

HARVARD LAW RECORD

America's Oldest Law School Newspaper

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TWENTY CENTS

Marshall Club Takes Honors

By Larry Vilardo



Front row – Hon. Irving L. Goldberg (Fifth Cir. Court of Appeals), Hon. Warren E. Burger (Chief Justice, U.S. Supreme Court), Hon. Vincent L. McKusick (Chief Justice, Supreme Judicial Court of Maine). Back row (Members of the Marshall Club) – Daniel I. Small, P. Michael Jung, Millie Whatley, Arthur H. Bryant, Patricia L. Wells, Kenneth J. Vandavelde.

Faculty Votes to Approve Legal Services Institute

The Law School faculty voted unanimously last Wednesday to approve Harvard's participation in the proposed Legal Services Institute.

The Institute, which recently received a large grant from the federally-funded Legal Services Corporation, is scheduled to begin operations next year.

The Institute will offer a full third-year program of interrelated clinical and classroom instruction for 25 students from Harvard and other Boston area law schools. In addition, the Institute will provide a full range of legal services to the Boston neighborhood of Jamaica

Plain.

The faculty's vote of approval followed the recommendation by an ad hoc HLS faculty committee that the Law School accept the invitation to participate in the Institute. The faculty of Northeastern Law School had earlier approved that school's participation.

HLS Professors Gary Bellow and Jeanne Kettleson have both been actively involved in developing the concept of the Institute and in attempting to make it a reality. Both were members of the five-person group that wrote the original proposal for the Institute.

Little girls' dreams of being firefighters will have to remain dreams, if the verdict of the Ames Moot Court Competition Finals is any indication.

A three-judge panel, headed by United States Supreme Court Chief Justice Warren E. Burger, awarded Best Brief, Best Oralist and Best Overall Performance honors to attorneys for respondents in what was termed by one member of the Board of Student Advisors "the most one-sided decision in recent years." The final round of the BSA-sponsored event was held last Thursday before an overflow crowd in the James Barr Ames Court Room in Austin Hall.

P. Michael Jung was given the Best Oralist Award by the judges. His teammates from the Marshall Club included fellow oralist Arthur H. Bryant, and Daniel I. Small, Kenneth J. Vandavelde, Patricia L. Wells, and Milly A. Whatley on the brief.

The case of Jane Maloney v. Municipality of Lincoln, Lincoln Fire Department and Rescue Squad, and Kenneth Greer et al. centered on plaintiff-petitioner's claim that the city fire department's hiring practices discriminated against women. The argument was conducted under the assumption that the Equal Rights Amendment had been ratified by the required number of states, but included as issues whether certain ratifications were valid, and whether Congress had the author-

(Continued on Page 8)

(See also Related Story, Page 8)

Turow: *One L* an Accurate HLS Account

By Gina Markey

A lot has happened since Scott Turow's *One L* was published.

Since the initial hardcover publication last year, the book has been released in paperback, and its author has graduated from HLS and moved to Chicago, where he is working in the U.S. Attorney's Office. Have these intervening events caused Turow to reconsider his account of Harvard Law School?

"I'll never back off from my description," said Turow in a recent interview with the RECORD. "The book is simply about my experience, but I don't think that experience was starkly aberrational. For many the first year was even worse than I portrayed it.

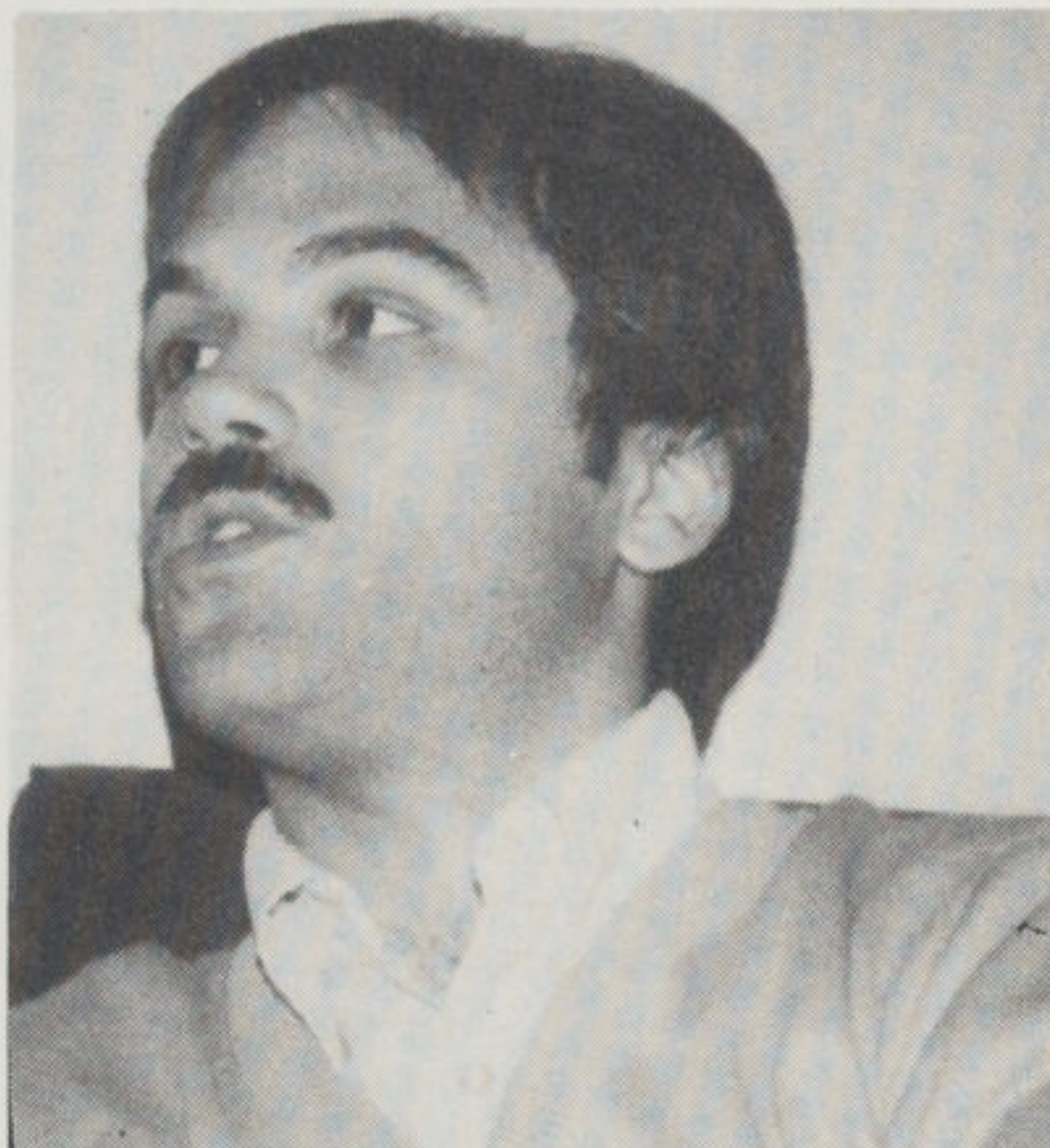
"It amuses me that people from other law schools will agree on the description of experiences which I gave, but those from Harvard want to distinguish themselves from that portrayal, because it wasn't a favorable one."

Turow stands by his account of the first year and says he saw 1Ls "in the hideous grip of ambition," that year. Spring semester was a time which he would still characterize as "a low point in human behavior" and a period of "massive terror."

Although Turow defends his book as an accurate account of his first year, he admits that one aspect of his experience didn't receive enough attention in the book. "The book underemphasized the degree of help that I got from friends and the good personal feelings which existed. If I could add one thing to the book it would be that."

Boring Years

Turow believes that his second and third years, like his first, were



Scott Turow, author of *One L*

fairly typical. "I was bored like most are in the second and third years. The intellectual zing of the first year was gone. The terror dissipated along with the curiosity."

Turow said that he thinks the principal element of law school is "acquisition of basic rhetoric" and once that is accomplished there isn't much more to learn during the three years. "I had the feeling within the first few weeks of my second year that I could write down most of the basic legal concepts on a few sheets of paper."

Despite Turow's emphasis on his boredom during the second and third years, he did say that he found something interesting in every semester. He commented that he had enjoyed the upper level courses taught by Professors Marvin Chirelstein, Lewis Sargentich, Duncan Kennedy and Richard Parker.

The highlight of Turow's experience at HLS was his involvement in Introduction to Advocacy. "The time I spent in the clinical program was fabulous, marvelous! It was a sharp contrast with the other two and a half years I spent in law school."

While typical in many respects, Turow notes that his last year at HLS was somewhat different because *One L* had been published. "I was lifted from the anonymity that most students experience at Harvard. I was aware that people whispered who I was as I passed them in the halls."

Bitter Comments

The reactions to *One L* by Turow's classmates and by the faculty weren't always favorable. "Some bitter things were said, some were angry. Some friends grew more distant and some professors were extremely upset. People reacted *personally*, but they didn't challenge my conclusions," Turow asserted. He noted that "many of the faculty were pleased with the book."

"Some BSA (Board of Student Advisors) members commented to me that they had read and enjoyed the book but were telling their 1Ls not to read it because they should go through the experiences themselves," Turow said. He disagrees and thinks that *One L* is a good book to read before attending law school.

"I believe in the book's accuracy. By reading it some of the things which I experienced might be prevented," Turow maintains that those who have read the book will be less likely to be as "mystified" as he and his classmates were and may therefore avoid feeling as though they are "in a meat grinder."

In addition to the responses of classmates and faculty noted by Turow were those of potential employers with whom he spoke in his third year. Some interviewers were concerned about the possibility of a sequel or an exposé of the experiences of a young attorney. "There was more concern about that in the public sector than in the private because of the nature of the work done in the public sector." Once he began working, he claimed, the suspicions about an exposé were successfully dispelled.

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Placement Office Issues Rules To Restrict Number and Holding Period of Job Offers

By Dave Quinto

The Placement Office has changed the rules this year regarding the number of job offers second- and third-year students may hold, and how long they may hold them. These changes were adopted pursuant to discussions with other law schools and reflect "a recognition on our part that within certain areas this Law School cannot act completely on its own," according to Dean Stephen Bernardi.

before the reading and examination period), or any employer other than a private law firm or a corporation.

Small Firms Exempt

As in years past, firms are not allowed to pressure students by mailing out more offers than they have positions, telling the students that only the first to accept will get jobs. This is intended to keep the

No Recidivism

Bernardi requests that any student suspecting a violation of the rules report it to the Placement Office. The Placement Office will then ask the firm to desist. Although a number of firms have violated some of the rules, Bernardi says that he is not aware of any recidivists.

On a different topic, Bernardi stated that there are no plans afoot to have the Placement Office offer more services to 1Ls. After Thanksgiving a list of firms which have hired 1Ls in the past few years will be made available, but the Placement Office will not schedule interviews for 1Ls. "The Placement Office has scheduled 18-20,000 interviews in 40 days," said Bernardi, "and the number of 1L interviews would be comparable to those of the 2 and 3Ls."

This "anti-hoarding of offers rule" is designed to protect the students who have interviewed with a firm and who are still awaiting a response, according to Dean Bernardi.

The most important change adopted this year requires law firms to hold offers open only until December 15. In addition, a student receiving an offer must inform the offeror within four weeks that he has been holding no more than one other offer in that location for more than ten days. If a student fails to do this, the firm need not hold the offer open. A student may also be required to reaffirm his or her interest in an offer and may have to state periodically that he or she has not been holding more than one other offer in that location. According to Bernardi, this "anti-hoarding of offers rule" is designed to protect the students who have interviewed with a firm and who are still awaiting a response.

An exception to the December 15 limit allows a student to hold one offer received prior to December 15 until February 1, provided that he or she notifies the employer between December 1 and 16 and affirms to the employer that the extension is needed in order to pursue employment opportunities with a private firm or corporation that does not interview on-campus before December 15, or a private firm or corporation outside the Boston area which did not offer a fly-down prior to November 24 (two weeks

applicant pool deep for the firms which interview late in the season, and to allow students time to consider their offers. Firms having not more than 20 lawyers are exempt from this rule.

Organizations having 20 or fewer lawyers are also not bound by the rules concerning the holding of offers. Bernardi explains that this is because "a great big law firm can plan on hiring 15 students and the question of whether it gets 14 or 16 has much less impact on it than failure would have on a small firm which had planned to hire one person and which didn't get him."

The rules which bar employers from practicing discrimination based upon sex, race, color, religion, ethnicity, or disability as applied to offers, salaries, working conditions, type of work, and promotions; from restricting their interviews to "top" students; from initiating off-campus interviews in the Boston area between the beginning of the academic year and their HLS interview date; and from discriminating against people whose spouses had or are seeking a law-related job with another employer in the same community unless the employer can demonstrate actual or apparent conflict of interest, are still in effect.

Sports Answers

1. Gordon Howe of Detroit, who won in 1952, 1953, 1957, 1958, and 1963. He was also MVP for the World Hockey Association in 1974 while he played for Houston.
2. The Hart Trophy is given to the MVP in the National Hockey League and the Lady Byng Trophy is the Sportsmanship Award. Bobby Hull of Chicago won both in 1965 and Stan Mikita, also of Chicago, won both in 1967 and 1968.
3. Rocky Marciano, who had won 44 professional fights, retired in 1956 without being beaten.
4. Eddie Arcaro who won with Whirlaway in 1941 and Citation in 1948.
5. Elvin Mesger of Sullivan, Missouri.

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Phelps to Stress Public Interest Jobs

By Amy L. Grossman

On the third floor of the Pound Building, within the general bounds of the Placement Office, there is another office under the direction of Douglas Phelps, administrator for public service placement and career development. As Phelps' title indicates, his function at Harvard Law School is to aid students interested in public interest and service careers in defining career goals and in finding jobs.

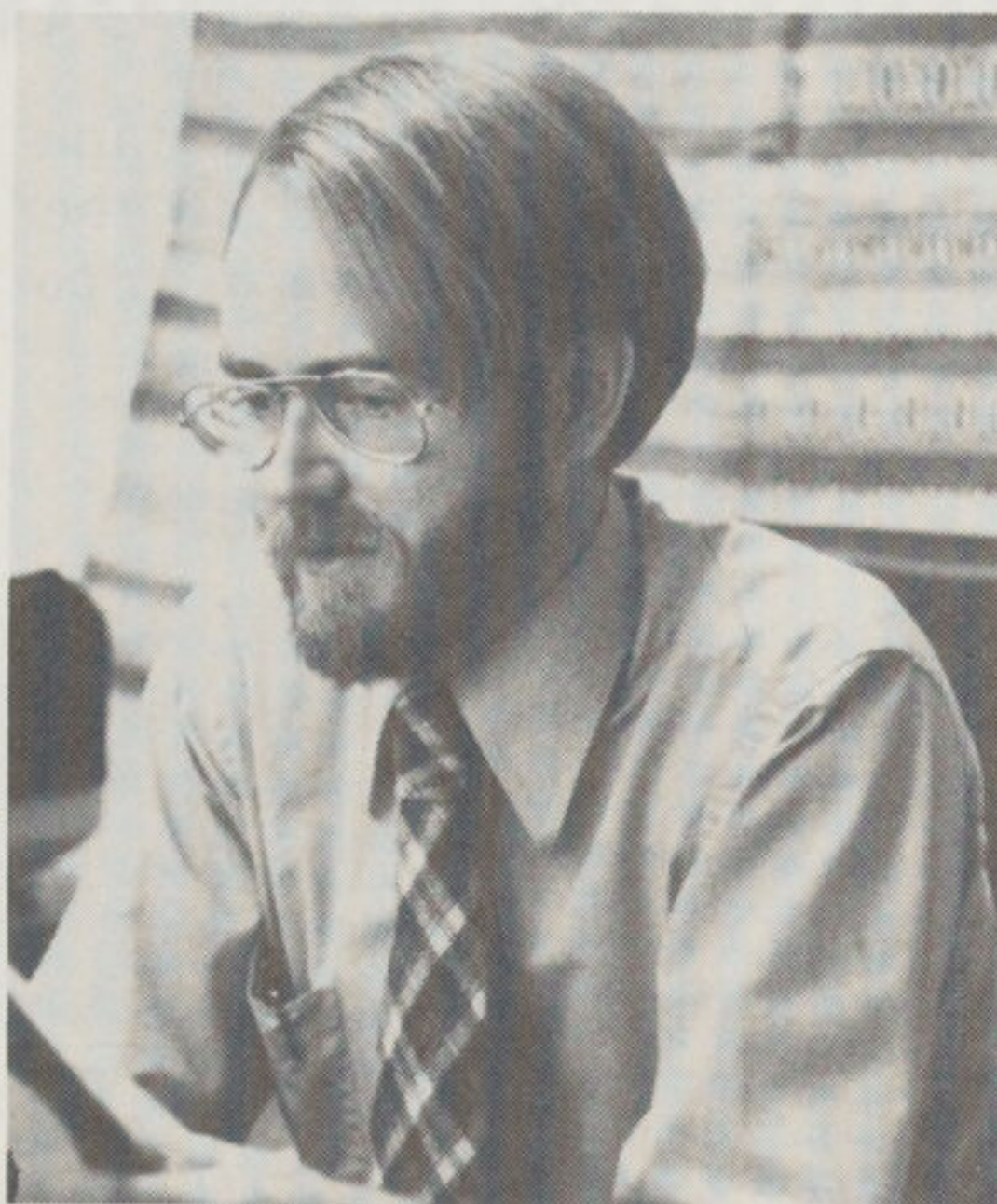
Phelps was appointed in 1977 by Dean Albert M. Sacks to fill a perceived gap in the HLS placement system. Phelps, an avowed political activist and a graduate of Harvard Law School, accepted the position, then called alternative careers administrator, with grave reservations about the entire placement process.

He admits his concern about "career placement" in an article he has just written for the *New York University Law Review*, explaining that there is a "general tendency in our current approach to facilitating students' transition into the legal profession — a tendency to treat work as though it is socially purposeless activity. Through the Placement Office lens, focused narrowly on jobs, vocation appears disembodied from the social and historical content which gives it meaning."

Phelps is deeply committed to helping law students discover what it is that they want to do through law or related fields. He strongly urges more student involvement in creating jobs to fill the needs of society.

Three Areas of Concern

Phelps believes that his office has three functions. The first is placement — the identification of jobs with employers who are unable to come to HLS during the on-campus interview season. These job openings are almost all related to public or politically motivated groups and firms. The second function is career



Douglas Phelps

development — the career and socialization process. Efforts are made to get information into the office and out to the students before and while they are looking for specific jobs.

The final function is impact — helping the students determine what it is they would like to do, and showing them how to go about doing it. "What troubles me the most," says Phelps, "is that the placement environment and approach embodies a mentality evidenced in most everything law school does, that is, to think of finding existing jobs and not to find needs."

Phelps explains that "we try to impact the environment by the work we're doing." He is diligently searching for new ways for students to get into public interest law, but he comments, "There are not too many opportunities. However, if people are really committed to it, they'll do it."

Against the Status Quo

Phelps is fighting what he believes to be a tendency of the Law School to encourage students to enter into the lucrative field of corporate law. He says that although HLS claims to be value neutral, it, like society, makes a political statement by what it values and what it does not value. He claims, "The fact is that we structure rewards for personal and material status and prestige

gains. Idealism is out of fashion. I think it should be the opposite. My values would lead to structure rewards for needs that are filled."

Phelps bemoans the fact that students cannot be told that public service careers are important or valid since the legal profession itself does not believe they are. "Otherwise," he comments, "the resources would be there."

On a practical level, Phelps has organized his office to find job opportunities for law students. The office handles mass mailings to identify public service jobs. Through letters, questionnaires, and the like, public service firms and organizations inform the Placement Office of job opportunities. This information is posted on bulletin boards in the office, as well as compiled into index files by law subjects, geographical areas, and employer information.

Presently Phelps is developing a program to contact Harvard Law School alumni who are or have been involved in public interest work, so that they may aid present law students in their job hunts. By pooling these several hundred alumni, Phelps hopes to establish what he considers to be potentially the best placement resource.

He believes that his efforts make but a small difference in what he terms "this period of social amnesia, of delusion." He continues, "It's only a matter of time before people face up to concern — then there will be demand and the school will be prepared to help. Harvard clearly has the best public interest placement program in the country."



On Dec. 8 the next and last-of-the-semester issue of The RECORD appears. At that point, the staff takes a lengthy break to recuperate. The first issue of next year will (we hope) appear on Feb. 9, 1979, after the winter term has come and gone.

Seminars Boost Career Alternatives

By Joan Shear

A lunchtime speaker series designed to increase students' awareness of career goal possibilities concluded this month with discussions about opportunities in criminal law and public interest opportunities in New York on Nov. 17 and 20.

The series was organized by Douglas Phelps, administrator of public service placement and career development, to give students a clearer idea of the career choices available to them. According to Phelps, law students are often so used to deferred gratification that they look at their first job out of law school as career preparation, rather than following their career goals. This doesn't have to be the case, he said.

Statistics which are now being compiled show that Harvard graduates pursue careers in public interest, legal services, government, and even solo practice. Students' ideas about the avenues open to them are shaped by the interviewing process at school. "But the interviewing system doesn't reflect where we're going, it only reflects who is able to recruit," according to Phelps. The majority of the 14 speakers in the lunch time series were HLS alumni.

Plugging Public Interest

The series is aimed at first-year students and people who haven't really thought about what they will do, as well as those leaning toward public interest.

One measure of the success of the series, as Phelps sees it, is that the audience was composed of different people every time. Phelps speculates that the varied audience indicated that students came when the topic was of particular interest to them. Turnout at the talks ranged from ten to 30 persons.

One of the largest groups came for the talk given by David Moulton, a lobbyist for Ralph Nader's Washington group, Congress Watch. Questions from students

were primarily about Nader and the Nader organization as compared to other public interest groups. Moulton also talked about differences between the work he performs as a lobbyist and more traditional legal employment.

Recruiting Expensive

One flaw with the series, Phelps believes, is that speakers are often willing to talk only about their own agency. Even though there are legal jobs available at many labor unions and Public Interest Research Groups (PIRGs), for example, only the bigger organizations such as United Auto Workers and

the New York PIRG are able to afford to recruit at Harvard. Phelps would like to see students consider those employers who are unable to travel here.

The Placement Office is making other efforts to inform students of the universe of career possibilities available to them through a workshop series and symposia. Phelps is also creating a career resource center stocked with materials pertaining to alternative areas of practice. And the office hopes to build a strong network of alumni advisors and counselors to help students get in touch with the legal community in a particular geographic area or type of practice.

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Turow Reflects on Life and Law After Student Days and One L

(Continued from Page 2)

Turow is currently practicing law in Chicago in the office of the U.S. Attorney. He and his wife, Annette, live in a suburb north of Chicago in a house purchased partly from the profits of *One L*.

Profits Spent

"The money from the book has been made and spent already toward the purchase of a six-room house — it's certainly not a palace," Turow said that he doesn't expect to receive much more in royalties from the book and doesn't even pay attention to how well the book is selling.

He received a \$4,000 advance to write his account and the paperback rights were sold before the book was published. At one time there was some discussion of making *One L* into a television movie, Turow related, but the idea was dropped when it was announced that the series *Paper Chase* would be aired.

Although Turow claims his experiences at Harvard were typical, he points out that his career choice was not. Unlike 97 percent of the class of 1978, Turow went to work for the federal government.

Turow feels strongly that more HLS students should think about careers in the government. "It's not necessary to lend your energies to people you don't admire," Turow reflected. "Students should break from the corporate mentality — resist!"

In discussing his own career choice, Turow claims, "I've found the best job in the world! It's wonderful and relaxed and we're doing good things. My wife laughs — she says I jump out of bed saying 'Good, I'm going to work!'"

Besides his legal career, Turow is working on a novel which he says is not law-related.

"At one point *One L* dominated my life," he said. "Now I hardly ever think about it."

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ABC's Walters Discusses News Life

By Barbara Kritchevsky

"I can share this all with you, since I don't plan to write a book," television journalist Barbara Walters announced as she opened the floor to questions during her appearance here last Wednesday. Walters fielded queries from a packed Ames Courtroom crowd for nearly 90 minutes in a program cosponsored by the Harvard Law School Forum and the Harvard Business School Women's Student Association.

Responding to the anticipated first question, Walters said she has never seen "Saturday Night Live" but it bothers her when people call her "Baba Wawa," since she does not believe she deserves the ridicule. The discussion centered around Walters' thoughts about the personalities and events she has covered, her belief in the worth of television as a news medium, and her views on how being a woman has affected her work.

Historic Value

Walters said the interview she was most proud of, one she feels may have had "some tiny historic value," was of Israel's Prime Minister Menachem Begin and Egypt's President Anwar Sadat one year ago. She noted that the interview was the first time in modern history an Egyptian and an Israeli had sat down together. Walters



Barbara Walters

added that she cannot believe the Mideast peace talks will fall apart, that they are being conducted by three men who all have great senses of "mission," each a mystic who believes his God is on his side.

Asked her opinions of the characters and motivations of some of the leaders she has interviewed, Walters described Cuba's Fidel Castro as "a moral man," whose sincerity she accepts. She described him as "a revolutionary, a Communist revolutionary," who will not change his disposition no matter how much he desires peaceful relations with the U.S.

The Shah of Iran wanted to bring his country up to present day

standards, Walters said, and added that he had accomplished a great deal, despite the price his people have had to pay. She noted that she was surprised that he did not become tougher sooner.

In the future, Walters would like to interview hard-to-get people: Richard Nixon, Pat Nixon, and Leonid Brezhnev, "for a lot of reasons . . . Maybe I'd ask them all the same questions."

No More Absolutes

Walters said she believes she has attained her success in interviewing because all parties believe she is fair, and she does not believe her personal views influence her questions. She added that understanding the issues makes everything appear "grayer," not clearer. "The more I know, the more I find personally and professionally that the absolutes just don't work for me anymore."

As a member of a news department, Walters noted, she is forbidden for a political candidate. "I can't tell you what I think about Phyllis Schlafly, and I think a lot about Phyllis Schlafly." But she added, smiling, "But if some of my views do come out, that's fine."

Although there is not one bad thing in the nation which has not been blamed on television, it has entertained and educated the nation, Walters maintained. People can learn more from a half-hour network news show than from most newspapers, she claimed: "You can almost learn as much as you've got the stomach for." She added that she believed television news is more influential than print journalism, despite the fact that it cannot editorialize for specific candidates since it is national in scope.

Walters stated that the people in network journalism "care" greatly. "We are not 'Network'. We are not that film." She did, however, call the fact that Ford and Kissinger get paid for doing interviews "disgusting," and said that she foresaw no change in the network execu-

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High Court Decision Limits Media Access

By Charles Johnson

When the Supreme Court handed down its decision last summer in *Houchins v. KQED, Inc.*, many observers thought it sounded the final death knell for the media's attempt to acquire an affirmative right of access to information held by the government.

William B. Turner, '63, who last year was an HLS lecturer on law and resident fellow at the Center for Criminal Justice, argued the case for KQED and called the plurality decision "regrettable."

Writing for Justices Byron White, William Rehnquist and himself in the Court's 4-3 decision, Chief Justice Warren Burger said, "Neither the First Amendment nor Fourteenth Amendment mandates a right of access to government information or sources of information within the government's control."

With that language, the Court upheld and strengthened the holdings of two 1974 cases — *Pell v. Procunier* and *Saxbe v. Washington Post Co.* — which established that the media has no special right of access to prisons or jails greater than that of the public in general.

In *Houchins*, the Court overturned a federal district court injunction granted to a television station to allow its news personnel reasonable access to the Alameda County Jail, including an area, Little Greystone, where a prisoner's suicide allegedly occurred.

KQED had brought the action under 42 U.S.C. § 1983, claiming a deprivation of its First Amendment rights.

But Burger, Rehnquist and White, along with Justice Potter Stewart who concurred in the result in a separate opinion, found that KQED had no intrinsic right to examine the jail conditions, a result perhaps made more readily acceptable because Thomas L. Houchins, sheriff of Alameda County, announced a program of regular monthly tours of the facility shortly after KQED brought this action. Reporters, however,

were never allowed to observe the Little Greystone area, nor were they permitted to use photographs or sound equipment to conduct interviews with inmates.

Leaves an Opening

Still, despite its apparent severity, the decision leaves the press an opening in Stewart's concurring opinion.

Although Stewart concurred in the result and subscribed generally to the theory that the press has no greater right of access to information than the public, he determined that equal access, when applied to the press, meant equally effective access.

"This is the first Supreme Court decision I know of that, on the basis of the Constitution, directs any form of press access to a public facility, even though the direction here is only that it be given equally effective action," said Anthony Lewis, *New York Times*' columnist and teacher of a class on the Constitution and the Press at the Law School.

Noting that the Constitution accorded the press a special role in society, Stewart wrote, "The Constitution requires sensitivity to that role, and to the special needs of the press in performing it effectively. . . . But if a television reporter is to convey the jail's sights

and sounds to those who cannot personally visit the place, he must use cameras and sound equipment. In short, terms of access that are reasonably imposed on individual members of the public may, if they impede effective reporting without sufficient justification, be unreasonable as applied to journalists who are there to convey to the general public what the visitors see."

Stewart thought that the district court's injunction was overbroad, but he thought KQED was entitled to some form of preliminary relief.

"It's very clear to me that the only law in the case was what Justice Stewart said," said Lewis.

Turner agreed that Stewart's concurrence provided some hope for the press.

Turner, who now is in private practice in San Francisco, argued the case on Nov. 19, 1977. The decision, however, was not announced until June 26, 1978.

"It's unclear about the logic of (Stewart's) opinion," Turner said, but he acknowledged that Stewart as the swing man set the actual holding of the case.

No Special Access

He said that Stewart, although stating that the press has no special access to information, said the press may be accorded greater access than the general public once

(Continued on Page 13)

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Burger Meets Court Critics Before Ames

By Pat Hanifin

Some twenty organizers of the protest against the Burger Court met with Chief Justice Warren E. Burger at his request Thursday afternoon. Burger characterized the meeting as not marked by "inhibitions"; some students who met with him called him "evasive."

At a demonstration sponsored by the National Lawyers Guild and fifteen other student organizations about 200 people gathered outside Austin Hall Thursday night to protest the Court's civil rights decisions. They listened to speakers and musicians and watched a play called "The Discreet Charm of the Burger Court."

Dean Albert M. Sacks, in a statement issued Friday, criticized the demonstrators for conduct "inappropriate" for lawyers but stressed that they were exercising their fundamental right to free exchange of views.

At Burger's request, about 20 of the organizers of the protest, representing the different student groups, met with him Thursday afternoon. Speaking to the audience after the Moot Court Competition, Burger called the meeting "interesting" and "provocative." He added that, while the students did not display much "inhibition," they allowed him the privilege of not displaying much himself. In a comment during the reception after the argument he remarked, "I thought that Harvard was a place for rational discourse, but some of the students got a bit smart-alecky."

Not Satisfied

Lori Potter, 2L, said after the meeting that the students "were not satisfied with his rationale. For instance he said that the court had heard more sex discrimination cases since 1969 than in its whole previous history. We tried to explain we are more concerned with impact than numbers." She said that "Burger talks the way he

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"The Discreet Charm of the Burger Court."

Judges Praise Ames Quality: It's Better Than the Real Thing

(Continued from Page 1)

ity to extend the deadline for the amendment's ratification.

Burger was joined by Fifth Circuit Court of Appeals Judge Irving L. Goldberg and Maine Supreme Judicial Court Chief Justice Vincent L. McKusick. The panel declined to decide the case on the merits, but determined that the better performance had been given by attorneys representing the defendant-respondent city and fire department.

Team Effort

"Of course, we're very pleased that we won," said an ecstatic Bryant shortly after the decision was announced. "It was entirely a team effort. We couldn't have done it without every member."

Attorneys for petitioner, who included oralists Patricia A. Brannan and Robert S. Osborne, assisted by Don S. DeAmicis, David L. Lillehaug, Robert P. Reznick and Craig R. Spiegel, had argued that the height and strength requirements of the Lincoln Fire Department effectively denied women the opportunity to be firefighters. In light of the Equal Rights Amendment, they noted, this constituted

an impermissible abridgment of equality in hiring practices.

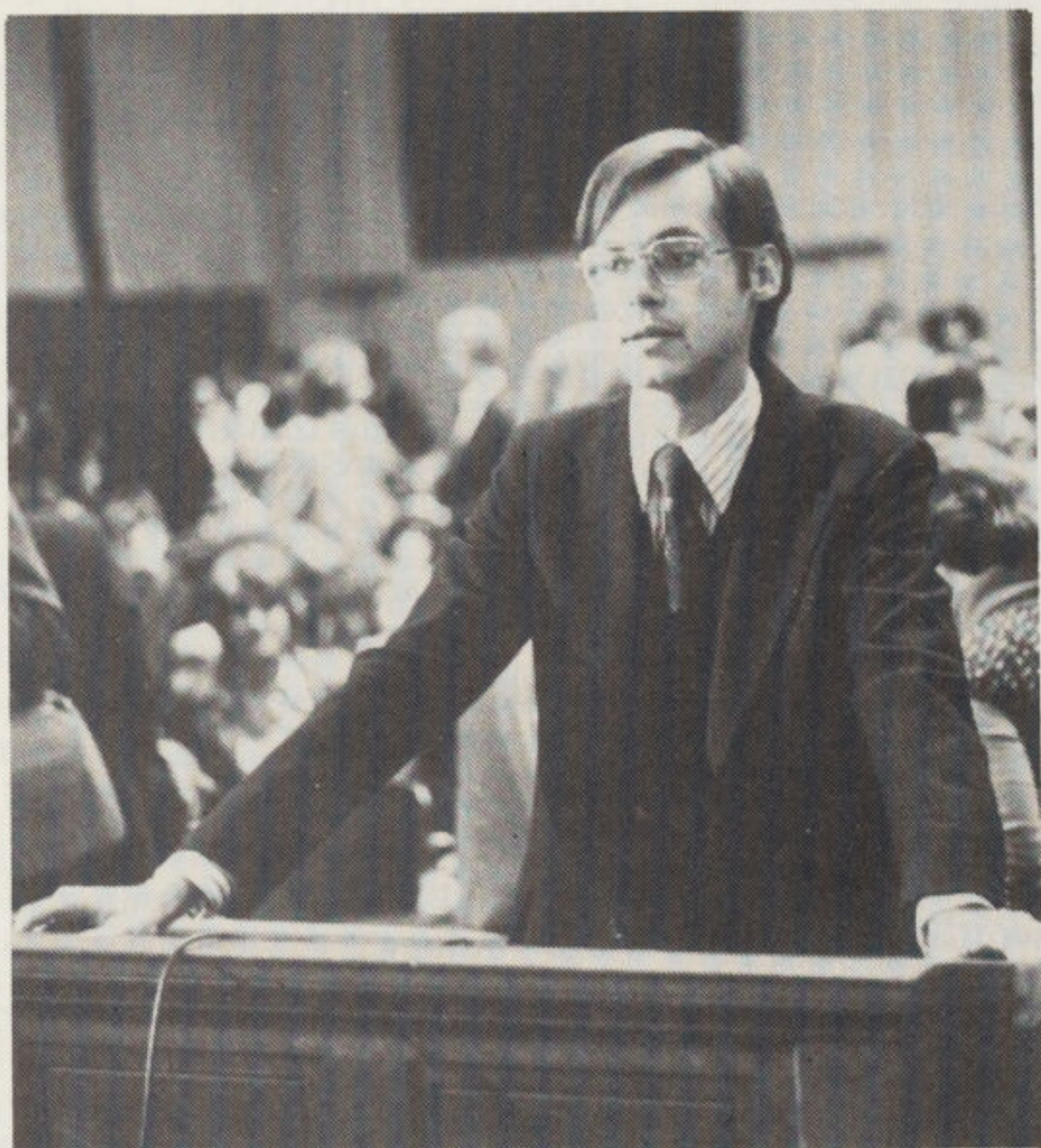
Respondent argued first that the ERA had not been validly ratified by the states, since three state legislatures had voted to rescind their previous ratification, and since Congress improperly voted to extend the deadline for ratification. They then noted that even if the ERA had been validly adopted, the fire department's hiring practices were nevertheless constitutional since they protected a legitimate state interest of employing firefighters who were strong enough to perform their job.

Burger brought a touch of humor to the predominantly sober proceedings by expressing concern over whether women firefighters would be strong enough to "carry my bulk down the ladder." But the real show-stopper was Circuit Judge Goldberg, who wondered whether it would be permissible for Congress to extend the deadline for an amendment's ratification until "the Millenium or after five sunny days in Boston, whichever comes first."

(Continued on Page 15)



Front row - Hon. Irving L. Goldberg, Hon. Warren E. Burger, Hon. Vincent L. McKusick. Back row (Members of the Marshall Arts Club) - Craig R. Spiegel, Robert P. Reznick, Patricia A. Brannan, Don S. DeAmicis, David L. Lillehaug, Robert S. Osborne.



P. Michael Jung, named Best Oralist, in action.

Below, some of the nearly 2,000 people who attended the Ames Finals arguments in the James Barr Ames Courtroom and lecture halls in the Science Center.



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Meeting of the Minds

Whatever opinions one might have of the Burger Court, Chief Justice Burger is to be commended for meeting last week with a group of students who organized a protest to mark his appearance at the Ames Finals.

The Chief Justice could easily have hidden behind his judicial robes, ignoring the protesters and moving only amidst those students who honored him during his visit. Instead, Burger openly acknowledged the rancor that decisions by his Court have inspired among many law students here and elsewhere. He admirably gave the protesters the opportunity to express their opposition to his face.

We also are pleased that the exchange between the students and the Chief Justice was, in Burger's words, "uninhibited." The Chief Justice did not condescend to the students, as did Nixon during his celebrated meeting with young anti-war protestors at the Lincoln Memorial in 1970. Nor were the students awed into excessive deference by the presence of the nation's leading judicial officer.

The encounter will not change the philosophies of either Burger or the students. But their frank exchange may make each side more cognizant of the rationale on which the other bases its views.

Bathroom Humor

We weren't really surprised when some hoaxster circulated a memo, purportedly from Dean Sacks, announcing that all toilets on campus would soon be converted to pay toilets. What did surprise us was the number of students who believed the memo was genuine. The Dean's office reported it was busy answering phone calls all day, some complaining about the memo, others asking whether it was the real thing.

Why so many supposedly extremely intelligent people would fall for such an obvious hoax is hard to say. Perhaps the explanation is simply that intelligence and common sense are two very different commodities, which exist in varying proportions in different people. Or perhaps the pressures of impending examinations are already beginning to affect some students' sanity.

And then there's the possibility that students feel that an administration that would attempt to forbid students from exercising their natural right to play on the grass in front of Harkness Commons would probably also be willing to interfere with the free exercise of another, even more fundamental natural right.

Whatever the explanation, the inability of many students to recognize a joke is a little discouraging. Certainly there are people here who would do well to take themselves, the Law School, and life in general a trifle less seriously.

HARVARD LAW RECORD

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Fenno

Fenno spotted the 1L sitting dejectedly next to the coffee machine in the Austin Lounge.

"Why the long face?" asked Fenno. "You look like you just came out of your first Property class."

"I really blew it today in Civ Pro," the 1L explained. "I mean, I could have done well but I just plain blew it."

Fenno smiled. "We all have our off days," he said. "And besides, class performance doesn't mean a thing."

"Who's worried about class performance?" the 1L retorted. "I'm sore because I just lost the last Turkey Bingo game before Thanksgiving. First prize was a real turkey."

"They tried to do that a few years ago," Fenno noted, "but the turkey just wouldn't go for it. It seems that the winner was from Cleveland and the turkey refused —"

"I think I've heard that story," the 1L said. "Is the winner now a prominent attorney in Washington?"

"That's right," said Fenno. "And the turkey is now teaching law at a prominent Massachusetts university."

"You're good at this sort of thing, Fenno," the 1L said. "Is there any sure-fire Turkey Bingo strategy?"

"I'm afraid not," said Fenno. "Why, a few years back some ingenious student thought that he'd be one up on the rest of the class by putting the professor's name on his card. But the rules expressly say that the turkey must speak English for his square to be covered, and Roberto Unger just wouldn't oblige that day."

"Sounds depressing," the 1L said.

"And then there was the time that some 2L was so excited when he won that he called Felix Frankfurter a turkey in Archibald Cox's class. Made poor Archie's hair curl, so they expelled him."

"I suppose things could be worse," said the 1L. "I suppose that I have lots to be thankful for."

"Like the fact that Kennedy and Steiner both teach the same subject," offered Fenno, "So no one has to take them both."

"And I've got the recipe for Turkey a la Bernardi," the 1L noted. "I understand that the dressing is just exquisite."

"Have a nice vacation," Fenno said as he walked away. "And while you're home for the holidays, I hope the only torts you think of are the ones you have for dessert."

"Amen," said the 1L as he licked his chops and went off to pack his bags.

Letters to the Editor of the RECORD

Frivolous Legal Issues

To The Editor:

The account in the October 27 RECORD leaves me in the dark as to the meaning of the name of the "newly-organized Committee on Gay Legal Issues."

From previous accounts, I gathered that this group was contributing to the corruption of the language, and that it used the word "gay" in its dreary modern sense, denoting homosexual orientation. From this article, however, the group seems to be reviving the old primary meaning, "having or showing a joyous mood" (Random House Dictionary), or "joyous and lively; merry; happy; light-hearted" (Webster's New World, College Edition). Their idea of boycotting Pillsbury, Madison and Sutro because the firm successfully asserted that courts in California lack personal jurisdiction of heterosexual activist Anita Bryant has a joyous, merry ring to it. To any second- or third-year student familiar with *International Shoe*, *Hanson v. Denckla*, and *Shaffer v. Heitner*, this gay project is light-hearted indeed. Ms. Bryant's "contacts" with California were obviously not legally sufficient to form a basis for jurisdiction. I trust the group urges that Ms. Bryant's sexual contacts with Californians (of whatever variety) justify California's subjecting her to suit in its courts. That is almost as lively and happy a thought as the idea of boycotting her law firm. Nothing like a little guilt by sexual association!

In my day, Harvard had far too few groups that organized to contribute to the gaiety of the place. I am delighted to learn that today's students take things less seriously. If the law needs anything these days, it is a committee on frivolous legal issues.

Thomas Lombard, '62
LL.B. U. of Pennsylvania, '63
Washington, D.C.

Objects to Obscenity

To the Editor:

I have read the article "Faculty Blasts Ban on Dirty Words" in the October 20, 1978, issue with interest and consternation. The interest was enhanced by the fact that three of the persons mentioned, Milton Katz, Paul Freund and William Brennan were classmates of mine; the consternation will become apparent in what follows.

The quoted opinions of Katz and Der-showitz are reminiscent of the theological arguments in colonial America as to how many angels could be accommodated on the point (or was it the head?) of a pin. Is free speech really in danger because certain gutter words are forbidden to be broadcast? Admitting that a little bit of realism may be

sacrificed by eliminating the subject words from some dramatic situations, is this really a violation of constitutional rights? Is it constitutionally objectionable to interdict on the air breaches of what generations of intelligent and cultured English-speaking peoples have considered good taste? I submit the answers to the above are resounding noes.

Were any of the persons mentioned in the article to use the subject words in a mixed gathering in my living room, I would boot his . . . oops, buttocks out my front door. I have little doubt I would receive equal treatment at their hands.

It is sophistry to argue that the choice to receive a broadcast constitutes a waiver of the right to some protection against language that is offensive to most listeners. It should not be necessary for one to deprive himself of all broadcasts in order to insure he is not bombarded by such language, just as it should not be necessary to avoid strolling on Boston Common so as not to witness nude couples copulating.

I am not a prude; I have used all the seven subject words, but only in company that I knew would not be outraged. I have a right to receive like consideration from the broadcast industry.

A. Clinton Kellogg, '31
Sharon, Massachusetts

Overachieving Men

To the Editors:

I read with interest your article entitled, "Are Women Underachieving at HLS?," and your attempt to discover a cause. May I suggest that you consider the possibility that men may be *overachieving* at HLS?

Harry Subin
Professor of Law
New York University
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An Unstated Question

To the Editor:

I don't know who Michael Smith might be but I heartily endorse his article found on pages 15 and 16 of your October 6, 1978 issue.

The reference to Dean Bernardi's memo tells me that the Law School itself took some part in the boycott of the Collier, Shannon firm because of certain of its clients.

Mr. Smith does not go far enough to indicate the reason why H. L. S. students, or a considerable number of them, are content with law firms representing the Nazis, Russia and Ford (he might have added murderers), and perhaps you would not have printed it any way.

People whose human rights have been violated by the Nazis, the USSR and other brutal police states are generally of the white race.

It is as simple as black and white.

Harry A. MacDonald, '27
Erie, Pennsylvania

SPORTS QUIZ

1. Which National Hockey League player has been Most Valuable Player more times than any other?
2. Three times the same player won the Hart Trophy and the Lady Byng Trophy. For what are these trophies given and who were the players to score this double honor?
3. Only one heavyweight champion has retired unbeaten. Who was he?
4. Only one jockey has ridden two Triple Crown winners. Who are the jockey and the horses?
5. One bowler has more three hundred games than any other. Who is he?

(Answers on Page 3)

Cryptic Law

This week's selection illustrates that one should look a gift horse only in the mouth.

(D)lkakaiq httljlc kmhk kml dthaqkass. . . (xhe) aq hkkqlchqnl. . . hk h nabnwe dlbsibohqnl jazlq rp kml clslqchqk. . . (H) mibel, xmanm xhe jiaqj kmbiwj m chqnaqj dlbsibohqnl aoolcahkltp aq sbiqk is xmlbl kml dthaqkass xhe eakkaqj, xhe. . . nhwelc ki rhng kixhbec kml dthaqkass, hqc xmatl aq kmae eakwhkaiq kml mibel lzhnwhklc mae rixlte aqi mib thd. . .

(Solution on Page 15)

Guerilla Theater Mocks Burger Court

(Continued from Page 8)

writes — not very logically. The tone of the meeting was not amiable."

Bridget Arimond, 3L, of the National Lawyer Guild, summed up the meeting, saying, "He didn't think much of us and we didn't think much of him." Burger evaded questions and filibustered with a 10 minute sentence of prison reform, she said.

Sacks praised Burger for meeting with the students. "It was an admirable instinct on his part. He thought it was better to have the meeting, whatever the success of the discussion in improving enlightenment on both sides."

Roughly half the members of the crowd which gathered for the demonstration seemed to be law students. Some held cardboard signs. One read: "7 Dirty Words: Burger, Rehnquist, White, Stevens, Stewart, Blackmun & Powell." One police officer stood by the front door of Austin Hall, more concerned with checking people's passes to the Moot Courtroom than with the demonstration on the steps. People drifted in and out of the fringes of the crowd or paused on their way into Austin to watch the play for a while.

Bad Puns

The play, "The Discreet Charm of the Burger Court," was the highlight of the demonstration. It featured numerous bad puns, such as President Nixon stumbling on the decision to appoint Burger while trying to order a "warm burger" for

lunch. Several Burger Court opinions which give a narrow reading to civil rights were criticized. *Ingraham v. Wright*, in which the Court held that corporal punishment in the schools is not "cruel and unusual punishment" was characterized by Justice Powell (played by Amy Hirsch, 3L) as "since one wouldn't expect to find cruel and unusual punishment in the schools, when one does find it it must not be there." Jeff Blum, 2L, was the director and Stephen Smith, 2L, with appropriately grayed hair, played the title role.

Lori Rosenberg, a local civil rights attorney, spoke to the crowd, accusing the Burger Court of representing only the interests of the "ruling class" and of "deceit, conspiracy, negligence, breach of contract and intentional infliction of emotional distress" towards the poor and working classes. Barry Wilson, a local labor lawyer, accused the Court of "serving one need only: to keep the people oppressed and preserve the status quo." He argued that the people should protest energetically to force the Court to "be a little more responsible to the people."

Two musical groups, Underground Railroad and Turnout, played and sang protest songs for the crowd. Many people seemed to enjoy it but one spectator said, "It reminds me of a line from Dr. Zhivago: 'Perhaps they will sing in tune after the revolution.'"

Potter, who coordinated the pro-

test, said she thought there was a good turnout for both the demonstration and the forum. "A majority of the students at HLS are represented by the organizations sponsoring the protest," she said.

Sacks criticized the demonstrators: "Except in very special cases I do not think political demonstrations are an appropriate form of communication between lawyers and judges. Lawyers have special opportunities growing out of superior knowledge and understanding of the courts, and capacity and opportunity to articulate their views directly to judges when in court and directly to fellow lawyers in professional meetings and publications or more generally to the public when writing in newspapers or magazines. Lawyers as lawyers ought not organize political campaigns against judges and courts."

How Lawyers Behave

There may be "special circumstances" justifying exceptions to this rule, Sacks said, "but the Ames final is far from being one. The Chief Justice came to attend a school function for the students' benefit, especially those who were finals advocates. His coming enhances the occasion for large numbers of students." Sacks said that since nearly all the students will be lawyers within two and a half years, they "ought to consider whether modes of behavior lawyers observe

(Continued on Page 13)

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Lawyer Ponders Alternate Strategy

(Continued from Page 7)

the government opens the door to allow any access to the press or public.

But the government can close the door completely on sources of information, Turner said, so that neither press nor public would be allowed any access to prison conditions.

Laurence H. Tribe, HLS professor of constitutional law, has written about the case in the forthcoming supplement to his treatise, *American Constitutional Law*.

He wrote that all seven participating justices in some degree adhered to two propositions: that the press has no right of access superior to that of the public generally and that the Court "has limited institutional capacity to enforce a right of access to information still in government's hands, even assuming that such a right were required by the Constitution."

He noted, however, that Stewart and the three dissenters — Justices Stevens, Brennan and Powell — would have sustained that part of the district court's order requiring the sheriff to give press access on a more flexible and frequent basis to the areas of the jail that the sheriff had opened for public inspection and to permit the media's use of cameras and recording equipment.

Turner, whose arguments before the Court drew expressions of hostility towards the media, said he thought Burger's opinion was regrettable, but he was grateful that only three members of the Court adopted it.

He said that the sweeping holding didn't "affect just jails; it applies to all government institutions."

In this respect it broadened the holdings in *Pell* and *Saxbe*, he said. "They did not involve a general right to access to information, but merely a refusal of a right to interview prisoners," he added.

Second Thoughts

Turner said he would have done

two things differently if he had known the case would reach the Supreme Court.

"I would have filed it in state court if I had known that the case would have been appealed at all," he said.

At the time he filed the pleadings on behalf of KQED, he thought that the case would fall apart after KQED received the preliminary injunction. All the other sheriffs in the area had opened their jails, he said.

In state court, he said he would have lost at the trial level but

would have won in the California Supreme Court on appeal.

In addition, he said his decision to include the NAACP as a party to KQED's suit was a mistake because Justice Thurgood Marshall excludes himself from every case in which the NAACP is a party.

At the time, however, Turner was working for the NAACP Legal Defense Fund and thought that the NAACP would lend weight and credibility to his First Amendment claim. Nobody thought the case would ever reach the Supreme Court, he said.

Protest Lampoons Burger Court In Speeches, Songs, Skits, Signs

(Continued from Page 12)

shouldn't be at least the initial standard for their own approach."

But Sacks repeatedly stressed that "students who decide to engage in demonstrations are exercising rights of free exchange which are among the most important ones in the University and should be as fully protected as can be done."

Forum Wednesday

On Wednesday night the coalition sponsored a forum featuring two speakers critical of the Court. Michael Avery, a local lawyer active in the Guild and the ACLU, accused the Burger Court of closing the courts to oppressed groups seeking justice. He reviewed the Court's recent cases cutting back on the availability of civil rights suits under 42 U.S.C. 1983. The Court is "gutting the Fourth Amendment of much of its meaning by narrowing the exclusionary rule and the protections of *Miranda*," he said.

Katherine Triantafillou, a Boston feminist attorney, spoke on the subject of "Pigs in the Parlor," a criticism of the Court for sexism and misogyny.



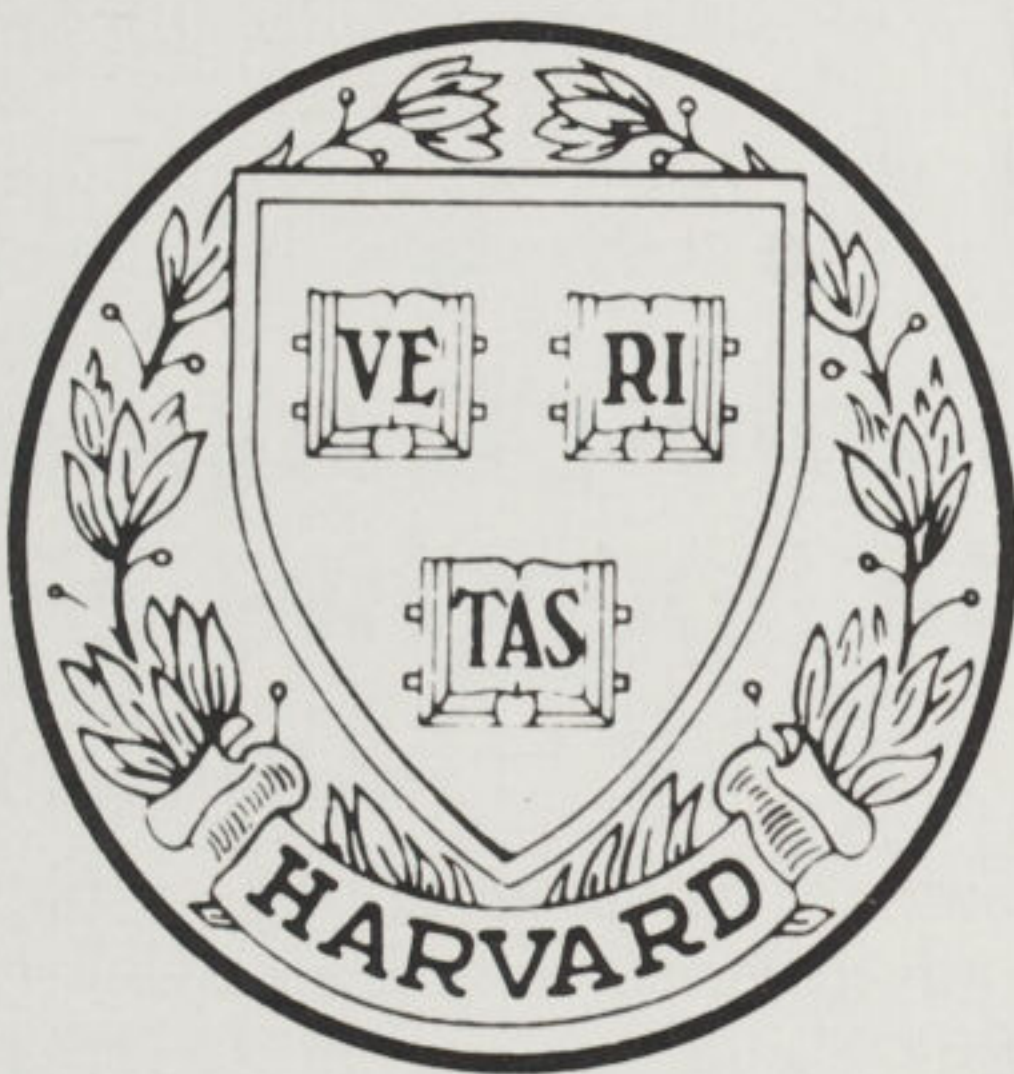
Justice is not blind, just near-sighted, according to "The Discreet Charm of the Burger Court."

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A GOOD WAY TO REMEMBER



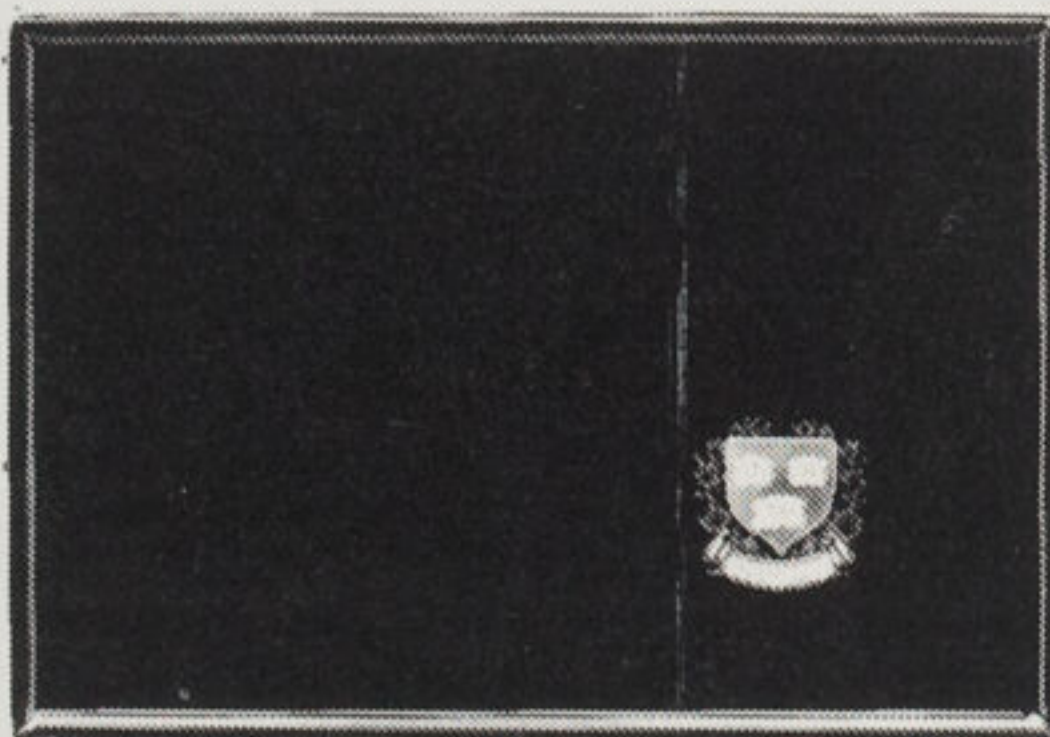
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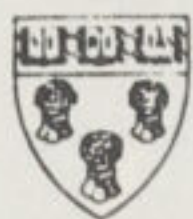
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November 16, 1978

MEMORANDUM

TO: All students
 FROM: Dean Albert M. Sacks
 SUBJECT: Harkness Commons Deficit

As you know the Harkness Commons has not been self supporting for some time. Although increases in tuition fees and room rents have recently been used to subsidize the operation of the Hark, the deficit persists. In an experiment designed to alleviate the problem, the Law School administration has decided to install pay toilets in all dormitory and classroom buildings. This experiment will commence in January and run through the Spring semester. The anticipated fee is ten (10) cents. Free toilets will be left open in the Faculty Office Building. We sincerely regret having to take this measure and hope that you will soon become accustomed to the situation.

Relax. The above memo, which was posted throughout the Law School last Friday, is a hoax. But don't relax completely. When informed of the hoax Dean Albert M. Sacks commented, "Now that the idea has been brought to our attention, we're going to give it serious consideration. But in light of raging inflation we wouldn't set the price lower than 50 cents."

TV's Walters Talks of Career

(Continued from Page 6)

tives' concern with ratings. Walters also refused to apologize for the money she made in television, saying she should get some of the amount the industry pulls in, and noting that entertainers make much more than she does. She said she suspected some opposition to her salary came because she was female.

Asked how she felt about the news media "creating" Yassir Arafat and "publicizing" terrorism, Walters stated that Arafat was neither created nor glorified by the media. She noted that suppression of the news could be justified in some cases of terrorism or kidnapping.

Not a Pioneer

Walters said that she never considered herself a "pioneering woman." She began work in television while in graduate school. "Doing what I loved, I found my own career." She noted that when she began in television there was no place for a woman except on the "Today Show."

On her "way up," she found supportive and non-supportive people of both genders.

Being a female can make some difference in the interviews, Walters admitted. She noted that when

she told Zbigniew Brzezinski of her belief in Castro's sincerity, he responded, "Oh, you had a crush on him."

After noting that the audience was much less hostile than she had expected, Walters admonished her listeners to try to educate themselves. "No matter how much we try, we are not oracles. And, finally, don't shoot the messenger if you don't like the message."



Solution to "Cryptic Law"

S.E. 680, 681 (1928)
Christy Brothers Circus v. Turnage, 144
 her lap. . . .
 action the horse evacuated his bowels into
 towards the plaintiff, and while in this situ-
 plaintiff was sitting, was . . . caused to back
 mance immediately in front of where the
 which was going through a dancing perfor-
 mance given by the defendant . . . (A) horse,
 (was) in attendance . . . at a circus perfor-
 (P)etition alleged that the plaintiff . . .

TGIF: Friday, Dec. 1 from 4-6 p.m.
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Marshall Club, Jung Awarded Top Ames Honors

(Continued from Page 8)

The Chief Justice, in announcing that the court had reached its decision "by a narrow margin", noted that he and his associates wished "that the average performance in each of our courts was up to the quality of the performance given here tonight." Oralists Bryant and Jung returned the compliment after the proceedings when they noted that the questions asked by the judges were perceptive. "All three judges had such different styles," Jung said, "But all three were good."

Close Decision

The closeness of the decision was evidenced by the fact that many observers felt that it was an unpopular one. "Another in a long line of faulty decisions by the Burger Court," one student said.

One of the petitioner's attorneys was disappointed with the judges' decision, but was satisfied with his team's performance. "Both Pat and Bob were just magnificent," he said. "The whole team is very proud of both of them."

The competition was preceeded by a demonstration against the policies of the Burger Court on the steps of Austin Hall. Burger alluded to the protest and to the one staged last year when he was unable to attend due to illness by noting that "I have the unique distinction of being the only judge to preside over the moot court competition once, but to have two demonstrations staged against me."



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City Council Set to Join Subway Suit

By Joshua Dratel

For those of you living on Mass. Ave. between Harvard Square and Porter Square, that din waking you each morning is not a Panzer division on maneuvers. That noise represents progress — or at least some people think so.

The Massachusetts Bay Transportation Authority has begun an extension of the Red Line subway from Harvard Square to Porter Square, to Davis Square, to a terminal station at Alewife Brook Parkway.

The MBTA has run into opposition, however, from a group of citizens determined to halt the construction of the proposed extension. The Red Line Alert has filed suit to stop the construction and has campaigned successfully for Question 10, a non-binding referendum calling for a moratorium on the project until further environmental studies are made.

But Jack Leary, MBTA's Director of Development, claimed, "We (the MBTA) were very pleased with the vote. Red Line Alert purports to represent a large group of people, and we did nothing (to campaign against the measure). Yet Question 10 carried by only 6700 to 4800, with 2000 blank ballots."

Close Vote

The vote was limited to selected Cambridge districts, and Leary believes that a canvass of the entire city would have defeated the referendum. "We thought it amazing how close it was," he said.

The project appears to have more local supporters than had been suspected. Rich McKinnon of the City Council staff admitted the project's opponents' victory was "not as strong as a lot of people expected. I would be surprised if the passage of Question 10 led to any action by the City Council."

But the City Council did take some other action against the extension during its Nov. 6 meeting. The Council authorized the city solicitor to prepare papers that would join the City Council with Red Line Alert as co-plaintiffs seeking an injunction against construction work pending further examination of the project's effects on the North Cambridge community. The city solicitor must bring the draft back to the Council for final approval, but the Council's court assault on the project, already twice delayed, is essentially under way.

Environmental Impact

The MBTA declined to comment on the matter pending litigation, but McKinnon explained: "The main reason for the moratorium is that the original environmental impact statement referred to the effect on Arlington. There should be a new or supplemental study from the point of view of an Alewife terminus. Until that time there ought to be a moratorium."

A tunnel consultant hired by Cambridge's Community Development Office has appeared before the Council with a report favorable to the MBTA's proposals. Robert Jenney, of Jenney Engineering, reported his conclusion

that "the plans and specifications did adequately protect the Cambridge community."

While that finding supported the original plans, Richard Fahlander of the Community Development Office is wary of the problems inherent in operation.

"It's the city's job to see that the MBTA enforces these specifications," he remarked. "We will continue to work with the MBTA on problems as they arise. We don't want to be in an adversary situation with the MBTA."

MBTA Makes Effort

Thus far, Fahlander is satisfied. "They (the MBTA) have been more responsive, and they're making an effort, but it's only because of the pressure applied by people in the community," he said.

The City Council has also felt that pressure, as shown by its willingness to enter the legal battle. "The Council has a different outlook entirely (from that of the Community Development Office)," Fahlander pointed out. "It has to respond to a group of upset citizens."

The North Cambridge community is angry over the proposed Alewife terminus, which will include a 2000 car parking lot. Many area residents would prefer the use of satellite parking and express buses to the Alewife station.

"Historically, the people closest to the station are the most concerned with the construction," Leary commented. "They're worried about property values and such, but the station will actually be good for the area. Besides, the project is being built almost entirely underground."

Leary finds the dispute over the parking lot to be "bizarre. In every other city the pressure is to build more facilities for parking, and to make them larger, not smaller. Cambridge is virtually strangled with traffic, and here's a chance to clear the streets of 2000 cars each day. I think that that will improve the city."

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