far, he hadn't let her down.

The server appeared to be working. What a pleasant surprise! Fenno grabbed her decoder ring and hopped onto the new web version of OpenMail. "Let's see," she said, checking the ring and scanning over an array of unfamiliar icons on the screen, "a three-dimensional trapezoid sitting in a brown pile of shit; that must be my Inbox." Fenno clicked. "The Page Cannot Be Displayed." Hmm.

OK, maybe I can at least send a message, Fenno thought, even if I can't check my e-mail. Fenno was contemplating a quick message of consolation to recent HLS grad John Cranley, who had just lost his bid to become the youngest member of the U.S. Congress. Fenno had fond memories of Cranley, who had used to hit on her at parties. Such attention always made Fenno feel warm and fuzzy, kinda like a slug of tequila. Yesterday he was just a fresh-faced 1L, his seductive arsenal consisting solely of Austin Powers impersonations. And today he was a vanquished warrior for democracy, embossed with a glossy sheen of martyrdom.

Apparently, Cranley's campaign had been hurt by attack ads that quoted him saying he'd never had a real job. Fenno loved it that Cranley's oppo-

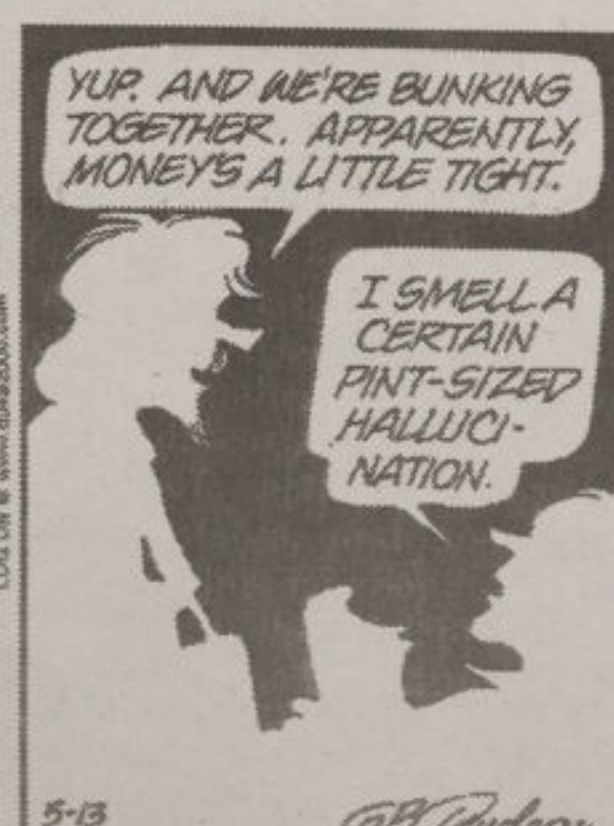
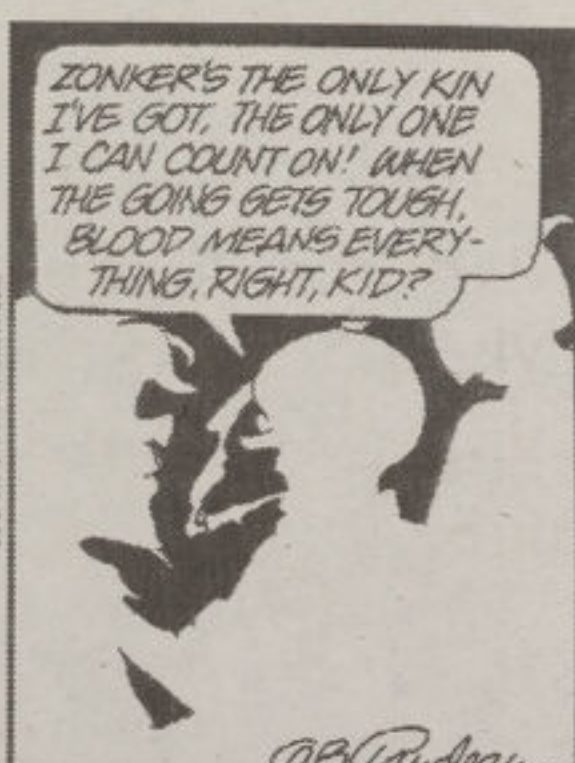
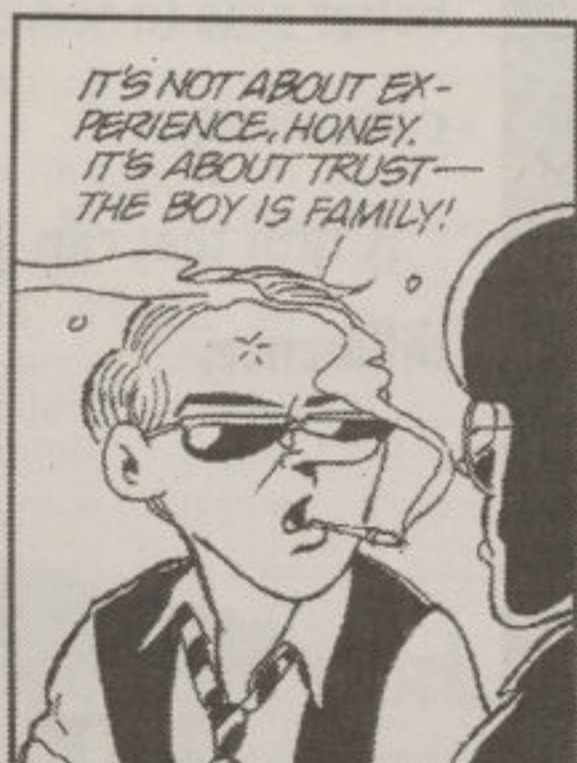
nents had lifted that quote from a RECORD article. Now if only someone would lift a few quotes from Fenno herself, things would get *really* interesting. The political career of Elie Mystal could be over before it even got started.

Fenno continued to stare at her computer screen, trying to figure out how to send a message with OpenMail on the web. There was an icon with three little people standing around, another one with a house and one with a little wrench. None of these seemed right. What does a house have to do with e-mail? Why do I need a wrench? How hard can this be?! Fenno decided just to log out, cut her losses. Cranley would have to wait.

Logging out was easier said than done. "If I were a logout icon, what would I look like?" Fenno thought to herself. Maybe like a question mark with a bunch of arrows radiating away from it? No, probably not. How about an upside-down triangle contained within a circle contained within another circle, all with fuzzy brown stuff in the background. That might work! But no, it just 'refreshed' the page. At long last, Fenno found the logout icon: a vertically-oriented trapezoid with an arrow pointing at it, naturally. 'How could I have missed that one?' Fenno thought. She clicked. "Please enter username and OpenMail password." What?! I have to type in my password to log out? What the hell kind of e-mail program was this? Let's face it, OpenMail makes Kubrick's HAL seem user-friendly.

Screw it, Fenno thought. I need a drink.

Doonesbury



Solution to last week's crossword puzzle

MILLENNIUM MEANDERING									
RUTH	SPECS	POPE							
OSHA	TIROL	ARIL							
ANON	ALAMO	SELL							
MARCONI	BEATLES								
ODD	CASTE								
BRICE	ALT	TUBAS							
RECK	ELI	BARELY							
UPI	PRINTER	HON							
CAESAR	TAN	BANG							
EYRIR	HOD	DONEE							
GOREN	POL								
DAIMLER	GALILEO								
ACLU	EAGER	VEAL							
SHIN	SLINK	ANTE							
HEAD	EDGES	ROSS							

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