



Erwin Nathaniel Griswold, Former Dean, Dies

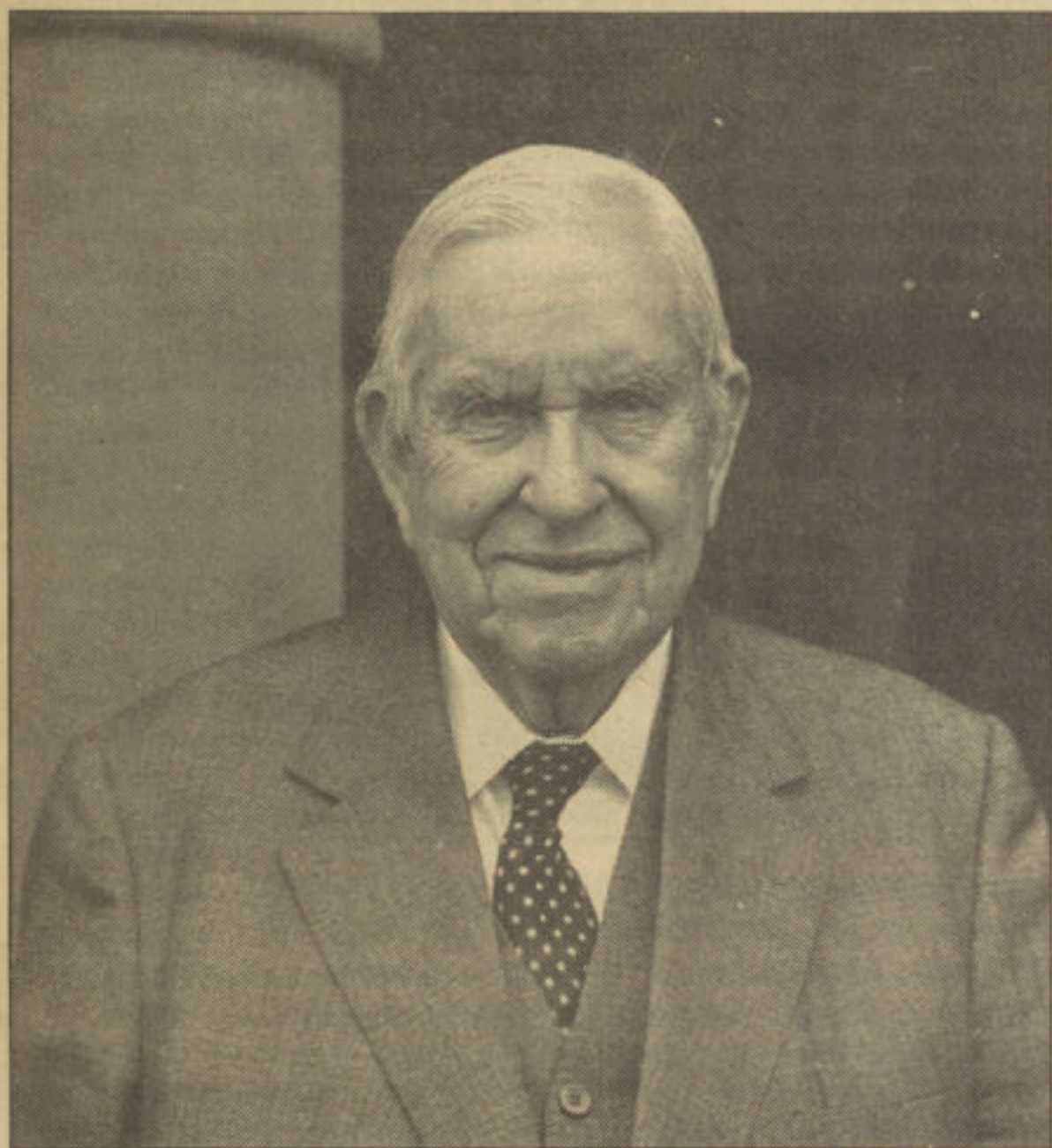


Photo Courtesy Of HLS Communications Office

The former dean in a recent photo.

By Victoria Kuohung

Erwin Nathaniel Griswold, HLS dean from 1946 to 1967 and solicitor general in both the Johnson and Nixon administrations, died Saturday, November 19, at Massachusetts General Hospital. He was 90.

The late dean is well-known for presiding over the Law School during its rapid post-World War II expansion. As solicitor general, he argued 127 cases before the Supreme Court, including the 1971 argument seeking to bar newspapers from printing secret Department of Defense memos in the famous Pentagon Papers case.

Griswold was a "passionate, humane individual... and a man of supreme ability and qualities," said Prof. Clark Byse. Other HLS professors remember him as very demanding, a quality which carried over into his reign as HLS dean.

While holding down student enrollment, Griswold doubled faculty size, founded the

International Legal Studies and International Tax programs and welcomed the first entering class of women in 1950.

Griswold also spearheaded construction of the Gropius complex and the Harkness Commons, increased financial aid tenfold between 1951 and 1967, implemented the Written Work Requirement and deemphasized the pure Socratic method in favor of a problem-solving approach in the classroom.

Much of Griswold's initiatives were motivated by a desire to link legal concepts with contemporary issues.

"If the Harvard Law School, through its faculty activity and teaching, could shift its concern from the narrow objectives of much traditional legal scholarship, we might increase our contribution," Griswold said in a speech given in 1967 on the 150th anniversary of the Law School.

Griswold's own career was marked by this interaction between theory and practice

that he advocated.

Born in East Cleveland on July 14, 1904, he graduated Phi Beta Kappa from Oberlin College in 1925 with both a bachelor's and master's degree. At HLS, Griswold wrote his father with fears of failing out, but then finished second in his class his first year. He joined the law review, where he served as president from 1927 to 1928.

Griswold graduated summa cum laude in 1928 and received an S.J.D. from the Law School a year later. He then returned to Ohio to work at his father's firm, Griswold, Green, Palmer & Hadden. After only a year in private practice, Griswold joined the solicitor general's office as a staff lawyer in tax and soon ascended to Special Assistant to the Attorney General.

He returned to HLS as an assistant professor in 1934, receiving tenure at the end of his first year. Later Griswold assumed the Charles Stebbins

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Ames Finalists Praised Despite Controversy

Marshall Team Wins Overall; Malis and Campbell Are "Best Oralists"

By April Rockstead

This year's Ames Moot Court finalists didn't perform at the level most appellate attorneys do, according to the judges who presided over the competition. The Ames finalists were better.

The judges thought two of the competitors were so proficient in oral argument that the judges were "unanimous" in deciding that David Campbell '95 and Jon Malis '95 of the Felix S. Cohen Team both deserved a "Best Oralist" title. Supreme Court Justice Ruth Bader Ginsburg '56-58 announced the winners upon

returning from a brief recess after the arguments.

The John Marshall Team won the "Best Brief" and "Best Overall Performance" categories, with Ginsburg noting it was no accident the team won both awards.

"In real life, the brief has more staying power than the oral argument," Ginsburg said.

The competition Nov. 18 in Ames Courtroom pitted the Marshall team, representing petitioner Bottomless Beer Co., against the Cohen team, representing respondents Rosebud Sioux Tribal Court et al., in a dispute about a tribe's jurisdiction.

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Hart and Teammates Say They Didn't Cheat

By Greg Stohr

Allegations that Melissa Hart '95 cheated in the Ames Moot Court finals are false, Hart and her fellow members of the John Marshall team said this week.

But Hart said that during fly-out week she spoke about the competition with a Columbia University law student who was familiar with the actual case on which the competition record was based, and in a Nov. 7 memo to the Board of Student Advisers, the team conceded that the conversation "constituted a violation of the rules of the Ames Competition that will result in a three-minute penalty."

Members of the penalized team said this week that Hart's

discussion violated only the interpretation that BSA President Greg Duhl '95 applied to the rules. The BSA rules provide that "[t]eam members may not consult or collaborate with any person or organization, other than their teammates, regarding the subject matter(s) of the Record."

The BSA committee overseeing the final round subtracted three minutes from the 35 minutes the team was allotted for oral argument. Citing "confidentiality," BSA leaders this week declined to comment on most aspects of the controversy, but they issued a statement describing the incident as a "technical violation of the rules."

"We do not believe that the [Marshall team] gained any unfair advantage in the

Competition, nor do we believe that the [Marshall team] intended to violate the rules," the BSA statement said.

Several members of the opposition Felix S. Cohen team also said they did not believe the Marshall team gained any advantage from the incident.

Allegations against Hart became public Nov. 18, the day of the final round arguments, when an anonymous flyer appeared on bulletin boards around campus and in at least some student Hark boxes. The flyer also leveled accusations against a number of other members of the HLS community, including the Marshall team, BSA, the HLS faculty and administration, and the RECORD. Hart

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Justice Ginsburg Answers Students' Questions

By Jeff Bucholtz

Before taking the bench to judge the final round of Ames Moot Court on November 18, U.S. Supreme Court Justice Ruth Bader Ginsburg '56-58 found herself on the receiving end of student questions from a standing-room-only crowd in Austin North. The nation's second female justice gave a brief presentation on the court's review-granting process, oral argument before the court, and the way its decisions are reached, and then fielded student questions.

After her introduction by Prof. Arthur Miller '58, whom she recalled as "the kindest person on law review, and a little shy," Ginsburg described the

arduous and critical process of sifting through the thousands of petitions for certiorari received by the court, from which the justices choose the cases the court will hear.

"Every cert petition is the subject of a memo by a law clerk," said Ginsburg, "but the justices read them, too."

"Seventy percent of the cases we agreed to hear last term were based on splits of authority," she added. She explained that the court usually does not take the first case to raise a particular question, "since returns from several courts can help us in our decision."

Ginsburg, possibly the court's most active questioner, termed the court "a hot bench," where "oral argument is an occasion for dialogue between

knowledgeable counsel and justices who have done their homework."

She cited the court's strict time limitations on oral argument as a change from the D.C. Circuit, where she served until her appointment by President Clinton. Now, "a half-hour is it, for the justice as well as the lawyer," while on the D.C. Circuit, a judge can extend counsel's time with questions.

Ginsburg described "the real difference in dynamic" between the nine-member court and a three-judge appellate panel. Besides the greater numbers making interruptions and dialogue "less feasible," the justice "at the end of the bench can't always see what's going on

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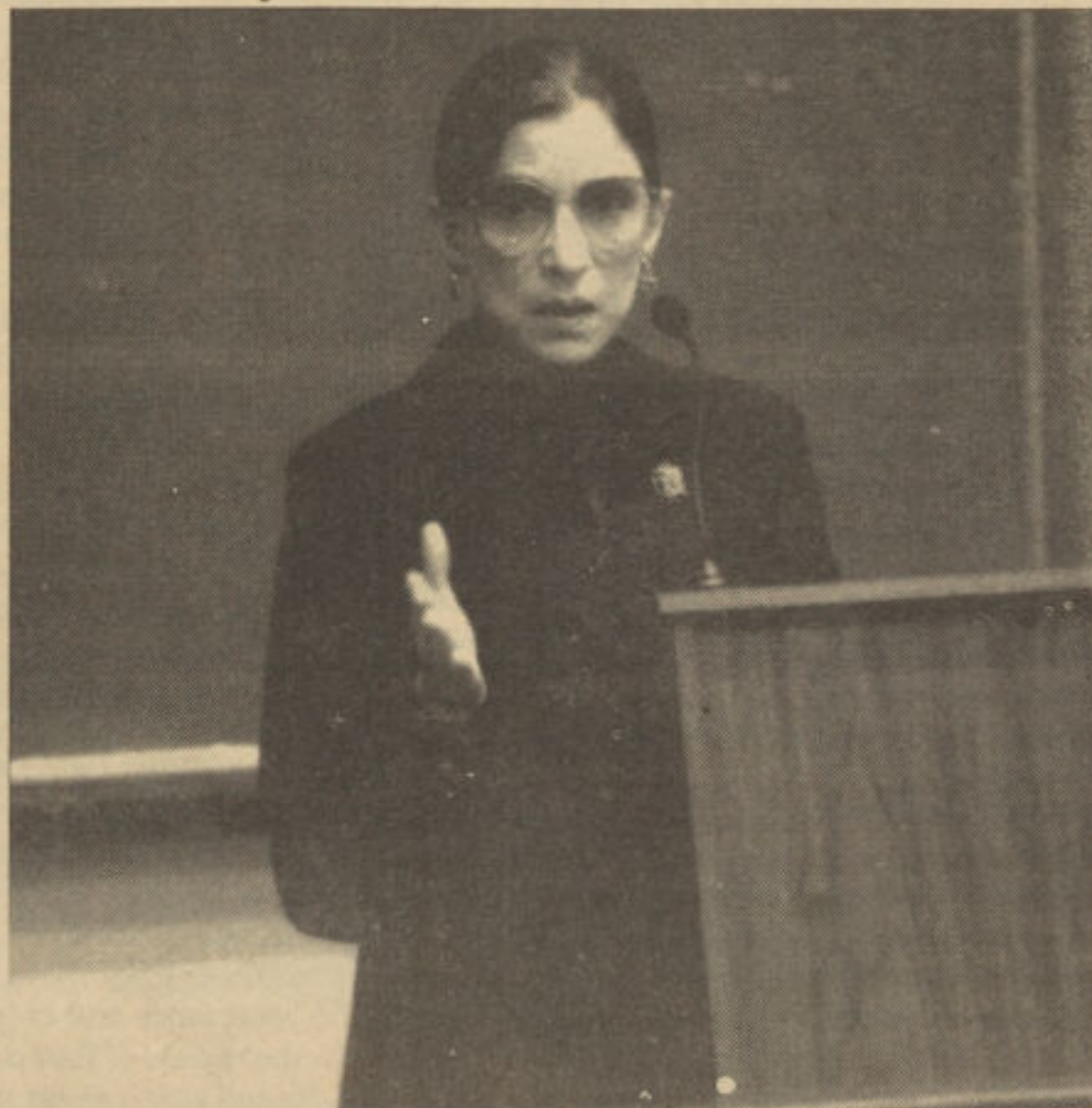


Photo courtesy of HLS Communications Office

Justice Ruth Bader Ginsburg '56-58 spoke about the operations of the Supreme Court and answered student questions before serving as Chief Justice at the Ames Moot Court Finals.

Ames Semifinalist Teams Selected

By Marc J. Goldstein

Marc Yablonovich '96 remembers seeing students constantly working at the table set aside in the library for members of the semifinalist teams in the Ames Moot Court Competition.

Now he anticipates many hours at that table next semester.

Yablonovich is a member of one of the four teams to advance to the semifinalist round of the Ames competition. The advancing teams were announced by the Board of Student Advisers, Nov. 20.

The competition began with 27 teams and was narrowed to four through a qualifying round which concluded just before Thanksgiving break. The fall '96 final round teams will be chosen from the spring semifinal competition.

For Yablonovich, reality has just hit. "Now it's just beginning to sink in how much work it's going to be," he said.

Many of the advancing team members said they were excited about moving into the next round but were also apprehensive about the task ahead.

Matthew Brill '96 said his team had mixed emotions about moving into the next round. "We were excited about advancing but concerned about the workload ahead," he said.

Jill Houlahan '96, a member of another semifinalist team, agreed that the work ahead is daunting but said her team is

ready for the challenge. "We are going to work really hard. At this point you don't put less than 100 percent into it."

The four teams, each comprised of four 2Ls, will each add two additional members to their team to participate in next semester's round. None of the teams have decided who will be added to their teams.

Amy Kreiger '95, chair of the Board of Student Advisers' Qualifying Round Committee, said she was pleased with the competition despite the disqualification of one team earlier this month and an immense amount of administrative details.

"It ran as smoothly as possible, and I am as happy as possible about the competition," Kreiger said. "You always have to provide for things that are unforeseen." One of those unforeseen details was trouble filling all the judging slots.

Kreiger refused to comment on what effect the disqualification had on the other teams or on the competition, although both Brill and Houlahan felt the incident had no impact.

The semifinal teams are: Team 1, Jay Prabhu, Marc Yablonovich, Sam Liccardo and Henry Chernoff; Team 5, Andrew Tainiter, Randall Lake, Amanda Fischman and Matthew Brill; Team 12, John Stinneford, Jill Houlahan, John Watts and Todd Zubler; and Team 24, David Schwimmer, Bathsheba Crocker, Mark Quarterman and Jeff Simes.

Judges Laud Ames Oralists

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tion over non-Indian defendants who allegedly caused harm within the tribe.

In addition to Ginsburg, competition judges included Samuel J. Ervin, III '51, the chief judge of the U.S. Court of Appeals for the Fourth Circuit, and Judge Diarmuid F. O'Scannlain '63 of the U.S. Court of Appeals for the Ninth Circuit.

During the oral argument, students watching in overflow video rooms in Austin Hall reacted with obvious amusement when judges interrupted with terse questions, such as a query almost immediately posed to the first oralist to speak.

"What is the standard of review in this case?" Ervin asked.

Antony Ryan '95 of the Cohen team, to wild applause from overflow audiences.

However, the judges appeared pleased with the performances of the

oralists, even under fire.

"I thought the arguments were particularly good," Ervin said. "They were substantially above the level that I often suffer through."

Ginsburg spoke little after the oral arguments except to announce the awards, but did say she enjoyed the event.

"For a bus driver's holiday, this evening's entertainment was a treat, and you were all grand," she said.

O'Scannlain suggested that the oralists might pursue careers in appellate litigation. If they do, they can take



Jon Malis '95 faced some tough questions from (clockwise from left) Supreme Court Justice Ruth Bader Ginsburg '56-58, Judge Diarmuid F. O'Scannlain '63, and Samuel J. Ervin, III '51, but answered them well enough to share Best Oralist honors with teammate David Campbell '95.



Photos Courtesy of HLS Communications Office

notes from their own performances, according to Ervin.

"Do as you did tonight — answer the questions

straight-forwardly, candidly, honestly — and you'll do

better than if you attempted to evade or dodge," Ervin said, adding to appreciative laughter, "That's more than enough from me."

Marshall Team Charged with Violating Ames Rules

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was the only student mentioned by name.

"Banter with an old friend"

In interviews this week, Hart said that at time of her conversation with the law student, Jonathan Moses, she considered the conversation "banter with an old friend." She said he called her the first Sunday of flyout week to discuss judicial clerkships, a few days after the Marshall team's final brief had been submitted in the competition.

During the conversation, Hart said, Moses mentioned that he had worked at an Indian reservation the previous summer. Hart said she then "jokingly" asked him, "Not at the Rosebud Sioux Reservation [a party in the Ames case]?"

According to Hart, when Moses told her he had worked on the Rosebud Sioux Reservation, she told him she had recently completed work on a moot court brief that involved the reservation. She said Moses told her the Ames record had been based on an actual case recently considered by the Rosebud Sioux tribal courts.

The case concerned a suit by the tribe against "Bottomless Beer Company" over the company's marketing of "Genuine Crazy Horse Beer."

Hart also said Moses told her that in his opinion the tribe did not have a strong argument on the merits. Hart said she hoped others agreed because her team was representing the beer company, but she thought what the beer company had done was "awful."

Hart also said Moses offered her a copy of the actual briefs in the case.

"I told him I was not allowed to look at them or know the arguments that had been made because they might be similar to arguments we would have made in our briefs," Hart said in a statement she submitted to BSA leaders and her opponents on Nov. 7.

Hart said the discussion concerning the moot court case comprised about five minutes of a 30-minute conversation.

"I think what I did was stupid," she said, "but it's not cheating."

She added that later that week Moses left an "unsolicited" message in which he said that the tribal courts in the actual case had decided not to grant jurisdiction. Hart said she did not return that call.

Moses could not be reached for comment.

Earlier dispute set stage

The dispute surrounding the interpretation of the rule prohibiting consultation and collaboration was in large part a product of an earlier controversy, sources close to the competition said.

Shortly after the teams received the case record, compiled by Prof. Joseph Singer '81 and Jessica Herrera '95, both teams discovered what they perceived to be problems with the phrasing of the "questions presented," which determine the precise issues to be argued. Although a conference with Singer was scheduled for Thursday, Sept. 22, about a week after the records were distributed, Marshall team members said they were concerned that, if the questions were not clarified until that date, they would have only three weeks, rather than the scheduled four, to research and complete their first brief.

"It would have effectively made the competition start a week later," said Nikola Djuric '95, a member of the Marshall team.

According to the Marshall team and a memo issued by Cristina Espinosa '95, chair of the BSA's Final Round Competitions Committee, the Marshall team first attempted to work

with BSA to move the conference date, but Singer was unwilling to meet earlier than Thursday. The Espinosa memo also said Singer believed the questions were "straightforward."

Marshall team members said they then approached Rakoff to ask him to attend the conference and help clarify the record. In the course of that conversation, they said, Rakoff asked about the problems they perceived with the record and the questions.

The final round rules provide that "[a]ll communication concerning the Competition, except for administrative matters, must be submitted in writing,

from the team captain, to ... the BSA office."

Both Rakoff and the Marshall team said they did not consider the meeting to have violated the rules. Rakoff said the "general thrust" of the meeting was procedural.

"I didn't kick them out, so I guess I must have thought it was [proper]," Rakoff said. "If there was anything wrong, it was only wrong in the sense of who you were supposed to speak to." He added that he told a BSA official and a Cohen team member of the conversation immediately after it occurred.

"We viewed it as an administrative sort of thing," said Chris Vergonis '95 of the Marshall team.

Rakoff said he then spoke to Singer about the record, and by the next day, Espinosa had placed revised question in the competitors' boxes. That same day, Cohen team members distributed a memo in which they said the conversation with Rakoff and the distribution of the new questions "involve violations of several rules of the competition."

Marshall team captain Jon Unger '95 responded later that day with a memo in which he denied that the team violated any rules.

"At no point did Professor Rakoff and the members of [the Marshall] team discuss the substantive merits of the legal issues presented in the Record or what potential arguments could be made," Unger wrote.

The Cohen team later said in another memo that it was not seeking sanctions against the Marshall team.

"We were concerned about process, not motive," Cohen team captain Paul Hauge '95 said this week. He added that the team did not intend to direct any criticism toward Rakoff.

Rule interpretation disputed

The dispute over the Rakoff conversation, however, set the stage for a stormy discussion in the BSA office that week. In that meeting, Duhl told the teams that in the future, BSA would interpret the "consult or collaborate" rule as prohibiting any discussions about the case, according to

participants.

Espinosa said Duhl made it clear that "under no circumstances can they talk informally with anybody outside their team" about the subject matter of the record.

According to Marshall team member Roger Capriotti '95, Duhl opened the meeting by saying, "This is not a hearing. This is not a discussion. We have made a decision and we're here to tell you what it is."

"In effect he told us that if we were overheard at a party criticizing the BSA or talking about the record, it would be an automatic five-minute penalty," Capriotti said. "[Duhl] referred to it as his interpretation of the rule. It was clear that the BSA was going to interpret this rule as meaning less than 'consult and collaborate.'"

Marshall team members said their understanding of that interpretation was a major reason they decided to concede they had violated the competition rules and to accept the three minute penalty after the Hart-Moses conversation became public.

"We understood that [Duhl] was going to sanction us under his interpretation of the rule," Capriotti said. "We felt if we didn't protest outright, he might actually agree to meet with us."

Marshall team members said they were disappointed that BSA leaders would not meet with them informally to discuss the matter.

"If they had asked us what happened, they would have realized the conduct was entirely innocent," Vergonis said. Hart added that a "fuller investigation before imposing a penalty might have been appropriate."

But Duhl said every team accused of a rule violation has a right to a hearing in BSA competition. "If any team asks for a hearing, they will be given a hearing on the substance of the violation," he said.

Hart said her team was also influenced by the time constraints. At the time BSA officials notified the teams they were aware of the Hart-Moses conversation, oral arguments were 11 days away.

"We didn't feel [a protest] was the best

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Melissa Hart '95



Gregptry Duhl '95

Dershowitz' Novel Walks 'Fine Line' Between Truth and Fiction

By Frank Morrow

"The Advocate's Devil," Prof. Alan Dershowitz' first novel, is all make-believe — more or less.

Despite the boilerplate disclaimer at the beginning of the novel, a reader might wonder how much of "The Advocate's Devil" is fiction and how much is real life.

The novel tells of a professional basketball player charged with date rape and the defense team hired to represent him.

Abe Ringel is high-profile criminal defense lawyer living in Cambridge. He strongly identifies with his urban and ethnic roots in Boston. He is a huge Celtics fan. And he even appears on "Larry King Live" to debate Gloria McDermot, a feminist lawyer who represents rape victims.

If any of this sounds familiar, it should.

"I don't have the literary imagination to create characters out of whole cloth," says Dershowitz. "I'm not Saul Bellow, I'm a lawyer."

A story about date rape should come as no surprise to Dershowitz' students.

"I have been widely criticized by women in my classes for spending too much time on false accusations of rape," says Dershowitz.

Calling rape "the hardest crime to think about and deal with intelligently," Dershowitz cautions that "this book is not about my position on rape."

But "The Advocate's Devil" is about legal ethics, Dershowitz says.

Dershowitz describes the book as a "fictional brief," posing ethical hypotheticals in fictional form. He hopes the book will become a vehicle for teaching in the Socratic tradition.

"I think of legal ethics as a discipline that forces you to ask hard questions," he

says. "Framing the questions is more important than answering them."

In one chapter, for example, Ringel explores the dilemma of revealing a client's confidences with a Catholic priest. In many respects, the dialogue reads like a Socratic give-and-take between teacher and student, though it leaves the reader wondering who is the teacher and who is the student.

Beyond these lofty pedagogical goals, Dershowitz also hopes that the book will dissuade from pursuing careers in criminal law those who are unsuited for its demands.

"Criminal law is a complex and ambiguous life," he said. "This book will warn off people who shouldn't become lawyers, at least criminal lawyers."

The next step in Dershowitz's literary career? He already has plans for a second novel about political intrigue in the Supreme Court.

Ginsburg Answers Student Questions

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among the other justices."

With the ascension of Justice Stephen Breyer '64 to her old seat, Ginsburg observed that "now I can see much better from my perch on the left," drawing laughter from the audience despite her admonition not to read any political significance into the remark.

Ginsburg stressed the importance of writing opinions logically and clearly but quoted Chief Justice Hughes' dictum that if something was necessary to get a fifth vote, "in it went, and let the law reviews figure out what it meant." She elicited cheers for her "confession" to the charge that her opinions are "too short," noting

pointedly that "this criticism obviously didn't come from a district judge."

Since many questions asked for Ginsburg's views on issues that could come before the court, such as term limits, prayer in schools, and peremptory challenges, she occasionally declined to answer, apart from the general reminder that "what I vote as a voter is not necessarily related to what I would decide as a judge."

In response to a question about the Supreme Court's shrinking docket, Ginsburg said it was "too early to predict if this trend is going to continue" and attributed it to the erosion of the court's mandatory jurisdiction and to the relative lack of "business on the legislative

side of late."

Ginsburg did permit herself to comment on the recent federal crime bill, offering her opinion that "it's a very poor use of the federal courts," but that "it is hard to communicate that to a legislature intent on 'doing something.'"

Asked about cameras in the courtroom, an issue that has figured prominently at HLS this semester, Ginsburg expressed "concern over who controls what will be shown," since sound bites present a "distorted view." She predicted that the federal "experiment" with cameras will continue and that "when the Judicial Conference decides what to do, the Supreme Court will likely follow suit."



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BRIEFS



Harvard Pres. Takes Leave; 'Fatigue' Blamed

In an unexpected move, Harvard University announced yesterday that Neil L. Rudenstine, the 26th president of Harvard, will take a medical leave of absence for at least several weeks.

In a statement released Tuesday afternoon, Dean of the Medical School Daniel C. Tosteson, who is serving as medical spokesperson for Rudenstine, 59, said Rudenstine "is suffering from severe fatigue and exhaustion of unknown origin. When the results of the studies are available, a more certain prognosis will be possible. It is likely that the president will be on leave for a matter of weeks or longer."

Albert Carnesale, University provost since July 1, has become acting president. Rudenstine said in a statement that he decided to take a leave "with the greatest reluctance."

"My clear desire would have been to continue to work uninterruptedly with my colleagues at Harvard," the president's statement said.

-From the Harvard Crimson

Hauser Hall Gets Architect Society Kudos

The newly-named Hauser Hall won two design awards this year at the Boston Society of Architects' annual ceremony in November.

The building received the "BSA Award for Excellence" at the banquet, selected "by a jury of prominent architects from outside the Commonwealth," according to the society. The 1994 Harleston Parker Medal, awarded to "the most beautiful piece of architecture" located "within the City or Metropolitan Parks District Limits," is to be presented by the society and the City of Boston at a spring reception.

The awards go to the client and the architect — Kallmann, McKinnell & Wood Architects Inc. — jointly.

R. Kennedy On Time's Movers and Shakers List

Time magazine this month included Prof. Randall Kennedy on its 1994 "50 For the Future" list of "America's most promising leaders age 40 and under." Kennedy just made the age cutoff at 40.

"Randall Kennedy's curriculum vitae is any young scholar's dream," the magazine report said, noting Kennedy graduated from St. Albans School in Washington, received a Rhodes scholarship after attending Princeton, and clerked for Supreme Court Justice Thurgood Marshall after graduating from Yale Law School.

The report said, "His provocative approaches to social and legal problems are helping reshape the way Americans think about race."

Thomas' Accusations Hit Close to Home

While declining to name any particular law schools, Supreme Court Justice Clarence Thomas said in an address to Samford University law students that "elite law schools" are failing to teach foundation concepts.

Instead, Thomas said, the schools are supplying students with courses that fail to prepare them for the reality of law practice, with titles such as "Thinking about Thinking" — a course listed in the 1994-95 HLS catalog and co-taught by Prof. Alan Dershowitz.

"The elite law schools and those other schools that follow them neglect to teach that law is an art, a craft, and not an adjunct to fancy theories or a means for political and social revolution," Thomas said. He graduated from Yale University Law School.

"This is the true source of the discontent that is apparently rampant among young lawyers," Thomas said. "Young law school graduates are often shocked to learn that much of the law is already settled, and it is only their job to apply it to a new set of facts before them."

-From the Boston Globe

JLPP Founder Elected to U.S. Senate

Among the new wave of Republicans elected to Congress this fall is the founder of HLS' Journal of Law and Public Policy, Spencer Abraham '79. Abraham is the first Republican U.S. senator elected in Michigan in 17 years.

According to an interview with the Detroit Free Press, Abraham managed to overcome administrative resistance to the use of the Harvard name in conjunction with JLPP, a conservative journal, when he merely pointed out to former Law School Dean Albert Sacks that entities such as Harvard Liquors and Harvard House of Pizza use the name.

The Free Press claimed the journal is currently "the second most widely read publication of its kind in the country, after the Harvard Law Review," and noted that Abraham remains president.

Abraham, 42, was Michigan's GOP state chairman from 1983 to 1991. He has also taught at Cooley Law School in Lansing.

-Compiled from News Reports

Judge's Order Delays Demise of Rent Control

Abolition of Cambridge's rent control laws, which is set for Jan. 1, may be delayed after a ruling this week by a Suffolk County judge.

Suffolk Superior Court Judge Hiller Zobel issued a temporary restraining order blocking the enactment of five ballot measures approved last month, including the question that banned rent control. Zobel said in his ruling that the Secretary of State's office may not have provided voters enough information on the ballot questions.

Elimination of rent control may be further delayed if the state government approves the city's "home rule" petition. The Massachusetts Assembly this week voted to allow the city to phase out rent control over a five-year period.

Voters had approved question 9, which would end rent control in Cambridge, Boston, and Brookline.

-From the Harvard Crimson

Ames Controversy

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use of our time under the circumstances," Hart said.

In its statement, BSA defended the imposition of the penalty. "We are confident that the Committee acted appropriately and within its discretion."

Rakoff said penalties and rule violations are generally internal matters for BSA but added that "the three-minute penalty was a sensible way for the BSA to enforce its rules."

In a letter written to the three judges in the competition, Espinosa told the judges that the Marshall team had violated "Rule I.C.2" and that a three-minute penalty had been imposed. The letter did not provide any details about the Hart-Moses conversation.

3L learned of conversation

The Hart-Moses conversation came to the BSA's attention as a result of an unlikely occurrence.

Helen Cantwell '95 said she had dinner near the end of flyout week with a group that included Moses. She said Moses told her he had spoken with Hart about the competition and mentioned "Crazy Horse Beer."

Cantwell then told Duhl about the conversation.

"I thought that I had an ethical duty to talk to Greg Duhl about it," she said.

"I prefaced my comments [to Duhl] by saying, 'I don't know if this is a rules violation. I don't know if it is a big deal.' But I thought there was something wrong."

Cantwell, who lives in the same apartment as Jennifer Hooper '95, a BSA member and a member of the Cohen team, said she did not discuss the matter with Hooper until after the posters appeared the day of the argument.

Hooper said she did not learn of her housemate's involvement until that day — after a member of the Marshall team told one of Hooper's teammates that Cantwell had informed BSA of the conversation.

"It wasn't even a consideration to tell Jennifer," Cantwell said. "Number one, I didn't want any appearance of impropriety. Number two, it wasn't her decision to make. It was my decision to make."

Cantwell said she would have taken the same action regardless of who had been involved in the conversation.

"I've never met Melissa Hart," she said. "I've never had a conversation with her. I had no personal reason to report her. This wasn't about Melissa Hart as a person. This was about hearing a story that sounded bad and it sounded like it was a violation of the rules."

"If it had been Jennifer, I would have turned Jennifer in."

Cantwell said that Hooper had told her about the strict interpretation of the consultation rule and that they had abided by that interpretation.

Duhl and Espinosa informed participants of the allegations in a memo distributed the Monday after Flyout Week. In that memo wrote that "[i]t has come to our attention that the [Marshall team has] possibly violated the Final Round Rules. ... At our last Joint Rules meeting, Greg instructed the teams that if it came to the attention of the Final Round Competitions Committee that any team member was communicating with a third-party regarding the subject matter of the Record, either informally or formally, the team would be penalized three minutes off their oral argument time."

Students deny charge

Although the anonymous flyer alleged that last spring Marshall team members "discovered the topic from a fellow HLS student who helped write the case," both Herrera — the only student who worked on the case record — and members of the Marshall team said Herrera only told them that she was working on the case with Singer.

Herrera said that originally she was not instructed to keep her role confidential. She said that until she received instructions not to discuss her participation — before the final round participants were

selected — she freely told friends that she was working on the case record.

"I never told anybody what the topic was," she added.

Djuric corroborated Herrera's account. He said that last spring, before the semifinal competition had been completed, Herrera told him that she was working on the case but did not discuss the topic. Members of the Marshall team said that they separately had heard talk that the case concerned Indian law.

Marshall team members also said that shortly after they learned they had been selected for the final round, they informed BSA of what they had learned. In a memo to Duhl dated April 6, the team wrote that "[i]t has regrettably come to our attention that the case for the Final Round of the Ames competition is being written by Professor Joseph Singer, with the assistance of Jessica Herrera. We have also heard that the topic of the case is Indian law."

Flyer condemned

The anonymous nature of the flyer, whose large headline proclaimed, "Boycott Ames: Team's Cheating Covered Up," drew near universal condemnation from those interviewed for this story.

A number of participants from both teams called the flyer "cowardly." Members of the Marshall team described it as "abusive." Jon Malis '95, a member of the Cohen team, called the flyer "mean-spirited." Dean of Students Suzanne Richardson said the flyer was "very harmful." Rakoff called it "destructive."

Law School Council President Willie Epps '95 and Vice President Clarke Camper '95 released a memo in which they called the flyer's distribution a "cowardly act."

"[W]e feel strongly that individuals at the Law School should have the courage to identify themselves when speaking out, particularly when dealing with issues that impact members of this community so personally and directly," they wrote.

That memo drew a quick response from fellow LSC members John Bates '95 and Kit Ekman '95, who criticized Epps and Camper for expressing their personal views on LSC stationery.

"We feel it is inappropriate for any member of the Council to use his or her position to expound their personal views as though they were the views of the Council," they wrote.

Hart called the flyer "the most cowardly thing I've ever seen."

"I was devastated," she said. "I've never been accused of cheating before. I've never been attacked before, especially by someone who couldn't say it to my face."

None of those interviewed said they had any information either as to who distributed the flyers or as to who removed the flyers from bulletin boards around campus.

RECORD Editor-in-Chief Greg Stohr's response to the flyer appears in an editorial on page 7.

"No effect on the outcome"

In the aftermath of the controversy, the Cohen team has attempted to stay outside the fray. Hague said the Hart controversy was a matter "between BSA and the John Marshall team" and described his team as mere "observers" throughout the dispute.

None of the team members said they thought the incident had any effect on the competition, in which the Marshall team won the overall and best brief competitions and Cohen oralists Malis and David Campbell '95 shared the best oralist honors.

"I don't think it was cheating," Hooper said. "We never thought they benefited from it."

Malis said: "As I understand the information that I received in copies of memos from BSA and the [Marshall] team, the entire incident regarding Melissa Hart had no effect on the outcome of the competition."

"We're disappointed, obviously, but the other team won fairly and squarely," Campbell said.

T H I N K I N G O F F

Movie Gluttony

Serving Three Main Dishes and Finding Two Out of Three Ain't Bad



By Kendra Lee and Jeff Simes '96

RECORD Columnists

THIS Thanksgiving break we indulged all of our gluttonous impulses. We caught several flicks in between the turkey and Jeff's aunt's jello mold. First up: "Star Trek: Generations." The latest offering by the billion-dollar juggernaut Star Trek empire, this movie features cast members of both the original "Star Trek" and "The Next Generation." Suffice it to say it involves time travel, Klingons, Class M planets, and bad guys (Malcolm McDowell of "A Clockwork Orange"). Look for "Cameron" from "Ferris Bueller" as the wimpy new captain of the Enterprise "B." The shocking surprise ending (sorry to spoil it) has the crew of the Enterprise heroically saving the universe from a dastardly villain at the last conceivable moment.

Jeff: It was the rough equivalent of a pretty good (but not great) episode of "The Next Generation." Moderate-to-lean on the action, a few good lines, plot got a little hokey.

Kendra: I agree. If we weren't die-hard Trek freaks, we would have had absolutely no clue or interest in what the hell was going on. If you're not with it, don't see it. **J:** Definitely. First of all, the entire first scene on the "holodeck" was totally inscrutable. It was like they needed to make the movie ten minutes longer and all they had lying around were some Gilbert and Sullivan costumes. Also, I was really disappointed by the lameness of the villain, Dr. Soren. He looked like Sting with saggy makeup. He wasn't particularly evil, or smart, or scary, or anything. He just sucked. The Klingon sisters were interesting, but they disappeared from the plot in about ten minutes.

K: Yeah, and Captain Kirk (William Shatner) looked pathetic. He was all puffed up like a marshmallow with lots of hair dye. And he still can't act. And of course Chekov and Scotty remain on the payroll. Scotty's still says the same old lines: "Captain, I don't know how much longer I can hold it together." After seven movies and three decades of that line, I'm starting to think he's talking about his own immense gut rather than the Enterprise.

J: The FX were definitely cool, though — that stellar cartography lab was fantastic. And of course, there was saucer separation, etc. Not enough phaser fire though. That's what I want in a Trek movie. The second movie ("Wrath of Khan") was excellent because Ricardo Montalban was a villain you loved to hate. . . .

K: With enormous pectoral muscles. . . .

J: . . . but also because everyone was shooting at each other. This movie involved about ten seconds of good, wholesome aggression, and then it was downhill from there.

K: I liked the bit involving Geordi's visor. Good, basic sci-fi. That subplot with Data's emotion chip wasn't properly worked into the rest of the plot. They sort of just let it hang there. Also, the rest of the crew were just sort of add-ons. Where was Worf? He didn't kick anyone's ass the entire movie. There just wasn't any interesting treatment of the characters as in the television series. And it didn't work in any major themes from the final episode.

J: At least there was no Wesley Crusher.

K: That was a relief. The crux of the plot, though, that mysterious "Nexus," was so incredibly lame. It was supposed to be this sort of Nirvana, but it was like an extended trip to the holodeck. I didn't buy it. Especially after the build-up Guinan (Whoopi Goldberg) gave it.

J: There were some loose sci-fi ends too. First, why did Picard need Kirk's help to beat up that wimpy villain? Second, this whole time travel thing. If you were traveling through time to save a galaxy, why would you go back to just one second before the crucial moment when you could go back a whole week to defuse the situation?

K: Don't sweat the details; this is sci-fi. You knew walking in that it was going to be out there.

J: I guess. This movie made it harder than usual to suspend disbelief.

K: Coolest scene in the movie: the "crash scene." 'Nuff said. The bottom line: if you're a Trek fan, you're going to see it anyway, so go ahead. If not, don't bother.

J: Go see it, because if you don't, they'll stop making more Trek movies.

K: Next movie, "Clerks," is a low-budget, black-and-white slacker flick. Except not really slackers, technically, because they do have jobs. Just really bad ones. This movie sucked.

J: Well, I wouldn't say it sucked. It was pretty juvenile, but there were lots of good lines. The characters were likable schmucks.

K: The entire movie was jokes about blowjobs, hermaphrodites, and necrophilia. Were we watching the same movie?

J: Hey, it's not for everyone. It's got a special appeal for males. Particularly juvenile ones like myself.

K: And the dialogue was so cooked up. It was like a really badly written play with everyone giving long monologues. Bottom line: skip it.

J: Go see it, but prepare to be offended.

K: Final movie, "The Professional," starring Jean Reno, Natalie Portman, and Gary Oldman. It's about a hit man who comes out of his shell to protect a young girl from the D.E.A. I liked it. I thought the characters were interesting, and the relationship developed in a satisfying way.

J: It was weak. Why call it "The Professional" and hype it as a relentless killfest when in fact it's "French cinema" with some Americanized action scenes on the front and back ends to keep us barely awake?

K: I say, go see it.

J: I say, rent it and watch the first and last five minutes.



F O O D - O - R A M A

Parish the Thought



By Ted Cohen '95 and Jonathan Goldstein '95

SEVERAL weeks ago we let you sit in on a little dinner party that Ted hosted for a platoon of high-powered guests, known collectively as "Jonathan." The next morning, while Ted was cleaning the pancake batter off the ceiling, he received a call from "Jonathan." "A dinner party is all very well and good," he began, sounding suspiciously like Lauren Bacall, "but the real test is lunch. Do you know how to lunch, Mr. Cohen?" Ted had to admit that he didn't. How would he be able to navigate a summer at a New York law firm thinking that asking a waitress for sweetbreads would get him a sock—POW!—right in the kisser. He had to be learned, and learned real fast-like. So Jonathan took him to the **Parish Cafe** (361 Boylston St., Boston; 247-4777).

The theme behind the Parish is simple and smart: The best chefs of Boston—including Lydia Shire of Biba and Chris Schlesinger of the East Coast Grill and The Blue Room—were asked to design their "dream" sandwich. None is above \$10.00. All are big, inventive, and excellent. But let's tune in to Ted and Jon's lunch:

Jon: (as the waitress walks away) Okay, that should be lesson number one. Don't order the Tums Salad.

Ted: But I wanted something light! And it did work faster than that Roloids salad I had last time.

Jon: Well don't go asking for crayons and paper placemats.

Ted: (starting to cry) I hate this place. I didn't get a balloon. And you said there was going to be a clown.

Jon: I'll clown you! (Jon throws his water in Ted's face. Ted, who is allergic to water, reels blindly about the restaurant, until the sous-chef gets him in a full-nelson and puts his head in the waffle iron.)

Ted: (sitting back down) Wow! I didn't realize how hot those waffle irons get!

Jon: Well you're just in time for your food. I ordered you the pizza sandwich, which is topped with sautéed broccoli and red onions, pine nuts, sun-dried tomato and traditional basil pestos, and fontina cheese.

Ted: Hmm. It looks just like a Tums Salad.

Jon: I thought we already went over that!

Ted: Sorry. What'd you get?

Jon: The two-sausage sandwich—chicken and lamb—with a delicious home-made catsup which is actually more like a chutney. On French bread. With very good potato salad. Hey, have you seen the new Star Trek movie?

Ted: Jon, you know that my palimony settlement with Counselor Troi says I can't write or speak about Trek. (Breaking down) God, she was the best woman I ever knew. . . .

Jon: Get a grip on yourself, Ted. Tomorrow is another day. Besides, you did get the shuttle craft and the matching Ferengi candlesticks.

Ted: Well, at least I still have my old friend, Lady Valium. (Ted takes a handful of pills).

Jon: Uh, Ted, lesson number two: Don't take tranquilizers at firm lunches.

Ted: (chewing on his own hair) Not even with red wine?

Jon: Well, yeah, with red wine you can.

Ted: And uppers with a light chablis.

Jon: You sure know your wines.

Ted: I should, I worked as a sommelier in the summer of '87.

Jon: I thought that was the summer you were Zsa Zsa Gabor's physical therapist.

Ted: Oh, yeah. (with a dreamy look in his eyes) What gams.

Jon: I like how you can sit right in the window and look out on lovely Boylston Street. You really feel like part of the action here.

Ted: What?

Jon: I said, you're like part of the action here.

Ted: Speaking of action, did you catch "The Nanny" this week?

Jon: If it's on television, I saw it!

Ted: Are you still watching eight hours a day?

Jon: Eight on a good day. My school work has really started to make demands on my time.

(They both explode into laughter. A waiter approaches the table.)

Waiter: Excuse me, gentlemen, but since you are unspeakably important restaurant critics, the owner has asked me to show you the kitchen. This way, please.

Ted: Oh, goodie. I love kitchen tours.

Jon: Just keep your hands inside the bus.

Waiter: This is our head chef, <<mumblemumble>>.

Ted: What was his name?

Jon: Uh, I'm not sure. Let's not ask.

Ted: Wow, look at all the bread they've got back here! It's delicious.

Jon: Ted, that isn't bread. Those are cloth napkins.

Ted: Mummpphh.

Jon: Oh my God.

Waiter: And this is our dishwasher, Louis.

Louis: The sum of the square of the angles in a right triangle is the square of the sum of its sides.

Ted: Yow, he's bright. Like a scarecrow.

Jon: I think we should get out of here.

Ted: Are you having one of your premonitions again?

Jon: No, gas.

Ted: Open the pod bay doors! Every (wo)man for (her)himself!

But for real: if you're in Boston to do some holiday shopping, eat lunch at the Parish. It's right near the Public Garden end of Boylston Street, convenient to Newbury Street and Downtown Crossing. And it's very, very good.

Harvard Law RECORD

Founded in 1946

Greg Stohr
Editor-In-Chief

An Independent Judgment Call

In the end, my decision not to run a story on the three-minute penalty imposed in the moot court finals was a judgment call. The decision was mine entirely, and I made it independently. The baseless charges leveled against the RECORD in the unsigned flyer that appeared on campus the morning of the argument were false and unfair. The unsupported allegation that "HLS persuaded the RECORD to pull the story" was flat-out wrong, and the assertion that the RECORD "violated the tenets of free speech fundamental to an academic community" misconstrues the proper mission of a newspaper.

The truth is that neither I nor anyone else at the RECORD spoke to anyone in the administration about the issue until after I told team members and BSA leaders of my decision not to run the story. Contrary to rumors, Dean Clark did not call to pressure me into pulling the story; I haven't spoken with him in at least a month. I freely admit to having been persuaded in part by students on the opposing team — people who clearly had done nothing wrong and who understandably feared that a story appearing the day of the argument would overshadow their year-and-a-half's worth of hard work. But considering the impact on innocent fellow students is, I believe, required when one is making decisions on a newspaper in a small, closely knit community.

The judgment call was close. I almost decided the other way. In addition to the impact on the opposing team, I considered the likelihood that I would be able to run a more accurate, complete, fair story in the following issue. (There never was a question as to whether the RECORD would run a story; the only question was when an article would appear.) At most, I had enough confirmed information to run only a bare-bones story, and most of that information had been provided to me off-the-record.

I respect and understand those who would have decided the other way. But to suggest anonymously and erroneously that an independent student organization buckled under Law School pressure is itself the height of irresponsibility. The newspaper business involves exercising judgment; it's sad the author or authors of the flyer failed to use any of their own.

- Stohr

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Editorial/Letters Policy

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

—First Amendment, US Constitution

• Letters •

Anonymous Flyer Lacked Integrity

"Integrity." Defined: "Rigid adherence to a code or standard of values; probity." It is ironic that a flyer that decries the apparent lack of integrity in the administration of the Ames competition ("Demonstrate that at least Harvard students have ethics and integrity") indulges in *ad hominem* attacks on the character of a fellow student with only the barest of innuendo as support.

On Friday, November 18, some unnamed person

stuffed Hark boxes with flyers that urged students to "Boycott Ames." The nameless (faceless, gutless) author complains about the purported lenience showed to the "John Marshall Team."

The flyer claims to vindicate the unknown writer's free speech rights ("... they have violated tenets of free speech..."). Anonymous flyers, however, do not achieve the purpose of free discourse in an academic community — to facilitate the exchange of

reasoned ideas. Rather, they function as this one did: to convey rumor, innuendo, and seemingly malicious attacks (note the irrelevant reference to the grandfather of the only finalist mentioned by name), leveled without the restraint of accountability. "Integrity" means taking responsibility for one's actions and standing behind one's words.

Anthony S. Barkow '95
Rajeev V. Date '95
November 21, 1994

Extra! Extra!

This is the last issue
of the RECORD to be
published this year!

To 2Ls and 3Ls:

Good Luck on
finals!

To 1Ls:

Don't study too
hard!

To All:

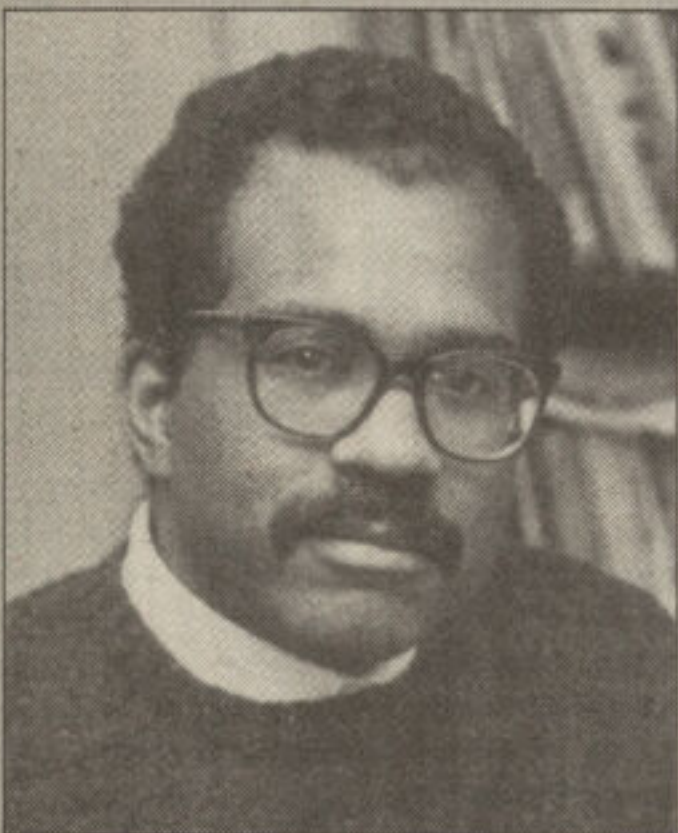
Happy New
Year!

See you in January!

The Phony War

By Randall Kennedy

Murray and Herrnstein (and their supporting cast of public relations consultants, advertisers, and ideological allies) know how to make the most of controversy. They have already succeeded in transforming their latest work, "The Bell Curve," into a profitable news item. They have done so by proclaiming that they have revealed something hidden and new. In the second sentence of their essay, the authors assert that they are offering a scoop: the real story of white elites' perception of blacks — the private attitudes as opposed to the staged, public stances. Later they hint that they are going to give the reader the skinny on "a taboo issue, filled with incendiary potential for hurt, anger and divisiveness [that] lurks just beneath the surface of American life." Many editors, book publishers, and reporters are attracted to this sort of talk — even when it is highly exaggerated. They are attracted because it sells. The Free Press' advertisements for "The Bell Curve" highlight its carefully nurtured status as a "controversial" book. The dust-jacket states that "The Bell Curve" "is certain to ignite an explosive controversy."



The intellectual as Indiana Jones

In all too many quarters, controversy is viewed as a good in and of itself. And it probably is for those interested only in selling goods in the cultural marketplace. For those interested in the overall health of our culture, however, the fixation on mere controversy is a problem. We ought to distinguish between work that is usefully controversial because it opens up new avenues of thought and work that is controversial merely because it provides an occasion for shouting about preformed views. The Murray and Herrnstein project falls in the latter category.

The creation of controversy often involves striking a pose of risk-taking. Murray and Herrnstein do this in their essay when they claim that the bigshots with whom they conversed as they wrote their book — "scholars at the top-ranked [of course] universities and think tanks, journalists from the leading [what else] media, high [not low] public officials, senior [not junior] lawyers, financiers and corporate executives" — tended to be "scared stiff" about the answers to the authors' questions. But Murray and Herrnstein are not "scared stiff." They fearlessly pursue the Truth no matter where it leads. (Interestingly enough, it leads to answers that advance the ideological positions both men have long held.) A recent profile of Murray in The New York Times Magazine also shows him cultivating his image as a courageous intellectual. Explaining to reporter Jason DeParle his reasons for writing "The Bell Curve," Murray is quoted as saying, "Here was a case of stumbling onto a subject that had all the allure of the forbidden. Some of the things we read to do this work, we literally had to hide when we were on planes and trains. We're furtively peering at this stuff." This is, I think, largely a pose: the intellectual as Indiana Jones. I cannot imagine Murray and Herrnstein consulting a source so inflammatory that they literally had to hide it while traveling. Later in the profile, DeParle notes that Murray requested that the reporter refrain from naming the Maryland village where he lives, out of fear of threats of physical harm.

Murray's pose, however, reflects on more than just himself; he probably wouldn't engage in it if a large enough section of his audience rebuffed him. But the idea of "intellectual courage" has grown quite popular. As frequently used,

I cannot imagine Murray and Herrnstein consulting a source so inflammatory that they literally had to hide it while traveling.

the term is misleading or inappropriate. The people to whom it is applied typically risk little by taking the positions they articulate. Controversy, even utter outrageousness, pays well. In other instances, the term is inappropriate because it fails to illuminate the intellectual quality of the ideas set forth. It might take "courage" for a would-be astronomer to argue

that the sun circles the earth. But his courage should not obscure the erroneous nature of his view or dissuade his colleagues from considering whether he ought to be allowed to teach.

It's just hype

There is another aspect of the pose of courageousness that warrants comment. Murray and Herrnstein inveigh against the alleged "pariah status of intelligence as a construct and IQ as its measure for the past three decades." This alleged pariah status is a function, they claim, of "political fashion, not science." Unlike their fashionable antagonists, Murray and Herrnstein are immune to the blandishments of chicness and are unafraid to confront a blasphemous topic. Their publisher suggests much the same. According to the dust jacket, the authors "break new ground in exploring the ways that low intelligence . . . lies at the root of many of our social problems" and "demonstrate the truth of another taboo fact: that intelligence levels differ among ethnic groups." This is hype. In fact, over a long period of time, a substantial number of investigators have asserted relationships between intelligence and social differences, including racial differences. These data form the basis of Murray and Herrnstein's speculations. They don't design and conduct experiments and otherwise extract primary information. They leave those chores to obscure, moderately paid academics. Murray and Herrnstein synthesize and repackage this material and bring it to a larger, more

lucrative market. Their publisher acknowledges this on the book's jacket copy. Immediately after proclaiming that "The Bell Curve" demonstrates the taboo "fact" that intelligence levels differ among ethnic groups, the publisher writes that while "this finding is already well-known and widely discussed among psychometricians and other scholars," Murray and Herrnstein "open this body of scholarship to the general public." Contrary to the impression they sometimes give, Murray and Herrnstein are not intellectual pioneers; they are popularizers who have a keen sense of how to make a big splash among people who read opinion magazines and op-eds and purchase big books like "The Bell Curve" (for \$30 a copy), which they either shelve without reading or lightly skim.

Four brief observations. First, there are notable outcroppings of disingenuousness in the Murray-Herrnstein essay, the most blatant of which is its claim that "our limited objective is to warn readers who come to the discussion [of black-white differences in IQ] with firmly held opinions on either side."

been depressed by a disadvantaged environment, it is easily remedied." Who says this? The people to whom Murray and Herrnstein refer do not typically claim the baleful consequences of a disadvantaged environment can be easily repaired. To the contrary, they usually acknowledge the tremendous difficulty of countering the bad effects of poor living conditions. That is why they plead for more funding to transform the disadvantaged environments that generate problems that are hard to undo.

Third, Murray and Herrnstein display a nostalgia for good old days that never existed. "We argue," they write, "that the best and indeed the only answer to the problem of group differences is an energetic and uncompromising recommitment to individualism. To judge someone except on his or her own merits was historically thought to be un-American, and we urge that it become so again." Although I am sympathetic to one of the impulses behind this comment — an impulse prompted by the cages of racial and gender differences being created by some ideologues of "diversity" — the reference to a lost golden age of meritocracy is laughable. American history has been characterized by invidious racial oppression far more than it has been characterized by race-neutral equal opportunity.

A strange brew

Fourth, I hope that African Americans and others will eschew Murray and Herrnstein's invitation to indulge in what they describe as "wise ethnocentrism." The suggestion appears to me to be merely another marketing device, a way to make more palatable the Murray-Herrnstein claim that blacks, on average, are inferior intellectually to whites. Being part of a group that is collectively inferior in intellectual capacity is not so bad, the authors appear to con-

tend, so long as the group recognizes its own accomplishments. Indeed, the authors later maintain with a gush of apparent enthusiasm that "it is possible to look ahead to a world in which the glorious hodgepodge of inequalities of ethnic groups genetic and environmental, permanent and temporary, can be not only accepted but celebrated." This ridiculous appeal to non-judgmental relativism is one part reactionary racialism and one part 1990s political correctness — a strange brew

Contrary to the impression they sometimes give, Murray and Herrnstein are not intellectual pioneers; they are popularizers who have a keen sense of how to make a big splash among people who read opinion magazines and op-eds and purchase big books like "The Bell Curve" (for \$30 a copy), which they either shelve without reading or lightly skim.

indeed. Furthermore, apart from the matter of motive, the substance of the advice is dubious. We have enough ethnocentrism in our nation without adding a new variety or creating a fresh justification for those already in existence.

A final word: Have patience

Finally, a word about how to respond to the Murray-Herrnstein production. Those who strongly disagree, as I do, with their analysis and prescriptions should not attempt to prevent Murray from stating his, and his late collaborator's, views. Attempting to muzzle him will only give the book additional, bankable publicity. Nor should critics feel that they must disagree with everything the authors say. Sometimes the authors make good points, as when they discuss anxieties surrounding the question of environmental versus genetic determinants of alleged racial differences in intelligence. Readers interested in evaluating seriously the Murray-Herrnstein enterprise should show patience by engaging in and waiting for careful siftings of its intellectual merits and demerits. They should resist having their agendas set and their minds made up on terms prescribed by cultural entrepreneurs who exploit controversy for the purpose of financial and political profit.

Temporary Insanity

By Sheila Tuller



Liabilities

By Paul Taylor



Guide to Legal Terminology

By Sean Kanuck & Matthew Queler

Limited appeal: a fashion sense commonly found among teenage women

ultra vires: a special type of incurable pathogen

foreign tort claims act: an incident whereby French pastry is obtained

ABA: the first three letters of a dyslexic's alphabet

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CALENDAR

By Jeff Bucholtz

Save the Planet?
Pass the Depends!

This week promises to be lucrative for scalpers, as **Nine-Inch Nails** hit town for their sold-out-in-hours show at the Boston Garden on Saturday (12/3). The project to replace the Garden may get a big boost out of this concert, since Trent Reznor and Co. will undoubtedly do their antisocial best to lay waste to the ailing arena.

Even if Reznor's on-stage aggression is affected (or downright choreographed), a Nails show is a cathartic celebration of cyberfury. Unfortunately, there are *seats* at the Garden. If you don't have a ticket, and you don't happen to, oh, let's say, run Ticketmaster, it looks like you're reduced to an entirely above-board and legal service like Ticketmania (413-737-5152). When they try to gouge you, flash your HLS I.D. and express utter disbelief that they could engage in such blatantly illegal conduct. It won't work, but it might be amusing.

Tonight (12/2) features **Danzig**, **Type O Negative**, and **Godflesh** on a triple bill of evil at the Wallace Civic Center (508-345-7593). Ex-Misfit Glenn Danzig's band's plodding metal is musically inept, hopelessly uncreative, and cartoonishly satanic. If there really was a Satan, the first thing He'd do is beat the crap out of this poseur.

Type O, a New York band who are even more over-the-top than Danzig (a song from their first album is called "Unsuccessfully Coping with the Natural Beauty of Infidelity" and is subtitled something more apt, but unprintable), are finally getting some recognition for their great *Bloody Kisses* disc. Heavy, dark, and twisted, Type O fall somewhere between metal and gothic.

Ultra-heavy openers **Godflesh** have taken metal and slowed it down and electronically enhanced it, creating detuned dirges that could be the soundtrack for the apocalypse. Plus, a Godflesh show was the only time I've had to leave a concert because it was too loud and too violent.

If you can't get into **Nine-Inch Nails** on Saturday, Boston's own **Big Catholic Guilt** are the next best thing. Like the Nails, BCG play inventive and malevolent techno-core, and unlike the Garden, Local 186 (351-2680) doesn't have seats to get in the way of your moshing.

Perennial critics' darling **Lyle Lovett** brings his wacky country-jazz-pop to the Orpheum (931-2000) on Saturday, and funk legends **War** continue their comeback at the House of Blues (491-BLUE) on Sunday and Monday (12/4-5).

As if the Stones' on pay-per-view and Zeppelin on MTV Unplugged weren't enough, the dinosaur revival wheezes along with **Foghat** at the Hard Rock Cafe on Tuesday (12/6). Bummer that Boltonesque pseudo-hard rocker John Waite canceled his Paradise gig, but maybe he'll join Foghat for a slow ride to the nursing home. At least Zep and the Stones used to be good.

Wednesday metal night at Axis (262-2437) continues with thrash veterans **Testament** and **downset**, and the **Soup Dragons** make the Paradise (351-2526) a living Hell on Wednesday and Thursday (12/6-7).

Night Music

By Debra Dickerson '95

RECORD Columnist

My great-grandfather was in a wheelchair when I was a kid, and my mother couldn't tell me why. I figured polio, but his 85-year-old nephew told me an incredible story this summer about a magical horse, moonshine, and playing the fiddle at parties. This is an excerpt from my short story about it:



back. They spoke urgently among themselves and rolled cigarettes one-handed. Through the open back door, he could see the women circling in their own way, eyeing each other for bruises and missed meals, comparing waistlines to see who was pregnant again and so soon since the last one.

He let his head fall forward and began singing low. He squinted into the lamplight and kept his vision blurred. He cast around inside himself for the strength to play for them all night, the concentra-

tion required to keep the music simple and one-dimensional. The homebrew would not take effect, and he feared the result of such clarity as he stared out into their mindless disregard. His invisibility would reflect, he knew, off their colorless eyes, their sharp-looking freckles like small shards of tea-colored glass, and he would grow small. The ground would reach up for him, and he'd lose his balance at last and fall down and down and down. He felt panic. The men formed an urgent circle around him and Birda, hungry for the tinkling jarjingle he brought to help them find the music.

He remained inert while his mind searched for a culvert to hide in. Their impatient hands moved among the jars; not stealing, just touching. They could not wait much longer. The women inside looked to their men on such nights with a gaping ache that would not, not tonight, be denied. There was a need then for a man's lubricated ability to whisper, "You hush now," with just the right mixture of threat and partiality. The knowledge of just how to press against them in the dark to make them cooperative later and not just resigned.

Birda stamped her feet and bared her teeth. They danced back away from those hooves, and he came to himself. He sang louder; a market-day song with words created on the spot. The liquor kicked in at last, and he raised his fiddle to accompany himself with an intricate-

ly layered tune whose rhythm he knew they would not be able to catch. It gave him fuel, and they were happy at first to hear him, his old self. They clapped along as best they could, elbowing, feinting jabs to the ribcage, calling each other sombitches. When their feet started getting tangled up and their eyes narrowed in suspicion of secret codes and unexplained jokes, he finished with a simple flourish and leapt up onto the driver's box. He played a simple jig for them while they selected and dropped their quarters at his feet.

He leapt down as Birda pulled up to the open back door. She used her forequarters as a doorstep and stood at the spot from which he would be able to see her throughout the evening.

It was three hours from Webb to Clarksdale and Birda needed no urging to hit the correct stride. She never did. He reached underneath his seat and pulled out the fiddle case.

They jounced along. The perfect pace to set the wrapped jars behind him jingling in tuneful safety. He let the rhythm of hooves on dirt, burlap-wrapped tinkling, cicadas at sunset wash over him and found the music. He fit the fiddle under his chin, eyes closed, and felt the waning sun bathe his cheek. Birda threw her head 'round to the side, as if trying to see the music before it began. When his arms and fingertips began tingling, he knew it was right. Music came.

Set to music, she tossed her mane and danced along to his tune. Their tune. He played faster, he played slower. She kept pace and they danced together through the warm Mississippi night. Forty miles and three hours passed like a favorite melody.

She stopped the surrey at the meeting hall's back entrance, the place where they congregated to work up to a lynching. A half-mile or so back, her warning whinnies had broken through and stopped his playing. He'd ridden the rest of the way in slumped into the seat and gulping from his jar of private stock. Fiddle clasped across his chest, his breathing was ragged, his face ecstatic.

He swiped his sleeve across his eyes. "No," he rasped. "Fairgrounds." Where the lynchings took place. He downed the jar's remainder and let his head snap back as she took off for the other end of town.

A crowd of white men waited there, circling in the

Couples whose pallid features he could no longer reassemble into anything recognizable swung by in whirling blurs of whooshing skirts and stomping feet. One by one, his fellow bandmembers collapsed, exhausted, but on he played.

They played all night. Couples whose pallid features he could no longer reassemble into anything recognizable swung by in whirling blurs of whooshing skirts and stomping feet. One by one, his fellow bandmembers collapsed, exhausted, but on he played. George Bishop paused only long enough to drink and let the jars crash unnoticed to the wooden floor. He'd stop just so long and keep time

with his feet in melodies as satisfying as the full band. He'd drink and resume playing with hasty homebrew dribbling down his chin and tear-dropping his fiddle. He bucked and jumped while he played and the grainy glass particles scrunching beneath his feet became part of the music. He played like he always did until he no longer knew where he was or for whom he played or what he played.



Fenno felt sated. He was sitting comfortably in a cab en route from Logan Airport to the Gropius Complex. His Thanksgiving holiday back in Des Moines had been a good one, with plenty of food, folks, and fun. Fenno, Sr., had carved up a beautiful bird, while Fenno's mother had simply outdone herself with an epic casserole of yams and whammy whip (that's Fluff for you eastern seaboarders).

"Allah akbar," said Fenno as he gave his good man Mohammed the Cabbie an extra \$5 for his efforts. He then strolled into Story Hall and toward his room. He spied two burly figures standing just outside his door. "Evening, fellas."

"Are you... uh... uh... say, is it Fenno, or Mr. Fenno?"

"Fenno's fine, gentlemen, and yes, I be he."

"Then you'll have to come with us."

The next few hours were a blur for Fenno. From what little he could piece together, Fenno figured out that he was being held for having cheated — yes, cheated — on the preparation of his brief for the Ames competition. He was to go before the HLS Ad Board the following morning to explain his actions. When he asked for a lawyer, he was told that those types weren't allowed on campus any more. Confident of his innocence, Fenno decided not to worry and drifted off to sleep with images of Kate Moss dancing waif-like through his head.

Fenno awoke to the sound of uncomfortable chairs. He knew instantly that he was in Langdell South. Arrayed before him were several professors and three pimply law students who oozed self-importance. "Welcome to the Ad Board," boomed Arthur Miller. "You're in trouble, and I'm famous."

"We're famous too," said the three

student Ad Board members.

"Uh... I didn't do it. I wasn't there, and I don't know any of the suspects. Besides, this whole process is tainted by the fruit of the poisonous tree!" urged Fenno.

It was to no avail. The Ad Board dispensed with Fenno's case in rather perfunctory fashion. Fenno explained that all he had done was to spend a few hours at the Bow and Arrow with Dean Clark and the judge who had decided the case upon which the Ames exercise was based. The three amigos spent most of their time together comparing notes on 1L women they had recently dated and swapping fiduciary duty jokes. For only 30 minutes — at most — did they talk about what the judge felt were the four most important aspects of the argument that carried the day. Fenno didn't even take notes, except for a few jottings on a cocktail napkin. And he only used three of the four points in his brief.

Things got worse when the Ad Board, in reading Fenno's brief, noticed several unattributed phrases that seemed eerily familiar, including, "We must never forget that it is a CONSTITUTION we are expounding!" and, "The doggone girl is mine." Knowing he had been caught improperly borrowing from Justices Marshall and Jackson, Fenno tried using the "ITL defense," arguing that Nesson had taught him how to inhale, not cite things. There were no takers.

The Ad Board acted swiftly and harshly. The student members clamored for Fenno's head, but Professor Shapiro's (very) quiet voice of reason carried the day. Instead of death, Fenno would face life — as an unpaid bag checker in Langdell.

It was an unusual sentence, but hardly a cruel one. For, instead of having to cope with the demands of social interaction and basic human decency, Fenno was allowed to grope through people's belongings and hassle them all day long.

NEXT TIME: Green Eggs and Fenno.

Top Ten Reasons

No One from the RECORD Could Have Authored the Anonymous "Boycott Ames" Flyer:

10. "RECORD" not put in all caps.
9. No obsequious deference to Dean Clark '72.
8. The RECORD can't afford to publish on expensive white paper.
7. We know not to capitalize "spring."
6. RECORD staff too hung over Friday morning to put up posters.
5. Our operatives on the Law School Council would never have allowed the Epps-Camper rebuttal flyers to go up.
4. The RECORD is always the last to know juicy gossip.
3. Greg Stohr was fishing with Dean Clark '72 that day.
2. Prof. Nesson '63 not mentioned once.

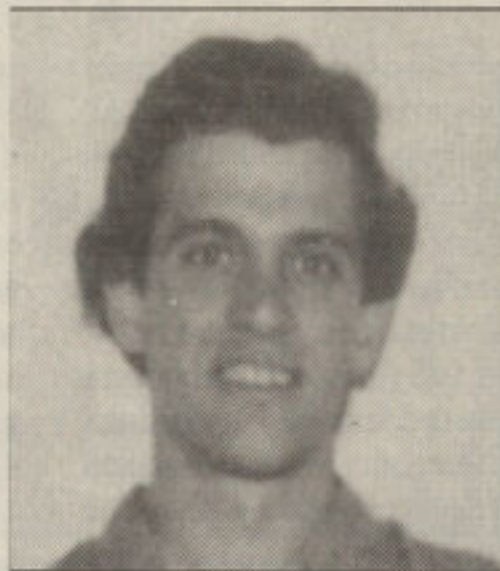
And the number one reason no one from the RECORD could have authored the anonymous "Boycott Ames" flyer:

1. No byline.

The Human Rights Program: Leading by Quiet Example

By Robert Weissman '95

RECORD Columnist



ONE of the mysteries of Harvard Law School is why, despite the prominence of the Critical Legal Studies movement, corporate firm recruiting goes on as strong as ever.

By some accounts, the radical CLS movement nearly took over the faculty a scant few years ago. And although the anointment of Dean Clark '72 muffled the CLS insurgency, the Crits maintain a significant presence at the Law School, with many of the foremost Crit scholars making their home here. How does all this jibe with the ongoing vitality of the recruiting mill, which has recently begun churning for 1Ls?

A big part of the explanation surely is that the Crits never had the influence their enemies alleged.

But a satisfactory solution to the mystery requires more. I believe much of the answer lies in the Crits' approach. The CLS emphasis on demonstrating the indeterminacy and contradictions of the law links up with utopian or progressive political projects only at a very abstract level, not one likely to be communicated very effectively in the classroom. As a legal tool, the Crits' insights into how the law can be manipulated serve business interests equally well as the public interest. And the Crits' abstract, academic, anthropological take on the law does not provide either a model or an inspiration to many public interest-minded students.

By way of contrast to the flamboyant Crits, the Human Rights Program (HRP) operates quietly on the fourth floor of Pound Hall. Program Director Prof. Henry Steiner '55 may lack the attractive outrageousness and may not generate the controversy of the Crits, but he does provide an example of an engaged lawyer using the tools of the trade to work for a better world.

Steiner and his associates have developed an extraordinary program that offers students a compelling mix of the theoretical and the practical, the academic and the applied. Under the broad rubric of HRP, faculty and visiting lecturers teach a half dozen courses a year. The Harvard Human Rights Journal gives students a chance to contribute to the human rights literature, on both theoretical matters and case-specific analyses. Students are able to participate in any of countless research projects, for credit or independently. HRP regularly brings in leading practitioners from around the world to discuss their work at open forums. And it sponsors about 10 visiting fellows every year to do research and writing on human rights.

Most important, perhaps, each summer HRP sponsors 15 to 20 students to work with human rights organizations around the world. The HRP internships give students an opportunity to do field work and to get a glimpse of human rights and public interest practice in other cultures.

I worked as an HRP-sponsored intern two summers ago, with the Philippine Alliance of Human Rights Advocates (PAHRA). I saw how law got translated into reality in an authoritarian Third World context, how legal guarantees and protections often turned out to be nothing more than a cruel hoax — but also how they sometimes could be turned into effective instruments to advance the interests of oppressed individuals and groups.

In Manila, I worked and became friends with an amazing collection of brave and devoted human rights workers. Nearly all of the staff at PAHRA had been the victim of human rights abuses or had immediate family members who had been killed extrajudicially. Staff members would casually mention that they had been disappeared for a week, or been detained for three years — and always, it seemed, tortured. "They don't consider it detention unless they torture you," one activist blithely told me.

My internship focused on the rights of indigenous people, and I traveled extensively outside of Manila to collect information on indigenous communities. Outside of Benguet, a city north of Manila, I visited a community of indigenous people who had been driven off their land in the countryside by a combination of military abuses and large-scale farmers looking for land to grow products for export. The community lived on a garbage dumpsite and supported itself by combing through the trash continuously brought to the dump. When I visited, a local rich man had just come to the community and told the residents that, under laws designed to protect the ancestral domain of indigenous peoples, he maintained rights to the land that had long been used by the city as a dumpsite. The residents would have to pay him a substantial amount to remain on the land, he said. The incident gave a whole new meaning to tragicomedy, and it taught me lessons about brutality and misuse of the law that I could never hope to learn by reading cases or even by working in a human rights office.

I returned from my internship with new understandings of the relationship between the work we do at the Law School and the reality of people's lives, a new appreciation for the freedom with which civic-minded lawyers and citizens can function in our society, a much more nuanced understanding of indigenous cultures, and an elevated zeal for public interest work. Every HRP intern has a different experience, of course, but almost all seem to come back similarly enthused.

HRP's integrated and applied approach has been a great success. For students who pass through one or another aspect of the program, it provides an ongoing example of what public interest lawyers can concretely do, how their work can be intellectually challenging and socially meaningful. It certainly has had a profound effect on the human rights community; HRP alumni have headed the Croatian Democracy Project, the Environmental Poverty Law Working Group, Human Rights Watch/Africa, Human Rights Watch/Americas, the Kenya Human Rights Commission, the Women Refugees Project, the legal department of Amnesty International, academic human rights programs, and other human rights organizations. HRP alumni lists also include dozens of former students and associates who have gone on to a wide range of public interest careers.

Harvard Law School could do a great deal to demonstrate its purported commitment to public interest work by creating more HRP-type programs, in areas like environmental or consumer law, for example. That might put a dent in the corporate firm recruiting efforts which coexist happily with the presence of the Crits, the academic legal community's leading radicals.

Dean Griswold Dies

continued from GRISWOLD page 1

Fairfield Professorship from 1946 to 1950, and the Langdell Professorship from 1950 to 1967.

In 1967, President Johnson invited him to take the post of solicitor general. Said Griswold of his decision, "I took 15 agonizing seconds, and said yes."

As solicitor general he argued 127 cases before the Supreme Court, one of only three attorneys to argue more than 100 cases this century.

In 1973 Griswold joined Jones, Day, Reavis & Pogue in D.C. as partner, and won the American Bar Association's highest award in 1978. In 1979 HLS dedicated Griswold Hall in his honor.

While a professor, Griswold's commitment to law in the real world led him into the political arena during the communist purges of the mid-1950s. In 1955 he wrote "The Fifth Amendment Today," defending the right against compelled self-incrimination and said in a speech at Mount Holyoke College on March 24, 1954, that

Americans "should have to bestir ourselves from time to time to protect our liberties as our ancestors did on many occasions."

Without this activism, Griswold said, "If we take these rights for granted, if we accept them as a matter of course, we may simply fritter them away and end up losing them, and we probably deserve to lose them."

Griswold also served as expert witness to then-NAACP Legal Defense Fund

Director Thurgood Marshall in a series of cases that laid the foundation for the Supreme Court's desegregation order in *Brown v. Board of Education of Topeka*.

This outspokenness continued into Griswold's later years when he testified in 1991 before the Senate Judiciary Committee against Clarence Thomas's Supreme Court nomination. Calling it a "frightening prospect" that someone with such sparse credentials could be justice for a lifetime, Griswold also commented to the Washington Post that Bush's contention that Thomas was the best person for Supreme Court "seems to me a fantasy."

A relatively liberal Republican, Griswold shifted toward more conservative positions during the Nixon Administration. During that time, he argued for preventing Dr. Benjamin Spock and three other minority party candidates from campaigning at an army base in Fort Dix, N.J., and contended that the military's policy of automatically discharging pregnant servicewomen was not discriminatory.

Perhaps his most notable position during that time was his 1971 Supreme Court argument in the Pentagon Papers case. Publishing these documents, Griswold argued, would "have the effect

of causing immediate and irreparable harm to the security of the U.S."

His argument was defeated and in 1989, after admitting that "[no] trace of a threat to the national security from the publication" existed, Griswold said, "There's a good deal of difference between foresight and hindsight, and as of that time I thought there was substantial risk."

As sketched in a 1960 New York Times profile, Griswold came from "a background of Midwest conservatism" and was "inflexible in his conceptions of basic rectitude."

That "basic rectitude" was perhaps one of Griswold's most memorable characteristics. As a teacher, "he was, in a good sense of the word, demanding," said Prof. Archibald Cox '37, who was a 1L during Griswold's first year as a teacher at HLS and later took tax from Griswold as a 3L.

"He was very insistent on preciseness, and as another student said, the greatest lesson he learned from

Griswold was, 'Read the statute.' And there was very little statutory material in the law in those days," Cox said.

But Griswold's exacting classroom standards was matched by an intense desire to help students, and "in order to give as close to a complete Harvard Law School experience to the greatest number of students as possible, he encouraged the formation of other law journals like the Harvard Civil Rights-Civil Liberties Law Review," Cox said.

Byse also emphasized Griswold's humane qualities, noting that the late dean personally answered 150 congratulatory letters on his 90th birthday. "Sometimes he didn't project that humanity or congeniality, [but] despite at times an appearance of gruffness, underneath that exterior was a very decent person, a man of supreme ability and values, particularly in civil rights and civil liberties."

Byse also mentioned Griswold's habit of conserving energy whenever possible.

"Erwin was always turning the lights off," he said. "Some years ago there was a blackout from New York to Boston, and somebody said to him, 'Erwin, you've gone too far this time.'"

Griswold's noted gruffness, however, sometimes bore a humorous edge, as when he welcomed the entering class of 1966: "Hello, I'm the maitre d' hôtel of this mélange of prima donnas."

A private funeral service was held last week. In addition to his daughter, survivors include his wife of 63 years, Harriet Allena (Ford); his son, William Erwin Griswold of Belmont; a brother, James, of Exeter, N.H.; a sister, Hope Curfman of Denver; five grandchildren; and a great-grandchild.

Perhaps his
most notable
position during
that time was
his 1971
Supreme Court
argument in the
Pentagon
Papers case.

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NO MSG!

The Mother in Law

By Diane J. Klein Mahaffey '97

Guest Columnist



I am a second-class citizen at Harvard Law School. When I look around my class, I know there is no one like me, no one whose law school experience will resemble mine in several very important ways. Does that make me a "pioneer"? If there have been others here like me, they have not left anything to mark their passing. As far as I know, I have no "role models" in the 2L and 3L classes. But I don't belong to a racial or ethnic minority group severely underrepresented at the Harvard Law School.

The facilities which would make it possible for me to participate fully in the HLS experience are conspicuously absent. As a result, the meetings of most extracurricular groups as well as career and professional development activities are inaccessible to me. But I do not have a physical disability.

Most of the time I'm sure I seem like any other HLS student, maybe a little more talkative than some (though I hope not all) of my section-mates. It's easy for me to "pass" as an ordinary career-minded law student in my 20's, and usually I am beset only by typical first-year anxieties: will I ever catch up in my Civ Pro reading? Do I need to send out 100 letters looking for a summer job, or will 50 be enough? How will I do on exams? Only once in a while do I really worry about whether my lifestyle will make a promising future in a firm impossible no matter what my grades are. But what I conceal when I "pass" is not homosexuality or a working-class background.

What I am is the mother of two healthy, happy children, ages 2 and 4.

At a cost only slightly below Harvard Law School tuition, my children are in daycare and preschool from 8 a.m. until 3 p.m. five days a week. Hiring a baby-sitter after that not only reduces my time with my children nearly to nothing, but also costs our family about \$10 an hour. Almost every activity, information session, and social event on campus takes place between 4 and 8 in the evening. Even those groups for which I might be willing to pay a \$20 "kid tax" just to go to their meetings often don't schedule or publicize events until a day or two in advance, not nearly enough time to making sitting arrangements. Of course, no child care is offered, and children are most definitely not welcome. (I know; I've tried to bring them.) I'm sure this problem is not unique to me. Any student who works evenings or has other commitments than law school must find herself in the same position.

I am not the only student parent at HLS. But as far as I can tell (using the membership of the Harvard Law Couples Association as a rough guide), almost every student parent at HLS is a father, and most of them have stay-at-home wives caring for their children. Unlike the spouses of most HLS student parents, my husband works full time (and then some), and unlike many families with student parents, we are not living on loans but on what he earns.

In Dean Clark's welcoming address, he spoke to partners of new HLS students, encouraging them to cut the student some extra slack, to accommodate the apparently extraordinary demands on a 1L. Of course, this speech occurred

Perhaps Dean Clark's picture of the married student is one who goes home late to a neglected wife whose casserole is burned and who can't quite follow his unintelligible chatter about collateral estoppel or personal jurisdiction. That is not quite my life.

in the middle of the afternoon on a weekday, so my husband wasn't there to hear it because he was working. I think having my law school education and daycare for our children paid for (to say nothing of food, rent, etc.) is just about as much slack as anyone is entitled to, and I fail to see why supporting a family of four, three of whom are in school, is somehow less demanding and stressful than learning negligence and the legal duty rule. Perhaps Dean Clark's picture of the married student is one who goes home late to a neglected wife whose casserole is burned and who can't quite follow his unintelligible chatter about collateral estoppel or personal jurisdiction. That is not quite my life.

I know that for most students at HLS, and indeed, for most young associates in law firms, parents are still something you have, not something you are. "Hard choices" mean deciding between another few drinks at Rosie's with your friends or another few pages of Fuller & Eisenberg, not deciding whether your child's fever is so high that you need to miss Torts to take her to the doctor or whether with baby Tylenol she can hang in there until ITL. I was touched and somewhat amused by the recent column in the RECORD urging law firm interviewees to inquire about parental leave and child-care policies in a tone which suggested that, contrary to popular belief, such concerns might not be quite as distant as retirement pensions. It didn't seem to occur to the writer that for some future lawyers in her very own school, that far-off tomorrow is already yesterday.

No doubt some readers are thinking to themselves that after all, I didn't have to wait to go to law school until I had children. I could have done what they did, and started law school right after college (or the obligatory year or two in D.C. or New York). But no one "has to" come to Harvard Law School — not the first black students, not the first women, not the first openly gay students, not the first Jews. Like them, I came because I wanted what HLS has to offer, and like them, I feel I have something to offer HLS. And like them, part of the added price I pay is second-class status.

Forrest Gump in '96?

By Willie J. Epps, Jr. '95

Guest Columnist



THE resounding mid-term defeat suffered by the Democrats and President Bill Clinton has politicians and public icons from all political persuasions testing the waters to determine if Americans will want to transplant the exposed president from 1600 Pennsylvania Avenue back to Arkansas in 1996.

With both houses of Congress now safely back in the hands of the Grand Old Party, would-be Republican presidents are swarming all over Iowa and New Hampshire to organize the troops. Senators Arlen Specter of Pennsylvania and Phil Gramm of Texas have already announced their candidacies, but incoming Senate Majority Leader Bob Dole is the early favorite for the '96 Republican nomination. At least six members of President Bush's cabinet — former Secretary of State James Baker, former Secretary of Defense Dick Cheney, former Secretary of Labor Lynn Martin, former HUD Secretary Jack Kemp, former Vice President Dan Quayle, and former Secretary of Education Lamar Alexander — are also possible candidates. Governors William Weld of Massachusetts, Pete Wilson of California and Tommy Thompson of Wisconsin are being pressured to seek the higher office. And one should not be surprised to see television commentator Pat "Mr. Protest Vote" Buchanan make another run for the White House.

Clinton's vulnerability also has some Democrats thinking about challenging the President for his party's nomination in 1996. Jesse Jackson, the civil rights advocate and 1988 presidential hopeful, has expressed interest. Senator Bob Kerrey of Nebraska, a thorn in Clinton's side during the budget battle, is also thinking about running despite what he said last week.

Also, independents such as Ross Perot and former chairman of the Joint Chiefs of Staff Colin Powell are often mentioned as Clinton's potential adversaries in 1996.

FORREST GUMP

But the President's strongest challenger in '96 could be Alabama businessman Forrest Gump. Gump is the most respected and intriguing man in the country, more popular than any other public figure, including General Colin Powell. He has played a pivotal role in just about every key moment of U.S. cultural history since the early 1960s, and not only was the originator of Elvis's hip-wiggling style but also was the real discoverer of the Watergate break-ins. And he avoids partisan politics.

The "talking heads" have begun to speculate on a Gump campaign and agree, at first glance, that Mr. Gump has what it takes to both attract votes of white males who abandoned the Democratic Party last election and give Clinton a run for his money. Insiders say that Mr. Gump will meet with his close advisors during the coming months to determine if his old-fashioned virtue, innocence, faithfulness, and generosity are what Americans desire in a president.

Forrest Gump, the 6' 6", slow-talking, slow-witted gentleman was born in the rural South in the 1940s. Young Forrest was afflicted with leg braces but overcame his physical disability through sheer determination. During high school, he was an excellent athlete and a decent student, despite his lower than average I.Q. of 75. After high school, he became an All-American football player for Coach Bear Bryant's Crimson Tide at the University of Alabama. Off the field, this young football legend played a front-line role in the court-ordered desegregation at the university.

Following graduation, Gump enlisted in the United States Army, served in Vietnam, and earned both the Medal of Honor and a Purple Heart. Gump represented the U.S. in international pingpong, ran cross country, and founded Bubba Gump Shrimp, now a multi-million dollar business. President Clinton may have had his moment with JFK captured on film, but Gump had his moments with three presidents captured on film.

Gump's extraordinary life inspired Paramount Pictures "Forrest Gump," starring Tom Hanks. "Forrest Gump" is the No. 1 film of 1994 and the fourth-highest domestic grossing movie ever, with \$300 million in ticket sales. It is expected to dominate the upcoming Oscar nominations.

It would be an understatement to say this film has helped Forrest Gump, the man, capture the hearts and minds of the American people. Licensed merchandise bearing his name is expected to be one of this year's leading Christmas gifts. "The Bubba Gump Shrimp Co. Cookbook" is expected to be a hot item in bookstores. Gump pingpong sets are leading the field. And the paperback book chronicling Gump's life has sold more than a million copies.

Gump's name recognition will increase even more this spring when the movie "Forrest Gump" is released on video by Worldwide Video. This fact alone has media consultants, poll-takers, and campaign strategists standing in line to work for Mr. Gump if he decides to seek the presidency.

THE INEVITABLE PRESS ATTACK

But when Mr. Gump finally announces his presidential intentions, this writer is willing to bet that he will ultimately choose not throw his hat into the ring.

Gump may not be book-smart, but he has an enormous amount of common sense. For Gump realizes America's love affair with him would quickly end via the malicious press if he announced his candidacy. Our national media will dig deep into his past, looking for dirt, treating the highly regarded Gump much like a box of chocolates because "you never know what you are going to get."

Gump's support from the religious right would be badly damaged by inevitable reports that Gump coined the infamous phrase, "Shit Happens," which has been inflicted upon countless innocent drivers by the bumper of the car in front.

Potential southern white male support would evaporate when people learn our war hero participated in peace marches shortly after returning from Vietnam.

Potential black and Jewish support of a Gump candidacy would be jeopardized when the press forces Gump to explain that his namesake was a confederate general who was also an active Ku Klux Klansman.

Support from women would be damaged as soon as Gump articulated his viewpoint on abortion and health care.

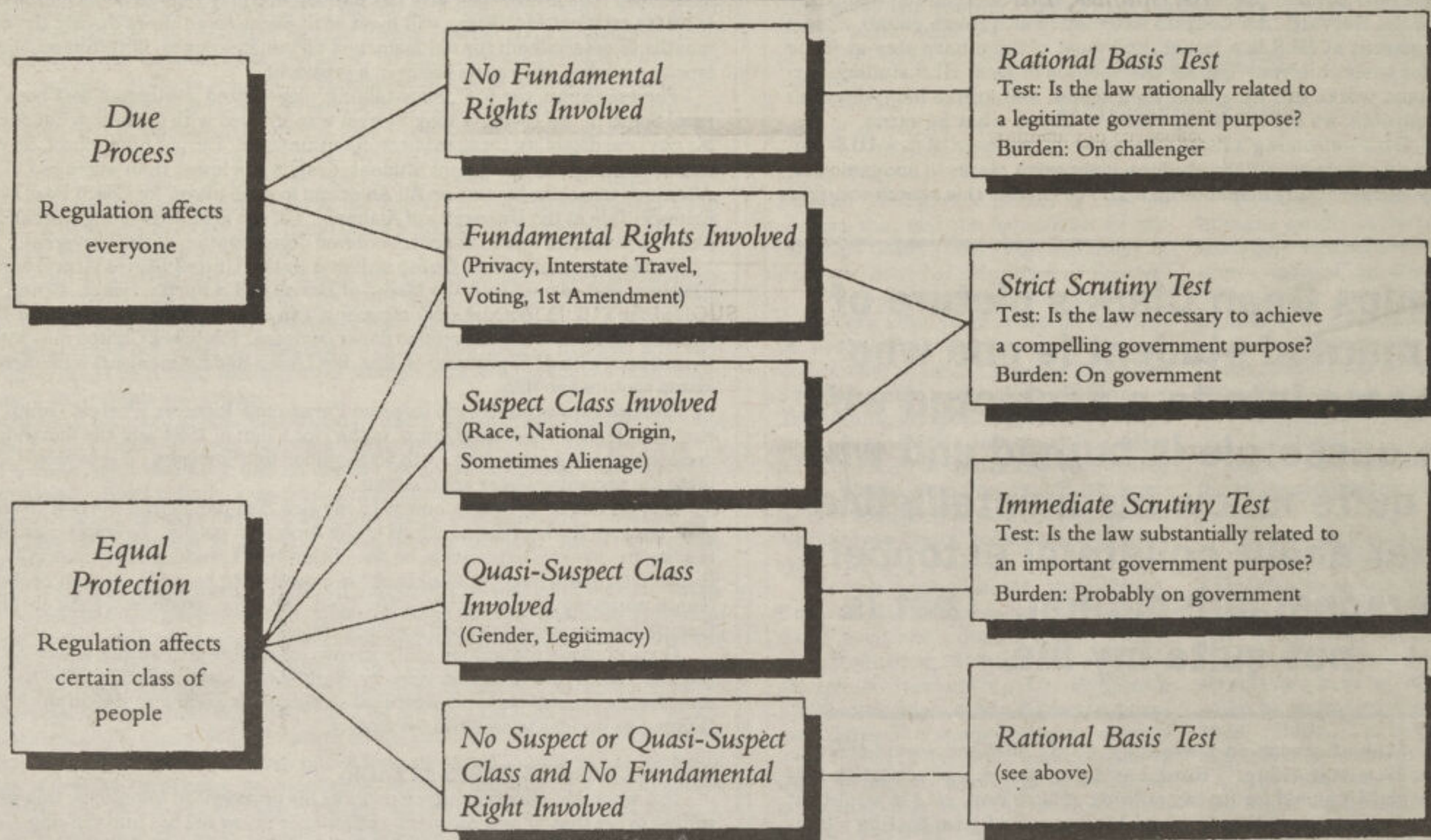
And how painful would it be to see Mr. Gump forced to explain his relationship with Jenny Curran, his deceased wife and mother of his only child? Many know that Ms. Curran made the rounds in sex and drugs, was closely affiliated with the Black Panthers and belonged to numerous radical women's liberation groups.

As Forrest Gump's momma told him over and over, "Stupid is as stupid does." Mr. Gump, don't be stupid. Don't run for president. The press is just too cruel. And after all, the American people would probably not prefer a president from Hope one election and then four years later vote for someone from Nowhere, Alabama. But then again, judging from the mid-term election results, maybe the American people do want a government headed Nowhere versus one that inspires Hope.

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