TOPS

OF THE WEEK

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MICHAEL ROMANOS

SHEET

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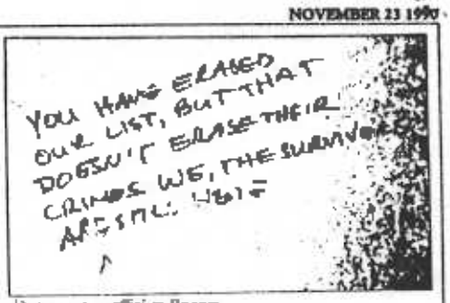

Date rape graffiti at Brown

JUDY EHEI

BRIEF CASES

Are rape ideologues running amok?

by Harvey A. Silvergate

"Let the jury consider their verdict," the King said, for about the twentieth time that day.

"No, no!" said the Queen. "Sentence first — verdict afterwards."

"Stuff and nonsense!" said Alice loudly. "The idea of having the sentence first!"

"Hold your tongue!" said the Queen, turning purple.

"I won't!" said Alice.

"Off with her head!" said the Queen, turning purple.

— Alice's Adventures in Wonderland

When L. Fred Jewett, the Dean of Harvard College, was interviewed by the Harvard *Crimson* in late October on the subject of administrative disciplinary policy and "date rape," he made a couple of observations that one would have thought would have been self-evident and not at all controversial. Said Jewett: "When people are drunk, they may not remember whether they said yes or not. The person that's drunk is not always clear, is not articulate, and that's why you get these cases." He concluded with another self-evident observation: "If the facts aren't clear, it's hard to take formal disciplinary action at some levels," he told the student reporter.

It's a sign of the times that these observations triggered an immediate and angry reaction. Some 75 students met a couple of days later to discuss Jewett's remarks. A candlelight vigil followed, "organized by several campus women's groups," reported the *Crimson*. The students vowed to demand a retraction from an obviously-shaken Jewett, who tried to respond, but without notable success, that his remarks were taken "out of context."

An "attack Jewett" poster campaign followed, led by two undergraduate women, Tanya S. J. Selvaratnam and Emily M.Tucker, who charged that Jewett's remarks showed a lack of concern about date rape. Jewett agreed to meet with a delegation of women. Following the meeting, Tucker observed that Jewett seemed "sincerely concerned about the issue."

Next week in Lifestyle:

The college crackdown on alcohol
Is it related to date rape?
And is it working?

The issue of date rape has come to the fore at colleges across the country. In New England, the debate over what constitutes date rape and what constitutes due process in date-rape cases has reached a fever pitch at Brown University where some women are keeping a list of male students who supposedly have sexually harassed, assaulted, or raped women students. And recently at the University of Rhode Island (URI) in Kingston, a freshman spent a week in jail following allegations that he raped a woman at a fraternity party. Charges were dismissed when the victim stated under oath that she could not remember the details of the assault clearly, and, in a much-publicized aftermath, another man who was present at the party died of a possible suicide.

The underlying issue here is the extent to which university disciplinary procedures should get out of step with the normal due-process requirements in criminal cases. Under the Constitution, defendants are entitled to a clear statement of the charges against them and an adequate opportunity to defend themselves in front of a neutral tribunal. The trend on college campuses, however, is distinctly away from such "niceties."

If the Harvard students had bothered to listen to Jewett more closely and dispassionately, they would have realized that his comments were not a reflection of insensitivity to the rights of women to live free from unwanted sexual assaults. Rather, he was lamenting the difficulty of dealing with the whole date-rape phenomenon — difficulty protecting the rights of victims, but also the difficulty of assuring due process for those accused of an offense that has no generally-accepted definition or procedures for determining the facts in a given case.

Jewett, when given a chance to explain, said that he did not intend to describe date-rape cases in general, but

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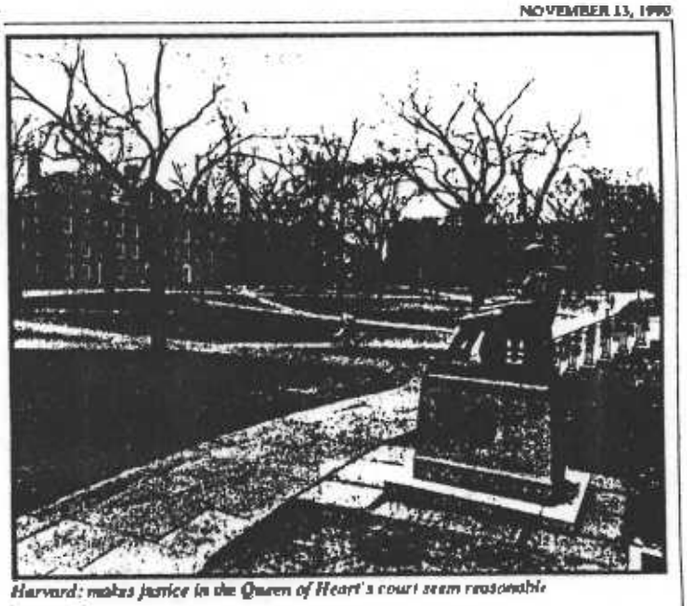


Harvard: makes justice in the Queen of Heart's court seem reasonable

Date rape

Continued from page 2

was referring to that category of cases involving alcohol, which are extremely difficult for college disciplinary bodies to adjudicate. After all, date rape, though serious, is not so heinous an offense that even innocence is not an adequate defense. People have known for thousands of years that alcohol can cloud one's recollection of events. In an area as subtle as date rape, a recollection extracted from an alcohol-induced haze is hardly the kind of evidence on which one comfortably convicts a student and throws him out of school or, worse, reports him to a district attorney for criminal prosecution.

Date rape is a particularly difficult issue, because allegations often stem from what started as a consensual interlude in which the accused has gone too far either without the express permission of the victim or despite her objections. Victim's protestations Controversy rages as to where the burden of denial or consent rests — with the woman to say 'no,' or with the man to obtain a clear 'yes.' In instances where neither participant takes the initiative to clarify the situation and where sex results, how does one untangle the progression of events and decide whether the sex was or was not consented to? And — equally important under long-standing Anglo-Saxon legal principles — whether the accused man had a good-faith basis to conclude that the woman was consenting and not objecting to sex?

These are not easy cases to judge, particularly when alcohol is involved, as Dean Jewett, at his peril, suggested. Date-rape cases are getting even harder to decide, however, in the face of the ideological line-up of the sometimes extremely opposing factions taking sides on the issue. At one end are men who believe that they can do anything as long as women do not try to fend them off with deadly force. On the other are the women who believe that nearly all sex between men and women, without a written contract, takes place without consent. (The latter is a position actually espoused by radical feminist theoretician Andrea Dworkin, whose otherwise salient and incisive social criticism of sexism is marred by her irrationally overextended definition of rape. Indeed, Dworkin does not even believe that a written contract is sufficient to connote consent, since, in her view, there can be no knowing consent until men and women are of equal status in society.)

As difficult as it is to deal with date rape in the absence of any social consensus as to a working definition of the offense, it is becoming even more difficult to figure out a procedure for adjudicating complaints outside the criminal courts. Indeed, women who have achieved only limited success in getting campus disciplinary bodies to accept their broad and vague definitions, have more and more attempted to reform procedures to weigh more heavily in the complainant's favor.

At Harvard, a number of women critics of the administration have demanded a special procedure for judging these cases. Some of the proposals are downright Orwellian. Take, for example, the suggestion seriously propounded by one group of students, as reported in the *Crimson*:

"In addition, students said they are concerned that [Administrative Board] rules give too much power to the male defendant. Under current practice, the victim writes a report of what happened and then the male is allowed to read it and respond.

"After hearing students' remarks last night, Jewett agreed to consider having both students write their reports simultaneously."

In other words, rather than have the victim lodge a complaint, present the defendant with the charges, and give the defendant an opportunity to respond and defend himself point by point, the current proposal at Harvard is to require the defendant to defend himself before he knows what the victim alleges transpired. It makes justice in the Court of the Queen of Hearts seem reasonable by comparison. There, at least, the defendants lost their heads before the verdict, and the agony was over.

Anti-date rape ideologues are active on other campuses as well. As reported in *Newsweek* and the *New York Times*, women have taken to scribbling date-rape graffiti on bathroom walls at Brown University. Some of the graffitists seem to feel that all it should take in an allegation of rape in order to convict the accused. "If I know I've been raped, then why the hell do I need a jury to tell me whether I've really been raped or not," wrote one student. "Why don't we just annihilate all men?" responded another. One accused male, senior Alex Downes, protested his innocence in the school newspaper. When his defense was noted among the graffiti, a responder scrawled, "Just because a guy says he isn't a rapist doesn't mean he's not a rapist." In short, the tactic here is to deem the accused guilty until proven innocent, and there does not seem to be any forum or procedure envisioned for such innocence to be proven.

One unfortunate result of this attack on common sense, is that efforts to discourage and punish obvious cases of sexual assaults get mired in ideological arguments. The movement to take sexual assaults more seriously loses credibility and gets bogged down as a result.

Take, for example, a report in the November 9 Harvard *Crimson* that the Harvard College Administrative Board suspended a freshman, for two years, for sexual assault in a dormitory hallway. James H. Burns was charged with grabbing the breasts of a woman and then fighting with her boyfriend. Burns told a *Crimson* reporter that his severe punishment was the result of a "difference in philosophy." In short, even though his offense would appear to be a clear case of sexual assault, he was able to slough it off by blaming the current atmosphere where irrationality and politicization have affected all sides and clouded the issues.

Indeed, Burns went even further in exhibiting precisely the kind of conduct that we should be working to discourage. "It wasn't as if it was a case of physical harm," he said, "but of the embarrassment [the boyfriend] felt." Until the date-rape debate gets back on track, it will be difficult to create an atmosphere in which students understand that the worst part of grabbing a woman's breast without permission is the relatively rare risk that it would cause embarrassment to her boyfriend. ☐

asked about a certain, delicate topic. Duncan resigned his IRS job in June 1989, walking away from a 16-year career as a financial investigator and his federal pension.

A "high government official"

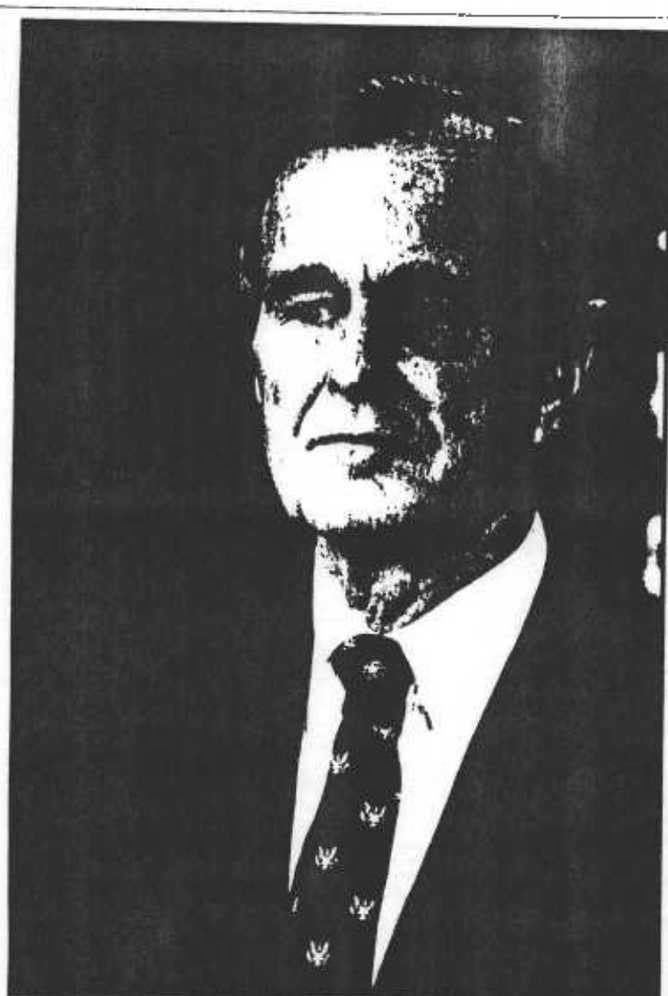
The request that Duncan perjure himself was made public on July 27, 1989, when he testified at televised congressional hearings. Duncan and his former IRS supervisor, Paul Whitmore, said that IRS attorney Mary Ann Curtin had ordered him to commit perjury by answering "I have no information" if the crime subcommittee asked him whether a "high government official" had been involved with Seal. Curtin has denied this.

That unnamed official remained anonymous during the public hearings. But this reporter has obtained a copy of a transcript of an earlier closed-door executive session held on February 26, 1988. And in that session Duncan was asked whether he had heard rumors that Seal had bribed the official — named by office as then attorney general Edwin Meese.

Duncan himself later testified in open congressional hearings that Curtin had wanted him to say "I have no information" when asked about Meese but that he'd refused to give that answer, instead responding that he had "no personal knowledge of that" yet had heard the rumors from investigator Welch. He also said he was certain that the subcommittee would have considered it perjury if he'd answered under oath the way the IRS wanted him to. Duncan said Gregory later confirmed his suppositions.

Duncan said that the IRS's only concern seemed to be not having Meese's name "smeared all over the *Washington Post*." Meese at that time was already under investigation by a special prosecutor and a federal grand jury on other matters. He resigned on July 5, 1988, after the grand jury failed to indict him on misconduct charges.

Duncan, now without a job, quickly found one and took heart that the story about what happened in Arkansas would finally be told. The House Subcommittee on Crime hired him to investigate the Mena connection, though Duncan found it strange when it wanted him to live in Washington rather than Arkansas, where he needed to be.



Bush's office served as "cover" for the contra arms operations.

ERIC RASMUSSEN

Then, on March 4 of this year, another strange event befell the investigator. Duncan, at the time a member of the House subcommittee staff, was arrested as he entered the Cannon House Office Building. The charge: violation of a District of Columbia gun-registration law.

The IRS Attorney in Washington has told Duncan that his office intends to pursue the gun-violation case even though Duncan was authorized as a congressional investigator to carry the weapon and had a firearms license and gratuitously showed the gun to the Capitol police officer as he entered the building. Duncan said he wanted to leave the handgun in a committee safe so that it would not remain in his car at Washington National Airport.

The timing could not have been more critical. Duncan was about to conduct a key interview for the subcommittee with former CIA contract employee Richard Brenneke, who has been outspoken about the connection of Bush's office with the contra operation during his vice-presidency. After Duncan's arrest, the committee cut off his travel funds. Duncan offered to continue without the funds, but that request was denied. So yet another investigation of what really happened in Arkansas was aborted.

This past July, Duncan — angered and frustrated — resigned from the subcommittee staff for giving him what he said were words of support "but nothing else." He is still awaiting trial.

What angers Duncan most, he said, is the decision by his superiors to let him twist in the wind all these years. "If someone had ordered me officially to stop, I readily would have. But all they told me was, 'Sic 'em, Fido.' And then when they finally tried to stop me, they did it by ordering me to commit perjury."

In his role as IRS investigator, Bill Duncan spent years unsuccessfully battling his own government in an attempt to get the Mena story out. And when Terry Reed threatened to spill the beans at his trial, the government folded its case. Clearly, some people in high places want to keep what happened in Arkansas a deep, dark secret. LJ