



## Team Disqualified from Ames Q-Round

By Greg Stohr

A team has been disqualified from the first round of the Ames Moot Court competition for a violation of the competition rules, according to Amy Kreiger '95, chair of the Board of Student Advisors' Qualifying Round Committee.

Kreiger would not discuss the specific charges against the team, saying she wanted to preserve the "confidentiality" of the proceeding. Students familiar with the brief, however, said it contained six sentences that were virtually identical to a passage from a key court opinion.

Kreiger confirmed that a five-member BSA panel decided to disqualify the team after giving the members an opportunity to appear at a hearing last week.

"They presented their side. They had a chance to say everything they had to say," said Kreiger. She added that the disqualified team chose not to exercise its right to appeal the decision to the entire BSA.

Kreiger said BSA acted after receiving an anonymous complaint.

"It presented a real problem," she said. "This happened the day before [the team's first] argument was to occur."

Under BSA rules, each team participates in a total of four arguments — two each by two pairs of students. When a team is disqualified, the oral arguments at which team members were scheduled to appear are canceled, meaning that students scheduled to argue against the disqualified team

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Eric Dupré '95 tries to combat bicycle theft by chaining his bicycle to a pole. See story on recent thefts, page 2.

## 3L Wins Argument Before Mass. SJC

By Maria Politis

Many years from now, HLS students can brag they wowed the judges in moot court, or matched wits with the brightest legal minds in the nation.

But Daniel Olohan '95 will be telling his grandkids something perhaps no other HLS student can say: that as a 3L, he argued a Massachusetts constitutional issue in front of the highest court of the state—and won.

At Olohan's urging, last week the Supreme Judicial Court of Massachusetts unanimously held that a prosecutor's use of peremptory challenges to

exclude jurors with Irish-sounding surnames discriminated against jurors on the basis of ethnicity, and violated the Massachusetts Constitution. As a result, the SJC sustained the reversal of the conviction of Olohan's client, Fr. Thomas Carleton, a Catholic priest, who had already spent a year in jail for allegedly blocking an abortion clinic in January of 1993.

Olohan had been working on the case since spring of his 1L year, when his friend, Southern New England Law Professor Dwight Duncan, asked him to help defend

please see **OLOHAN**, page 10

## Greenberg Named to Head New York Legal Aid Society

By Terri Gerstein

Danny Greenberg, director of clinical programs since 1987, said he is leaving the Law School to become the new executive director of New York City's Legal Aid Society, the city's largest provider of criminal and civil legal representation to indigent people. His appointment comes at a time of great turmoil within the Legal Aid Society, following a recent strike by staff lawyers and proposed budget cutbacks by the Rudolph Giuliani administration.

Greenberg said he felt mixed emotions about his new job. "I teach my five- and six-year-old daughters Ilana and Mara that different contradictory emotions

can exist at the same time. That's how I feel: sadness at leaving friends and colleagues here, and enormous excitement at the chance to genuinely affect the delivery of legal services to poor people in New York," he said.

Greenberg said he has already begun work for the Legal Aid Society but does not know when he will assume full-time responsibilities in New York. He said he probably will be at HLS at least part-time until the spring.

At the Law School, Greenberg will leave as his legacy the strength of Harvard's extensive clinical program. During his seven years at HLS, the clinical program has grown from 14 annual fieldwork clinical courses in the 1986-1987 school year to 24 options during the 1994-1995 year. Currently, approximately 500 2Ls and 3Ls

take fieldwork clinicals each year.

"He's helped conceptualize, structure, and implement a very diverse, complex program, making it more coherent and accessible to students and faculty," said Prof. Gary Bellow '60.

Former Dean James Vorenberg '51 noted that Greenberg commonly enlisted new faculty members in the clinical program, pointing out possible clinical approaches to their subject. "He had worked himself as a lawyer and understood what was involved in teaching about it," Vorenberg said. "He also worries about the substance of what is taught as well as the method, about whether the school is performing a service for the community."

Many who have worked with Greenberg said his contribution to the Law School cannot be measured in numbers alone. "He's an extraordinary human being and that's what made the program so good — his commitment, passion, and high standards," said Prof. Martha Minow.

Greenberg has held an important symbolic role in the HLS public interest community, in addition to his official title as clinical director. "There's nobody at Harvard Law School who personified public interest lawyering more than Danny Greenberg," said Abbe Smith, deputy director of the Criminal Justice Institute. "He helped elevate the profile of poverty law and law for social change in a

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Danny Greenberg

## Ito Thanks ILs Memos "Interesting and Helpful"

By April Rockstead and Victoria Kuohung

During the same hearing at which he ruled in favor of allowing media camera coverage inside the O.J. Simpson courtroom, Judge Lance A. Ito offered the camera a publicly broadcast message of gratitude to the HLS students whose memos he said contributed to his understanding of the issues.

"I found them very interesting and helpful," said Ito of the memos. "In fact, I took them home this weekend, before I started my formal research, to review in my own mind the issues, the policy, the law, that applies to this."

Prof. Charles Nesson '63 and Visiting Prof. Peter Murray '67 submitted 11 memos writ-

ten by 1Ls to Ito after the Los Angeles Superior Court judge learned that students were exploring the issue in their Introduction to Lawyering Course. Although all 1Ls were invited to submit memos at their option, only 11 of the 59 memos Nesson received were forwarded to Ito. A total of 35 students worked either independently or in groups to create the 11 memos selected for Ito's review.

In addition to the student memos, Nesson forwarded Ito his own synopsis of the issues raised in the memos, a memo authored by Murray that also drew from the student responses, and a memo written by Harold Brown '39 and titled, "Entertainment and the Law."

Prior to publicly commend-

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## HLS Grad Ends Hunger Strike Continues to Search for Missing Husband in Guatemala

By Victoria Kuohung

For Jennifer Harbury '78, the peasant uprising against Guatemala's military government is more than just another foreign conflict.

Last Friday, Harbury ended a 32-day hunger strike in the main plaza in front of Guatemala City's Presidential Palace to travel to Washington, D.C., to continue her search for her husband, Efraín Bámaca Velásquez — also known as Commandante Everardo to his Mayan rebel troops — who disappeared on March 12, 1992, during a skirmish with government forces.

The Guatemalan government, installed in 1954 after a CIA-sponsored coup overthrew the democratically-elected leadership, contends that Bámaca



Jennifer Harbury '78 (far left) watches as forensic experts determine that the exhumed skeleton is not that of her husband.

committed suicide after being captured in the skirmish. In a letter from May 1992, then-Guatemala Human Rights

Ombudsman Ramiro de Leon Carpio, now president, described

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## Speakers Debate Constitutional Issues Raised by Public Religious Speech

By Hope Yen

A nationally known legal advocate for religious rights squared off with a constitutional specialist from the Kennedy School in a debate here that sought to find the place of religious speech in the public sphere.

"Is America better off when we remove religious influence from the marketplace of ideas? My answer is no," said Jay Sekulow, chief counsel for Pat Robertson's Virginia-based American Center for Law and Justice, to a crowd of nearly 100 here last week.

Frederick Schauer, the Kennedy School's Frank Stanton professor of the First Amendment, countered: "It is the establishment clause that says when government businesses are involved, speech principles are somewhat different."

The debate, "The Demonization of Religion in the Public Sphere," was sponsored by the Society for Law, Life, and Religion.

Sekulow said the United States faces a "constitutional crisis" in which political correctness leads to censorship of religious ideas. He said this censorship threatens the basic rights of all citizens.

"Citizens should not be put in a situation where they should surrender their rights simply because they're coming from a religious perspective," he

said. "The First Amendment is supposed to encourage open, robust, and free debate."

Sekulow pointed to several cases that he said involved attempts at censorship, including the decision by the Los Angeles City Council in 1984 to exclude religious solicitation in the Los Angeles International Airport.

"They passed an ordinance to say, 'There shall be no First Amendment activities in airport terminals at LAX,'" Sekulow said. "So here, the First

Amendment was put in jeopardy because there was hostility toward religion."

But Schauer said overregulation of religious speech today is necessary to right the wrongs of a past where religious arguments were underregulated in public discourse. In a theoretically imperfect world where the right amount of regulation cannot be achieved, the better choice today is overregulation, he said.

"We can acknowledge that people with religiously motivated views are

disabled and discriminated against in public discourse," Schauer said.

**Schauer said, "It is the establishment clause that says when government businesses are involved, speech principles are somewhat different."**

Schauer also countered attacks by Sekulow that the government had engaged in "constitutional overkill" by going to extremes to right the past wrongs.

"If we think that a fair amount of existing free speech doctrine includes within the so-called marketplace of ideas religious speech, then does that doctrine change significantly when the marketplace of ideas moves into a facility owned, operated, or controlled by a government entity?" Schauer asked.

"It is at this point that the presence of the establishment clause which mandates the very overkill we are talking about disables a certain kind of speech," he said.

Sekulow, however, argued there is a distinction between a case where a student is forced in school to say religious prayers and one where a student chooses to say prayers with other classmates on school property at the beginning of the school day, but outside of class.

"There is a crucial difference between government speech endorsing religion, which the establishment clause does prohibit, and private speech endorsing religion, which is not only protected by the free speech clause but also the free exercise clause," Sekulow said.

**"Is America better off when we remove religious influence from the marketplace of ideas? My answer is no," said Jay Sekulow.**

## Locks Not Enough to Protect Some Bikes

By Justin Weiss

Carrie Cuthbert '95 thought her U-shaped Kryptonite lock, made of hardened steel, would be enough to protect her \$350 mountain bike. It wasn't.

At 7:00 p.m. on November 8, Cuthbert locked her bike, a deep purple Specialized "Hard Rock" model, to a bike rack outside Austin Hall. At 7:25, on her way back from buying a snack at the Science Center, she made sure it was still securely locked to the rack. When she returned at 9:15, the bike was gone — with the Kryptonite lock still fastened securely to the rack, its U-shaped curve empty.

"I'm not going to buy another bike, that's for sure," Cuthbert said. She said she was angry because she depended on the bike for transportation to and from Inman Square, a 20 minute walk.

"[The police] said there's some device people are now using that allows them to pick a Kryptonite lock," Cuthbert said.

Harvard University Police Department Sergeant Lawrence J. Fennelly said that in most cases of bike theft, locks are pried or cut open, not picked. Fennelly said a metal "sleeve," which fits over the lock barrel and costs about \$4, is an effective method of deterring such efforts.

In an interview several weeks ago, Fennelly described bicycle theft as the one category of crime at Harvard that "we really get killed on." This week Fennelly estimated that more than 300 bikes had been stolen University-wide in the past year,

with a total value of more than \$100,000. However, a perusal of the Harvard University Police blotter revealed that for the period from October 1 to November 15, fewer than 10 bicycles were reported stolen from the Law School campus.

Cuthbert said that had she known about the frequency of bike theft at the Law School, she might have taken extra precautions, including using two locks as "a deterrent," or locking her bike in a more well-lit area.

Not only students have been stung by the bike theft scourge.

Paula Garvin, who works in the Career Services office, has had two bikes stolen since September. While the first was stolen near the Cambridge Hospital, the second was stolen just outside Pound Hall. On October 3, Garvin locked her bike with a cable lock to Pound Hall's stair railing. It

was gone by 8:45 that evening when she left to go home.

"I was angry," Garvin said. "It was a cold night and I just wanted to get home."

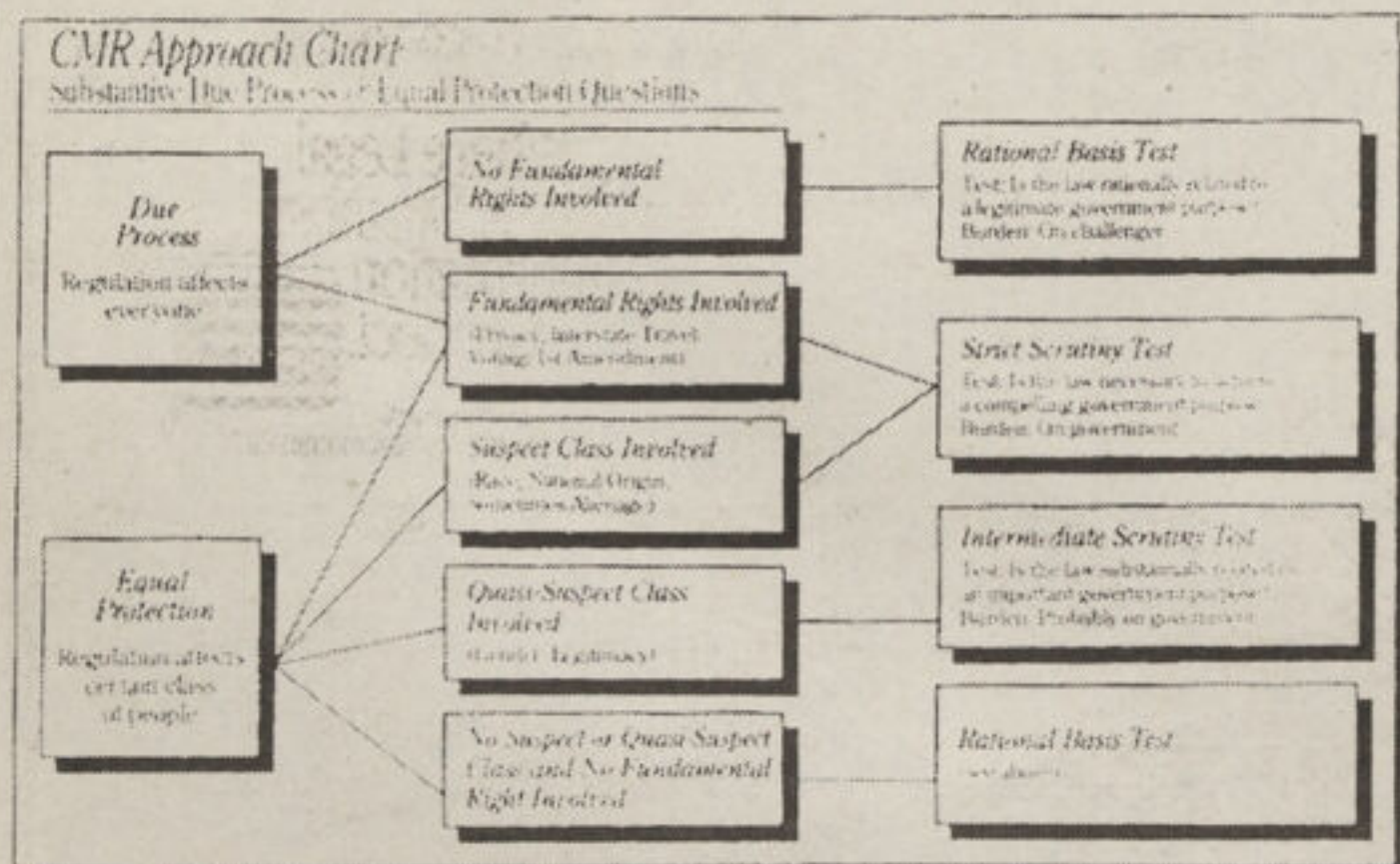
After hearing of Garvin's second stolen bike, Janet Viggiani '96 and Katrina Campbell '96, whom Garvin had helped during recruitment season, organized a group of students who chipped in enough money to buy Garvin a replacement.

"I was touched," said Garvin, who expressed thanks both to the students and her Career Services colleagues who coordinated the contributions. "I just wish I could hug everyone who did that."

Garvin, who likes her new bike, said she is trying to be more careful. "I have two locks now," she said.

**More than 300 bikes have been stolen University-wide in the past year.**

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# BRIEFS



## Dersh Brings Penthouse to Widener

Saying, "For me, it's a matter of principle," Professor Alan M. Dershowitz recently offered to sponsor a Widener Library subscription to Penthouse magazine. A library official said Widener will accept the subscription.

Dershowitz said he was inspired by a column in the Harvard Crimson, criticizing Widener for subscribing to the Journal of Historical Review, a Holocaust revisionist magazine, while not subscribing to Penthouse and other publications.

"I felt that if the library is going to allow a Holocaust denial publication, then there is no excuse for refusing to subscribe to Penthouse since Penthouse has many excellent writers and a lot of very important articles," Dershowitz said. He conceded that the fact that he writes a regular column, called "Justice," for Penthouse, influenced his decision to pay for a library subscription.

Dershowitz said he wanted to find out "what criteria Widener uses which would result in subscribing to an anti-Semitic journal while not subscribing to Penthouse." Nat Bunker, Warren Bibliographer for American History, said Widener did not subscribe to Penthouse because "we had a subscription to Playboy and in many ways Penthouse duplicates that publication."

*-From the Harvard Crimson*

## Stone Testimony Seals Hamlet's Conviction

Recognizing a "method to madness" defense, a jury of local government officials and personalities in Chicago last weekend decided 10-2 that Hamlet was guilty of the murder of Polonius in Shakespeare's well-known work.

During the course of the trial — a fundraiser that boasted top lawyers and doctors among participants — Hamlet suffered few "alings and arrows" as devastating as the testimony of expert witness and HLS Prof. Alan Stone, M.D.

Testifying for the prosecution, Stone argued Hamlet was sane despite Hamlet's conversations with his father's ghost, because the ghost was really there. Likewise, the fact that all the other characters truly plotted against Hamlet defeated the claim that he suffered paranoid delusions, Stone argued.

Moreover, Hamlet's melancholy soliloquies regarding the weariness of human existence were evidence of philosophical inquiry, not suicidal tendencies, Stone said.

"Those speeches are not about suicide," Stone said. "They are about a situation of a man caught in an immoral world. Those are reflections on the human condition."

*-From the Harvard Crimson*

## Harvard 2, M.I.T. 0

The Harvard Chess Team beat rival M.I.T. in its annual match for the second year in a row Sunday, by the narrow margin of 10.5 to 9.5. The Law School was represented by James Lank '96 and Alan Tse '97. Lank, one of few players in the country to have held master ranking in both over-the-board and correspondence chess, was high scorer for the Harvard team, winning both of his games. The annual Harvard — Yale match will be held November 19th.

## New Head of Program on Negotiation Announced

Marjorie Corman Aaron '81 will replace Simmons College Management Prof. Deborah M. Kolb as executive director of the Program on Negotiation at the Law School, officials announced last week.

Aaron is joining the Program after holding positions with ENDISPUTE Inc., one of the country's largest private mediation firms. She was a senior mediator and vice president for professional development for the company.

In addition, Aaron served on the Harvard Business School faculty team this past year and has taught on at the Massachusetts Institute of Technology and Suffolk University Law School. She is a graduate of Princeton University's Woodrow Wilson School of Public and International Affairs as well as HLS.

Prof. Robert H. Mnookin '68, chair of the Program of Negotiation Steering Committee, said Aaron "brings significant experience as a mediator, an educator and administrator" to the program.

## Job Openings Decrease, Report Says

According to a report by The American Lawyer, and based on statistics released by the Office of Career Services, firm jobs advertised at HLS for graduating law students have decreased an overall 38 percent since 1989. Part of the drop can be attributed to constricted recruiting budgets, as firms that have been unsuccessful attracting HLS grads retarget their efforts toward schools with better yields.

Nevertheless, The American Lawyer reported, the contraction in the market for first-year associates has clearly tightened in the past two years. The actual state of affairs may be worse than that reflected in the decrease in the number of jobs advertised. For instance, the number of Los Angeles firms recruiting at HLS has remained constant but the total available number of jobs has dropped 21 percent. And while only one Atlanta firm has left OCS' list, openings there have dropped by 27 percent. Finally, according to the article, a report issued by San Francisco-based legal recruiting firm Major, Wilson & Africa states that only 29 percent of more than 50 firms surveyed in the California and the Pacific Northwest said they would hire more first-year attorneys this fall than last.

# HLS Grad Ends Hunger Strike, Continues Protest

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a cadaver allegedly found at the battlefield that matched Bámaca's physical description.

However, Santiago Cabrero Lopez, a Mayan guerilla who escaped from army detention, told Harbury in the spring of 1993 that Bámaca was being held and tortured by government officials. Since then, he has testified before the Organization of American States and the United Nations. In addition, two government-led exhumations failed to produce Bámaca's body. The most recent exhumation was held this past Thursday and attended by both a forensics team and an unofficial five-person U.S. delegation, which included Harbury's cousin Bernard Harcourt, J.D. '95, LL.M. '95 and HLS Human Rights Program Projects Director Makau Mutua.

In an interview with the RECORD, Harbury said she ended her fast because she "had a chance to talk to people at high levels in the White House" and also because she "was in a better position" after last week's 60 Minutes broadcast about her case. The 60 Minutes team discovered a CIA memo that described Bámaca being captured alive and sustaining only minor injuries. Harbury will meet with National Security Advisor Anthony Lake this week, and will return to Guatemala to await filing criminal charges against a Guatemalan colonel, a captain, two majors, and four intelligence specialists whom she implicates in Bámaca's disappearance.

"I've been in and out of Guatemala for a decade," said Harbury. "From 1985 to 1986 I averaged one dead friend per week." While on her hunger strike, during which she used only a plastic tarp for cover and drank electrolyte fluids, Harbury said she "had to think of all these other people who have been killed and all of the people who are being killed right now."

"For a long time there were strong insinuations from the Guatemalan government that I was really imagining all of this and that [Bámaca] must be dead," said Harbury. "The tone was very much as though there was nothing to be done. [Guatemalan officials] refused to attach any consequences if he should be assassinated in the face of all this international attention, and in the face of all the facts that we do have."

Formerly with Texas Rural Legal Aid, Harbury met Bámaca while researching Guatemala's military situation both for her Mayan refugee clients

and her book on Mayan rebels. After spending six months with Bámaca's unit in the western Guatemalan mountains, and later meeting again in Mexico City, the two married in Texas in 1991. Bámaca had returned to Guatemala in the beginning of 1992 to reassume his position in the Guatemalan National Revolutionary Union (UNRG), a rebel umbrella organization, when he disappeared.

Harcourt said neither U.S. Ambassador Marilyn McAfee nor the State Department has publicly announced to the Guatemalan government that resolving Harbury's case is a priority. The U.S. stonewalling might stem from the fact that the Guatemalan government and the UNGR are now engaged in peace negotiations that could end the three-decade-long civil war, said Harcourt.

"One of the competing interests in Guatemala is to try and keep the peace process on track between the military and the UNGR," said Harcourt. "So it seems as if the human rights cases are taking second place to the peace process."

"All along the U.S. government told [Harbury] that they had no information about Bámaca until the 60 Minutes piece," said Harcourt. "It seems to indicate that they had information and were not prepared to divulge it, and that only because she was on her 32nd day of the hunger strike that they were ready to give it up."

Mutua said he found this U.S. policy supporting the Guatemalan government "inexplicable" in light of "the impunity with which its military continues to commit massive violations against the native population," which constitutes about 70 percent of the country's population.

"It is a very sad commentary on U.S. foreign policy that both Democratic and Republican administrations except for Jimmy Carter's have not exerted pressure on the Guatemalan military to respect human rights," said Mutua.

Indeed, despite the human rights accord reached by both sides in March, the killings in Guatemala have only escalated, said Harbury.

"The Guatemalan government thinks that its money from the international community — specifically the U.S. — in the form of aid and trade privileges will not be terminated during the peace process," she said. "They feel that they are safe and sound now and can wipe out the opposition."

"I've got to stop this right now and I don't care what this will cost me."

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## Greenberg Leaving HLS

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very traditional school."

Students who have known Greenberg attest to the tremendous influence he had on their lives and career paths. Jennifer Gordon '92, who started a workers' rights organization upon graduation and is currently executive director of the Workplace Project, recalls choosing Harvard Law School over NYU after a meeting with Greenberg. "I remember thinking, 'If he's here, then I can go to this place.' Once I got to Harvard, he helped keep me sane," she said.

"His office has been a sanctuary for me," said Tanya Greene '95. "He helped me maintain my faith that people can survive here for awhile with their souls intact."

Greenberg's departure will create a gap on campus, according to his colleagues. Stacey DeBroff, the public interest adviser, said, "Committed public interest students and all of us at OPIA

will miss Danny — from his eloquent and inspiring speeches to his terrible jokes to the strength of his conviction of both what constitutes public interest work and the importance of undertaking that work."

Patricia Keane of the clinical office said the staff would miss Greenberg because "he's wonderful to work with, for a lot of reasons. He's good at getting people to focus, and he has a great sense of humor."

HLS faculty members expressed confidence in Greenberg's administrative abilities and in his capacity to lead a troubled Legal Aid Society. "He's able to see the whole as well as the parts, and that makes him very successful as an administrator," said Bellow. "I also think he will open up to the Legal Aid Society new ways of working with law schools." Others noted Greenberg's ability to maintain warm and constructive working relations with colleagues who had a wide variety of political views and personality types.

## Ames Team Disqualified

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participate in one fewer argument. To compensate for the lost points, brief scores for the affected students are doubled.

Kreiger said the rules gave the committee no discretion in dealing with the arguments and scores of opposing teams. She added that BSA members contacted the affected opponents as soon as possible after the hearing.

Brant Bishop '96, whose team lost an opportunity to argue against the disqualified team, said he understood the BSA ruling but thought the results were unfair to him and his partner David Marglin '96.

"Last year in the first year Ames we had done really well in the oral argument," he said. "We had looked forward to oral arguments as something that would boost our score. We were kind of disappointed with the score on our briefs

and that ended up getting doubled, so we sort of ended up getting it from both ends.

"[BSA] handled it well, but I would have liked to have seen a different outcome."

Kreiger said, "The whole thing was just an unfortunate situation. I feel very bad for everyone that was affected, but we did the best we could to be fair."

Minor rules violations are fairly common in Qualifying Round competition, Kreiger added. She said she has received more than 20 protests over the course of this year's competition.

"There are always protests about any number of minor violations," she said. "The rules specify the number of spaces per line and the number of lines per brief."

Twenty-seven teams competed in the qualifying round, which concluded this week. Results are expected to be announced early next week. Four teams will advance to next spring's semifinals.

## Ito Responds to 1L Memos

continued from AMES, page 1

ing the student memos at the Nov. 7 hearing, Ito sent Nesson a letter in which he said he planned to read the memos before the hearing and was indebted for the "valuable assistance" he anticipated they would provide.

"My brief initial review indicates your students' memos will provide me with both a precise legal analysis and a cogent policy discussion untainted by the heat of the trial arena or the demands of the competitive commercial news media," Ito wrote.

Nesson said he was pleased with Ito's televised remarks about the memos.

"I was very grateful for his comments," Nesson said. "He couldn't have been more gracious in acknowledging our

students' work, so I was proud of what our students had done and proud that it had been well-received."

Despite the generous praise by Ito, however, one 1L whose memo was selected for the judge reacted with perhaps unprecedented modesty.



Charles Nesson '63

"It was a humbling experience to be involved in such a high profile case, still being very naive in the law and a relative beginner at legal research," said Gregory Gottesman '97, who was interviewed on "Entertainment Tonight" after his team's memo was submitted.

"It was an honor to have the memo selected, and although I don't think we had necessarily a direct impact on Ito's decision, it was exciting to play a small role in a case of this magnitude."

## FOOD - O - RAMA

### Big Food, Italian Style



By Ted Cohen '95 and Jonathan Goldstein '95

**T**HERE'S something encouraging about walking into an Italian restaurant and seeing a chef sitting in front of a pasta machine, pumping out fresh strands of linguine and spaghetti. If nothing else, it tells you that you're not going to be getting pasta that was either bought elsewhere or, even worse, prepared hours or days earlier and left to dry in a refrigerator. At **La Groceria** (853 Main St., Central Square, (617) 547-9258), that difference is apparent with nearly every bite. Though the extra-long menu features everything from shellfish to veal, it is really the pasta you come here to enjoy. And it's worth the trip.

The restaurant is divided into a small upstairs area, a larger main floor dining room, and a moderately comfortable bar area. The dining room suffers from a slightly institutional feel: a bit too bright, too loud, and somehow cold. The tables are of the plastic-over-tablecloth variety (which always manages to detract from the class of a restaurant); the lighting is a little too bright; and the mostly-pink color scheme is strangely cutesy for a place that serves portions fit for a lumberjack. All of which is especially regretful given that the service is of high quality: friendly, quick, and accurate. With a few atmospheric adjustments, La Groceria could stand as one the area's best values in an evening out.

We began with a generous plate of assorted homemade antipasti (\$8.95). Most of the items were standards: marinated red peppers, salami, battered and fried artichokes, cauliflower, and the like, all of which was tasty, if a little insipid. Of special interest was a slice of frittata, which could have stood on its own as an appetizer. Alongside of all this, we sampled the Garlic Bread Groceria (\$2.95), a racier version of bruschetta topped with chopped tomatoes, sweet red onions, fen-

**Though the extra-long menu features everything from shellfish to veal, it is really the pasta you come here to enjoy. And it's worth the trip.**

nel seeds, and a drizzle of olive oil. Although the tomato and onion mixture was fresh and lively, the bread failed the cardinal rule of bruschetta: It wasn't stale, so that when the juices soaked in, it became soggy rather than chewy.

Our appetites already beginning to wane, we plunged ahead into the entrées. Luckily, several of the pasta dishes are available in full or half portions, allowing the diner to sample a wider range of tastes. A plate of black pepper linguine with vongole (\$11.95) was delicious. The cracked peppercorns gave an added boost to the pasta, which had been sautéed with minced clams, garlic, onions, and tomatoes in white wine with basil. Another surprising — and authoritative — twist to this dish was the addition of mint. (The single stuffed clam casino that perched on top of the pasta, however, seemed like it had fallen off another dish onto the plate.) Also excellent was a special of pennette with scallops, lobster, leeks, roasted peppers, and fresh fennel and basil in a tomato-inflected cream sauce (\$12.95). The addition of fresh fennel and leeks turned a good seafood pasta into a rich and complex one.

Other promising pasta entrees include a lobster and crab meat ravioli with sautéed asparagus and artichokes in a creamy lobster sauce (\$13.95), angel hair al frutti di mare "primavera" (\$11.95), served with sautéed shellfish and vegetables. For those of you who don't eat seafood, the kitchen turns out both by-the-book standards like spaghetti carbonara (with eggs, pancetta, and parmesan cheese) and inspired interpretations of classics like tortelloni al forno, large discs of pasta filled with prosciutto, shitake, and porcini and baked in a casserole of ground veal, onions, parmesan, and bread crumbs. In sum, it's hard to go wrong with La Groceria's pasta offerings.

Not that the veal and chicken are anything to sniff at. In fact, La Groceria's assortment of pollo arrosto (that's roast chicken) are uniformly excellent. Our tender half-bird (\$11.95) came under an addictive heap of green and red peppers marinated in vinegar, good black olives, artichokes, capers, and sliced mushrooms. The sharp tang of the peppers gives exactly the right "oomph!" to the deliciously fatty skin. Another version comes in a lemon-caper sauce.

If veal's your bag (as the inimitable Rip Torn noted on a recent "Larry Sanders Show," "I know it's raised in a cage and all that, but it tastes so damn good") you might try the powerful Vitello "De Plume" (\$12.95) stuffed with prosciutto, fontina cheese, and fresh rosemary in a sauce fortified with Madeira wine. This is stick-to-the-ribs winter food, Italian-American style. There's also a hefty loin-cut veal chop which is prepared Tuscan style, redolent of rosemary and garlic, served over a sauce of pan drippings finished with port (\$17.95). La Groceria also serves a variety of seafood standards such as shrimp scampi (\$15.95) and seafood "fra diavolo" (\$16.95). All the entrees are huge and come with a generous — if pre-prepared and over-refrigerated — salad.

As for dessert, there are various incarnations of that creation unique to Italian American restaurants, the "tartufo," which is sort of like an exotic version of the classic dipped cone: Here, the praline pecan or chocolate hazelnut ice cream is covered in hardened dark chocolate or white chocolate, respectively (\$3.95). The kitchen is rightfully proud of its homemade tiramisu, which is also heavily Americanized: more like a cheesecake than mousse, and missing that one-two punch of espresso and alcohol, La Groceria's version is nonetheless memorable (\$4.95).

Of course, you may just want to enjoy an excellent espresso or cappuccino before having your massive coronary.

**RATING: ☆☆1/2**

**GIVE  
ANOTHER CHANCE.  
GIVE BLOOD.**



**American Red Cross**



## Harvard Law RECORD

Founded in 1946

Greg Stohr  
Editor-In-Chief

### The Angry, Ignorant Voter

If the right to vote were a privilege that had to be earned through thoughtful consideration of candidates and issues, the American people would have forfeited the ballot by now. The public's self-righteous "anger" at Washington has become a smokescreen for willful voter ignorance about the choices we make at the polls.

Through little or no merit of their own, the Republicans are this year's lucky beneficiaries of the public's ignorance. The Republicans capitalized on voter desire for simple solutions. In their "Contract with America," Republican House candidates promised a balanced budget amendment without admitting that balancing the budget will require cutting deeply into Social Security and Medicare. They vowed to help "take back our streets" without acknowledging the relatively insignificant nature of the federal government's jurisdiction over violent crime. They called for a vote on term limits, as if depriving voters of a choice will improve government.

Two years ago, it was Bill Clinton who benefited from voter mindlessness. Voters, Clinton discovered, were happy to learn that he could simultaneously increase domestic spending, cut middle-class taxes, and control the budget deficit. Like this year's Republicans, Clinton won in 1992 by promising "change" — as if any "change" could only be for the better.

The media hype about the "angry voter" has only fueled the voters' refusal to educate themselves. Convinced that they have reason to be mad at Washington, voters reject everything associated with the city, rather than make the effort to preserve what — and who — is valuable in our government.

The Republicans are wrong if they believe they have any meaningful mandate. Polls conducted shortly before last Tuesday's vote showed that the average voter had no clue what he or she had any reason to be so angry about. Two out of three registered voters in conservative Orange County, California could not name any member of the county's six-person congressional delegation. Nearly half of Speaker Tom Foley's Washington state district did not know that if Foley lost (which he did), the district would also lose the speakership (which it did). Before the vote, four out of ten Americans thought the Republican Party already controlled Congress. Even after voting, more than a quarter of those exiting the polls admitted they did not know enough to cast their ballot.

Voter simple-mindedness might be amusing if it were not so instrumental in the decline of American government. Because of ignorance and selfishness, voters routinely call for a balanced budget, yet they reject candidates who advocate the steps necessary to actually balance it. Thus, Maine Senate candidate Tom Andrews, a Democrat, was hurt by his refusal to fight the closure of military bases in his state. Pennsylvania Senate candidate Rick Santorum, a Republican, dropped 10 points in the polls shortly after he made the eminently reasonable suggestion that the Social Security retirement age gradually be raised from 65 to 70 to reflect longer life spans.

Buried within the simplistic Republican rhetoric are some promising ideas: restoring incentives in the tax code, restructuring government programs to take better advantage of market forces and encourage individual responsibility, and reforming litigation laws to discourage frivolous lawsuits. But Republicans should work to educate voters about these issues, not validate their angry ignorance. If the Republicans want to start acting like leaders, they will redirect the public rage to the proper source: those who attempt to impose simple-minded solutions on complex problems.

- Stohr

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"Congress shall make no law...abridging the freedom of speech, or of the press;..."

—First Amendment, US Constitution

### • Letters •

### Abortion Position Mischaracterized

We are writing this in order to better articulate our reasons for circulating the anti-abortion tuition rebate petition. We feel our position was mischaracterized by Maria Politis' editorial [RECORD, October 28]. Far from being a mere "tit-for-tat argument," our equal protection approach enables us to present two assertions that we feel are central to the abortion issue.

First, we have been accused of opening the door to censorship of student organizations with which some students may disagree. We have not opened the floodgates. The University opened this door with regard to abortion, and, under an equal protection analysis, either all students should be able to take advantage of an abortion-related tuition rebate, or the door should be closed altogether. We trust the University will see the potential dangers of this "small"

exemption and revoke the tuition rebate. Ms. Politis [95] would have us simply state our disagreement with the refund. We however, believe our strategy will prove more productive in closing the door than simply complaining that the door is open.

Second, our strategy allowed us to inform people that the pro-choice position has a moral component. Our stand on abortion is based on more than a belief in personal liberty and privacy. We have valid moral concerns about the health, safety, and lives of women in a society that denies them legal abortion. Anti-choicers do not own all the moral ground on this issue.

A recent development highlighted our pro-choice moral concerns. According to the Adviser, the Society for Law, Life, and Religion sponsored a pro-life panel at which Fr. Thomas Carleton was a speaker. Fr. Carleton has

participated in many Boston-area clinic blockades, including one in which he chained himself to a van with a Kryptonite bicycle lock around his neck. He also signed Paul Hill's petition declaring "the justice of taking all godly action necessary to defend human life including the use of force." Paul Hill was recently convicted of first-degree murder and attempted murder in the shooting of a Pensacola abortion provider, clinic escort, and his wife.

We believe that the strength of our strategy is demonstrated by the support we have received from almost 200 students. Contrary to Maria Politis' suggestion, there are more than three students who support our approach.

Catherine Caporusso '95  
Cindy Chandler '95  
Kim Christensen '95  
November 15, 1994

### Editorial Shows Irony Lost on Politis

Maria Politis' editorial "The Right Cause, the Wrong Tactic" [RECORD, October 28] amounts to a sanctimonious insistence that the only permissible rhetoric is that stunted variety to be found in lawyer's briefs and judicial opinions, plodding "simply and directly" ahead, saying what it means with a literalness utterly devoid of irony and wit. So far, the controversy in question seems to amount to this: Three students have claimed, by way of some sort of equal-protection argument, that either the University Health Services abortion rebate should be discontinued or the Law School's funding for the Society for Law, Life, and Religion ("SLLR") should be subject to a similar rebate, and Politis rejoins that the equation of abortion-referal funding with anti-abortion speech funding is fallacious.

Rather than tell us where the fallacy lies, however, Politis is content to leave that mysterious statement unexplained and goes on to catalog the horrors that would ensue if the administration were to act on the second suggestion — punishment of an organiza-

tion for its political speech, impoverishment of other student groups as people rushed to get their money back from all those they disliked, administrative chaos, and so on. Apparently the contemplation of this apocalyptic vision prevented her from considering that (1) the administration would never put itself in this predicament, and (2) perhaps the three students know perfectly well that a rebate from a student organization's budget is neither a realistic nor a desirable goal. But if one is willing to make the prodigious effort of imagination required to suppose these two things, it is not too difficult to conclude that the three students have hit on a rather effective rhetorical strategy for making clear precisely that equivalence of speech rights and abortion rights which Politis, without supporting argument, denies.

SLLR's support of the abortion rebate is simply inconsistent with the non-consensual approach to student-organization funding which removes SLLR's budget from the reach of its detractors, and Politis' righteous indignation at a wholly illusory threat to SLLR's speech only shows

how far she is from the point, since her basic argument (that shifting funds from other sources to subsidize an "unpopular" organization is an "uncomfortable prospect") applies even more obviously to students' exercise of the abortion right.

Civil disobedience has a certain nobility, sometimes even a moral grandeur, but Harvard Law School is not civil society. Students pay their tuition and fees voluntarily, and in doing so they inevitably embrace the notion that money attributable to them will be used for purposes which they find silly, wasteful, or abhorrent. If one's abhorrence is too great to bear, rather than petulantly attempting to exalt one's own morals above everyone else's and grasping at exemptions from standard funding practices, it would perhaps be in better taste to transfer to another school with less diabolical policies. The slippery slope Politis fears is probably real, but it will not begin in the future, with the chilling of SLLR's speech — it began already, with the abortion rebate.

Jeff Duffy '95  
November 15, 1994

### Why is Everyone So Concerned About NY?

Why does Markus Hartmann [96] feel the need for such angry and humorless venting? Why does he think that what New Yorkers do and think matters so?

No deeply dyed New Yorker would take the time to write about the shortcomings of Boston or Chicago or Kalamazoo, at least not

without finding something amusing to say. New Yorkers occasionally bash California, but, after all, they took the Dodgers, the Giants, and the film industry from us.

If Mr. Hartmann is so rankled by the lack of "objective" explanation for the attractive power of New York, or by our failure to

acknowledge the "joys of living in the rest of America," perhaps he should reflect on why it concerns him at all. The New Yorkers I know best find it perplexing and amusing that "the rest of America" just can't stand that we live as they do. Why does it matter to them so?

Mark Falcone  
November 9, 1994

### Dickerson's Column Enlightening, Warm

The temptation to write a letter to the RECORD is something I've resisted since my graduation. (I occasionally gave in while enrolled.) It has been difficult. Years of second-hand exposure to the mounting absurdities and often puerile animosities of HLS life can cause even the most open-minded alumnus to cringe and vow a stinging rebuke. Some of the silliness I've watched from afar is unmatched by anything in my experience since... well, since I was a student. Still, assuming the role of the curmudgeonly alum requires genuine motivation, and quickly waning

indignation or befuddlement is usually not enough to supply it.

At last I've found a better reason to write. It strikes me as worth mentioning that Ms. Debra Dickerson is the finest RECORD columnist I've read since I left the school, and I've read them all. Her short essays — that's really what they are — consistently display wit, warmth, and shrewd insight into the human condition. Stories from her personal life appear not as solipsistic sagas, but as remarkably perceptive extrapolations from the particular to the general. And unlike several

of her notorious predecessors, Dickerson is never salacious merely out of some misconceived notion of the avant-garde. What's best is that when she has an argument to make, she does so both feistily and cogently; the reader isn't presented with a formless rant.

I'm not suggesting that no other good writers have appeared in your pages; many have. But no others have prompted me to start each issue in the middle, and few have so regularly left me both thinking hard and smiling.

Joseph M. Ramirez '85  
October 28, 1994

# Democrats Need to Find the Light

By Lewis Polishook '95

The day after the election, I awoke to find the sun still shining, leaves still falling from the trees, and WBZ radio still cranking out 50,000 watts of murders in Charlestown and fires in Chelsea. Our constitutional system is strong enough to withstand dramatic shifts in political power without fundamental changes in American society. But this stability provides little consolation for the losers in the process. Unless the Democrats want to spend the next 40 years in the wilderness, they must determine why the electorate detests them and President Clinton.

Last week's Economist suggested the Democrats' troubles had to do with "the three Gs: God, gays and guns." Although important in the South and West (as my friend Dan likes to say, people need assault rifles because "you never know when you will see 300 rabbits lined up in a row"), I doubt that such issues were sufficient to produce Republican victories in Senate races in Michigan, Minnesota, Pennsylvania, and Ohio. To understand these results, one must instead look to deeper issues. Two factors — a perceived decline in morality in America, and the limited impact of the economic recovery on ordinary people — make voters less willing to trust government to solve social ills and increasingly protective of their own government entitlements.

Conservatives and liberals agree that America has lost its sense of moral direction and purpose. This is largely because the Cold War is over, and no longer dominates our political culture.

But domestic changes have also contributed to moral malaise. Conservatives object to the decline and systematic exclusion of organized religion from the public sphere, toleration of sexual promiscuity (despite a recent study indicating that Americans are predominantly monogamous), and acceptance of alternative lifestyles. Liberals miss the sense of purpose they shared during the early struggle for civil rights, and bemoan the unbridled greed of the 1980s. Minority groups believe efforts to eradicate institutionalized racism have failed miserably, while many ethnic whites complain that affirmative action affords minorities an unfair advantage.

Such attitudes have led to increased polarization

in American society. Moreover, religious white lower- and lower-middle class working males, who may favor such traditional liberal goals as supporting organized labor and controlling the excesses of "big business," now vote Republican.

Many people are also dissatisfied with economic conditions. Although the economy is improving, for people with only a high school education, and even for some college graduates, the outlook is bleak. Such individuals tend to have low-paying, uninteresting and temporary jobs, which offer minimal benefits or opportunities for advancement. Perhaps most disturbing, most people of our generation are not better off than our parents.

It is unclear what government can do about such problems: they are results of increased global trade, which raises living standards worldwide, but also depresses wages in wealthier countries. Similarly, the rise in temporary employment is necessitated by a growing need for flexibility in labor markets. But try this explanation on people suffering from the downside of our prosperity.

It may be that government can do things to attempt to — dare I use the word — redistribute some of the benefits of economic growth to those who suffer because of it. Yet Americans have seen inequality increase and mobility decrease over the last 30 years. The underclass seems increasingly permanent, and even some academics contend that efforts to help such people merely waste money. This attitude, combined with the disintegration of social values, has led voters to be selfish. If government cannot improve the economy, and those it tries to help simply end up worse off, why do anything? Republicans do not oppose government spending on middle class citizens through Social Security and Medicare; they merely oppose redistrib-

uting these people's money to helping the poor. Newly conservative voters can argue with some force that government spending on the middle class works, whereas Democratic education and welfare programs for the inner-city underclass fail.

So, what can Democrats do? This defeat may not be as harmful for Democrats as it seems. Many of President Clinton's reform efforts were blocked by Republicans and conservative Democrats in the previous Congress: now at least he can blame congressional Republicans for his defeats. The party's first priority should be to put an end to the Republican monopoly on "family values" by recognizing that the decline of familial and social cohesion are not acceptable. Efforts by members of both parties to go after deadbeat dads are a good first step in this direction.

Democrats also might be sensitive to the reality that most Americans find the prospect of unrestricted abortion as unappealing as the most restrictive "pro-life" statutes, and find room for reasonable accommodation between these two extremes.

Democrats also ought to encourage market-oriented reforms of government programs, while continuing to emphasize the residual role government must play in providing a basic safety net. The federal government could give money to the states and allow them to experiment with their own social welfare legislation.

Such a strategy, combined with a continued commitment to individual liberties and

social responsibility, might help Democrats recapture the few seats they need to regain control of Congress in 1996. It certainly would give the party a far more noble and realistic purpose than it currently possesses.

**This defeat may not be as harmful for Democrats as it seems. Many of President Clinton's reform efforts were blocked by Republicans and conservative Democrats in the previous Congress: Now at least he can blame congressional Republicans for his defeats.**

## • Letters (cont.) •

### Let Murray and Nesson Do Their Job

This letter is in response to the letter from Joshua Sternoff '95 that characterized the first year Introduction to Lawyering class as being a "fanciful trip through the impenetrable world of Prof. Nesson's cyberbrain."

As a 1L, I want to make it clear that I (and virtually all of the classmates I have discussed this with) stand with Prof. Charles Nesson [63] and trust him and Prof. Peter Murray [67] to give us the proper level of guidance in preparing us to become lawyers. I have, in the first five weeks, written two briefs, a legal memorandum, researched for hours learning both the manual and computerized research systems, and have been catapulted into the world of electronic technology. I had avoided learning to use or work with computers for my last five years in the Army although everyone around me was learning to use the systems that the Army had purchased. Prof. Nesson and Prof. Murray, by requiring computer use, forced me

past the barrier of computer-phobia and it has enriched my learning process and my quality of life.

There is no doubt that any new system of teaching is going to have fits and starts, but I think it patently unfair to determine from a few minor problems that this course is useless or that it has been effectively changed from the basic skills course that it has always been. Mr. Sternoff alleges that it is "apparent that the program is suffering from a lack of focus from the top." Apparent to whom? Does Mr. Sternoff sit through the ITL classes or work with the 1Ls as we dig through our research requirements? If the answer to these questions is yes, then I could sure use his help because it isn't apparent to me that this course is suffering from a lack of focus anywhere. My small group instructor is outstanding in his devotion to our needs, his knowledge, and his willingness to work ridiculously long hours to help us. The

1Ls that I have worked with are motivated and also work hard and the professors (Nesson and Murray) go out of their way each class to provide us with the intellectual skills to tie our basic skills together into legally effective arguments. If that isn't a basic skills course, I would sure like to be enlightened.

Although my experience is significantly less than Mr. Sternoff's in terms of legal training, I am fairly certain that Prof. Nesson's and Murray's experience dwarfs Mr. Sternoff's. It is one thing to spread off-the-cuff allegations with no evidentiary basis to the RECORD, but quite another to be furthering the legal education of incoming law students at Harvard and have your efforts maligned. If Mr. Sternoff has something with more substance to complain about in terms of ITL then out with it; otherwise let Prof. Nesson do his job.

Kelly Whiting '97  
November 1, 1994

### Don't Let ITL Changes Make You Nervous

Have the 1Ls been hijacked into cyberspace? There has been a great deal of commentary about this year's ITL program — a substantial portion of which has suggested that the first-year class is not developing needed research and writing skills, but rather is becoming road-kill on the information superhighway.

Much of this discussion has created unnecessary angst among many first years. If you are a 1L, the bottom line is that you are getting the research and writing skills you need — and more. Misperceptions about what has happened in previous years seem to be fueling nervousness. For example, my section wrote one major research memo and drafted a few briefs (some in teams) last year. The writing curriculum this year is substantially similar, except that a practice exam has been consciously thrown in where a brief was last year — a trade many people will probably appreciate in January.

There also appears to

be a lot of worry about the large section meetings. Perhaps it would be helpful to know that for my section last year, there was no large ITL lecture. (Other sections who had lectures saw similar content to this year.) Anything you gain out of these meetings is, in one respect, an extra. It can be a valuable extra. If large section meetings have angered you, provoked you, or forced you to ask what you're learning (if anything), those meetings have succeeded. They're making you move beyond a strictly pre-professional view of research, writing, and lawyering to confront and think about, hopefully, larger questions. That's why you're here. If you find the purpose hopelessly confusing, realize that much of the first year curriculum is about resolving confusion.

Finally, I would point out that more than a few students arrived here last year surprised with how behind HLS's curriculum seemed to be in teaching teamwork and in utilizing

technology. This year's ITL has been a first step in the right direction. Sure, it is easy to carp that having an E-mail account in 1994 is no big deal — it's not. However, striving towards learning to manipulate shared legal work-product and disseminate ideas electronically, making use of advances in networks, software, and access, is important. You are the first class that has headed in that direction. Relish that.

Do not let your worries about ITL interfere with learning necessary lawyering, and thinking, skills. No one is fully comfortable researching and writing briefs after two months of law school. The seemingly incomprehensible purposes of fall course methodologies are often likewise disconcerting. Do not intensify these natural anxieties with ill-founded fears that you are somehow missing out on something. You're not.

Kenneth L. Horton '96  
November 4, 1994

### Term Limits Not the Proper Solution

I enjoyed your editorial [in the RECORD dated] Friday, October 7, concerning term limits. I am opposed to term limits and believe that the only complete solution, by constitutional amendment, is one six-year term for president and vice-president and staggered six-year terms for all congressmen. Without this, the country may be

doomed.

The high cost of campaigning, compared to that envisioned by the signers of the Constitution, makes every politician a whore. The day of election is the day to start fund-raising for the next election. Those interests which are to be supervised become the principal source for funds. Pork becomes the mother's milk

of financial support and votes. The reelection process itself now contaminates and defeats our democracy.

I would support term limits as a compromise, but it is not the ultimate solution.

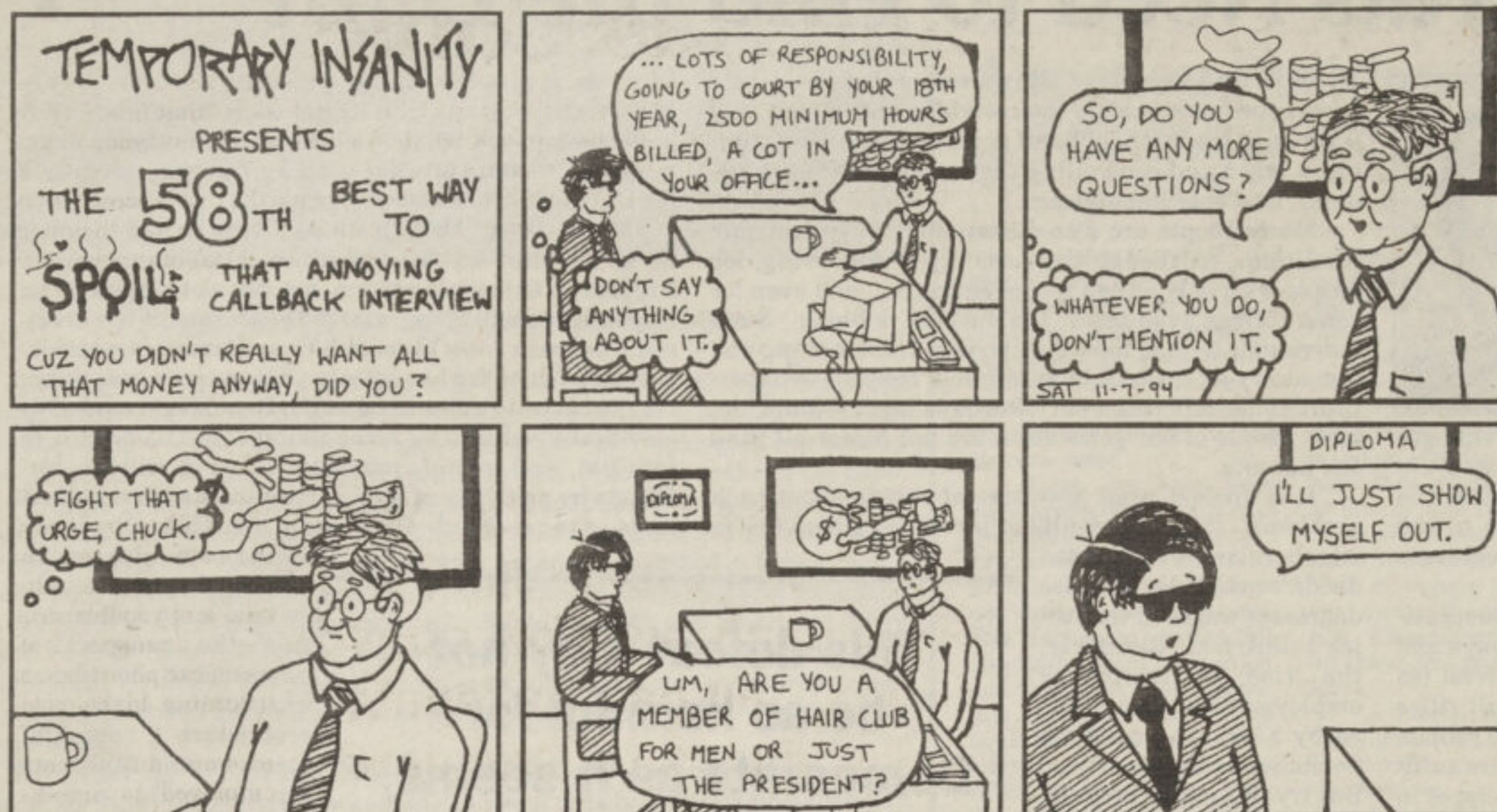
Jesse H. Oppenheimer '42  
October 28, 1994

**Write to  
the  
RECORD!**



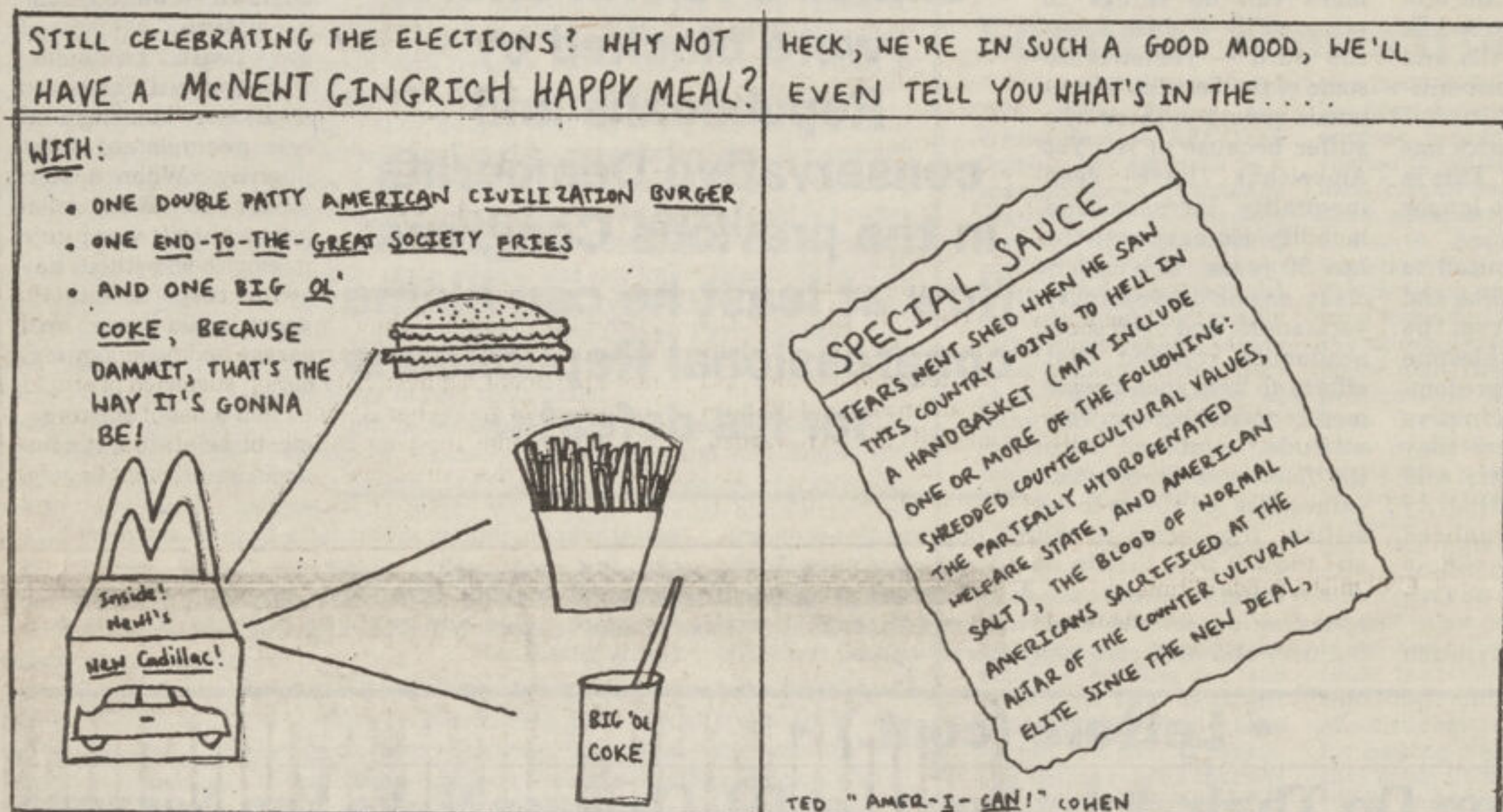
## Temporary Insanity

By Sheila Tuller



## Res Ipsa Loquitur

By Ted Cohen

Politically Incorrect  
Guide to ^Legal Terminology

By Sean Kanuck &amp; Matthew Queler

|  |                                                                                                                                                                                                                                                                                 |
|--|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|  | <p><u>sic utere tuo ut alienum non laedas: a medical disorder usually requiring a hysterectomy in Roman times, but now treatable with prescriptive easements</u></p> <p><u>amortization: the process of seduction</u></p> <p><u>lay fee: the proceeds from prostitution</u></p> |
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## CALENDAR

## Keep Music Evil

By Jeff Bucholtz

If you resist the temptation to bail out early for Thanksgiving, you'll have something to give thanks for: **Live and Fatima Mansions** at the Orpheum (931-2000) on Tuesday (11/22). Four years ago, Live made the big jump from York, Pennsylvania to the coveted opening slot on MTV's 120 Minutes alternative rock tour. But rather than being awed by the presence of luminaries such as Big Audio Dynamite's Mick Jones and Public Image Limited's John Lydon, Live blew B.A.D.'s lip-sync scam and Lydon's more-rotten-than-thou sneer off the stage. *Throwing Copper*, Live's most recent disc, is one of the year's best, both harder and more intelligent than their debut.

Ireland's Fatima Mansions have upheld their "Keep Music Evil" motto with in-your-face rants like the not-exactly-elegiac "Blues for Ceausescu" and their version of REM's "Shiny Happy People," possibly the most utterly twisted and wonderful cover ever recorded. Their biting new single, "The Loyaliser," continues in the same blistering vein.

For those picking up the RECORD on Thursday, tonight (11/17) brings the jagged, furious metal grooves of **Prong** to the Middle East (491-0576). *Cleansing*, this New York trio's fifth album, is their heaviest and most polished to date, and if you don't bring earplugs, the show may well cleanse your brain. Opening are **Clutch**, a Maryland metal band with a powerful sound and a great sense of humor, and **Drown**, who lean more towards the guitar end of the industrial metal spectrum.

A slightly different musical option for tonight is **Bjorn Again**, who are — I'm not making this up — an ABBA tribute band. If you're worried that Bjorn Again disrespect the profoundly influential Swedes, don't; they apparently take ABBA's saccharine, sub-fluent vapid pop as seriously as ABBA did. At Axis (262-2437) at 7 p.m.

Friday (11/18) truly offers something for everyone. It would just be way too easy to make fun of Steve Perry, so I'll restrain myself. The ex-Journey frontman plays at the Orpheum with **Sass Jordan**. Ex-Tribe singer **Janet LaValley** debuts her new band at the Paradise (351-2526), with another local hero, ex-Dumptruck **Kevin Salem**, opening with his new rootsy, bluesy band.

Also on Friday, punk legends **NoFX** play an early show at Axis, and hip-hop/blues slacker **G.Love** brings his **Special Sauce** to the Middle East. You might not need earplugs for this one, but I'd stay a safe distance away from the stage.

Local industrialists **Big Catholic Guilt** have eons more talent than most industrial groups that have inked major-label deals in the wake of Ministry and Nine-Inch Nails' success, but their loss is our gain, since they're still playing a hospitable little joint like the Rat (536-2750) on Saturday (11/19).

The hugely successful House of Blues celebrates its second anniversary on Wednesday (11/23) with **Dr. John** and other special guests. Call 491-BLUES for info, since this will be packed.

# A Tort Whose Time Has Come

By Debra Dickerson '95

RECORD Columnist

**I**N discussing the recent elections with a prof, as might be expected, we started out bemoaning our national descent into the political Dark Ages. Then a funny thing happened. Suddenly giddy with the opportunity provided us to join the political mainstream, we spent a few moments trying to out-conservative each other (it felt very naughty — like skinny-dipping or cross-dressing). While we are both more or less liberal Democrats (though I suppose names will now be taken of those who still dare infect the polity with such heresy), we both admitted to our own latent conservatism in some areas.

He pointed out that the belief in the dignity and basic goodness of all human beings is readily disproved by simply driving or walking through Harvard Square. People push, shove, intimidate, pick pockets, cut off, cuss out, and just plain act up whenever they can get away with it. (Don't get me started on street "performers"; who was it that issued those losers amplifiers?)

The bigger problem, I responded, is neither conscious venality nor petty scheming: It's stupidity. You can't fix stupid, you can't outgrow stupid, you can't allocate funds to eradicate stupid. If those folks could change, they wouldn't be stupid. Stupidity is the real problem facing America today; it's permanent, impervious to improvement, and, worst of all, multiplies (follow a dolt home and see if another doofus doesn't open the door). But fear not, there's a solution. Stupidity may be here to stay, but that doesn't mean we can't act.

The recent elections have inspired me. In light of the new, righteous spirit of punitiveness and moral judgment sweeping America, I propose that stupidity be made actionable. In Nichiren Shoshu Buddhism, stupidity is a sin. I think this is a good rule and, more important, we don't want to let it be said that the Buddhists are tougher on stupidity than we are. If we put our minds to it, we can do better than the mere disapproval and rebirth as Rush Limbaugh's seat cushion that those bell-ringing pacifists can muster; we can make the stupid pay their

debt to society right now. Just as our forefathers would have flogged the evil spirit out of an epileptic or tied a dung-smeared chicken feather to the forehead of an asthma sufferer, let's get busy prosecuting the stupid and return to America's simple, virtuous past.

As the elections prove, America is tired of hearing about rights. I have been baffled by the right's seemingly nonsensical harping on obligations over rights; were they suggesting that those who

pressed their rights were draft and tax-dodgers, criminals, traitors? Failing some antisocial behavior, I always interpreted this as just another reactionary ploy to change the subject. But that was before; now I get it. It's insufficient merely to cease hearing talk of people's rights — from now on, we'll be turning the tables and the government will be going after citizens to enforce their obligations to the nation. Since the government has always done this, clearly we'll have to invent new obligations to counterbalance the new rights created by the bad old, discarded left. I propose non-stupidity as the first new obligation.

Now, this may sound extreme to some of you. (If it does, keep it to yourself or you'll end up on The List.) But just think of how many of society's ills are stupidity-related. I had an undergraduate professor who'd written a hilarious article called "The Right to be Stupid in America." It focused on lawsuits filed, and won, by truly stupid people. I still remember the dimwit who tried to siphon his battery acid with a drinking straw, the criminals who sued the owner's of premises they'd hurt themselves trying to burgle, the hamfisted handyman who fell from a ladder he'd placed in a melting snowbank on an unseasonably warm day. Not only should such numskulls not be rewarded, they should be punished.

The next time the person in front of you in the super-

market line waits til the clerk says "that'll be 247.24, please" to look for their checkbook, show your virtue: Make a citizen's arrest.

When that next moron reads the movie screen aloud and chortles at his own wit as if only he had the magic decoder glasses which made the entertaining missive visible, you have permission to fire (thank God gun control is dead).

After that idiot tailgates at high speed in a blinding rainstorm and, inevitably, rear-ends you — deck him. Justifiable fisticuffs. If he (and, given facts involving stu-

pidity behind the wheel, it will be a "he") returns fire, it will count as an aggravating circumstance at the stupidity phase of his trial and you'll be entitled to damages. If he has a car phone but no insurance, his car is too expensive for his income and clearly employed as a penis-extender, or he's playing his music really loud with his windows down — we're talking jail time.

I wish I'd hit on this last year. I'd have handled my housing clinical completely differently. When a client came in the day before the sheriff was due to evict her, without having responded to the

proceeding, after the time for appeals had passed, with kids and no way to pay the arrearage and no money for a new apartment, I'd have held her on suspicion of stupidity instead of giving her Kleenex and a list of shelters.

It's not that the poor can never be stupid, it's just that they have so much less margin for error. After this election, they'll have even less.

**It's stupidity. You can't fix stupid, you can't outgrow stupid, you can't allocate funds to eradicate stupid. If those folks could change, they wouldn't be stupid. Stupidity is the real problem facing America today.**



Fenno was back, and it was good.

All told, the week in L.A. had been a blast. The firms that had flown him out west for call-backs had treated him quite well: several lunches at Spago, two dinners at the Beverly Hills Club (Shannen Doherty was sorely missed), and, on one particularly glorious evening in the City of Angels, proof that the business empire of Ms. Heidi Fleiss is still alive and kicking, even while she is absent from the helm. Fenno knew which firm he would be returning to this coming summer.

But it only took a few moments back at school for Fenno to begin to appreciate what he had been missing while away. He flung open the door to his Gropius Complex mega-suite only to discover what happens when master keys are stolen. Gone were Fenno's computer, stereo, 12 posters of Elle McPherson (all from different angles), and his leather suit. Magically enough, in their stead he found two bicycles, each bearing the label "Property of Paula Garvin."

Before Fenno could begin to worry about the financial implications of this development, Del, Fenno's most trusted friend and advisor, drifted in to inform Fenno that the combination of the various tuition refunds that had been demanded by BLSA, APALSA, JLSA, LAMBDA, VITA, SLR, OXFAM, NCAA, KKK, A&W, and WKRP meant that students could now attend HLS for free. What a deal!

That warm, fuzzy feeling of being back at HLS only increased when Fenno logged into his e-mail account (on Del's computer). Professor Nesson had decided over fly-out week that, in fact, there would be no exam in his evidence class this semester. Instead, the message read, each student would be required to develop several Haiku poems on issues relevant to Judge Ito's handling of the OJ case. Nesson had even offered one of his own as food for thought:

Cool mists, sands of time  
Press in courts, voice of mankind  
Inhale the rich smoke

Fenno smiled at Del; they both knew that only at HLS could you have a mind-altering experience and call it a class.

As Fenno and Del strolled across the Gropius Green towards the Hark for dinner, Del explained to Fenno that while Fenno had been away, there had been something of a stir at a special faculty meeting. It appears that Professor Dershowitz had stomped out of the meeting in protest when the Dean-o announced that the Holmes Field Building was going to be named after the couple that had given \$13 million, rather than after Alan himself. At a post-meeting press conference, Dersh said, "I give this school my all whenever I'm not in New York or L.A. The least they could do is name a lousy building after me."

As Fenno sank his teeth into the dinner special (lasagne), ignoring the hair and the crunchy parts, he couldn't help but wonder what life would be like out in L.A. this summer. It sure would be nice meeting more of Heidi's girls, and yet, as Fenno began to smell the effects of the WLA's "We won't shower until men respect us" campaign, he knew it could never be this nice.

Yes, Fenno was back, and it was good.

NEXT WEEK: Fenno goes crazy with several Hanna-Barbera characters

## Quote of the Week

"We'll leave that question because you look like you want to hit me."

—Visiting Prof. William Eskridge, speaking to a student in class.

**Join the only student  
paper that hears  
more from Nesson  
than Judge Ito!  
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## FORUM CONVENIENS

## Rambo Rebuffs the Renaissance Man

By Markus Hartmann '96

RECORD Columnist

If all politics is local, then Sen. Edward Kennedy's recent victory over Mitt Romney '75 should be of some interest to the HLS community. After being suspended for cheating, Kennedy received his undergraduate degree from Harvard in 1956. Ted went to UVA to get his law degree. Romney earned a JD/MBA from the Harvard Law and Business Schools.

The voting guide that was placed in my Hark box some time ago led me to believe that a significant number of students are concerned about the political difference between Mitt and Teddy. Not to worry. The transformation from citizen to senator was described in Orwell's "Animal Farm," and there is no reason to doubt that, had Romney won, one senator would have been distinguishable from the other. The significant difference is the background and approach of the two. These factors are worth considering as we consider our options after law school.

Kennedy's history is well known but worth reviewing. The son of Joseph and Rose Kennedy and the brother of JFK and RFK, Teddy saw his political path paved for him when he was elected to his brother's Senate seat in 1962. His portly appearance testifies to a life of excess. Teddy openly defies Rome by supporting abortion and recently decided that the debate over the ordination of women was a convenient campaign tool. Despite cheating (at school and on his wife), Chappaquiddick, Palm Beach, and his deafening silence during the Thomas confirmation hearings, he has been regularly re-elected to the Senate.

Romney's father served as Secretary of Housing and Urban Development in the Nixon administration and was the governor of Michigan. Unlike Kennedy's, Romney's wealth is relatively recent and a function of his own industry. He is a leader in the Mormon Church and seems to walk his talk when it comes to his personal life. Clean-cut and fit, it looked like Romney was a shoe-in. But unfortunately for Mr. Romney, something funny happened on the way to the Senate.

You're probably asking yourself: Hey, what has this got to do with law school? Given the fact that many of us will enter the fields of business, law, and politics, the background and approach of the two candidates is worth considering.

After leaving Harvard, Mr. Romney went into the business world and created wealth for himself and others. He made his name in the growing field of consulting. Consulting seems to be the field for Renaissance people who can both think like lawyers and are not intimidated by quantitative analysis. A typical firm resume will tell you that consultants see themselves as problem solvers. Although their clients are "leading organizations," the underlying policy behind much of the analysis is one that maximizes profits and increases efficiency.

At a recent consulting firm show-and-tell, I was treated to a multimedia presentation that explained these points and listed a myriad of areas in which the particular firm considered itself competent. There were about 150 other HLS people at this show-and-tell which was promoted big-time. The partners and associates were very confident people. The level of confidence was so high that a less charitable person than I might categorize it as arrogant.

There did not seem to be any problem in the world that could not be solved by flying in a squad of highly educated problem solvers. After figuring out the problem with company X, they present their findings to the CEO. At that point, the CEO smashes his palm into his forehead as if he could have had a V-8. He then says, "Of course, how could I have missed that?" The lights go out for a second. Next we see the CEO with a silver bullet on his desk along with a hefty bill for services rendered.

**The outcome of the Kennedy-Romney race was determined by the career paths both gentlemen chose after law school. The politically ambitious souls among us should take note.**

There is no doubt that the business world has benefited from the consulting boom. Politics benefits from a similar phenomenon. The people who do political consulting tend to be open about their party affiliations; think of Mary Matalin and James Carville. When Mr. Romney declared that he wasn't going to be a Republican team player during a recent debate, it seemed as if he were saying: "Hey Kennedy dude, I don't need no party machine to beat you, I can solve this problem on my own."

Kennedy did not make a similar error. Where Romney is a business-generalist, Kennedy is a political-specialist. Getting elected is a specific skill and Ted is very good at it. He may be familiar with thousands of policy issues, but his instincts have been sharpened by 32 years of playing one game. The outcome of this race was determined by that difference.

As we decide where our career path will lead us, the generalist-specialist issue is worth examining. The larger firms are going to want us to specialize. Most of the firms start by putting you either in the corporate or litigation departments and the specialization continues from there. My friends in smaller firms seem to be doing it all. They are generalists and seem to be challenged just past their comfort level.

Like doctors, at some point we are going to have to decide which way we want to go. Even those brave souls who don't take the traditional law route will have to make this decision.

Romney and Kennedy provide us with interesting models of things you can do with a law degree. There is something very appealing about a career as a general problem solver. Solving different types of problems for different types of people can give one that warm and fuzzy feeling of being good enough, smart enough, and, gosh darn it, liked by people.

Kennedy's singular path has its own rewards. For 32 years, he has concentrated on policy instead of profits and reelections instead of restructuring. As a result of his specialty, the deck was stacked in Kennedy's favor. The outcome of the race was determined by the career paths both gentlemen chose after law school. The politically ambitious souls among us should take note.

## 3L Wins Argument

continued from OLOHAN, page 1

Carleton as a *pro bono* case.

Olohan, after having "serious collaboration" with his fellow classmates in Gropius, wrote the portion of the brief submitted to the Massachusetts Appeals Court on the peremptory challenge issue. While Duncan argued the issue on the initial appeal, he allowed Olohan to argue it before the SJC.

"He let me argue it because it was my issue and I had the best grasp of the issues involved," said Olohan. Although Olohan prepared a little for the argument over the summer with the help of David Pignato '95, he was informed only a week before oral argument that the court would let a student argue.

During his 15-minute argument, said Olohan, the court "went right at me. They treated me like an attorney. Although it was 'scary,' he said, he 'was glad they did.'"

While Olohan persuaded the court that striking potential jurors with Irish-sounding surnames showed the prosecu-

tion's intent to discriminate against Irish people, he couldn't persuade the court to take what Olohan called the next logical step: that by striking Irish jurors, the prosecutor sought to discriminate against Roman Catholics, because she feared they would be sympathetic to a defendant who is a Roman Catholic priest. The SJC decided to reserve judgment on that issue, said Olohan, because the ethnic discrimination claim was enough to sustain the reversal of the conviction.

Olohan said the decision was "a shock" partially because the justices appeared to disfavor some of his positions during argument, but also "because of the political nature of the case."

The Harvard Society for Law, Life, and Religion also helped research some of the issues on appeal. "There was a lot of work, and I tried to enlist some support," said Olohan, who is a member of SLLR. Carleton spoke at the Law School last week as part of an SLLR-sponsored panel.

The state has announced it will not seek to retry Carleton.



Daniel Olohan '95



2 weeks old, 1989



1 year old, 1991



2 years old, 1992

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## Dangerous Exclusion of Critical Voices

By Sameer Ashar '96

RECORD Columnist



**T**HE rationale for faculty diversity, at least as conveyed by conservative opponents and some advocates, is often skin deep, lacking substance and convincing intellectual merit. For example, Dean Clark '72, in a Wall Street Journal article in March 1992, indicated that in his opinion "minority students" pursued faculty diversity because they want "teachers who look like [them]." He characterized this kind of motivation to be "one of the symptoms of affirmative action."

Unfortunately, advocates of diversity often rely on a "role model" argument or on the assumed value of heterogeneity. The role model argument usually goes like this: We need openly gay and lesbian teachers to show incoming gay and lesbian students that they are valued at the institution and can one day be as dynamic and accomplished as a Harvard law professor, in spite of their marginalization because of their sexual orientation. The heterogeneity argument is vague, usually backed by platitudes about the value of having a "salad" of perspectives (rather than a "melting pot").

The role model and heterogeneity justifications used by sincere diversity advocates have little in common with the cynical, anti-affirmative action rhetoric put forth by conservatives. Advocates of faculty diversity have, however, tended to accept the cynical premise that we just want to "feel better about ourselves" by having teachers who look like us. Reliance on this premise leads to the incorrect conclusion that the only use that academic institutions have for "minority" teachers is for them to act as role models for students from traditionally marginalized backgrounds.

This myopic rationale for faculty diversity generates a larger backlash against progressive hiring policies and fosters racist, sexist, and homophobic assumptions about scholars who are members of traditionally marginalized groups. For example, macho law review editors feel entitled to say that a manuscript from a "minority" scholar "sucked" until they rewrote it. A student or professor has the audacity to suggest that Harvard Law School does not employ "minority" scholars because they do not meet our high standards. (Deans Paul Brest and John Sexton of Stanford and NYU, respectively, would be surprised to hear that they are assumed to have lower academic standards because of their superior records on faculty diversity.) When we buy into the conservative push to make our scholars mere role models, we invite opposition that is often ignorant and sometimes offensive.

Advocates for faculty diversity must develop a more complete rationale. Although it has been quiet since the tumultuous year of confrontation in 1992, there are students for whom Harvard Law School is more than just a means to a big-money job on Wall Street. These students care about the quality of legal education and the continued vitality of Harvard Law School. It is cause for concern that the faculty, and consequently the curriculum, does not include differing perspectives on the law, particularly those that are critical of the established canon.

In recent years, some of the best work in critical legal thought has been the product of women, people of color, and gay and lesbian scholars. This literature is transforming curricula at leading law schools across the country and breathing new life into old debates. For example, former Harvard law professor Kathleen Sullivan

**The time has come for cynical conservatives and sincere advocates of faculty diversity to focus on the intellectual contributions of scholars from traditionally marginalized communities.**

(now at Stanford), in a talk on November 14, vigorously refuted calls for governmental regulation of speech and argued for a First Amendment jurisprudence that did not rely on the Holmesian notion of a "free market" of ideas.

Professor Sullivan, in making this novel defense of free speech values, cited two scholars who have spoken here in the last month, Charles Lawrence and Catharine MacKinnon, among the leading advocates for governmental regulation of harmful speech. Lawrence and MacKinnon, tenured scholars at Georgetown and Michigan, respectively, were denied tenure by this faculty. The administration and faculty of Harvard Law School have repeatedly refused to allow the kind of intellectual ferment vividly exhibited in Professor Sullivan's work by excluding critical voices, often those of women, people of color, and gay and lesbian scholars.

Of the 67 permanent faculty at Harvard Law School, there are only 9 women, all of European descent, and 4 people of color, all African American men (one of whom is on leave). Openly gay and lesbian legal scholars have been excluded by the administration and faculty. Latina/o and Asian American legal scholars have been excluded. Women of color legal scholars have been excluded. Disabled legal scholars have been excluded. The faculty and administration's systematic exclusion of these legal scholars is detrimental to students, the curriculum, the future of Harvard Law School, and may even be against federal and state employment law.

It is important to have role models at Harvard Law School for students from traditionally marginalized communities. The "minority" professors here often have double or triple the workload of their colleagues because they are asked to fill multiple roles, of scholar and teacher, as well as mentor, innovator and representative for their community. The time has come, however, for cynical conservatives and sincere advocates of faculty diversity to focus on the intellectual contributions of scholars from traditionally marginalized communities. A strong commitment to faculty diversity is tantamount to a commitment to creating a vibrant academic community. If they fail to create such a community, the administration and faculty abuse the trust that students and alumnae/i have placed in them.

## A Straight Take on Gay Rights

By Carla Halpern '97

RECORD Columnist

QUEER VIEWS



**I** was born in Northampton, Massachusetts — the lesbian capital of the world. OK, perhaps that's a bit of an exaggeration, but the following experience still came as quite a surprise:

My lover and I were walking down Main Street with our arms around each other. We must have fit some kind of stereotype, with our short hair and unshaven legs, because while we were strolling along blissfully, two boys on bicycles rode up behind us and screamed, "Dykes!"

Talk about ignorance. Besides being rude, it really doesn't seem necessary to inform lesbians of their sexual orientation. And furthermore, my lover was a man. The boys realized this as they passed us and amended their previous comment: "Oops. Not dykes. Sorry." By this time, my lover was laughing away any suggestion that being mistaken for a woman had threatened his masculinity. "Are you kidding?" he said. "I'm flattered. . . they probably thought we were lesbians because I wasn't proving my manhood by being a macho pig and dragging you along by the hair. We looked like a couple of people in a balanced relationship."

Perhaps in Northampton, where heterosexuals are somewhat rare, the natural assumption is that any relatively harmonious couple is gay. The rest of the country must be different.

Oh, yeah?

Some years later, I kissed a date on a street corner, deep in the heart of Texas. A jeep full of fraternity brothers peeled around the corner. "Dykes!" This time, my date and I both had long hair, so perhaps that was the explanation.

Or maybe not. In college, I ran a women's rights organization. A member once mentioned my boyfriend to someone. The response: "You mean Carla's not a lesbian? Are you sure?"

And then there was the day I was walking alone, in a great mood, chin up, pride in my step. And again, some young men, right on cue: "Dyke!"

So, uh, what's a dyke? By the preceding accounts, a dyke seems to be a strong, independent, caring person — a feminist. Cool! What a compliment!

I attended my first HLS Lambda meeting the day after I moved into Story Hall. I marched around the dorm in my "Northampton: where the women are strong and the men are pretty" t-shirt, posting invitations to Lambda lunches and the like. Six weeks into the semester, I "came out" to my floormates. News of my heterosexuality was quite a surprise to some. Often people have trouble understanding why a straight person would be involved with the gay rights movement.

For me, there's obviously the personal empowerment associated with being (assumed to be) a lesbian. But putting that aside, let me mention the most important reason to be involved in the gay rights movement:

All heterosexuals, take note: somebody you love is gay or lesbian or bisexual. I can't stress that enough. Someone you love is queer. If it's not you, it's your brother. Or your cousin. Or another relative. Or your best friend from college. Or your favorite teacher from fourth grade. Or your brilliant law school mentor. The list goes on; the fact is that someone you care about is hurt by homophobia.

You might ask, instead of supporting the gay rights movement, can't we "help" homosexuals to "go straight?" Can't we convert them somehow? In answer to that question, I ask you first to think about the world we live in. Heterosexual propaganda permeates every aspect of life. Think about it — from every facet of the media to the sacred institution (and to some, definition) of marriage itself. If conversion worked, we'd all be straight. My second response to the question is this: even if conversion worked, is it appropriate? If forced to, I could change my religion or my hair color or my nationality. But why should I have to? Why should fear compel me to change what is natural?

Sometimes straight people find it hard to believe that they would know anyone queer. One of my friends or relatives? A homosexual? Impossible — I would know by now — she would have told me!

Not necessarily. The closet can be a safe hiding place, especially for people who fear the rejection, harassment, or hatred they might encounter upon coming out. Many queer people fear that by coming out they will jeopardize their careers or lose custody of their children. Many closeted people simply fear for their own safety. They may think that they are alone in the world; that no one will stand up for them if they come out. If you honestly think that no one you love is queer, try this: join the gay rights movement. Make it known that you support gays and lesbians and bisexuals. Be vocal and open about it — show that you're an ally. I guarantee you, someone you love will thank you for it. Someone you love will come out to you.

It's also possible that someone may assume that you are queer. Don't be afraid to take that as a compliment.

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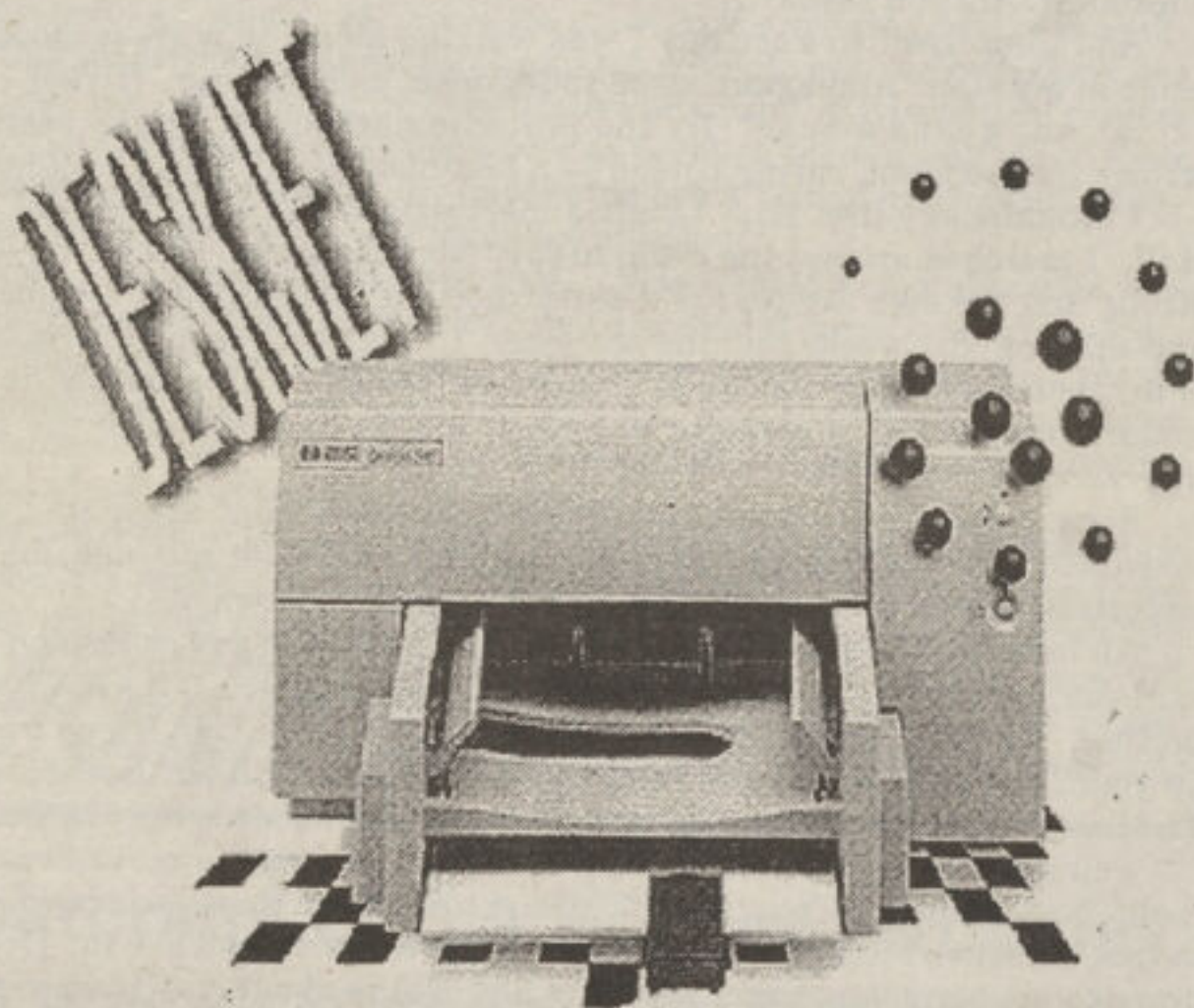
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