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THE GRISWOLD 9 AND STUDENT ACTIVISM FOR FACULTY DIVERSITY AT HARVARD LAW SCHOOL IN THE EARLY 1990s

*Philip Lee**

This article reconstructs a mostly forgotten moment in Harvard Law School history when the students organized in the early 1990s across race, gender, sexual orientation, and ability and disability lines to push for faculty diversity. The new student coalition, called the Coalition for Civil Rights, gave the students' activism unusual momentum. This initiative included the first time that law students, acting pro se, sued their law school for discrimination in faculty hiring and the first time Harvard Law School students were publically tried by their school's Administrative Board for conducting an overnight sit-in at the Dean's office (i.e., the Griswold 9 incident). Drawing upon social movement theory, the author analyzes why the activism was so robust during this time period by applying the concepts of signaling, framing, and resource mobilization to the actions of the students. The author argues that the unprecedented diversity of the coalition contributed to the activism's intensity in key ways. First, the protests by this diverse group signaled to the entire student body that the faculty diversity movement was gaining momentum. Second, the ways in which the coalition members framed an inclusive conception of diversity created a sense of strong group cohesion among students. Third, the diversity of the group served as a resource that enhanced the coalition's problem solving abilities. The author concludes that although the most vigorous activism was relatively short-lived, the students that were involved in this coalition were nonetheless successful in making their voices heard by Harvard University and the general public.

At some point, demands for change have an unacknowledged effect. Those in authority eventually come to see the value of diversity and even take credit for doing what they should have done much earlier. But it is the Harvard Law School students who deserve credit for [a tenured faculty appointment for a woman of color], and they can now celebrate this positive step.¹

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1. Derrick Bell, Op-Ed., *At Last, Harvard Sees the Light*, N.Y. TIMES, Jan. 29, 1998, at A27.

INTRODUCTION

On November 20, 1990, a Harvard Law School (HLS) student organization called the Coalition for Civil Rights (CCR) sued Harvard University *pro se* claiming that HLS was engaging in discriminatory faculty hiring practices. CCR was made up of a number of student organizations including the Black Law Students Association, La Alianza (the Latino Students Association), the Asian American Law Students Association, the Native American Law Student Association, the Women's Law Association, the Committee on Gay and Lesbian Legal Issues, the Disabled Law Students' Association, and the National Lawyers Guild. CCR was formed in the spring of 1989 to increase diversity at HLS. The lawsuit was only one tactic they utilized to pressure the administration to hire more minorities and women.

On April 6, 1992, nine CCR members, protesting the lack of any women of color and members of other historically underrepresented groups on the permanent faculty, staged a peaceful sit-in in the corridor outside Dean Robert C. Clark's office. They began the sit-in around noon and remained for twenty-four hours. As a result of their actions, the students, who would become known as the Griswold 9, faced discipline, potentially as severe as dismissal from school. The Griswold 9 were composed of members and leaders of various affinity groups at HLS. They were from different HLS class years and undergraduate institutions. They were all, however, promulgating a multifaceted conception of faculty diversity that went beyond the African American men and white women professors that HLS had some success in hiring during the previous twenty years.

Why was the student activism for faculty diversity at HLS so intense in the early 1990s? In this article, I contend that this movement was one of the first times that students organized across race, gender, sexual orientation, and ability and disability to push for faculty diversity. This diverse coalition gave the students' activism unusual momentum, which included the first time that law students, acting *pro se*, sued their law school to increase faculty diversity and the first time HLS students were publically tried before the Administrative Board for conducting an overnight sit-in at the Dean's office.

Drawing upon social movement theory, I explain how the diversity of the coalition enhanced the activism. First, I argue that prior successful student protests over the Dean's elimination of public interest career advising at HLS signaled that the administration was vulnerable and served as a catalyst for the subsequent faculty diversity protests. As the CCR escalated its activities, this diverse group's actions further signaled to the public that the movement was increasing in strength and this propelled the activism forward. Second, I contend that the students framed the issue of faculty diversity into an inclusive conception—incorporating the diversity of the members in the coalition—that facilitated solidarity among many different groups of students. Third, I argue that the group's diversity—in terms of the backgrounds and experiences of its members—provided increased resources that enabled the coalition to escalate its protest activities. Although the most vigorous activism was relatively short-

lived, the students nonetheless made their voices heard by Harvard University and the general public.

I. THE COALITION FOR CIVIL RIGHTS

A. *The Formation of the Coalition*

As a result of the Civil Rights and feminist movements, HLS began to diversify its exclusively white male permanent faculty. HLS appointed its first African American male tenured professor in 1971 and its first two white women as tenured and tenure-track faculty members in 1972.² Progress, however, was slow. In the early 1980s, expressing dissatisfaction over minority hiring at HLS, Professor Richard Parker stated, “I’m ashamed to be a member of a faculty with only two blacks in 1983.”³ At the start of the academic year in the fall of 1990, HLS had sixty-six tenured and tenure-track professors—five were African American men, five were white women, and fifty-six were white men.⁴ In its 173-year history, HLS had yet to hire a woman of color in a tenure or tenure-track position. Also at this time, HLS had never had an Asian American, Latino, openly gay or lesbian, or disabled member on its tenured or tenure-track faculty.

During the early 1990s, students unhappy with the status quo in terms of the limited progress in faculty diversity, made their voices heard. The Dean at the time was Robert C. Clark, who taught corporate law and had been a tenured professor at HLS since 1979.⁵ Clark was appointed as Dean of HLS on February 17, 1989, despite objections from some of his colleagues that he would polarize an already divided faculty because of his public stance against the Critical Legal Studies movement.⁶ In addi-

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2. See LISA BOYKIN ET AL., *HLS DIVERSITY: A CELEBRATION OF THE MOVEMENT* (1998), at unpagged section titled *Protest Yields Results: A History* (noting that Derrick Bell was hired in 1969 and granted tenure in 1971 following a two-year appointment as a lecturer on law and that in 1972, Elisabeth Ann Owens was appointed to a tenured position and Diane Lund was hired as a tenure-track faculty member); see also Daniel Taubman, *Owens to be Named First Tenured Woman Professor*, HARV. L. REC., Jan. 28, 1972, at 1 (discussing the tenure appointment of Elisabeth Ann Owens, who had been given consecutive one-year appointments as a lecturer on law since 1956); *Faculty Appoints Eight New Profs; Two are Women*, HARV. L. REC., Jan. 28, 1972, at 1 (discussing the appointments of Elisabeth Ann Owens and Diane Lund); Laura Taylor, *Prof. Bell Named U. of Oregon Law Dean*, HARV. L. REC., Mar. 14, 1980, at 1 (discussing Derrick Bell’s hiring and tenure appointment at HLS).
 3. Louis J. Hoffman, *Profs “Ashamed” of HLS, Decry Minority Hiring Results*, HARV. L. REC., May 12, 1983, at 1.
 4. Pat Gulbis, *CCR Invites Clark to Mock Trial on Faculty Diversity*, HARV. L. REC., Oct. 26, 1990, at 1.
 5. Johathan S. Cohan & Tara A Nayak, *Clark Appointment Made Official; Bok Says Dean will be Conciliatory*, HARV. CRIMSON, Feb. 18, 1989, available at <http://www.thecrimson.com/article/1989/2/18/clark-appointment-made-official-bok-says/>; see also Jonas Blank, *Looking Back: 14 Years of Robert Clark*, HARV. L. REC., Apr. 23, 2003, available at <http://www.hlrecord.org/2.4463/looking-back-14-years-of-robert-clark-1.580320#4> (discussing Clark’s background). I attempted to interview Dean Clark for this article. I was unable to connect with him.
 6. See Chris Crain & Greg Herbert, *Bok Taps Clark as New Dean: Faculty Split Along Ideological Lines*, HARV. L. REC., Feb. 24, 1989, at 1. Critical Legal Studies is “a school of thought advancing the idea that the legal system perpetuates the status quo in terms of economics, race, and gender by using manipulable concepts and by creat-

tion, students and faculty members said they were concerned that Clark would be insensitive to racial and gender issues based on his past actions.⁷

One of Clark's first acts as dean was to eliminate the only two public interest career advising positions at HLS in an effort to reduce costs.⁸ The move was described by Clark as a "reorientation of resources, away from things in the past that have been for symbolic, guilt-alleviating purposes [rather] than to get a real result."⁹ Clark's decision to eliminate public interest advising at HLS received national attention.¹⁰ It was followed by a year of student activism that included letter writing, petition drives, support rallies, and open forums.¹¹ In the summer of 1990, Clark con-

ing an imaginary world of social harmony regulated by law." BLACK'S LAW DICTIONARY 404 (9th ed. 2004). For an overview of Critical Legal Studies, see generally, ANDREW ALTMAN, CRITICAL LEGAL STUDIES (1993); MARK KELMAN, A GUIDE TO CRITICAL LEGAL STUDIES (1987); DUNCAN KENNEDY, A CRITIQUE OF ADJUDICATION [FIN DE SIECLE] (1997); ROBERTO MANGABERIA UNGER, THE CRITICAL LEGAL STUDIES MOVEMENT (1983). See ELEANOR KERLOW, POISONED IVY: HOW EGOS, IDEOLOGY, AND POWER POLITICS ALMOST RUINED HARVARD LAW SCHOOL (1994), for an account of the struggles between the Traditionalists and the Critical Legal Studies adherents at HLS during the early 1990s. Kerlow writes about the activism during this time in the context of faculty struggling over the proper place of Critical Legal Studies in the academy.

7. See, e.g., Cohan & Nayak, *supra* note 5 (noting that when Professor Derrick Bell held a sit-in in 1987 to protest the faculty's vote to deny tenure to a proponent of Critical Legal Studies, Clark said "This is a university—it's not a lunch counter in the deep South."); Crain & Herbert, *supra* note 6, at 1 (noting that Professor Lewis Sargentich said that Clark was the "point man and primary voice" for the controversial tenure denial of Clair Dalton in 1987); Dan Kroll, *Bok Taps Clark as New Dean: Students Wary of Choice*, HARV. L. REC., Feb. 24, 1989, at 1 (noting one student who said that Clark did not seem sold on the idea of wanting more women and people of color on the faculty).
8. See Patrick Miles, *Clark Cuts Public Interest Position*, HARV. L. REC., Sept. 8, 1989, at 1 (noting that Clark started as HLS Dean on July 1, 1989 and terminated the public interest advising positions about a month later, on August 9).
9. *Id.*
10. See Patrick Miles, *Law Schools Across Nation Respond to Fox Departure*, HARV. L. REC., Sept. 15, 1989 at 1.
11. See, e.g., *Student Groups Meet with Clark, Rally Planned for Tuesday*, HARV. L. REC., Sept. 15, 1989 at 1 (noting that a coalition of student groups launched a petition drive and "a speak out" was planned for September 19, 1989); George Paul, *Students, Professors Rally in Support of Public Interest*, HARV. L. REC., Sept. 29, 1989, at 1 (noting that around 300 students attended a protest rally on September 19, 1989 advocating for a separate public interest advising office and according to rally organizers, 900 out of 1,600 HLS students signed a petition calling for the restoration of the two public interest advising positions; also detailing the activities of the Emergency Coalition for Public Interest Placement [ECPPI]); Tara A. Nayak, *Public Interest Squabble*, HARV. CRIMSON, Sept. 30, 1989, available at <http://www.thecrimson.com/article/1989/9/30/public-interest-squabble-pvowing-to-escalate/> (noting heightened activism at HLS over elimination of public interest advising positions); Paul Tarr, *Clark Announces \$1 Million Endowment; Defends Public Interest Reorganization*, HARV. L. REC., Oct. 20, 1989, at 1 (noting that Clark announced a new endowment for HLS graduates taking jobs in the public sector, while there was still no change in Clark's decision to eliminate public interest advising; also noting the formation of a public interest advisory committee, which was chaired by Professor Christopher Edley and staffed by faculty and students); Greg Herbert, *Students Demand Immediate Action at Public Interest Forum*, HARV. L. REC., Dec. 1, 1989, at 1

ceded to student demands by appointing Professor Christopher Edley as the Faculty Director of Public Interest Programs and creating the first independent public interest placement office in HLS history, which was to be staffed by an attorney and an administrative assistant.¹² Dean Clark's first few years as dean would be marked with further conflict.

Emboldened by their success with the public interest advising protests, HLS students formed CCR in the spring of 1989 to address the lack of faculty diversity. In explaining CCR's name, CCR co-founder and La Alianza member John Bonifaz said, "[I]t is particularly appropriate for the problems we face. We want fair and equal treatment of all our issues in the classroom, and fair representation in the faculty and student body."¹³ CCR's membership consisted of representatives from HLS student groups including the Black Law Students Association, La Alianza,¹⁴ the Asian American Law Students Association, the Native American Law Student Association, the Women's Law Association, the Committee on Gay and Lesbian Legal Issues, the Disabled Law Students' Association, and the National Lawyers Guild.¹⁵ This new coalition to increase diversity at HLS cut across race, gender, sexual orientation, and ability and disability lines. This coalition was not to last—but for three years, it was strong. It led to new forms of activist energy that pushed for an inclusive conception of diversity.

B. *The Multi-Pronged Campaign*

The first nationwide class strike day on April 6, 1989, organized by University of California at Berkeley's Law School in order to encourage law schools to increase diversity in the faculty and student body, was implemented at HLS by a precursor to CCR—a group called the Student Coalition for a Diverse Faculty.¹⁶ This coalition was made up of La Alianza, the American Indian Law Students Association, the Asian American Law Students Association, the Black Law Students Association, the

(noting about 100 students attended a forum on increasing public interest resources at HLS); Patrick Miles, Jr., *Public Interest Committee Prepares Position Paper*, HARV. L. REC., Mar. 2, 1990, at 1 (noting that the Law School Council and ECP/IP prepared a position paper proposing measures that would facilitate increased support for public interest law); Jim Houpt, *Clark: HLS Should Further Public Interest*, HARV. L. REC., Mar. 16, 1990, at 1 (noting another forum attended by 150 students where the student-prepared position paper was presented to Dean Clark).

12. Paul Tarr, *Clark Moves to Bolster Public Interest Programs; EPIC Pleased, But Vows to Keep on Fighting*, HARV. L. REC., Sept. 14, 1990, at 1. Note that by this time, the Emergency Coalition for Public Interest Placement (ECP/IP) had changed its name to the Emergency Public Interest Coalition (EPIC). See *id.* Upon opening the public interest placement office, student demand for advising far exceeded the available resources. See George Paul, *Public Interest Advising Office Swamped*, HARV. L. REC., Sept. 21, 1990, at 1.
13. Morris Ratner, *New Civil Rights Group Will Host Teach-In*, HARV. L. REC., Mar. 16, 1990, at 1.
14. See Luz E. Herrera, *Challenging a Tradition of Exclusion: The History of an Unheard Story at Harvard Law School*, 5 HARV. LATINO L. REV. 51, 59–110, for a history of La Alianza's efforts to diversify the HLS faculty.
15. Ratner, *supra* note 13, at 1.
16. See Simon Mendelson, *Students Stage "Study In" for Faculty Diversity*, HARV. L. REC., Apr. 14, 1989, at 1.

Committee on Gay and Lesbian Issues, and the Women's Law Association.¹⁷ The students' organized actions included a study-in attended by approximately sixty students and a silent protest outside a faculty meeting.¹⁸ This coalition was more focused on engaging in dialogue with the administration than confrontation.¹⁹ Professor Derrick Bell described this coalition as a "worthwhile effort" and further noted that insistence by students has been the root of all progressive change at Harvard.²⁰ The diversity movement at HLS would gain momentum the following year with the creation of CCR.

CCR's first public event was organized around the second nationwide class strike day, which was in the spring semester following the successful public interest advising protests. On Thursday, April 5, 1990, around 300 students attended a CCR rally at HLS and then marched to Dean Clark's Office.²¹ Dean Clark refused to meet with the students.²² CCR subsequently organized overnight sit-ins at the Dean's office on that day and the following Monday—around eighty students participated in each sit-in.²³ The students demanded that a woman of color be hired by the fall and that faculty members suspend a policy that delayed the permanent hiring of visiting professors for at least one year after they finish teaching.²⁴ On Friday, April 13, 1990, Dean Clark met with law students at a forum to discuss minority faculty hiring.²⁵ The students, once again, demanded quicker tenure considerations for visiting minority professors.²⁶ Dean Clark responded, "I'm not inclined to wa[i]ve the year-away policy [for evaluating the tenure of visiting professors] under any circumstances, but we'll see."²⁷ Clark maintained that the policy was necessary to prevent undue pressure on visiting professors while they are at HLS.²⁸ The subsequent inconsistent application of the year-away policy would be one of main issues that led the protests to escalate.

The spring of 1990 culminated with Derrick Bell, HLS's first tenured African American professor, announcing that he would take an unpaid leave of absence until HLS hired its first woman of color as a tenured or

17. *Id.*

18. *Id.*

19. See Steve Crawford, *Student Coalition Presses for Minority Hiring*, HARV. L. REC., May 6, 1988, at 4.

20. *Id.*

21. Ratner, *supra* note 13, at 1.

22. *Rights Groups Plan to Rally for Diversity*, HARV. L. REC., Sept. 21, 1990, at 1.

23. *Id.*; see also Linda Popejoy, *Students Protest Dean on Diversity: Students Stage Second Sit-In*, HARV. L. REC., Apr. 11, 1990, at 1; Linda Killian, *Protestors Camp Out at Law Dean's Office*, BOSTON GLOBE, Apr. 7, 1990, at 27.

24. Popejoy, *supra* note 23, at 1; see also Linda Popejoy & John Thornton, *Clark and Students Talk at Forum*, HARV. L. REC., Apr. 20, 1990, at 1.

25. Popejoy & Thornton, *supra* note 24, at 1.

26. Phillip M. Rubin, *Learning the Value of Appearances: Law School Protests*, HARV. CRIMSON, Apr. 14, 1990, available at <http://www.thecrimson.com/article/1990/4/14/learning-the-value-of-appearances-pdean/>.

27. *Id.*

28. Popejoy & Thornton *supra* note 24, at 1.

tenure-track faculty member.²⁹ Professor Bell was hired by HLS in 1969 after widespread student pressure to hire an African American professor following the assassination of Dr. Martin Luther King, Jr.³⁰ Bell left HLS to become Dean of the University of Oregon Law School in 1981.³¹ In the spring of 1985, Bell resigned his deanship at Oregon in protest of the failure of his colleagues there to appoint an Asian American woman to the faculty.³² He then returned to HLS. When Professor Bell announced his protest at HLS in the spring of 1990, Dean Clark dismissed Bell's leave of absence as mere "power politics."³³ Clark's vocal stance against Bell caused CCR to organize a coordinated response.

The fall of the next academic year (1990-1991) started with a CCR rally to increase campus awareness on the faculty diversity issue—especially among the incoming class.³⁴ After the rally, CCR decided to embark on a creative multi-pronged campaign that included discussions with Dean Clark and other faculty members,³⁵ continued support for the protest held by Professor Bell,³⁶ and direct action to pressure the faculty on the diversity issue.³⁷ On Tuesday, November 20, 1990, CCR members used their legal training to apply pressure to HLS. Instead of hiring a lawyer, eleven CCR members, who were all HLS students, represented themselves in court. They filed a lawsuit against Harvard University in Massachusetts Superior Court at the Middlesex County Courthouse in Cambridge, Mas-

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29. Linda Popejoy, *Clark Offers Cool Response to Bell's Protest*, HARV. L. REC., May 4, 1990, at 1; see also Fox Butterfield, *Harvard Law Professor Quits Until Black Woman is Named*, N.Y. TIMES, Apr. 24, 1990, at A1, available at <http://www.nytimes.com/1990/04/24/us/harvard-law-professor-quits-until-black-woman-is-named.html>; Fox Butterfield, *Harvard Law School Torn by Race Issue*, N.Y. TIMES, Apr. 26, 1990, at A20, available at <http://www.nytimes.com/1990/04/26/us/harvard-law-school-torn-by-race-issue.html>. See DERRICK BELL, *CONFRONTING AUTHORITY: REFLECTIONS OF AN ARDENT PROTESTER* (1996), for an autobiographical account of Professor Bell's protest.
30. See Mark Muro, *Derrick Bell: In Protest*, BOSTON GLOBE, Mar. 25, 1992, at 69 (noting that Professor Bell was hired following the outcry over the assassination of Martin Luther King, Jr.); Steven Donziger, *Minority Profs Hired when HLS Students Act*, HARV. L. REC., Apr. 14, 1989, at 6 (noting that Professor Bell was hired after several years of systematic pressure by the Harvard Black Law Students Association); Jack Tate, *Black Awareness and Black Unity Surging Forward at Law School*, HARV. L. REC., Sept. 26, 1968, at 1 (noting that the assassination of Dr. Martin Luther King, Jr. had a galvanizing effect on HLS students leading to the subsequent demand for black professors at HLS).
31. Taylor, *supra* note 2, at 1.
32. George A. Golder, *Bell Resigns Deanship of Oregon: Cites Minority Hiring Failures*, HARV. L. REC., Mar. 1, 1985, at 1.
33. Popejoy, *supra* note 29, at 1.
34. *Rights Groups Plan to Rally for Diversity*, *supra* note 22, at 1.
35. One proposal CCR considered was to create a student-faculty committee to examine the diversity issue. See Malcolm E. Harrison, *After Rally, CCR Begins to Rethink Strategy on Diversity*, HARV. L. REC., Oct. 5, 1990, at 1.
36. Even though Professor Bell refused to teach official HLS classes as part of his protest, in the fall of 1990, Bell taught an unofficial, uncompensated, not-for-credit civil rights seminar at HLS attended by twenty-two Harvard students. See *A Class Sends Message to Harvard Law School*, N.Y. TIMES, Nov. 21, 1990, at B11, available at <http://www.nytimes.com/1990/11/21/news/a-class-sends-message-to-harvard-law-school.html>.
37. *Rights Groups Plan to Rally for Diversity*, *supra* note 22, at 1.

sachusetts.³⁸ CCR co-founder and named lawsuit plaintiff John Bonifaz stated, “We have negotiated. We have protested. We have taken to the streets. Now we use the only instrument of power Harvard Law School seems to understand.”³⁹ This was the first time that law students, acting *pro se*, sued their own school to diversify their faculty.⁴⁰ The students were solely responsible for conducting legal research, developing a theory of the case, and implementing their legal strategies. In explaining the objectives of the lawsuit, named plaintiff Keith Boykin stated, “The foremost objective is to end discrimination at the school. The other objective is to call attention to the shocking underrepresentation of minorities and women.”⁴¹

Their complaint, filed under Massachusetts antidiscrimination laws prohibiting discrimination in employment (General Laws, Chapter 151B) and in making and enforcing contracts (General Laws, Chapter 92, Section 102), alleged that HLS’s unofficial faculty hiring criteria worked against women and minorities in the hiring process.⁴² The complaint further alleged harm to the students in the form of being denied the social, educational, and professional benefits of an integrated faculty.⁴³ The complaint also alleged that lack of a diverse faculty denied equal and adequate educational opportunity, perpetuated badges of inferiority, and fostered insensitivity and intolerance.⁴⁴ The named student plaintiffs that brought the lawsuit on behalf of CCR included Keith Boykin, Linda Singer, Laura E. Hankins, Jeffrey Lubbell, Pat Gulbis, John Bonifaz, Inger Tudor, William Anspach, Lucy Koh, Chris Jochnick, and Christian Arnold.⁴⁵

C. *The Litigation and Protests Proceed*

On December 20, 1990, the court granted CCR’s motion that prevented Harvard University from destroying documents related to the claims.⁴⁶ Harvard subsequently filed a motion for a stay of discovery until the court ruled on a motion to dismiss that would soon be filed by Harvard. Harvard’s in-house counsel, Allan A. Ryan, informed CCR of his intention of going to court on December 24, which was during the students’ winter break, to argue the motion to stay discovery.⁴⁷ Ryan refused the

38. Dan Greeney, *Students Sue HLS Over Faculty Hiring: School Seeks More Time to File Reply*, HARV. L. REC., Nov. 30, 1990, at 1.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Portions of the CCR Lawsuit*, HARV. L. REC., Nov. 30, 1990, at 10.

43. *Id.*

44. *Id.*

45. *Id.* Another group of HLS students subsequently brought a motion to intervene arguing that CCR was not representative of the student body—they sought to end the lawsuit and also counterclaimed against CCR for \$200,000. See George Paul, *Students Intervene in CCR Suit*, HARV. L. REC., Feb. 8, 1991, at 1. The motion to intervene was eventually denied by the Superior Court. See *Harvard Law Sch. Coal. for Civil Rights, et al. v. President & Fellows of Harvard Coll.*, 1991 No. 907904B WL 489552, at *1 (Mass. Super. Feb. 22, 1991).

46. Evette Harrison, *CCR Lawsuit: First Round a Draw*, HARV. L. REC., Jan. 18, 1991, at 6.

47. *Id.*

students' request for an extension of the motion argument date until January 2, 1991, when the students would have returned from vacation.⁴⁸ Ryan went before the judge on December 24 without the students present and the judge told him to return on January 2.⁴⁹ When Ryan and the students appeared before the court on January 2, the judge granted Harvard's request to stay discovery.⁵⁰

Shortly thereafter, Harvard filed a motion to dismiss CCR's complaint claiming that the students lacked standing to sue.⁵¹ On Friday, February 15, 1991, the Massachusetts Superior Court heard arguments on Harvard's motion to dismiss CCR's discrimination complaint.⁵² Allan A. Ryan argued for Harvard.⁵³ HLS students Linda Singer and Pat Gulbis argued the case for CCR.⁵⁴ Ten days later, on Monday, February 25, 1991, Middlesex Superior Court Judge Patrick F. Brady dismissed the lawsuit on standing grounds. Judge Brady held that only people who could bring employment discrimination claims were employees, applicants for employment or former employees and the students did not fall into these categories.⁵⁵ Further he held that there was no discrimination based on the enforcement of any contract.⁵⁶ Although the students lost on these claims in the trial court, Judge Brady was impressed with their advocacy:

Whatever shortcomings Harvard Law School may have, if any, in failing up to now to provide a faculty sufficiently diverse to satisfy all students' needs, it does not appear to be failing in its obligation to produce first rate lawyers. The written and oral advocacy of the students in this case has been commendable.⁵⁷

Professor Bell praised the students, claiming they "merit the support of all those concerned about racial justice and effective legal education."⁵⁸ The students planned to appeal the trial court's decision. The publicity garnered by the lawsuit seemed to increase other students' interest in campus protests.

A third class strike day at HLS, once again in conjunction with University of California at Berkeley Law School's national strike day, occurred on Thursday, April 4, 1991.⁵⁹ CCR organized a morning teach-in, a rally at 12:00 noon, and an afternoon march to outgoing Harvard Presi-

48. *Id.*

49. *Id.*

50. *Id.*

51. Sharon Stone, *CCR v. Harvard Law: Court Weights Motion to Dismiss Today*, HARV. L. REC., Feb. 15, 1991, at 1. Standing is "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right." BLACK'S LAW DICTIONARY, *supra* note 6, at 1442.

52. *Id.*

53. E-mail from Linda Singer, named CCR plaintiff, to author (July 12, 2010, 22:10 EST) (on file with author).

54. *Id.*

55. See *Harvard Law School Coal. for Civil Rights, et al. v. President & Fellows of Harvard Coll.*, No. 90-7904-B, 1991 WL 489552, at *1 (Mass. Supp. Feb. 22, 1991).

56. *Id.*

57. *Id.* at *1 n.1

58. *Judge Rejects Suit on Bias in Harvard's Hiring*, N.Y. TIMES, Feb. 26, 1991 at A18.

59. Sharon Stone, *Students Strike for Diversity: Rally Roils Campus; CCR Vows Further Action*, HARV. L. REC., Apr. 12, 1991, at 1.

dent Derek C. Bok's office.⁶⁰ Two hundred students, five professors, and Dean Clark attended the morning teach-in.⁶¹ At the noon rally, Professor Christopher Edley, who was the fourth African American professor to make tenure at HLS,⁶² told the audience that Dean Clark would be held accountable if the school fails to make progress on faculty diversity.⁶³ After the rally, the students marched to Harvard Yard to confront outgoing President Bok.⁶⁴ When the police prevented access to the building, the students proceeded to Dean Clark's office in Griswold Hall where they conducted an overnight sit-in.⁶⁵ They curtailed their sit-in on Friday morning after learning about the Thursday night murder of a feminist law professor, Mary Joe Frug, who was the wife of an HLS professor.⁶⁶

Three days later, on Wednesday, April 10, 1991, a group of CCR members staged a sit-in inside Dean Clark's office and blockaded all entrances from 8:00 a.m. to 5:00 p.m.⁶⁷ CCR member Keith Boykin said "[T]he escalated tactics of the diversity movement are a response to Dean Clark's undemocratic, virtually authoritarian, management style. Dean Clark repeatedly rejects student concerns as mere cries of 'consumers,' which is how he sees the student body."⁶⁸ In a letter dated Tuesday, April 23, 1991, Dean Clark wrote to the HLS student body: "I am writing to put you on the clearest possible notice that future disruptions like this one [blockading the office], or other violations of Law School and University, will be immediately subject to disciplinary action."⁶⁹ Dean Clark's warning did not deter the students. CCR responded with its own letter on April 25.⁷⁰ It stated that CCR would ignore the Dean's warning because it was a violation of due process and lacked authority since it did not come from the Administrative Board—the entity responsible for HLS student disciplinary matters—of which Dean Clark was not a member.⁷¹ On Wednesday, April 24, 1991, exactly one year after Professor Bell announced his leave in absence in protest of the lack of women of color on the faculty, at a rally organized by CCR, fifty students picketed outside the office of Dean Clark to advocate for more faculty diversity.⁷²

60. *Id.*

61. *Id.*

62. BOYKIN ET AL., *supra* note 2, at unpaginated section titled *Professor Biographies*.

63. Stone, *supra* note 59, at 1.

64. *Id.*

65. *Id.*

66. *Id.*; see also Toyia R. Battle, *Law Students End Overnight Sit-In: Students Cancel Protest in Wake of Fatal Stabbing of Law Professor's Wife*, HARV. CRIMSON, Apr. 6, 1991, available at <http://www.thecrimson.com/article/1991/4/6/law-students-end-overnight-sit-in-pin/>.

67. Robert Arnold, *Students Storm Dean Clark's Office*, HARV. L. REC., Apr. 12, 1991, at 2.

68. *Id.*

69. *Diversity Protestors Picket Griswold Hall: Dean and CCR Exchange Letters*, HARV. L. REC., May 3, 1991, at 3.

70. See Letter from the Coal. for Civil Rights to HLS Dean Robert Clark (Apr. 25, 1991) (on file with author).

71. *Id.* See discussion *infra* Part II.F (discussing responsibilities, composition, and procedures of the Administrative Board).

72. See *Diversity Protestors Picket Griswold Hall: Students Picket, Respond to Dean's Letter*, HARV. L. REC., May 3, 1991, at 3. Professor Bell had, by this time, announced his

Relations between Clark and the students were rapidly deteriorating. Nonetheless, some students continued the conversation regarding faculty diversity with the Dean in an attempt to assist the administration in finding qualified minority candidates. Black Law Students Association President and later member of the Griswold 9 Charisse Carney-Nunes⁷³ recalls, “As the President of BLSA, I actually had some engagement with Dean Clark—more than I think the average student.”⁷⁴ For example, on Wednesday, May 1, 1991, Carney distributed a letter to the HLS faculty, including Dean Clark, attaching a paper entitled “Diversity in Legal Education: The Channels of Access for Underrepresented Groups.”⁷⁵ This paper included “a compilation of almost 100 African American women law professors, their areas of interest, and their scholarship.”⁷⁶

The new academic year began without much progress in terms of the student demands for further diversifying the faculty. On Friday, October 4, 1991, CCR informed the HLS community that CCR filed its notice of appeal in its lawsuit against Harvard.⁷⁷ To give a status update on diversity at HLS, CCR wrote:

Today, Harvard Law School has 66 tenured or tenure-track professors. Of those 66 faculty members, only five are women (all of whom are white) and only six are African American (all of whom are male). The rest are all white men. In its 174[-]year history, Harvard Law School has never hired a Latino/Latina, an Asian-American, a Native-American, an openly gay or lesbian person, a disabled person, or a woman of color for its tenured faculty.⁷⁸

CCR once again focused on a multifaceted interpretation of diversity including race, sexual orientation, gender, and ability and disability. In November 1991, CCR’s appeal was docketed by the Massachusetts Court of Appeals.⁷⁹ In a highly unusual move, on Wednesday, January 22, 1992, the Massachusetts Supreme Judicial Court granted direct appellate review of the Superior Court’s ruling dismissing CCR’s lawsuit for lack of standing.⁸⁰ Massachusetts’ highest court granted direct appellate review in cases involving novel questions of law or issues of such public interest that justice required full determination by this court.⁸¹ On Wednesday, February 26, 1992, CCR held a public meeting to update HLS students on

plan to spend next year at NYU Law School. See Paul Tarr, *Bell Stuns BLSA Conference: Announces Plan to Spend Next Year at NYU*, HARV. L. REC., Mar. 15, 1991, at 1.

73. In this article, I refer to the law student as “Charisse Carney,” while I refer to the alumna as “Charisse Carney-Nunes” (i.e., her married name).

74. Interview with Charisse Carney-Nunes & Jodi Grant, former Griswold 9 members, in D.C. (June 23, 2010).

75. Letter from Charisse Carney, Harvard Black Law Students Association President, to HLS faculty (May 1, 1991) (on file with author).

76. *Id.*

77. Coal. for Civil Rights, *CCR Discrimination Lawsuit: Alive and Still Kicking*, HARV. L. REC., Oct. 4, 1991, at 10.

78. *Id.*

79. See Robert Arnold, *Discrimination Lawsuit Against HLS Gets Docketed: Student Group Filing “Alive and Well,”* HARV. L. REC., Nov. 22, 1991, at 1.

80. See *Mass’ Supreme Judicial Court to Hear HLS Discrimination Suit: SJC Grants Students’ Motion for Direct Review of Lower Court Ruling*, HARV. L. REC., Feb. 7, 1992, at 1.

81. MASS. R. APP. P. 11(a).

the status of the lawsuit.⁸² At this meeting, John Bonifaz stated: “This is an unprecedented case. Never before have students taken their school to court. Never before. . . . This is the *Brown v. Board of Education* of the 1990s[,] make no mistake about it!”⁸³ Oral argument in the Massachusetts Supreme Judicial Court was scheduled for Tuesday, March 3, 1992.

D. Students Argue Before the Massachusetts Supreme Judicial Court

On Tuesday, March 3, at 9:00 a.m., the hearing began. HLS students Caroline Witcoff and Laura E. Hankins argued the case on behalf of CCR. Allen A. Ryan argued the case for Harvard.

Caroline Witcoff, argued first, noting that despite forty years of civil rights gains, the “invidiousness of discrimination in education” still characterizes HLS hiring practices.⁸⁴ Her argument was based on Massachusetts General Laws, chapter 151B, which prohibited employment discrimination based on race, color, religious creed, national origin, sex, or sexual orientation.⁸⁵ To address the standing issue, she contended that the students were “aggrieved” within the meaning of this statute, and that they have suffered “direct” and “substantial” harms as a result of HLS’s discriminatory faculty hiring practices.⁸⁶ She explained:

When students at Harvard Law School sit in the classroom every day for three years and are never once taught by a single woman of color, or Latino, or Asian-American, or Native American, or openly gay or lesbian person, the discrimination that is the reason behind this long history of exclusion sends students a devastating message: that while we’re good enough to sit in the classrooms at Harvard Law, we’re not good enough to sit on the faculty, and that’s a stamping of a badge of inferiority. It’s the same stamping of a badge of inferiority recognized as early as *Brown v. Board of Education*. The other type of harm [that] Harvard’s discrimination inflicts on students is a denial of the benefits of association with an integrated faculty.⁸⁷

Attempting to analogize the teacher-student relationship to an employer-employee relationship to address the standing issue, Witcoff stated that “students’ direct interaction and ongoing relationship with professors” constitute a relationship akin to that of employee to employer.⁸⁸ Harvard Law School students “work with professors on third-year papers, serve as research assistants, and represent Harvard in clinical programs.”⁸⁹

Laura E. Hankins spoke next. She argued that the law students have been discriminated against under the Massachusetts Equal Rights Act

82. Lisa Zornberg, *CCR Holds Public Meeting: Stressing the Importance and Difficulty of the Case, Student Litigators Explain Their Strategy*, HARV. L. REC., Feb. 28, 1992, at 1.

83. *Id.*

84. Ashley Barr, *CCR Argues Lawsuit Before SJC*, HARV. L. REC., Mar. 6, 1992, at 1.

85. *Id.*

86. *Id.*

87. KERLOW, *supra* note 6, at 110–11.

88. Barr, *supra* note 84, at 1.

89. *Id.*

(MERA), Massachusetts General Laws Chapter 93, § 102, which provided that all persons, regardless of sex, race, color, creed or national origin have “the same rights enjoyed by white male citizens to make and enforce contracts.”⁹⁰ She argued that the students, as payers of tuition, had a contractual relationship with HLS.⁹¹ She then cited the statistical evidence regarding the lack of women of color on the faculty to show disparate impact and noted that further discovery was needed to uncover documentation regarding the hiring practices being challenged.⁹² Hankins also covered CCR’s breach of contract claim based on Harvard’s nondiscrimination statement included in its handbook and other literature that students rely on when choosing to attend Harvard.⁹³

Allen A. Ryan next presented argument on behalf of Harvard. With regard to the employment discrimination claim, he contended that the record before the Court fails to demonstrate any substantial harm to the students or any other person.⁹⁴ In response to the contract discrimination claim, he argued that whatever contractual rights existed between the students and HLS, the “students are not inhibited in any way, shape or form from studying at the law school and completing their degrees.”⁹⁵ Ryan further argued that the students’ claims amount to little more than the contention that Harvard is “too male, too white and too heterosexual.”⁹⁶ He ended his argument with an admonition:

If students are allowed to go forward to prove that of the 1.9 percent of Asian-American law professors in the country, Harvard does not have its share, and are allowed to put forward the records and qualifications of Asian-American professors who themselves had not come forward to vindicate whatever rights they feel they have against Harvard Law School, then I submit the force of law in this commonwealth is moot.⁹⁷

After the arguments, the parties awaited a decision from the Supreme Judicial Court. While the appeal was pending, a series of events occurred at HLS that would culminate in a group of students risking dismissal from school to make their voices heard.

E. *Four White Males Appointed to Tenured Positions*

Despite ongoing discussions between the students and Dean Clark regarding hiring more minority and women faculty members, on Friday, February 28, 1992, without informing the students beforehand, HLS made tenure offers to four white men⁹⁸—two of whom were visiting profes-

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.*

95. *Id.*

96. *Id.*

97. KERLOW, *supra* note 6, at 121.

98. Robert C. Arnold, *4 White Men Offered Tenure: Students Say Announcement Violates Policy*, HARV. L. REC., Mar. 6, 1992, at 1.

sors.⁹⁹ The students were caught off guard by these appointments—especially given the fact that students have been raising faculty diversity concerns for years.¹⁰⁰ Dean Clark announced the appointments as a politically balanced group that broke through many years of ideological deadlock.¹⁰¹

These tenure offers appeared to reverse an HLS policy requiring full-time faculty candidates to leave HLS for at least one year (i.e., the year-away policy) before being considered for full-time faculty positions. Over the last three years, according to John Bonifaz, the law school had used this policy to deny consideration to three minority candidates.¹⁰² William Anspach reflects:

The same claim, which you always hear in opposition to activism is that we have to do things slowly and these things take time. And then all of a sudden, I do recall, there was a burst of hiring. I think it was all white professors. Now, I think at the time, it was packaged as a political deal—you had some left-wing people and some right-wing people or something like that. Nonetheless, it was a slap in the face. It belied all their claims that these things had to be done slowly.¹⁰³

On Thursday, March 5, 1992, Dean Clark held an open forum at HLS to explain to more than 250 people that the faculty's decision to offer tenure to four white male professors did not violate law school policy.¹⁰⁴ During the open meeting, Dean Clark said a policy barring visiting professors from tenure consideration while still teaching had been suspended last spring.¹⁰⁵ The students were unaware of this policy change. Clark responded to charges that the law school administration ignored student complaints by referring to a recent resolution to forward "several promising candidates who are not white males" to the full faculty by next fall.¹⁰⁶

99. Lisa Zornberg, *Tenure Candidates Id'd: CCR Asks Them to Delay Acceptance*, HARV. L. REC., Mar. 20, 1992, at 1.

100. Ashley Barr, *Clark, Students Discuss Diversity on "Zero Day,"* HARV. L. REC., Mar. 20, 1992, at 1.

101. See Arnold, *supra* note 98 at 1.

102. *Id.* The three professors were identified in the article as Regina Austin, Anita Allen, and Gerald Torres.

103. Interview with William Anspach, former Griswold 9 Member, in N.Y.C. (June 24, 2010).

104. Natasha H. Leland, *Law School Dean Meets with Students: Tries to Ease Tensions by Addressing Charges of Discrimination in Hiring*, HARV. CRIMSON, Mar. 6, 1992, available at <http://www.thecrimson.com/article/1992/3/6/law-school-dean-meets-with-students/>.

105. *Id.*

106. *Id.*

F. *Bell's Extension Denied and the Protests Intensify*

As Professor Bell's protest reached its second year, Bell wrote to Dean Clark requesting an extension of the two-year leave policy.¹⁰⁷ Harvard University's two-year leave policy allowed faculty members to take up to two-year absences before the University would require the professor to return to Harvard.¹⁰⁸ Bell reasoned that this rule "doesn't apply to people who have walked away for reasons of conscience."¹⁰⁹ After Dean Clark denied his request, Bell made an appeal to the Harvard University President. On Wednesday, March 4, 1992, President Neil L. Rudenstine met with members of HLS minority student groups to discuss their concerns about Bell's status, faculty hiring, and diversity at the law school.¹¹⁰ During the meeting, President Rudenstine told the students that he would not grant Professor Bell an extension on the University's two-year leave policy—the final appeal would be decided by the Harvard Corporation.¹¹¹ As the meeting concluded, one of the students asked President Rudenstine how he felt about the overwhelming presence of white men on Harvard's faculty, the tenure of four more white men, and the impending loss of Professor Bell—who represents one-third of the tenured African American professors [and one-sixth of the tenured and tenure-track African American faculty] at the law school.¹¹² Rudenstine replied that "he is very concerned and disturbed" and assured the students that he is "committed to doing something about the situation."¹¹³

After the tenure offers were made to four white males and Bell's extension request was denied, CCR members intensified their activities. On Wednesday, March 11, 1992, CCR brought Reverend Jesse Jackson to speak at HLS about the importance of faculty diversity.¹¹⁴ Over 450 students and faculty were in attendance.¹¹⁵ At the presentation, Jackson said that just as students must fight apartheid in South Africa, they must "also fight apartheid in the Law School faculty here at Harvard."¹¹⁶ The next day, which the students referred to as "Zero Day" to mark the end of a countdown that would culminate in protest activity, at 7:30 a.m., twenty students confronted Dean Clark at his home.¹¹⁷ At Clark's suggestion, the group proceeded to the HLS student center where the students voiced their concerns about the inconsistent application of the "year away rule"

107. Fox Butterfield, *Professor Steps Up Fight with Harvard*, N.Y. TIMES, Feb. 28, 1992, at A12, available at <http://www.nytimes.com/1992/02/28/us/professor-steps-up-fight-with-harvard.html>.

108. *Id.*

109. *Id.*

110. Natasha H. Leland, *Bell Vows to Fight On*, HARV. L. REC., Mar. 6, 1992, at 1.

111. *Id.*

112. Steve Yarian, *4 White Men Offered Tenure: Rudenstine Wants Clarification of Hiring Process*, HARV. L. REC., Mar. 6, 1992, at 1.

113. *Id.*

114. Madeline Fain, *Jesse Jackson Exhorts HLS to Diversity*, HARV. L. REC., Mar. 20, 1992, at 3.

115. *Id.*

116. *Id.*

117. Barr, *supra* note 100, at 1.

to professors of color.¹¹⁸ Dean of Students Sarah Wald and twenty other students joined the discussion.¹¹⁹ The meeting lasted until 10:00 a.m. and concluded with Dean Clark agreeing to meet again at 2:00 p.m. with other members of the faculty, along with the entire HLS community.¹²⁰

Before the two o'clock meeting, 200 students met in the Ames Courtroom at HLS to plan for the rest of the day. As part of their strategy, in order to put pressure on the administration before the afternoon meeting, over 100 students demonstrated in Langdell Hall in front of faculty offices, shouting, "Diversity now!"¹²¹ Sometime during the day, HLS Vice Dean David Smith placed a letter in HLS students' mailboxes, warning them not to disrupt the "normal function[ing]" of the law school staff.¹²² The letter warned that HLS students could face suspension or expulsion for such disruptions.¹²³ Vice Dean Smith attached a copy of the University Rights and Responsibilities to his letter.¹²⁴ By distributing this letter, the administration was giving notice to the student body of the possible consequences of disrupting the "normal functioning" of the law school.

At two o'clock p.m., almost 300 people attended the meeting, including twenty-one faculty members.¹²⁵ The discussion focused on procedural issues such as student participation in hiring practices and finding qualified applicants from underrepresented groups.¹²⁶ CCR member Keith Boykin and other students expressed frustration at the repetitive rhetoric from the administration about the "commitment" to diversify the faculty.¹²⁷ Six days later, on Wednesday, March 18, a group of students conducted a sit-in in Professor Charles Fried's office.¹²⁸ The students stayed for fifteen minutes.¹²⁹ The students that could be identified during the sit-in, including John Bonifaz, Julia Gordon, Raul Perez, and Ashley Barr,¹³⁰ would be known as the Fried 4.¹³¹ On the following day, a group of law students conducted a similar sit-in in Professor Reinier Kraakman's

118. *Id.*

119. *Id.*

120. *Id.*

121. *Id.*

122. Letter from David Smith, HLS Vice Dean, to HLS students (Mar. 12, 1992) (on file with the author). Smith, the former Assistant Dean for International Studies and the HLS Graduate Program, became Vice Dean in the fall of 1983. See generally Michael Malamut, *Smith Named to "Novel" Position*, HARV. L. REC., Sept. 23, 1983, at 5 ("The vice deanship is a new position created to ease the overload of work and responsibility of the dean.").

123. Letter from David Smith, *supra* note 122.

124. *Id.*

125. Barr, *supra* note 100, at 1.

126. *Id.*

127. *Id.*

128. Javier V. Garcia, *Law Students Stage 15 Minute Sit-In at Prof's Office*, HARV. CRIMSON, Mar. 19, 1992, available at <http://www.thecrimson.com/article/1992/3/19/law-students-stage-15-minute-sit-in/>.

129. *Id.*

130. Ashley Barr had been wrongly identified as a student participating in the Fried sit-in and was later absolved of the charge. See John Regis, *Ad Board Moves Against Students*, HARV. L. REC., Apr. 17, 1992, at 1; Andy Ward, *Fried 4 Absolved, Griswold 9 Hearing Set for Monday*, HARV. L. REC., May 1, 1992, at 1.

office.¹³² Fried and Kraakman, both members of the Faculty Appointments Committee, were targeted because the students believed that they were blocking women and minority hiring.¹³³ Katya Komisaruka, CCR member and participant in both sit-ins, stated, “[Clark] isn’t the entire problem here. The fact is the rest of the faculty is complicit in failing to diversify.”¹³⁴ In a letter dated Tuesday, March 31, 1992, Dean Clark informed the law school community that “some students have chosen to test the limits of appropriate behavior” and warned the community that such behavior “simply cannot be tolerated.”¹³⁵

II. THE GRISWOLD 9

A. Dean Clark Comments in the *Wall Street Journal*

Over spring break at HLS, Dean Clark made public comments in a national newspaper that would incense many students. On Wednesday, March 25, 1992, the *Wall Street Journal* reported:

Mr. Clark has an insight into why affirmative action is such a big issue. “We have the highest percentage and absolute number of minority students of any of the top 20 law schools. At some level, [the minority students] are worrying about what role affirmative action played in getting them here.[”]

“The minority students need a sense of validation and encouragement, with the fundamental problem being a need for self-confidence that plays itself out as, ‘Why doesn’t Harvard Law School have more teachers who look like me?’” Mr. Clark said.

“In a sense, we’re dealing here with one of the symptoms of affirmative action. This means this debate could be a recurring theme through the 1990s or until we get to some equilibrium.”¹³⁶

CCR and other student groups were furious. Dean Clark, ignoring the students’ legal arguments about discriminatory practices at HLS, attributed student demands for increased faculty diversity as arising from self-esteem issues created by affirmative action policies.

When HLS students returned to campus, they publically responded to Dean Clark. CCR posted flyers around the law school campus declaring, “The issue is discrimination, not self confidence.”¹³⁷ On April 2, 1992,

131. See Ward, *supra* note 130, at 1, for the resolution of the Fried 4. The Administrative Board never formally charged the identified students—they received warnings instead. *Id.*

132. Philip P. Pan, *Law Students Stage Surprise Sit-In: Sixteen Protestors Drive Kraakman From Office, Occupy Room for 15 Minutes*, HARV. CRIMSON, Mar. 20, 1992, available at <http://www.thecrimson.com/article/1992/3/20/law-students-stage-surprise-sit-in-psixteen/>.

133. *Id.*

134. *Id.*

135. Letter from Robert C. Clark, HLS Dean, to HLS community (Mar. 31, 1992) (on file with author).

136. L. Gordon Crovitz, *Rule of Law: Harvard Law School Finds its Counterrevolutionary*, WALL ST. J., Mar. 25, 1992, at A13.

137. Ashley Barr, *Griswold 9 Take Over Dean’s Office*, HARV. L. REC., Apr. 10, 1992, at 1; see also Flyer from CCR to HLS community (Mar. 1992) (on file with author).

CCR organized the fourth annual class strike day at HLS, including a noon rally in front of the Harkness Commons, which was attended by 400-500 HLS students and others.¹³⁸ One of the flyers advertising the rally referenced the recent hiring of four white males and Dean Clark's quote in the *Wall Street Journal*.¹³⁹ In a letter dated April 4, 1992, CCR wrote to HLS alumni:

As Alumni, you hold the purse strings and hence the power to help bring change at HLS. We urge you to read the attached [*Wall Street Journal*] article and let the Dean know your response. We urge you to let the Dean know that faculty diversity is not about an imagined stigma felt by minority students but about the empowerment of traditionally-disempowered communities to help share in the development of the law, the countering of pervasive institutional biases, the expansion of perspectives and backgrounds represented on the HLS faculty, and the resulting increase in the importance and excellence of HLS as a leading educational institution.¹⁴⁰

Furthermore, in a letter dated Tuesday, April 7, 1992, HLS students Camille Holmes and Jeffrey Lubell¹⁴¹, writing on behalf of CCR, wrote an open letter to Dean Clark in response to the *Wall Street Journal* article. Citing the US Supreme Court case that upheld the separate but equal doctrine, they wrote:

So there is no confusion, let's be very clear. Your statements are patently offensive and insulting to minority students and those engaged in the struggle for a diverse law faculty because they belittle and deny the reality of the stigma that flows from exclusion. This strategy has frightening roots. In the infamous case of *Plessy v. Ferguson* (1896), the United States Supreme Court used strikingly similar logic to justify the forced segregation of the races:

We consider the underlying fallacy of the plaintiff's argument to consist of the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in this act, but solely because the colored race chooses to put that construction on it.¹⁴²

The escalation in protest activity was about to reach new heights.

138. Luz Delgado, *Boycott Marks 2d "Diversity Day" at Harvard*, BOSTON GLOBE, Apr. 3, 1992, at 20 (noting that 300 HLS students boycotted classes as well as 650 of the Harvard Kennedy School's 800 students).

139. Flyer from CCR to HLS community, *National Strike Day for Diversity Day Thursday* (Apr. 1992) (on file with author).

140. Letter from Jeff Lubell, Member on behalf of CCR, to HLS alumni (Apr. 4, 1992) (on file with author).

141. Lubell was a named plaintiff in the CCR lawsuit.

142. Camille Holmes & Jeffrey Lubell, Letter to the Editor, *CCR Asks for a Public Apology from Dean Clark*, HARV. L. REC., Apr. 10, 1992, at 9.

B. *The Griswold 9 Escalate the Struggle*

While the CCR lawsuit was a strategy in which the students put their legal advocacy skills to work in their activism, another group of students—that would become known as the Griswold 9—applied a different form of pressure on the administration. Julie Su, only a first year law student at the time and Griswold 9 member, recalls why she felt compelled to act:

I was among [the] students who were taking our time to research women of color, other faculty of color and openly LGBT faculty around the country and coming up with slates for HLS to invite. Then Dean Clark came out in the *Wall Street Journal* saying that those of us who advocated for diversity were really just insecure, and our activism was a “symptom of affirmative action.” For me, that made it clear: this was much deeper than just who got an invitation to teach at HLS; it was about racist notions of inferiority that could never be addressed through talks and committees.¹⁴³

On Monday, April 6, 1992, Julie Su and others, wearing paper masks that portrayed the visage of Dean Clark, staged a peaceful sit-in in the corridor outside the Dean’s office, which was located in Griswold Hall.¹⁴⁴ After explaining that the students created the masks by copying and enlarging the picture of Dean Clark that appeared in the *Wall Street Journal* article, Jill Newman, Griswold 9 member, recounts why the students wore the masks:

We were trying to make ourselves kind of all the same—like the ironic statement about, “here we were, this very diverse group of people putting on all this—the face of a white man.” And it was also confronting Dean Clark with his statements [in the *Wall Street Journal*].¹⁴⁵

William Anspach, another Griswold 9 member, wrote a chronological account of the sit-in three days after it happened.¹⁴⁶ He noted:

At about 12:20 p.m., on Monday, April 6, about ten of us headed for Griswold from the Labor Law Project office. When we entered the hallway outside the door to the office area containing Dean Clark’s office, we discovered that this door was locked. We sat down in the hallway a few feet from the door. Most of us put on our masks. Personnel inside the office area immediately got on the phone and security showed up a few minutes later and entered the office area.¹⁴⁷

143. E-mail from Julie Su with memo attachment, former Griswold 9 Member, to author (July 20, 2010, 05:22 EST) (on file with author).

144. Barr, *supra* note 137, at 1; see also Desda Moss, *Professor, Students Protest Over Hiring*, USA TODAY, Apr. 7, 1992, at 2A.

145. Telephone interview with Jill Newman, former Griswold 9 Member (July 20, 2010).

146. William Anspach, *Account of Sit-In* (Apr. 10, 1992) (on file with author). Anspach created this document to aid in the Griswold 9’s defense in anticipation of disciplinary action by HLS.

147. *Id.* at 1.

Around fifty protestors arrived at Griswold Hall throughout the day; however, when the Harvard University Police restricted access to the corridor outside the Dean's office, many students left the area—the Griswold 9 remained.¹⁴⁸

A few hours into their sit-in, the Griswold 9 blocked Vice Dean Smith from entering the office. Anspach wrote:

I think that it was around 2:30 p.m. that Vice Dean Smith first appeared. I think that this was the first time we made a concerted effort to block someone from going through the door. We all clustered around the door and told him the office area was closed. I believe this was also the first time we received a warning that our action was a violation of the University Rights and Responsibilities and that we might face disciplinary action.¹⁴⁹

In explaining what the group was trying to accomplish during the sit-in, Anspach wrote:

Our intention was not to intimidate anyone or to cause trouble in any generalized way, but rather was specifically to stop "business as usual" in the office area. Furthermore, the only people we really made a point of preventing from entering the office area were Clark and Smith. On a number of occasions, we let office personnel enter the office area.¹⁵⁰

Later in the afternoon, Dean Clark arrived and talked with Griswold 9 members Charisse Carney and Derek Honore, and incoming Black Law Students Association President and CCR member Ronald S. Sullivan.¹⁵¹ Carney recalled that during this discussion, she asked Dean Clark if his quote in the *Wall Street Journal* article was misquoted or taken out of context.¹⁵² When Clark responded that the quote was accurate and he meant what he said, Carney decided that, regardless of consequences, she must sit-in overnight.¹⁵³ Anspach described what happened next:

After a short while, Clark stood up and approached the door. He said that he wanted to go to his office. We clustered around the door again and told him the office area was closed. He was very angry, but did not try to force his way inside. I believe that Smith was there at this time and that Smith told us again that we were doing something that could get us in trouble.¹⁵⁴

148. See Interview with William Anspach, *supra* note 103; Interview with Charisse Carney-Nunes & Jodi Grant, *supra* note 74.

149. Anspach, *supra* note 146, at 2–3.

150. *Id.* at 6.

151. *Id.* Ronald S. Sullivan told me during an interview that he was present during the first part of the sit-in. See Interview with Ronald S. Sullivan, Clinical Professor, Harvard Law Sch., in Cambridge, Mass. (May 20, 2010). He left the group to cancel an intramural basketball game that was scheduled for later that day and to meet with incoming admitted students in his leadership capacity with the Black Law Students Association. *Id.* When he came back to Griswold Hall to re-join the protestors, Harvard Police officers prohibited his entry. *Id.* He spent the night in the building, but was unable to sit in the corridor with the Griswold 9. *Id.*

152. Interview with Charisse Carney-Nunes & Jodi Grant, *supra* note 74.

153. *Id.*

154. Anspach, *supra* note 146, at 3.

For eight-and-a-half hours, Harvard Police officers prevented the students from using the restroom, which was located a few steps away from the office corridor.¹⁵⁵ The police officers informed the students that they would not be allowed back into the corridor if they left to use the restroom.¹⁵⁶ After much discomfort, the students eventually negotiated bathroom privileges with the officers.¹⁵⁷ At 9:00 p.m., Harvard University counsel Daniel Steiner confronted the students with claims that HLS students were being arrested outside of Griswold Hall¹⁵⁸—not intimidated by these statements, the students remained in the corridor and told Steiner that the administration had “underestimated their commitment to ending discrimination in hiring practices.”¹⁵⁹

Two dozen students remained outside throughout the night.¹⁶⁰ The Griswold 9 members stayed in the corridor; they relied on hand-held walkie-talkies to communicate with the students on the outside throughout the sit-in.¹⁶¹

C. *The Next Day*

On the morning of the second day of the sit-in, Vice Dean Smith appeared again and argued with the students. In his account of what happened, Anspach wrote:

[Smith] approached the door and said that he wanted to enter the office area. I told him that the office was still closed. He said, “Under what principle?” I responded clumsily, “Under the principle of democratic control of the hallway.” He was either impressed or baffled by this answer. While he stood there, we began to chant, “The office is closed.” He did not stay long.¹⁶²

During the sit-in, the Griswold 9 members anticipated that they would be arrested.¹⁶³ This did not happen. Instead, the law school administration prepared to deal with the students through a disciplinary proceeding. During the sit-in, Harvard employees took pictures of the

155. Glennis Gill, *The Griswold 9: From Start to Finish*, HARV. L. REC., Sept. 18, 1992, at 6; see also Barr, *supra* note 137, at 1.

156. Anspach, *supra* note 146, at 4.

157. *Id.*; see also Interview with Ronald S. Sullivan, *supra* note 151 (noting that Sullivan helped negotiate bathroom privileges with the Harvard Police from outside the Dean’s office corridor).

158. Barr, *supra* note 137, at 1. During this conversation, Steiner told the protestors that some students outside Griswold Hall were being arrested, but the Griswold 9 knew these claims were false because of their communication with the students outside through walkie-talkies. *Id.*; see also Anspach, *supra* note 146, at 8 (noting that during the evening, Steiner or someone else told the group that Ronald S. Sullivan was arrested for attacking a police officer—a claim that the protestors determined to be false).

159. Barr, *supra* note 137, at 1.

160. Gill, *supra* note 155, at 6.

161. Barr, *supra* note 137, at 1.

162. Anspach, *supra* note 146, at 9.

163. *Id.* at 5 (“We thought we would be arrested at 5:00 p.m. [on the first day], but nothing happened. . . . At some point, a decision was made to stay in the hallway overnight. We felt that we would surely be arrested early the next morning.”).

student protestors without their masks on.¹⁶⁴ The Administrative Board convened an emergency meeting on early Tuesday morning to consider bringing charges against the Griswold 9, who were identified by the photographs.¹⁶⁵ Although not a member of the Administrative Board, Dean Clark was present at this emergency meeting and talked to the Board members.¹⁶⁶ The Administrative Board issued a statement later in the morning that indicated that it could “issue charges against the individuals involved that, if sustained, could lead to reprimand, suspension, or dismissal [sic].”¹⁶⁷

By 7:00 a.m. on Tuesday, April 7, seventy-five students had joined the supporters outside, informing the national media of the protest.¹⁶⁸ Professors Christopher Edley, David Charny, Frank Michelman, and Duncan Kennedy were allowed to enter the corridor to give the students advice about their sit-in.¹⁶⁹ Anspach wrote:

[Duncan] Kennedy told us that if we pushed Harvard too hard, too much attention that week and over the coming months would be focused on the issue of disciplinary action rather than diversity. Kennedy’s argument had a big impact on us, I believe. We were not acting in order to promote ourselves or nihilistically to create chaos, but rather in order to spur the faculty and administration to end discrimination in faculty hiring. We hoped that we would both inspire people on our side and pressure people on the other side.¹⁷⁰

The Griswold 9 ended their sit-in around noon.¹⁷¹ At a rally immediately following the protest, the Griswold 9 issued a formal statement of their purposes.¹⁷² Trained as legal advocates and anticipating that the HLS administration would argue that the students violated the University Statement of Rights and Responsibilities regarding the interference of the normal duties and activities of the school, the Griswold 9 stated:

The Dean can take no comfort in the University Statement of Rights and Responsibilities, which asserts that “interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University.” There is nothing “normal” about discrimination; the “essential processes” of the law school

164. Gill, *supra* note 155, at 6.

165. Barr, *supra* note 137, at 1.

166. Ward, *supra* note 130, at 1.

167. Barr, *supra* note 137, at 1. The Administrative Board later clarified the difference between “dismissal” and “expulsion” in a letter—a student who has been expelled may apply for readmission, but a student who has been dismissed may not. Letter from David L. Shapiro, Chair of the Admin. Bd., to Professor William W. Fisher, III, defense counsel to Griswold 9 (Apr. 21, 1992) (on file with author).

168. Barr, *supra* note 137, at 1.

169. *Id.*

170. Anspach, *supra* note 146, at 10.

171. *Id.* at 10–11.

172. Coal. for Civil Rights, *Why We Must Sit-In Today*, (not dated) (on file with author); see also Gill, *supra* note 155, at 6.

cannot be served by the exclusion of women and minorities from the legal academic community.¹⁷³

The protestors also issued a number of demands including a request for “a special faculty meeting to be held to adopt a package of diverse candidates for tenure positions.”¹⁷⁴ They also demanded that Dean Clark publicly apologize for his statement in the *Wall Street Journal* article and Clark send a written invitation to Professor Bell, asking him to return to HLS.¹⁷⁵ Charisse Carney read a statement to cheering supporters at the rally in which she concluded, “We have reached our goal today. We have successfully escalated this struggle.”¹⁷⁶

CCR members explained the meaning of the Griswold 9 sit-in. William Anspach, wrote, “What we seek is change. And we want change at the rapid pace the law school showed itself capable a few weeks ago when it made tenure-track offers to four white men.”¹⁷⁷ Ronald S. Sullivan, incoming President of the Black Law Students Association who was present during the early part of the sit-in, commented, “I personally support this group’s goals and methods. This faculty has created a situation in which there is no other recourse but to create an environment in which the faculty is forced to make changes.”¹⁷⁸ In response to some student complaints that the sit-in was harming diversity efforts on campus, CCR member Camille Holmes remarked, “People who say sit-ins are ‘counter-productive’ have to realize that statements such as those in the *Wall Street Journal* are also counter-productive and undermine Dean Clark’s credibility.”¹⁷⁹

On Thursday, April 9, 1992, the HLS Administrative Board sent the Griswold 9 members, by Federal Express, letters informing the students that they had been “tentatively identified as participating in an incident,” and that the “Administrative Board will soon be considering whether to issue formal disciplinary charges in connection with [the] incident.”¹⁸⁰

D. Who Were the Nine?

The CCR members that comprised the Griswold 9 were not radicals. They were law students engaged in mainstream campus life and involved in various student affinity organizations and public service activities.¹⁸¹

173. Gill, *supra* note 155, at 6.

174. Barr, *supra* note 137, at 1.

175. BOYKIN ET AL., *supra* note 2, at unpagged section titled *Spring 1992: The Struggle Escalates*.

176. Barr, *supra* note 137, at 1.

177. William Anspach, *Our Protest Confronts Injustice*, HARV. L. REC., Apr. 10, 1992, at 10.

178. Rodolfo J. Fernandez, *Students End 25-Hour Law School Sit-In: “Griswold Nine” of Coalition for Civil Rights Protest Outside Dean Clark’s Office*, HARV. CRIMSON, Apr. 8, 1992, available at <http://www.thecrimson.com/article/1992/4/8/students-end-25-hour-law-school-sit-in/>.

179. Barr, *supra* note 137, at 1.

180. Regis, *supra* note 130, at 1.

181. The backgrounds of the Griswold 9 members in this part were taken from “Griswold 9” *Voluntarily Come Forward*, HARV. L. REC., Apr. 17, 1992, at 6. Note that William Anspach and Lucy Koh were also named plaintiffs in the CCR lawsuit. See *supra* text accompanying note 45.

The only third year law student in the group was Charisse Carney. She was a graduate of Lincoln University and a joint degree student at HLS and the Harvard Kennedy School of Government. Carney was the outgoing President of the Harvard Black Law Students Association and was instrumental in helping establish the Charles Hamilton Houston Fellowship, which addressed the long-term goal of expanding the pool of women and minority professors in the country.

Seven members of the Griswold 9 were second year law students. William Anspach, a graduate of Haverford College, was involved in the Labor Law Project, and worked to establish an independent organization, the Unemployment Compensation Advocacy Project, which was designed to provide unemployed citizens with student representatives before the Department of Employment and Training. Jodi Grant was a Yale graduate who was active in Student Funded Fellowships, the Big Brother/Big Sister Program, and served as an editor for the *Human Rights Journal*. Derek Honore, a graduate of UCLA, was the outgoing Chair of the Academic Affairs Committee for the Black Law Students Association. He was also the incoming Executive Editor for the *BlackLetter Law Journal* and Membership Chair of the Black Law Students Association. Lucy Koh, a graduate of Harvard College, was active in the Tenant Advocacy Project, Student Funded Fellowships, Battered Women's Advocacy Project, and the Asian American Law Students Association. She was also a research assistant for Professor Christopher Edley. Elizabeth Moreno was a graduate of University of California at Berkeley. She was outgoing Co-chair of the Women's Law Association and worked as a research assistant for Professor David Westfall. Jill Newman was active in the Woman's Law Association as Co-chair of the Quality of Life Committee and the Student Funded Fellowships as the Chair of the Phonathon Committee. She was a graduate of Cornell University. Marie-Louise Ramsdale, a graduate of the University of South Carolina, was a Co-chair of the Women's Law Association and a Board Member of Student Funded Fellowships. She had served as a teaching fellow for the "Women and the Law" course taught at Harvard College and was Managing Editor of the *Women's Law Journal*.

The only first year law student in the Griswold 9 was Julie Su. Su, a second-generation Chinese American and a Stanford University graduate, was the incoming Co-chair of the Asian American Law Students Association and a general editor for the *Civil Rights-Civil Liberties Law Review*.

Although they came from different backgrounds, the Griswold 9 were united in a common commitment to diversify the HLS faculty.

After the sit-in, the Griswold 9 received external support in various forms. On Friday, April 10, 1992, CCR distributed a letter to HLS faculty explaining the purposes of the sit-in.¹⁸² Further, before the hearing, HLS

182. Letter from Camille Holmes, CCR member on behalf of CCR, to HLS faculty (Apr. 10, 1992) (on file with author). Holmes wrote:

Students on April 6 and 7 staged a sit-in in the corridor in front of Dean Clark's office just as university students staged a sit-in at a Woolworth lunch counter in Greensboro, North Carolina to protest an unjust violation of the law more than thirty-two years ago. These students represented those who wished to talk but saw no one who would hear and consider seriously student concerns. Diversity

students circulated petitions including one urging the Administrative Board not to suspend the student protestors and another urging the Administrative Board not to formally punish them.¹⁸³ Additionally, in a letter dated Wednesday, April 15, 1992 that was sent to Dean Clark and the Administrative Board, Reverend Jesse Jackson urged HLS not to discipline the Griswold 9. Jackson wrote:

Harvard Law School must not align itself with the authoritarian practices and responses of British-run India or the segregated South. It must seek a higher ground in 1992. The students who staged a 24-hour nonviolent sit-in outside Dean Clark's office should not be disciplined for acting on their convictions and fighting injustice. Rather, they should be honored for their commitment to building a multi-racial and pluralist society. They, like their predecessors, represent the best of America's youth. For Harvard Law School to now clamp down with vindictiveness on their cries for justice demeans the Law School's mission of teaching and moral inquiry.¹⁸⁴

E. *The Call for the Dean's Resignation and Charges Against the Griswold 9*

At a press conference on Thursday, April 16, 1992, a joint statement was issued by CCR along with a number of student affinity groups. This statement called for Dean Clark's resignation. The statement read, in part:

In response to the Dean's hostility and to the discrimination against women and minorities for faculty appointments, a number of students held a 24[-]hour sit-in outside Dean Clark's office. The Dean then quickly initiated a Kafka-esque administrative disciplinary proceeding against the students. Despite the fact that other students had conducted peaceful sit-ins for years without repercussion, the Dean suddenly chose to prosecute the students who took part in the most recent sit-ins. The difference between the most recent sit-ins and those of previous years is that this time the students involved were overwhelmingly women and minorities.¹⁸⁵

is part of a quest to make Harvard Law School a truly great institution, one which is responsive to the concerns of all students and equipped for the legal issues of the twenty-first century. Please urge the Dean to apologize for his representation of Harvard Law School in the *Wall Street Journal*. Please urge the Dean to take concrete steps to rectify HLS' poor record on minority hiring. Please require and help to effect positive change at HLS.

Id.

183. Letter from Bethany Spalding, HLS student, to HLS Section 2 classmates (not dated) (on file with author) (urging them to sign petitions by April 15, 1992).
184. Letter from Jesse L. Jackson, President and Founder of the National Rainbow Coalition, Inc., to Robert Clark, HLS Dean, and members of the HLS Admin. Bd. (Apr. 15, 1992) (on file with author).
185. Coal. for Civil Rights and a number of student affinity groups, *Student Groups Call for Dean Clark's Resignation*, HARV. L. REC., Apr., 17, 1992, at 15; see also Natasha H. Leland, *Law Student Groups Demand Clark Resign*, HARV. CRIMSON, Apr. 17, 1992, available at <http://www.thecrimson.com/article/1992/4/17/law-student-groups-demand-clark-resign/>.

Despite Jesse Jackson's plea and the students' denunciation of Dean Clark, on Friday, April 17, 1992, the Administrative Board formally charged the nine students with interfering with the normal functions of the University and individual freedom of movement by obstructing access to Dean Clark's office and refusing to leave when asked to do so.¹⁸⁶ The public Administrative Board Hearing was scheduled for Monday, May 4 at 4:15 p.m. in the Ames Courtroom at HLS.¹⁸⁷ Professor William (Terry) Fisher, who was not yet tenured, agreed to represent the Griswold 9 and Professor Detlev Vagts agreed to present the case against the student protestors.¹⁸⁸ HLS student Peter Cicchino assisted Professor Fisher with the defense of the Griswold 9 and HLS administrator Janet Katz assisted Professor Vagts.¹⁸⁹ At the time, Cicchino was a third year law student who had served as Co-Chair of Harvard's Committee on Gay and Lesbian Legal Issues.¹⁹⁰ He was also involved in a clinical course offering legal assistance to indigent criminal defendants in Roxbury, a poor, predominantly African American neighborhood of Boston.¹⁹¹ Julie Su recalls her meetings with Professor Fisher, Peter Cicchino, and the other students in preparation for the trial:

We had countless meetings among the 9 of us, Prof. Fisher and Peter. We talked about our options over and over, esp. when we were offered "plea agreements"¹⁹² by the Law School. We had dif-

186. See Gill, *supra* note 155, at 6; see, e.g., Letter from Suzanne L. Richardson, Sec'y of the Admin. Bd., to William Anspach, Griswold 9 member (Apr. 17, 1992) (on file with author). Around the same time, the *Harvard Law Review* sparked a controversy through its annual parody edition, the *Harvard Law Revue*, in which the authors of the parody mocked the work of murdered feminist law professor Mary Joe Frug, see *supra* note 66 and accompanying text, and made demeaning comments directed at minority and female HLS students and faculty. See KERLOW, *supra* note 6, at 169–275, for an account of this event. See also Thomas C. Palmer, Jr., *The Not-So-Civil War at Harvard Law School: Revue Parody Lays Bare Deeper Divisions*, BOSTON GLOBE, Apr. 26, 1992, at 74; Steve Yarian, *Faculty Clash over Revue, 1st Amendment*, HARV. L. REC., May 1, 1992, at 1. Responding to the outrage caused by the *Revue*, fifteen HLS faculty members distributed an open letter to the HLS community condemning the parody and the "institutional sexism and misogyny that made it imaginable" and urging the administration to eliminate its faculty committee and create a new committee devoted to diversifying the faculty. Letter from Elizabeth Bartholet, Gary Bellow, David Charny, Abram Chayes, Christopher F. Edley, Jr., Martha A. Field, William W. Fisher, III, Charles M. Haar, Morton J. Horowitz, David Kennedy, Duncan M. Kennedy, Frank I. Michelman, Richard D. Parker, Lewis D. Sargentich & Laurence H. Tribe, HLS faculty members, to HLS community (Apr. 20, 1992) (on file with author). At the end of the letter, Professors William Alford, Richard Fallon, Charles Nesson, Harry Steiner, and Alan Stone expressed agreement with many of the letter's characterizations but explained that they did not sign the letter because they did not agree with all of the recommendations in it. See also Natasha H. Leland, *Law Profs Urge New Faculty Hiring Process: Ask Dean to Dissolve Present Committee*, HARV. CRIMSON (Apr. 21, 1992), available at <http://www.thecrimson.com/article/1992/4/21/law-profs-urge-new-faculty-hiring/>.

187. Ward, *supra* note 130, at 1.

188. *Id.*

189. See Gill, *supra* note 155, at 6.

190. Peter Cicchino, *An Activist at Harvard Law School*, 50 AM. U. L. REV. 551, 558 (2001).

191. *Id.*

192. Julie Su later recalled, "The Ad Board offered several 'plea agreements' prior to trial that included our making apologies and promising never to repeat our actions in

ficult conversations about principle vs. pragmatism, what message we would send by going to trial vs. the diversion that might become from our ultimate goals, and whether we would gain more support or turn people off by having a public trial. Many of these conversations had us in tears, partly out of frustration, partly out of fear, and partly out of exhaustion.¹⁹³

The hearing was scheduled to begin on a Monday that was three days before the start of law school final exams.¹⁹⁴ The Griswold 9, through its counsel, requested that the hearing be moved to an earlier date, preferably Monday, April 27.¹⁹⁵ In support of the protestors, several hundred HLS students signed a petition urging an earlier hearing date.¹⁹⁶ Citing scheduling difficulties for individual board members, the Administrative Board denied the request.¹⁹⁷ According the Dean of Students and member of the Administrative Board Sarah Wald, as the hearing approached, “an enormous number of letters” was sent to the Administrative Board, most of them calling for leniency.¹⁹⁸

F. *The Trial of the Griswold 9*

The Administrative Board was charged with “matters involving student discipline and exceptions to faculty and administrative rules.”¹⁹⁹ Membership on the Board was to include three faculty, three students, and two administrators.²⁰⁰ In the spring of 1992, the HLS Administrative Board consisted of Professors Arthur Miller, James Vorenberg, and David Shapiro; students Barry Langman, Juan Zuniga, and Dorothy DeWitt; and Dean of Students Sarah Wald and Registrar Sue Robinson.²⁰¹ Suzanne Richardson, another administrator, served as Secretary to the Board.²⁰² This body of faculty, students, and administrators was to decide the fate of the Griswold 9.

The procedures of the Administrative Board were set forth in a three-and-a-half page document called “Administrative Board Procedures for Disciplinary Cases.”²⁰³ This document consisted of eighteen articles that described the purpose, jurisdiction, and procedures of the Board.²⁰⁴ The Administrative Board had the authority to issue charges only “if the Board believes it reasonably likely that the charged infraction can be es-

exchange for expunged records.” Julie A. Su, *Taking Risks to Uplift Humanity: A Tribute to Peter Cicchino*, 9 AM. U. J. GENDER SOC. POL’Y & L. 35, 41 (2001).

193. E-mail from Julie Su, *supra* note 143.

194. Ward, *supra* note 130, at 1.

195. *Id.*

196. *Id.*

197. *Id.*

198. Regis, *supra* note 130, at 1.

199. HARV. L. SCH. CATALOG, 1991–1992, at 185.

200. *Id.*

201. Gill, *supra* note 155, at 6.

202. *Id.*

203. Regis, *supra* note 130, at 1; *see also* ADMIN. BD. PROCEDURES FOR DISCIPLINARY CASES (1992) (on file with author).

204. ADMIN. BD. PROCEDURES FOR DISCIPLINARY CASES (1992), *supra* note 203.

tablished by clear and convincing evidence.”²⁰⁵ When the Board formally issued charges, the students were entitled to a hearing with representation by legal counsel or lay advisor.²⁰⁶ Formal rules of evidence did not apply; the Board was allowed to consider any evidence it deemed “relevant and trustworthy.”²⁰⁷ While Administrative Board hearings were normally private, students had the right to request a hearing that was open to the public.²⁰⁸ The Griswold 9 members were the first defendants to exercise the right to a public hearing in the history of the Administrative Board.²⁰⁹

In a letter dated Thursday, April 30, 1992, the Administrative Board informed Professor Fisher who it would allow to attend the hearing and other procedures:

Those who may attend include members of the Law School community, one or two authorized representatives of the broader Harvard community, one or two authorized reporters from the Harvard Crimson. Identification will be necessary at the door. (In addition, each participant in the hearing may obtain a ticket from Suzanne Richardson for an immediate family member or significant other.) Cameras, videotaping, or audiotaping will not be allowed, except for the official audiotape that will be kept as part of the record.²¹⁰

The parties were concerned about procedural fairness. Prior to the hearing, the Griswold 9 alleged that the Administrative Board had violated student rights by engaging in *ex parte* conversations with Dean Clark at the Tuesday, April 7 emergency meeting.²¹¹ After much discussion, the Administrative Board agreed to disregard the testimony from the April 7 meeting.²¹² The Administrative Board offered a plea agreement before the trial began. On the day before the hearing, the Administrative Board notified the Griswold 9 that it would issue a warning to any student who wrote a letter of apology.²¹³ Elizabeth Moreno was the only student who took the deal.²¹⁴ Although nine students conducted the sit-in, eight were to be put on trial.

205. *Id.*

206. *Id.*

207. *Id.*

208. *Id.*

209. Ward, *supra* note 130, at 1.

210. Letter from David L. Shapiro, Chair of the Admin. Bd., to Professor William W. Fisher, III, counsel for Griswold 9 (Apr. 30, 1992) (on file with author). I attempted to access the hearing audiotapes from the Historical & Special Collections Department at the HLS Library and was informed that I would not be able to obtain the officially archived materials that relate to the Griswold 9 incident because Harvard seals information that relates to students until eighty years after the records were made.

211. Ward, *supra* note 130, at 1.

212. Gill, *supra* note 155, at 6.

213. *Id.*

214. *Id.* Moreno later explained, “I couldn’t go on with it. The stress was horrible. The L.A. riots happened at about the same time, and my mother’s firm [where she works as a secretary] got hit with a Molotov cocktail. . . . That made me realize there

The hearing began on Monday, May 4, in the Ames Courtroom at HLS, with many students unable to attend because the room was filled to capacity.²¹⁵ The eight students entered to a standing ovation from the audience members.²¹⁶ Peter Cicchino later wrote a description of the room set-up:

Like judicial theater in the round, several hundred faculty, staff, and students surrounded eight long tables arranged as a square. The tables were draped with red cloths (Harvard's color is crimson) and microphones stood in front of each speaker. At the northern end of the square sat the members of the administrative board—the judges for the evening. On the western side of the square sat the prosecutor. Facing him, on the east, were Terr[y] Fisher, myself, and the . . . defendants. Finally, completing the square on the southern side were a lone chair and microphone—the witness seat.²¹⁷

To support his case, Professor Vagts relied on the Harvard University Statement of Rights and Responsibilities, which provided, in part:

The University places special emphasis . . . upon certain values which are essential to its nature as an academic community. Among these are freedom of speech and academic freedom, freedom from personal force and violence, and freedom of movement. Interference with any of these freedoms must be regarded as a serious violation of the personal rights upon which the community is based. . . . Therefore, interference with members of the University in performance of their normal duties and activities must be regarded as unacceptable obstruction of the essential processes of the University.²¹⁸

Vagts commented, "Obstructing access was a problem. If Dean Clark had really tried [to access his office] it might have escalated."²¹⁹ Professor Vagts first called the two secretaries from the Dean's Office as fact witnesses.²²⁰ Professor Vagts also called Vice Dean Smith, Harvard University Police Officer Rocco E. Forgione, and Harvard University Police Sergeant John M. Francis, as fact witnesses.²²¹ Administrative Dean Sandie Coleman was also called to testify; she detailed the costs incurred as a result of the sit-in.²²²

are other issues, and I could do more good getting a Harvard law degree than by getting thrown out." John Sedgwick, *Beirut on the Charles*, GQ, Feb. 1993, at 200.

215. Gill, *supra* note 155, at 6.

216. *Id.*

217. Cicchino, *supra* note 190, at 563.

218. HARV. L. SCH. CATALOG, 1991–1992, *supra* note 199, at 185.

219. Natasha L. Leland, *Law School Protesters Deny Charges at Hearing*, HARV. CRIMSON, May 6, 1992, available at <http://www.thecrimson.com/article/1992/5/6/law-school-protesters-deny-charges-at/>.

220. Gill, *supra* note 155, at 6.

221. *Id.*

222. *Id.* According to Professor Fisher's closing argument notes, Dean Coleman estimated that the sit-in cost HLS \$9,653.04. William (Terry) Fisher's notes for Admin. Bd.: Final Argument (May 5, 1992) (on file with author).

Defense counsels Professor Terry Fisher and Peter Cicchino, using the same provisions in the Statement of Rights and Responsibilities, argued that there is nothing “normal” about discrimination so the “normal duties and obligations” of the University were not infringed upon by the students’ sit-in. Cicchino, relying on free speech principles, stated that “the crucial issue is the way in which the Law School would respond to a completely non-violent expressive act of dissent motivated solely by legitimate concern for the institution’s treatment of women and minorities.”²²³

The defense called Professors David Charny, Christopher Edley, Duncan Kennedy, and Frank Michelman as character witnesses for the students.²²⁴ The testimony was heated at times. For example, during Professor Charny’s testimony, even though formal rules of evidence did not apply, Professor Vagts nonetheless objected to the fact that Charny was using his notes to refresh his recollection.²²⁵ Professor Charny, in a rage, responded by throwing his notes at Professor Vagts in front of the entire audience.²²⁶ Charny then threw his paperback copy of *The Brothers Karamazov* at Vagts.²²⁷ The audience was shocked. “You could have heard a pin drop,” said one student.²²⁸

The defense also called a law student, Raul Perez, who ran the communications between the Griswold 9 and the outside, and another law student, Julia Gordon, who testified as an “expert in comparative civil disobedience” at the law school.²²⁹ All eight Griswold 9 members testified as well, explaining their motivations for the sit-in. John Bonifaz, who was present during both evenings of the trial, recalls that during this portion of the testimony, he heard an HLS administrator say that these students “were the best of Harvard Law School.”²³⁰ Most of the student protestors said that they had not planned to engage in an overnight sit-in but a conversation with Dean Clark in which he affirmed his statement from the *March Wall Street Journal* article convinced them that the protest was necessary.²³¹

In closing arguments, instead of ending on his strongest legal points, Professor Vagts expressed his remorse that HLS had to endure such a process and explained that he only acted as prosecutor because nobody else would do it.²³² Professor Fisher, in contrast, gave an impassioned twenty minute closing, arguing that even if the students did disrupt the functioning of Dean Clark’s office, they did not violate the University Statement of Rights and Responsibilities because the Dean’s conduct with

223. Leland, *supra* note 219.

224. Gill, *supra* note 155, at 6.

225. Sedgwick, *supra* note 214, at 156.

226. *Id.* In an interview with Professor Vagts, he told me that while he remembers Professor Charny throwing the notes at him, he insists that Charny missed him. Interview with Detlev Vagts, Professor, Harv. L. Sch., in Cambridge, Mass (Mar. 4, 2010).

227. Sedgwick, *supra* note 214, at 156.

228. *Id.*

229. Gill, *supra* note 155, at 6. Both Perez and Gordon were members of the Fried 4. See Ward, *supra* note 130, at 1.

230. Interview with John Bonifaz, CCR co-founder, Amherst, Mass. (July 6, 2010).

231. Leland, *supra* note 219.

232. Gill, *supra* note 155, at 6.

regard to faculty diversity did not constitute “normal.”²³³ He contended that “[t]he students have tried many different ways of halting a pattern of insensitivity and discrimination in this institution—and each time were rebuffed[,] This protest, the[y] reasonably believed, was the only way in which they could make themselves heard[.]”²³⁴

Further, Fisher argued that HLS’s own hiring policies were in violation of the University’s affirmative action policy and obligations imposed by other portions of the Statement of Rights and Responsibilities.²³⁵ He posited that if a violation was found, the limited response of the students to the Dean’s actions should be treated with leniency.²³⁶ He concluded with a flourish:

The Harvard Law School Community is undergoing a crisis[.] The events of the past month have been traumatic[,] the levels of distrust, resentment and alienation within all the constituent parts of our community are extremely high[,] classroom discussions of controversial issues are either muted—because of students’ fear of provoking the wrath of their fellows—or distorted by outbursts of fury[.] [O]ne only has to watch a few casual, hallway contacts between students and faculty to see the deterioration[.] [P]eople snap at each other[,] search desperately for some neutral ground of conversation or merely avert their eyes. [O]ur educational mission—and the quality of our collective life—is seriously threatened[.] [U]nder these circumstances, it would be *especially* inadvisable to impose serious penalties on the defendants[.] [T]his is a time for healing—healing and reform—not recrimination and sanctions.²³⁷

After two days of evidence and arguments from both sides, about eleven hours total, the trial ended when the audience gave Professor Fisher a standing ovation.²³⁸ The Administrative Board had to meet over the next few days to discuss the evidence and the fate of the Griswold 9.

Immediately after the trial, reactions were mixed. Griswold 9 member Jodi Grant commented that “it was a very moving experience for both [p]rofessors and students.”²³⁹ Other members of the Griswold 9 complained about the lack of procedural due process they were afforded by the Administrative Board. For example, Marie-Louise Ramsdale complained about the Administrative Board’s exclusion of the outside press, which she believed was essential to protect the group’s due process rights.²⁴⁰ Julie Su noted that “it’s amazing that a place like HLS, where we

233. *Id.*; see also William (Terry) Fisher’s notes for Admin. Bd.: Final Argument (May 5, 1992), *supra* note 222.

234. William (Terry) Fisher’s notes for Admin. Bd.: Final Argument (May 5, 1992), *supra* note 222.

235. *Id.*

236. *Id.*

237. *Id.* (emphasis in original).

238. Gill, *supra* note 155, at 6.

239. *Id.*

240. *Id.*

learn about due process, had such egregious process violations in dealing with us.”²⁴¹ Su later explained:

The due process violations were numerous and severe. They were particularly ironic given that they were perpetrated by a university whose mission included teaching the meaning and importance of due process protections. The violations ranged from secret phone calls between the Dean and the Ad Board and attempts to turn our right to a “public” trial into a private one by excluding all of the press except the school paper, to which Peter [Cicchino] responded publicly, “As is said in the Scripture, those who live in darkness fear the light.”²⁴²

On the other hand, a student member of the Administrative Board, Dorothy DeWitt, explained that “we struggled to balance the procedural rights of the Griswold Nine with the need to resolve the hearings quickly, before the exam period commenced. I think the Ad Board hearing and the decision process were fair and consequently successful.”²⁴³ CCR member Camille Holmes said “that the people who sat in made an important statement. It’s awful that they were put through that trial, forced to divert their attentions away from their studies to be prosecuted . . . out of it came a sense of unity behind this issue and in support of these students that gives us hope for the future.”²⁴⁴

III. THE AFTERMATH

The Administrative Board’s decision was released on Friday, May 8, 1992.²⁴⁵ The Administrative Board rejected the defenses set forth by the students through their counsel and, in a five-to-three vote, it gave the eight students who stood trial official warnings, to be removed from their student files at graduation if no additional violations of University or law school rules were found.²⁴⁶ The Administrative Board also recommended that the registrar include additional language in the Harvard Law School Catalog that gave notice to future students that the sanction may be more severe in the future.²⁴⁷ The Administrative Board concluded, “This proceeding has been a difficult, arduous one for all involved, and we hope it will not need to be repeated in any other context.”²⁴⁸

Current HLS Dean Martha Minow²⁴⁹ recounted the commencement ceremony of that year’s graduating class:

241. *Id.*

242. Su, *supra* note 192, at 41.

243. Gill, *supra* note 155, at 6.

244. *Id.*

245. Statement of the Admin. Bd. (May 8, 1992) (on file with author).

246. *Id.* at 4–6; see also Rajath Shourie, *Ad Board Votes to Warn Law School Protestors*, HARV. CRIMSON, May 11, 1992, available at <http://www.thecrimson.com/article/1992/5/11/ad-board-votes-to-warn-law/> (noting that five members of the Administrative Board voted for giving the student protestors warnings and three voted for reprimands).

247. Statement of the Admin. Bd. (May 8, 1992), *supra* note 245, at 8.

248. *Id.* at 8.

249. Professor Minow became HLS Dean on July 1, 2009. See *Martha Minow Named Dean of Harvard Law School*, HARV. GAZETTE, June 11, 2009, available at <http://news.>

The Dean [Clark] objected to the selection of Peter [Cicchino] as commencement speaker at Harvard Law School in 1992. After all, Peter had defended student protestors, the Griswold 9, who had occupied the Dean's hallway to protest the law school's failure to pursue diverse faculty appointments! But the students' choice prevailed. His fellow law students picked Peter to speak at commencement not only as a sign of utter respect, but also because they wanted Peter's words as their send-off, their admonition, their hope. . . . He told the students, "Take your arrogance and afflict the comfortable. Take your contentiousness and articulate genuine political alternatives. Take your sense of entitlement to act in the world—to run things—and do so: govern, lead."²⁵⁰

During the summer, Jodi Grant commented that "it would be a travesty if it were all for naught . . . most of us are still active and involved in CCR. For example, some of us in New York this summer gave out info. to [a]lumni at the [annual summer alumni] reception and now that school is beginning, CCR is continuing to push for better faculty diversity."²⁵¹ Despite its best efforts, CCR received unfavorable news in July. On Thursday, July 9, 1992, the Massachusetts Supreme Judicial Court affirmed the dismissal of CCR's lawsuit.²⁵² While the lower court decided the case on standing grounds, the Commonwealth's highest court found in favor of Harvard on the students' substantive claims as well as the procedural standing issue.²⁵³ Julie Su, member of the Griswold 9, stated, "Certainly CCR is thinking about taking further legal action. A lot of things have happened over the summer which tried to undo what we did last spring in which we have to respond."²⁵⁴ HLS student and named CCR lawsuit plaintiff Jeffrey Lubbell commented, "It was a victory that we even got to the [Massachusetts] Supreme Court at all. We brought attention to the diversity movement and the lack of women on the HLS faculty. And there are still many things that can be done."²⁵⁵

harvard.edu/gazette/story/2009/06/martha-minow-named-dean-of-harvard-law-school/. Minow succeeded Elena Kagan, who in 2003, became the first woman to be appointed HLS Dean. See Sam Dillon, *First Woman is Appointed Dean of Harvard Law*, N.Y. TIMES, Apr. 4, 2003, at A18, available at <http://www.nytimes.com/2003/04/04/us/first-woman-is-appointed-as-dean-of-harvard-law.html>. Kagan left HLS in 2009 to become U.S. Solicitor General; she was later confirmed as a U.S. Supreme Court Justice in August 2010. See *Obama Names Elena Kagan Solicitor General: If Confirmed by Senate, HLS Dean Would be First Woman in the Position*, Jan. 5, 2009, HARV. GAZETTE, available at <http://news.harvard.edu/gazette/story/2009/01/obama-names-elena-kagan-solicitor-general/>; Carl Hulse, *Senate Confirms Kagan as Justice in Partisan Vote*, N.Y. TIMES, Aug. 5, 2010, at A1, available at <http://www.nytimes.com/2010/08/06/us/politics/06kagan.html>.

250. Martha Minow, *The Third Annual Peter M. Cicchino Awards Program: Lawyering at the Margins: Lawyering for Human Dignity*, 11 AM. U. J. GENDER SOC. POL'Y & L. 143, at 144–145 (2003).

251. Gill, *supra* note 155, at 6.

252. Todd Hartman, *CCR Suit Dismissed*, HARV. L. REC., Sept. 18, 1992, at 1; see also *Harvard Law Sch. Coal. for Civil Rights & others v. President & Fellows of Harvard Coll.*, 413 Mass. 66, 67–72 (Mass. 1992).

253. Hartman, *supra* note 252, at 1.

254. *Id.*

255. *Id.*

Later in the summer, CCR received more bad news. On Friday, August 21, 1992, Professor Bell announced that his final appeal to extend his unpaid leave of absence beyond the two-year limit was denied by the Harvard Corporation.²⁵⁶ The Corporation made its decision after Bell, along with his counsel on this matter, Professor Frank Michelman,²⁵⁷ presented a three-hour appeal before a meeting of the Joint Committee of Appointments.²⁵⁸ On Tuesday, July 1, 1992, Harvard University Provost Jerry R. Green announced that Bell's refusal to teach his classes would be construed by Harvard as a resignation from his tenured position.²⁵⁹ HLS student Camille Holmes said, "This is a tremendous loss. He represents the strength of spirit and commitment to inclusion that the law school has been fighting."²⁶⁰ In the fall of 1992, Professor Bell, who was now teaching at NYU Law School, returned to HLS to speak to the students; he urged HLS students to continue the fight for faculty diversity, in particular for a woman of color to be hired.²⁶¹

During the start of the 1992 academic year, in a letter to the Harvard Law School Community dated September 8, 1992, Dean Clark wrote:

The events of last [s]pring were disturbing and difficult for many members of this community. As a result, many have felt a need for improved communication at various levels. Most agree that issues relating to race and gender will continue to require discussion and debate that is more open and more respectful. It has become apparent that the ways in which we deal with each other ought to be improved.²⁶²

Professor Laurence Tribe commented that the letter "is an acknowledgement of a genuine need for discussion of issues relating to race and gender, and an acknowledgement that those discussions need to take place in a more open way."²⁶³ Dean Clark subsequently created a new committee, called the "Project on Community," comprised of both students and faculty, to address the law school's "decaying sense of community."²⁶⁴ Dean Clark appointed negotiation expert, Professor emeritus Roger

256. June Shih, *Board Denies Bell's Appeal: Corporation Rejects Former Law Prof's Leave Request*, HARV. CRIMSON, Aug. 21, 1992, available at <http://www.thecrimson.com/article/1992/8/21/board-denies-bells-appeal-pformer-weld/>.

257. Interview with Frank Michelman, Professor, Harvard Law Sch., in Cambridge, Mass. (July 1, 2010).

258. Shih, *supra* note 256.

259. *Id.*

260. *Harvard Law Notifies Bell of Dismissal for Absence* [sic], N.Y. TIMES, July 1, 1992, at A19, available at <http://www.nytimes.com/1992/07/01/news/harvard-law-notifies-bell-of-dismissal-for-absence.html>.

261. Betsy McGrath, *Bell Urges Continued Pressure*, HARV. L. REC., Oct. 9, 1992, at 1. Professor Bell also filed a civil rights complaint with the Department of Education's Office for Civil Rights over minority faculty hiring at HLS. Laura M. Murray, *HLS Hiring to Come Under Federal Scrutiny*, HARV. L. REC., Oct. 30, 1992, at 2.

262. Letter from Robert C. Clark, HLS Dean, to HLS community (Sept. 8, 1992) (on file with author).

263. Steve Yarian, *Dean Clark Offers Peace Initiative in Letter*, HARV. L. REC., Sept. 18, 1992, at 7.

264. David S. Clancy, *Project on Community at HLS Gets Underway*, HARV. L. REC., Oct. 2, 1992, at 4.

Fisher, to lead the project and enlisted the help of Professors Charles Ogletree and Alan Stone.²⁶⁵

As stated by the Administrative Board in its written decision regarding the Griswold 9, in the start of the next academic year, new language was inserted in the 1992-1993 Harvard Law School Catalog.²⁶⁶ As a warning to future student protestors, the language provided:

In recent years, there have been a number of occasions when students "sat in" or obstructed access to administrative offices, faculty offices, and other school facilities as a form of protest. The Administrative Board imposed the sanction of a "warning" for such conduct in the spring of 1992, but the Board wishes to give notice that a principal reason that the sanction was not more severe was that it was the first instance in many years in which formal charges had been brought and a sanction imposed for conduct of this kind.²⁶⁷

The fall of 1992 started with CCR organizing a silent vigil for increased faculty diversity in which seventy-five students attended.²⁶⁸ CCR subsequently met with Harvard President Neil Rudenstine to further express their concerns about this issue.²⁶⁹ On Friday, October 23, 1992, the newly formed Project on Community and CCR sponsored a panel for alumni titled, "Preparing HLS for the Future: Promoting Diversity in our Community."²⁷⁰ At this forum, HLS students and alumni connected to discuss the issue of increasing faculty diversity at HLS.

The first tenured woman of color at HLS was hired in 1998; however, initial hiring discussions regarding her appointment started earlier. Specifically, HLS offered a visiting professorship to Lani Guinier in 1992.²⁷¹ Because of her nomination for Assistant Attorney General for Civil Rights by President Clinton and for personal reasons, she was unable to accept the visiting offer until January 1996.²⁷² In January 1998, Lani Guinier became the first female African American professor in the 181-year history of HLS.²⁷³ Upon hire, Guinier stated, "Though I am the first woman of color to join the tenured faculty, I know that I will not be the last, and this is important to me."²⁷⁴

265. *Id.*

266. April Rockstead, *Ad Board Changes Policy in Response to Sit-In*, HARV. L. REC., Oct. 2, 1992, at 2.

267. HARV. L. SCH. CATALOG, 1992-1993, at 180.

268. Rob Weissman, *Students Hold Silent Vigil: Protestors Later Meet with President Rudenstine*, HARV. L. REC., Oct. 23, 1992, at 1.

269. *Id.*

270. Steve Yarian, *CCR Holds Meeting with HLS Alumni*, HARV. L. REC., Oct. 30, 1992, at 1.

271. Michael Chmura, *Letter to the Editor, Integrating Harvard Law School*, N.Y. TIMES, Feb. 1, 1998, at 416 (Chmura wrote this letter in his official capacity as News Director of HLS).

272. *Id.*

273. *Welcome Guinier*, HARV. CRIMSON, Feb. 4, 1998, available at <http://www.thecrimson.com/article/1998/2/4/welcome-guinier-pwe-welcome-the-announcement/>; see also Sarah G. Vincent, *Guinier Says Yes to Tenure at HLS*, HARV. L. REC., Feb. 6, 1998, at 1.

274. Richard Chacon, *Guinier Named to Law Faculty at Harvard: Move Addresses Criticism on Diversity at School*, BOSTON GLOBE, Jan. 24, 1998, at A1.

IV. THE SIGNIFICANCE OF THE DIVERSE STUDENT COALITION

The dearth of minority and women tenured or tenure-track professors was an issue before CCR's most vigorous activism from 1989 to 1992, and it continues to be an issue today. As reported in the Harvard University Office of the Senior Vice Provost's Faculty Development & Diversity Annual Report for 2009,²⁷⁵ out of eighty-four senior ladder faculty members at HLS,²⁷⁶ 18% are women (i.e., fifteen total).²⁷⁷ Out of ten junior ladder faculty members, 40% are women (i.e., four total).²⁷⁸ Therefore, out of ninety-four total ladder faculty members, nineteen are women (i.e., 20% of the total).²⁷⁹ In terms of women senior faculty, HLS has the lowest percentage of women compared with law schools at its peer institutions—including Columbia University, Cornell University, Northwestern University, Stanford University, University of Michigan, University of Pennsylvania, University of Chicago, and Yale University.²⁸⁰ Furthermore, out of ninety-four total ladder faculty members, the Senior Vice Provost reports that HLS has two Asian Americans, six African Americans, one Latino, and one Native American—a total of ten self-identified people of color out of ninety-four professors (i.e., 11% of the total).²⁸¹ An additional ladder faculty hire was made after this data was reported. In the spring of 2010, HLS hired Annette Gordon-Reed as a tenured faculty member.²⁸² Professor Gordon-Reed is only the second African American woman professor to hold a tenured or tenure track position in the history of the school.

Given the consistently low percentages of permanent minority and women faculty at HLS both before and after the early 1990s, I inquire as to what could have caused this intense period of student momentum for faculty diversity (1989-1992) that was unprecedented at the time and that has been unmatched through today. In this part, I utilize the concepts of

275. Harvard Univ. Office of the Senior Vice Provost, FACULTY DEV. & DIVERSITY ANNUAL REPORT 15 (2009), http://www.faculty.harvard.edu/sites/default/files/downloads/Annual%20Report%202009%20For%20Internet%20Final_0.pdf. The data in the Senior Vice Provost's report are based on November 1, 2008 snapshots and are limited to paid, primary appointments. *Id.* at 51.

276. Ladder faculty at HLS consist of tenured and tenure-track professors. See e-mail from Liza Cariaga-Lo, Harvard Univ. Assistant Provost for Faculty Development & Diversity, to author (July 20, 2010, 11:37 EST) (on file with author).

277. Harvard Univ. Office of the Senior Vice Provost, *supra* note 275 at 15.

278. *Id.*

279. *Id.* Although 20% of the ladder faculty members are women, HLS J.D. Admissions Office data reports that the incoming class of HLS students in 2009 is comprised of 48% women. See Harvard Law Sch. Admissions Fact Sheet (2009) (on file with author).

280. Harvard Univ. Office of the Senior Vice Provost, *supra* note 275 at 15.

281. *Id.* Although 11% of the ladder faculty members are professors of color, HLS J.D. Admissions Office data report that the incoming class of HLS students in 2009 is comprised of 34% students of color. See Harvard Law Sch. Admissions Fact Sheet (2009), *supra* note 279.

282. See Annette Gordon-Reed '84 to join the Harvard faculty, HARVARD LAW SCH., (Apr. 30, 2010), http://www.law.harvard.edu/news/2010/04/30_annette.html; Triple Appointment for Historian: Pulitzer Winner Gordon-Reed to join HLS, FAS, and Radcliffe, HARV. GAZETTE, May 3, 2010, available at <http://news.harvard.edu/gazette/story/2010/04/triple-appointment-for-historian/>.

social movement theory, bolstered by primary source material and oral histories of the former activists, to explain why the early 1990s were such a robust period of student activism.

A. *Signaling and Group Momentum*

Political opportunity theory posits that certain political contexts can be conducive for activism.²⁸³ Within this theoretical framework, signaling occurs when activists observe changes in the political environment, looking for encouragement for their mobilization and advocacy.²⁸⁴ Debra C. Minkoff contends that if early activists are successful, “a demonstration effect encourages protest by other groups because success signals the vulnerability and responsiveness of elites.”²⁸⁵ Further, Doug McAdam writes that “initiator” movements “signal or otherwise set in motion an identifiable protest cycle.”²⁸⁶ The subsequent “spin-off” movements, “in varying degrees, draw their impetus and inspiration from the original initiator movement.”²⁸⁷

Student protests aimed at Dean Clark’s termination of the public interest advising positions²⁸⁸ served as the initiator movement that catalyzed CCR activism. CCR protests for faculty diversity became a spin-off movement. The primary driving mechanism for the spin-off movement was signaling—the re-instatement of the public interest advising positions, after a year of continuous activism, demonstrated to the HLS community

283. See generally DOUG MCADAM, *POLITICAL PROCESS AND THE DEVELOPMENT OF BLACK INSURGENCY 1930–70* (1982); SIDNEY TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* (2d ed. 1984); David S. Meyer, *Protest and Political Opportunities*, 30 ANN. REV. OF SOC. 125 (2004); David S. Meyer & Debra C. Minkoff, *Conceptualizing Political Opportunity*, 82 SOC. FORCES 1457 (2004).

284. See, e.g., Susan Olzak & Emily Ryo, *Organizational Diversity, Vitality and Outcomes in the Civil Rights Movement*, 84 SOC. FORCES 1561, 1563 (2007) (“[A]dditions to the organizational population produce a type of ‘demonstration effect’ in which an increasing density of organizations and concomitant rise in protest activity signal to insiders and outsiders that support for the movement is rising.”) (citation omitted); Meyer & Minkoff, *supra* note 283, at 1470 (“The logic of [the signals model] is that activists and officials monitor changes in the political environment, looking for encouragement for mobilization and for advocating policy reforms.”); TARROW, *supra* note 283, at 88 (“Protesting groups put issues on the agenda with which other people identify and demonstrate the utility of collective action that others can copy or innovate upon.”).

285. Debra C. Minkoff, *The Sequencing of Social Movements*, 62 AMERICAN SOC. REV. 779, 780 (1997).

286. Doug McAdam, “Initiator” and “Spin-Off” Movements, *Diffusion Processes in Protest Cycles*, in *REPERTOIRES AND CYCLES OF COLLECTIVE ACTION* 217, 219 (Mark Traugott ed., 1995).

287. *Id.* at 219. Doug McAdam argues that “[i]nitiator movements may help to spawn later struggles, but the impetus for this process would appear to be cognitive or cultural rather than narrowly political.” *Id.* at 226. This is apparent in the HLS protests in the early 1990s. While the public interest advising protests did inspire and enable the faculty diversity protests, the initiator movement did not expand the political opportunities for the subsequent diversity protests. McAdam further suggests that spin-off movements may be “disadvantaged by the necessity of having to confront a state that is already preoccupied with the substantive demands and political pressures generated by the early risers.” *Id.* at 225.

288. See sources cited *supra* note 11 and accompanying text.

that the administration was vulnerable to student pressure. Lisa Otero, former La Alianza Co-Chair and CCR member, recounts:

When I came in as a first year student, the activism didn't really get rolling around this [faculty diversity] issue. What started the activism was we had a new dean—Dean Clark—who came in at the same time we did. And Dean Clark abolished the public interest office . . . so a group of us that came to the law school with public interest work in our future—were completely set on that—were quite upset. And we started protesting around that the day we walked in the door. And that got that movement going. And that was fairly quick. And after that, I think the students were fairly emboldened to look around and say, “all right, what else needs to happen around here.” That's when . . . people started talking about [faculty diversity], people started reading articles about it, and it was also happening on other campuses as well.

I really want to stress that early experience we had of speaking out about the closing of the public interest office, and the Dean hearing us. . . really gave us the sense that it's good to speak up, that it can be positive, that you can actually get justice—maybe that was a dangerous thing for us to think as 1Ls. . . . We felt that our voices were very powerful if we worked together and if we stood strong. . . . And those public gatherings we would have our demonstrations and actions and demonstrations did make people bolder and more invested.²⁸⁹

The successful protests against the elimination of public interest advising at HLS, therefore, inspired future faculty diversity activism by signaling to the students that their actions could make a meaningful difference in law school policies and practices. Laura E. Hankins, oral advocate in the CCR lawsuit, recalls:

For me, part of what was also going on at the law school at the time had to do with public interest law. So CCR, as I recall, got formed either at the end of my first year or the beginning of my second. But what was also going on in my first year—which was the first year that Bob Clark was the Dean of the law school—was one of the first things he did at least when the school year started . . . was to fire the public interest advisor. And so the students who were interested in working for big law firms and pursuing corporate law all were continuing to get completely supported in their efforts. And students who were interested in public interest law weren't at all—had nothing. And so a group of students started organizing around that issue in public interest law and that sort of carried over [to the diversity faculty issue].²⁹⁰

Charisse Carney-Nunes, former Griswold 9 member, also remembers being part of the protests around the termination of the public interest ad-

289. Telephone interview with Lisa Otero, former CCR member (July 14, 2010).

290. Telephone interview with Laura E. Hankins, named CCR plaintiff (July 12, 2010).

vising positions during her first year at law school before continuing with her CCR protests in later years.²⁹¹

In addition to signaling, another driving mechanism behind the spin-off movement was the overlap of organizational context and resources.²⁹² For example, Professor Edley, who was active in the public interest advising debates and who later became the Faculty Director of Public Interest Programs,²⁹³ was also active in the HLS faculty diversity movement. Indeed, Edley's consistent presence during both social movements created much overlap in terms of public faculty support for the students' demands. During the years of CCR's most aggressive activism, Edley spoke out against Dean Clark,²⁹⁴ advised the Griswold 9 during the sit-in,²⁹⁵ served as a character witness for the Griswold 9 during the Administrative Board hearing,²⁹⁶ and signed off on the open letter to the HLS community calling for the dismantling of the current faculty hiring committee.²⁹⁷

CCR's diversity of backgrounds became another signal—this multi-racial group of men and women was not just advocating for minority issues, but issues that affected everyone. Jodi Grant recalls, "If you look at the coalition—and it was the like the Griswold 9, the Fried 4, the lawsuit—if you look at the people, it was people from every background. This was about trying to really showcase that [faculty diversity] was really better for all of us."²⁹⁸ Marie-Louise Ramsdale remembers, "We brought both genders together. And more than that, we showed that it was a very broad group of people—I mean literally like Jesse Jackson's Rainbow Coalition . . . and it was varied in so many other ways . . . because you're talking about the gay and lesbian groups as well. . . . We really touched almost everyone in the law school in some way or another [through] our group."²⁹⁹

CCR's acts of protest also served as a signal to the HLS community and beyond. Indeed, the signaling had ripple effects across other schools. For example, after the two sit-ins that were part of the law students' protests for the second national class strike day,³⁰⁰ on Tuesday, April 17, 1990, the Minority Student Alliance at Harvard College staged an undergraduate class boycott and rally outside Memorial Church, which was attended

291. Interview with Charisse Carney-Nunes & Jodi Grant, *supra* note 74.

292. McAdam, *supra* note 286, at 227.

293. See sources cited *supra* notes 11 and 12.

294. See Stone, *supra* note 59, at 1.

295. See Barr, *supra* note 137, at 1.

296. See Gill, *supra* note 155, at 6.

297. Letter from Elizabeth Bartholet, Gary Bellow, David Charny, Abram Chayes, Christopher F. Edley, Jr., Martha A. Field, William W. Fisher, III, Charles M. Haar, Morton J. Horowitz, David Kennedy, Duncan M. Kennedy, Frank I. Michelman, Richard D. Parker, Lewis D. Sargentich, & Laurence H. Tribe, HLS faculty members, to HLS community, *supra* note 186.

298. Interview with Charisse Carney-Nunes & Jodi Grant, *supra* note 74.

299. Telephone Interview with Marie-Louise Ramsdale, former Griswold 9 member (June 28, 2010).

300. See sources cited *supra* note 23 and accompanying text.

by 300 protestors.³⁰¹ Cara Wong, leader of the Minority Student Alliance, said, “In February, we talked about the idea of a demonstration, but we thought it was too radical. But after the law students protested, we were inspired; we realized it could be done.”³⁰² At the time, ninety-two percent of tenured Harvard College faculty members were male and ninety-three percent were white, which was barely a one percent gain in minority and women professors in the previous ten years.³⁰³ Similarly, at the Harvard Graduate School of Education, the students organized to confront their dean after learning of the law school protests. Peter Kiang, a student at the Harvard Graduate school of Education, said:

After the first sit-in, I read the article in *The [Boston] Globe* and thought, ‘That’s fantastic,’ and wanted to find out more. After the second sit-in, we realized that this was not a one-shot deal—that the law students were really committed and that they deserved our [support.] Furthermore, I realized that we needed to re-raise the issue of faculty diversity at our school.³⁰⁴

Furthermore, John Bonifaz recalls that the Harvard Kennedy School of Government and other schools contacted CCR to inquire about how to protest their own schools’ lack of faculty diversity.³⁰⁵ The signaling to students outside HLS generated by CCR’s public protests was evident in the fourth class strike day at HLS, on April 2, 1992, where a noon rally drew 400-500 students—about 300 from HLS, and the rest from the Harvard Kennedy School of Government, the Harvard Divinity School, and the Graduate School of Education.³⁰⁶ About twenty students from Brandeis University joined the rally as well.³⁰⁷

B. Framing Processes and Group Cohesion

Social movement theorists have analyzed how activists frame issues in order to resonate with the public and gain support.³⁰⁸ Robert D. Benford and David A. Snow, contend:

[S]ocial movements are not viewed merely as carriers of extant ideas and meaning that grow automatically out of structural arrangements, unanticipated events, or existing ideologies. Rather, movement actors are viewed as signifying agents actively engaged in the production and maintenance of meaning for constituents, antagonists, and bystanders or observers. They are deeply embroiled . . . in what has been referred to as “the politics of signification.”³⁰⁹

301. John Thornton, *Law School Rally Inspires Other Harvard Groups*, HARV. L. REC., Apr.20, 1990, at 1.

302. *Id.*

303. *Id.*

304. *Id.* at 1, 12.

305. Interview with John Bonifaz, *supra* note 230.

306. Delgado, *supra* note 138, at 20.

307. *Id.*

308. See generally Robert D. Benford & David A. Snow, *Framing Processes and Social Movements: An Overview and Assessment*, ANN. REV. OF SOC. 611 (2000).

309. *Id.* at 613 (citations omitted).

As signifying agent, CCR framed its struggle in relation to a vision of diversity that was inclusive of different races, sexual orientations, genders, and other characteristics and identities. Since the 1970s, HLS had only made progress in hiring a few black men and white women.³¹⁰ CCR member and named plaintiff in the lawsuit Ketih Boykin said, “When [HLS administrators and faculty] talk about women and minorities, they mean black men and white women.”³¹¹ Boykin stated, “I say this as a black male, but that’s not the end of what diversity means. It’s not even the beginning of what diversity means.”³¹² CCR’s definition would be much broader. This new coalition, thus, made its members think carefully on how to be inclusive in its goals and demands. Upon reflection, CCR co-founder John Bonifaz said:

We were quite proud of the fact that . . . we had united all together on this . . . And that we were careful in our demands to make it clear . . . what *all of us together* were demanding in terms of the changes in the hiring practices for the faculty, and I think what’s made that movement so strong over the period of time that it was happening—as you really had all those organizations involved and all the student members [that were] part of those organizations.³¹³

The inclusive vision for diversity created a sense of cohesion among the group. In explaining the significance of the new coalition, Morrie Ratner, a member of CCR and the Committee on Gay and Lesbian Legal issues, stated, “This university traditionally has pitted minority groups against one another. If one minority group asks for something . . . they deny it on the grounds that all the other minority groups will ask for it. One of our goals is to cut that response off at the beginning. We are unified from the start, and we can’t be pitted against each other.”³¹⁴ The power of this inclusive framing of diversity manifested itself when students who were not part of the sit-in stood in solidarity with the actual protestors. For example, on the day that the Administrative Board announced possible charges against the Griswold 9, the Executive Board of La Alianza sent a letter to Vice-Dean Smith, in which it wrote:

Although only nine students sat-in on April 6th, we feel that they were acting for all of us and for the ideals that we have been struggling to realize for decades. . . . Any [disciplinary] action against the nine students is an action against all those who are concerned about our community.³¹⁵

This letter from the Latino students association illustrated the multi-racial cohesion of the coalition. Furthermore, Peter Cicchino explained his motivation for defending the Griswold 9:

310. See *supra* notes 2, 4, 78 and accompanying text.

311. See Delgado, *supra* note 138, at 20.

312. *Id.*

313. Interview with John Bonifaz, *supra* note 230 (emphasis added).

314. *Rights Groups Plan to Rally for Diversity*, *supra* note 22, at 1.

315. Letter from Vania Montero et al., Board Members of La Alianza, to David Smith, HLS Vice Dean, with a copy to Neil Rudenstine, Harvard Univ. President (Apr. 9, 1992) (on file with author).

More than anything else, gay and lesbian people are oppressed by the sense that we are the alone in the world. Most of the pain of being a gay adolescent flows from one source: the sense that you are the only one. It just seemed to me that it would be wrong to leave the Griswold 9 alone to face their fate. And so I agreed to coordinate their legal defense. Later, I would make a pledge to the Griswold 9 that if they were suspended—an outcome I found outrageously immoral—I would go to the Dean’s office, chain myself to the doors, and be suspended myself.³¹⁶

Cicchino’s linkage of his own life experiences to the experiences of the Griswold 9 was reflective of the multi-faceted conception of diversity that created a sense of solidarity beyond individual identities. Here, an openly gay man who felt kinship with the Griswold 9 was willing to be suspended from school in act of solidarity with the protestors—all in an attempt to pressure the faculty to hire a more diverse faculty.

C. *Resource Mobilization and Enhanced Group Outcomes*

Resource mobilization theory posits that it is not dissatisfaction with the status quo *per se*, but increased resources that give rise to activism.³¹⁷ I argue that the very diversity of the student coalition was the source of increased resources for the activists—for both the lawsuit and the sit-in.³¹⁸

The diversity of the CCR members who planned and implemented the lawsuit served as a resource that enhanced the group’s work and expanded the inclusivity of the group’s demands. Named CCR lawsuit plaintiff Linda Singer said about the diversity of the coalition, “I think it made us more thoughtful about our positions. We were, in many ways, the change we wanted. I think we also worked together more powerfully—often having to overcome real differences in outlook—to make decisions.”³¹⁹ CCR co-founder and named plaintiff in the lawsuit John Bonifaz states:

I think people learn to work together in ways that perhaps hadn’t occurred previously within the silos of the various organizations. . . I know, for example, that Mark McGoldrick—who was in my [graduating] class [in] 1992—was part of a new organization that he had started [for] students with disabilities [that] heightened awareness for all the other students in the ways in which the school needed to improve in its dealings both with students with

316. Cicchino, *supra* note 190, at 563.

317. See generally John D. McCarthy & Mayer Zald, *Resource Mobilization and Social Movements: A Partial Theory*, 82 AM.J. OF SOC. 1212 (1977); Olzak & Rio, *supra* note 284, at 1565.

318. Cf. Olzak & Rio, *supra* note 284, at 1566 (arguing that “diversity of goals and tactics . . . ought to increase the size of the mobilized population, which in turn should increase the movement’s capacity for collective action”); SCOTT E. PAGE, *THE DIFFERENCE: HOW THE POWER OF DIVERSITY CREATES BETTER GROUPS, FIRMS, SCHOOLS AND SOCIETIES* 173 (2007) (arguing that diverse groups can lead to better outcomes because multiple perspectives facilitate problem solving).

319. E-mail from Linda Singer, *supra* note 53.

disabilities and also recognizing this as a concern for faculty diversity.³²⁰

The student plaintiffs, thus, had to incorporate their varied backgrounds into an inclusive vision for a better Harvard. CCR's complaint was telling. As part of its prayer for relief, the complaint requested the court to "enjoin Defendant from employing hiring practices which have a disparate impact on [white] women, women of color, Latinos, African Americans, Asian Americans, Native Americans, openly lesbian or gay persons, and persons with disabilities."³²¹ As discussed in Part IV.B, *supra*, this inclusive framing of diversity created stronger group cohesion.

Similarly, the varied backgrounds of the Griswold 9 served as a resource that enhanced the group's decision-making and problem-solving capabilities.³²² The Griswold 9 consisted of seven women and two men. Two of the members were African American, two were Asian American, one was Latina, and four were white. Charisse Carney and Derek Honore had leadership roles in the Harvard Black Law Students Association. Elizabeth Moreno, Jill Newman, and Marie-Louse Ramsdale had leadership positions in the Women's Law Association. Julie Su was the incoming Co-chair of the Asian Pacific American Law Students Association. William Anspach was active in labor law issues, while Lucy Koh and Jodi Grant were involved in a number of public interest activities. These background traits and organizational affiliations gave each member of the Griswold 9 unique perspectives that enhanced the group's decision making. Julie Su reflects:

We definitely benefited from our diversity. I think the fact that it was primarily women brought a warmth and sisterhood to it that I really treasured. The value of having students from all races certainly symbolically demonstrated our power, and I think in all of those discussions leading up to how and whether we would defend ourselves, the diversity of perspectives brought by our different experiences made for rich and thoughtful and sometimes contentious discussions that made us all stronger.³²³

Also, the Griswold 9 members' diverse language skills enhanced their activism. During the sit-in, the students used walkie-talkies to communicate with students outside of Griswold Hall.³²⁴ When the protestors suspected that their communications were being intercepted by Harvard Police officers, they utilized the Spanish-speaking skills of some their group.³²⁵ When the Griswold 9 subsequently realized that the Harvard Police

320. Interview with John Bonifaz, *supra* note 230. See Jim Houpt, *Disabled Student Seeks to Organize to Pressure Administration for Improvements*, HARV. L. REC., Dec. 1, 1989, at 1, for an account of Mark McGoldrick's initial organizing efforts.

321. *Portions of the CCR Lawsuit*, *supra* note 42, at 10.

322. See *supra* Part II.D.

323. E-mail from Julie Su, *supra* note 143.

324. See *supra* notes 158, 161 and accompanying text.

325. See E-mail from Jodi Grant, former Griswold 9 member, to author (June 25, 2010, 14:21 EST) (on file with author); Telephone interview with Jill Newman, former Griswold 9 member, *supra* note 145.

brought in a Spanish-speaking officer in response to this tactic,³²⁶ Julie Su spoke in Mandarin to the group's Mandarin-speaking outside student contacts.³²⁷ One of the members, Lucy Koh, could speak Korean, but her skills were not employed because the Harvard Police did not bring in a Mandarin speaker to intercept Su's conversations.³²⁸

Furthermore, some of the varied life experiences of the CCR members—particularly around organizing in college—served as an additional resource that facilitated multi-racial coalition building. For example, John Bonifaz had an extensive history of organizing before enrolling at HLS. Bonifaz started his activism in high school working for nuclear disarmament.³²⁹ As an undergraduate at Brown University, he was involved in the anti-apartheid movement, participating in a coalition called Brown Divest Now, which worked to pressure the university to divest from any businesses doing business in South Africa.³³⁰ Bonifaz said, "Both that work and my involvement in the 1984 Jackson presidential campaign on campus were multiracial efforts that, I think, helped shape my understanding of coalition-building."³³¹ Also, former Griswold 9 member William Anspach had considerable experience with organizing before attending HLS. As a high school student, he campaigned against the Briggs Amendment—banning gay people in California from teaching in public schools.³³² At Haverford College, among other things, Anspach headed the campus divestment from South Africa movement, in which he organized the takeover of a campus building, and he organized the Crunch Action Team, which brought students to union picket lines in Philadelphia, in return for union's support of peace causes.³³³ After college, he worked on the Jesse Jackson presidential campaign in 1984. Anspach reflects:

As a white organizer involved in protests often centering around issues particularly impacting on minorities (e.g., the Briggs Amendment, the anti-apartheid movement), I learned how people of different backgrounds could work together. On the most obvious level, this meant that the movements could neither be overly dominated by white organizers (which would be considered paternalistic) nor by minority organizers (which would turn off whites and/or appear too self-interested). I believe the Griswold 9 and the surrounding circumstances reflected this.³³⁴

326. See E-mail from Jodi Grant, *supra* note 325.

327. E-mail from Julie Su, *supra* note 143.

328. E-mail from Jodi Grant, former Griswold 9 member, to author (July 8, 2010, 11:30 EST) (on file with author).

329. E-mail from John Bonifaz to author (July 14, 2010, 12:50 EST) (on file with author).

330. *Id.*

331. *Id.*

332. E-mail from William Anspach, former Griswold 9 member, to author (July 22, 2010, 15:55 EST) (on file with author).

333. *Id.*

334. *Id.*

Bonifaz and Anspach both played key roles in organizing CCR activism.³³⁵

CONCLUSION

The robust activity at HLS during the early 1990's appears to have been made possible by a "perfect storm" of people and events that culminated in the spring of 1992. First, Dean Clark terminated and, amidst student protests, re-instated two public interest advising positions. These successful protests served as a catalyst for future student activism. Indeed some of the same students who protested around public interest advising spearheaded the faculty diversity hiring efforts. Second, Professor Bell became increasingly vocal in his opposition to the lack of diversity on the faculty, taking a very public unpaid leave from HLS. Bell's actions created momentum for the students to act. Third, HLS's appointment of four white men as tenured professors, amidst the ongoing dialogue and protests, created a rallying point for the students. Finally, Dean Clark's comments in the *Wall Street Journal* explaining the activism as being caused by self-esteem issues that arise as symptoms of affirmative action provoked the students to further escalate their protests. In conjunction with these events, the diversity of the student coalition led to a particularly robust period of student activism. Throughout this period, the students' protests created signals for the community that the faculty diversity movement was gaining momentum. The fact that this solidarity cut across race, gender, sexual orientation, and ability and disability lines was creating further momentum—through signaling and increased resources that resulted from this diverse group. The trial of the Griswold 9 was the highpoint of the conflict. The activism was to subside soon thereafter.³³⁶

By the fall of 1993, CCR began to experience problems in sustaining its coalitions. Indeed, a year after the Griswold 9 sit-in, citing communication issues, La Alianza dropped out of CCR.³³⁷ And the activism that CCR sustained from 1989 to 1992 dissipated by 1993.³³⁸ By 1994, the campus was relatively quiet once again.³³⁹ By this time, many of the original activists had graduated and started their legal careers. The subsequent classes

335. See Interview with John Bonifaz, *supra* note 230; Interview with William Anspach, *supra* note 103.

336. This is consistent with Sidney Tarrow's view that there exist cycles of protest that "resemble politics in general in their uneven and irregular diffusion across time and space." SIDNEY TARROW, *STRUGGLE POLITICS, AND REFORM: COLLECTIVE ACTION, SOCIAL MOVEMENTS, AND CYCLES OF PROTEST* 46 (1991).

337. Jeff Bucholtz, *La Alianza Drops Out of Coalition: Cites CCR Communication Problems*, HARV. L. REC., Apr. 23, 1993, at 4.

338. See Matthew Huggins & Jonathan Davis, *CCR Changes, Faculty Diversity Issues Remain*, HARV. L. REC., Oct. 15, 1993, at 1; Rajath Shourie, *CCR Organizes "Diversity Day": Law School Celebration Features Rally, Student-Faculty Happy Hour*, HARV. CRIMSON, Oct. 27, 1993, available at <http://www.thecrimson.com/article/1993/10/27/ccr-organizes-diversity-day-ppetry-authored/>.

339. See Ishaan Seth, *Law School Silent After Activist Past*, HARV. CRIMSON, Feb. 25, 1994, available at <http://www.thecrimson.com/article/1994/2/25/law-school-silent-after-activist-past/> (noting the absence of rallies, sit-ins, fliers, and demonstrations in 1994 at the law school).

of students used different means for pushing for diversity. Sit-ins were replaced by diversity celebrations and litigation was replaced by “lobby days,” where students would set up appointments with HLS professors to discuss diversity issues.³⁴⁰

This ebb and flow of protest activity did not diminish the accomplishments of the HLS students in aggressively pushing for change in the early 1990s. They made their voices heard at Harvard and across the nation. John Bonifaz states:

From the standpoint of having a vibrant movement that engaged the law school community—the students, the faculty, the administration, [and] the alumni—that engaged those outside of the law school—the public at large, the media—and [that encouraged] the general debate around diversity in faculty at institutions of higher learning, I think it was a huge success.³⁴¹

Jodi Grant further reflects:

I think that one of the stories behind this is that your voices do matter. And students’ voices do matter. And students’ voices can help elevate alumni voices, and faculty voices, and voices in the legal community. And so I hope that maybe one of the stories about this is that students should feel empowered.³⁴²

In celebration of Lani Guinier’s appointment in 1998, HLS alumni, including Charisse Carney-Nunes, Jodi Grant, Camille Holmes, Lucy Koh, Jill Newman, Lisa Otero, Ronald S. Sullivan, and many others, took ownership of what they had done while students at HLS by creating a scrapbook detailing the history of student activism at HLS focusing on faculty diversity issues, including the Griswold 9’s sit-in and subsequent trial, CCR’s lawsuit, and Professor Bell’s protest from 1990 to 1992. This scrapbook, titled *HLS Diversity: A Celebration of the Movement*, was created on October 30, 1998; two copies were filed with the HLS library.³⁴³

The HLS alumni authors explain the broader significance of the “efforts of brave women and men of all backgrounds” that have engaged in student protest to increase faculty diversity.³⁴⁴ While observing that HLS had made notable progress in hiring white women since 1992, the authors wrote, “We hope that HLS will now show the same courage by developing a plan of action and stating its commitment to address its poor record of hiring Black women, Latinos/as, Asian Americans, Native Americans, openly gay or lesbian persons, and disabled persons.”³⁴⁵

340. See, e.g., Victoria Kuohung, *CCR Lobbies Profs for More Diversity*, HARV. L. REC., Mar. 4, 1994, at 1 (discussing “lobby days”); Victoria Kuohung, “Strike Day” *Questions Diversity of HLS Faculty*, HARV. L. REC., Apr. 29, 1994, at 1 (discussing diversity celebrations and silent vigils); Greg Stohr, *CCR Lobbies, But Many Students Remain Quiet*, HARV. L. REC., Mar. 3, 1995, at 1 (discussing more “lobby days”).

341. Interview with John Bonifaz, *supra* note 230.

342. Interview with Charisse Carney-Nunes & Jodi Grant, *supra* note 74.

343. See BOYKIN ET AL., *supra* note 2 (a circulation copy and non-circulation copy in the Historical & Special Collections department are available for review).

344. *Id.*, at unpagged section titled *A Reason to Celebrate*.

345. *Id.*

Change has been slow in coming. In recognition that the diversity struggle is not over with the appointment of Professor Guinier, the authors of *HLS Diversity* wrote, “We look forward to the addition of several more women of color to the Harvard Law School in the near future.”³⁴⁶ Over ten years since this statement was made, and in its 193-year history, HLS has only had three tenured or tenure-track women of color professors.³⁴⁷ Reflecting on this rate of progress, Ronald S. Sullivan, former CCR member, who is currently an HLS Clinical Professor of Law and Director of the Harvard Criminal Justice Institute, said:

The history of the Civil Rights Movement itself teaches us that rarely does progress come without demands being made—rarely does the sort of huge shift in attitude come without significant pressure being put on the status quo. . . . I shudder to think had we not been so vocally antagonistic to the absence of hiring [a diverse faculty], that . . . we may have been sitting here now in 2010 talking about “can we find a woman of color?”³⁴⁸

For a new generation of students, the struggle continues.

EPILOGUE: THE GRISWOLD 9 EIGHTEEN YEARS LATER

Charisse Carney-Nunes is a Senior Staff Associate at the National Science Foundation in Arlington, Virginia.³⁴⁹ She is also the founder of a media company called Brand Nu Words, an award winning author of three children’s books, *Nappy, I Dream For You a World* and *I am Barack Obama*, and a senior officer of the Jamestown Project, a think tank focusing on democracy housed at HLS.³⁵⁰ William Anspach is a partner at a union-side labor and employee benefits law firm in New York City.³⁵¹ Jodi Grant is Executive Director of the Afterschool Alliance, a non-profit organization in Washington, D.C., working to raise awareness about the urgent need to provide all children and youth with access to affordable, quality afterschool programs.³⁵² Derek Honore, who specializes in criminal law,

346. *Id.*

347. See Interview with Ronald S. Sullivan, *supra* note 151.

348. *Id.* But see Barry Langman, Letter to the Editor, *Integrating Harvard Law School*, N.Y. TIMES, Feb. 1, 1998, at 416, available at <http://www.nytimes.com/1998/02/01/opinion/1-integrating-harvard-law-363626.html> (arguing that protests at HLS in the 1990s were counterproductive to minority and female hiring because the administration delayed these appointments in order to prevent the appearance of capitulating to student demands and many qualified minority and female professors were reluctant to join such a contentious environment). Note that Langman was a student member of the Administrative Board that tried the Griswold 9. See *supra* note 201 and accompanying text.

349. E-mail from Charisse Carney-Nunes, former Griswold 9 member, to author (Jul. 7, 2010, 18:13 EST) (on file with author).

350. *Id.*

351. E-mail from William Anspach, former Griswold 9 member, to author (Jul. 8, 2010, 08:54 EST) (on file with author).

352. E-mail from Jodi Grant, former Griswold 9 member, to author (Jul. 8, 2010, 11:30 EST) (on file with author).

was a public defender in New Orleans, Louisiana.³⁵³ Lucy Koh is a United States District Court Judge for the Northern District of California.³⁵⁴ She is the first Korean American federal district court judge and the first Asian American federal judge in the Northern District.³⁵⁵ Jill Newman is currently an artist and the proud mother of two boys.³⁵⁶ Elizabeth Moreno practiced law in Los Angeles, California before passing away on February 1, 1997.³⁵⁷ Marie-Louise Ramsdale has a family law practice in Charleston, South Carolina.³⁵⁸ She was the founding director of S.C. First Steps to School Readiness (1999-2003) and the founding executive director of City Year Columbia (1993-1996).³⁵⁹ Julie Su is the Litigation Director at the non-profit Asian Pacific American Legal Center of Southern California (APALC), an affiliate of the Washington D.C.-based Asian American Justice Center.³⁶⁰ She was a recipient of the MacArthur “Genius” Fellowship in 2001.³⁶¹

353. See *Black Law Students Association Conference Looks at Post-Katrina Criminal Justice*, HARV. L. SCHOOL, Apr. 10, 2009, available at <http://www.law.harvard.edu/news/spotlight/criminal-law/blsa.html>.

354. See *Santa Clara Judge Wins Senate Confirmation*, SFGATE.COM (June 8, 2010), http://articles.sfgate.com/2010-06-08/news/21781394_1_superior-court-federal-bench-federal-judge.

355. *Id.*

356. E-mail from Jill Newman, former Griswold 9 member, to author (Jul. 22, 2010, 20:11 EST).

357. See *Elizabeth Moreno '93, Record Columnist, Activist, Member of "Griswold Nine" (1966-1997)*, HARV. L. REC., Feb. 14, 1997, at 5.

358. E-mail from Marie-Louise Ramsdale, former Griswold 9 member, to author (Jul. 9, 2010, 16:02 EST) (on file with author)

359. *Id.*

360. E-mail from Julie Su, *supra* note 143.

361. *Id.* Former CCR co-founder John Bonifaz, who is an election lawyer and voting rights leader, was also a recipient of the MacArthur Fellowship in 1999. E-mail from John Bonifaz to author (Jul. 14, 2010, 13:01 EST) (on file with author).