



Harvard Law Record

America's Oldest Law School Newspaper

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25 CENTS

Nader Finds Harvard Watch

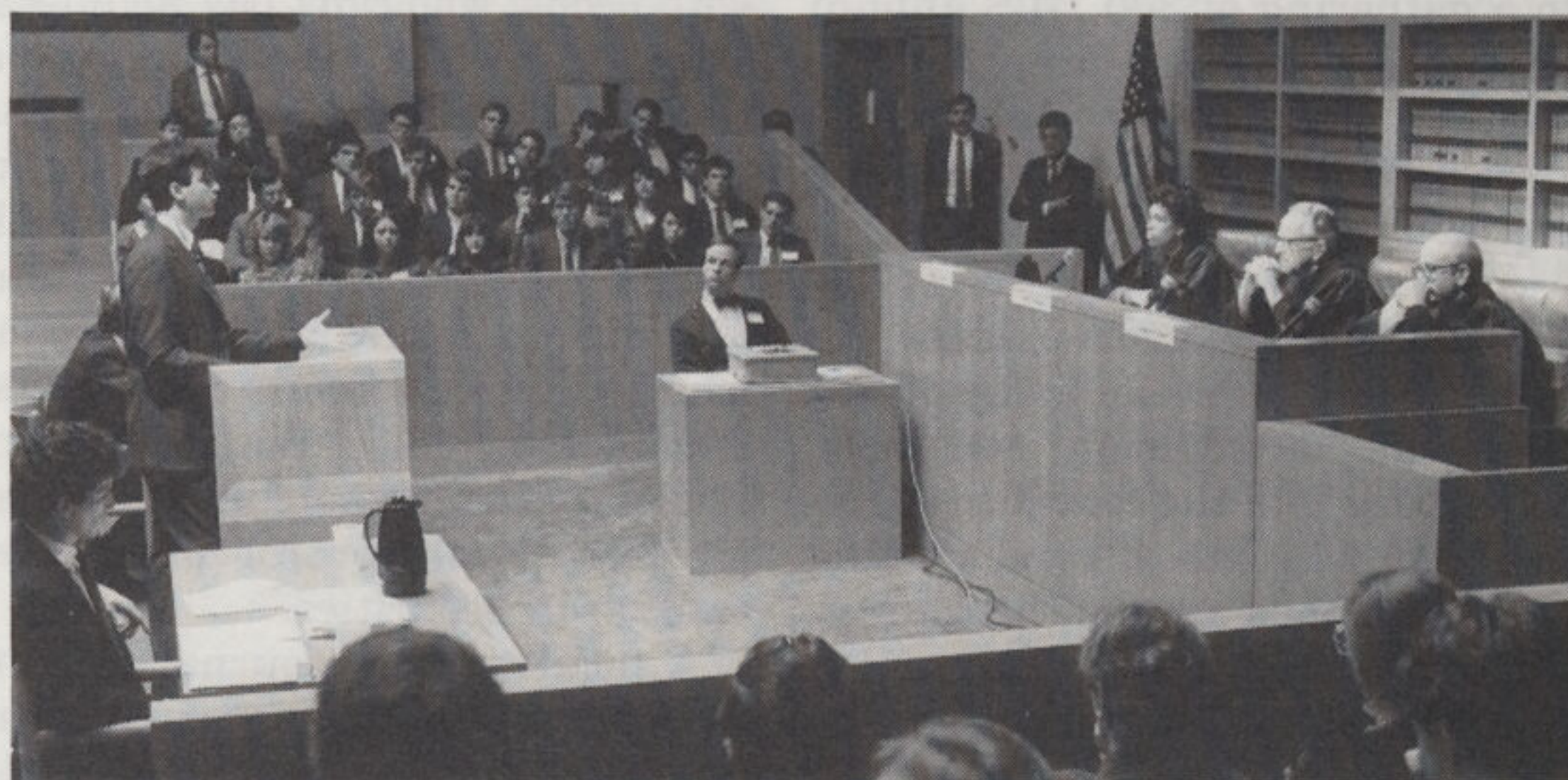
By Jonathan Grunzweig

Ralph Nader, '58, last month announced plans to monitor and critique his alma mater through a newly formed "HarvardWatch" project. As director of the Center for the Study of Responsive Law, Nader has hired Robert Weissman, a Harvard College junior who is taking this year off from school, to examine the policies and activities of Harvard.

Nader said in an interview last week that Harvard is an institution which requires close scrutiny by outside observers. The law school in particular is a focus of Nader's concern. "Arrogance is not conducive to introspection," he said, and a watchdog is needed because "at Harvard Law School, there is too much of the former and not enough of the latter." HLS is "subject to manipulation by outside trends, as is any other institution," he said, "but in addition, the historic and current importance of HLS presents the opportunity to have an impact on the external world."

Such views are not new to Nader. Ten years ago, in *The High Citadel*, by Joel Seligman '74, Nader faulted HLS for what he terms its "tunnel vision."

"The facile belief that technical competence and normative inquiry are a zero-sum game has helped make Harvard Law School one of the nation's great wasting assets," Nader and Seligman wrote. "After all, how has its narrow definition



Martha Stewart

Oralist Steven D. Ecker presents his argument to 2d Circuit Judge Amalya L. Kears, Supreme Court Justice Harry A. Blackmun, and 7th Circuit Judge Richard A. Posner.

'Agents' Win Ames Final Round

By Susan Povich

In honor of its 75th birthday, the Ames Moot Court Competition invited past winners as well as legal luminaries to attend its final round, held in the James Barr Ames Moot Courtroom on Monday. The panel, noted by the Board of Student Advisors Ames Supervisor Michael Feeley as one of the most talented, consisted of U.S. Supreme Court Justice Harry A. Blackmun, Second Circuit Court of Appeals Judge Amalya L. Kears and Seventh Circuit Court of Appeals Judge Richard A. Posner.

The case on the docket was an appeal by the petitioner in *Forest Phillips*, executor of the estate of Iris Phillips v. Higginson Corporation, Inc. and S.P. Kaiser, Inc. The record was supervised by Professor Charles Nesson. Judge Posner, in his comments following the arguments, repeatedly stressed the thoroughness of preparation by

the competitors and the evenly weighted facts of the case.

Nesson based the record on a Third Circuit case, *Cipollone v. Liggett Group, Inc.* The plaintiff sued the tobacco companies under various tort theories for causing the death of his wife, a smoker who died of lung cancer. The case presents two issues on appeal: the propriety of using the First Amendment to determine whether to issue a protective order and the preemptive effect of the Federal Cigarette Package Labelling Act on state common law claims.

Mark Edell, one of the attorneys for the plaintiffs in the Third Circuit case, attended at the invitation of Professor Nesson.

Justice Blackmun was in top form, lending his remarkable sense of humor and good nature to the proceedings. It was the third time that Justice Blackmun visited HLS this year. Feeley, who spent the day

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Vorenberg Marks the HLS Association Centennial

By David Snouffer

HLS Dean James Vorenberg '51 expressed confidence late last month that lawyers will continue to thrive despite changes in their profession. The dean had also intended to defend the school's planned faculty-edited law journal during his speech to a gathering of 300 HLS alumni and guests in West Orange, N.J., Oct. 30, but shortly before the speech he decided to omit any reference to the subject.

As U.S. lawyers practice in increasingly specialized fields, legal practice still offers an array of satisfactions to aspiring attorneys, Vorenberg told the crowd at a dinner that was one of over a dozen events planned around the country this year to mark the centennial of the HLS alumni organization, the Harvard Law School Association.

While today's lawyer is less likely to become a "wise, independent generalist," Vorenberg said during the annual HLS Vanderbilt Lecture, lawyers continue to "help others

understand and deal with important problems in their lives."

At the same time, the law offers sizeable intellectual challenge, both with substantive issues and with practical problems ranging from the ethical limits of aggressive representation to how attorneys should provide legal services to dealing with people who can't pay high fees, Vorenberg said, according to a transcript the HLS Communications Office gave the RECORD last week.

Trained attorneys, he added, should "understand such important and diverse issues as capital punishment, toxic tort class action suits, employment discrimination, tax reform, enforcement of international treaties [and] control of insider trading in securities."

A faculty-edited journal can inform practicing attorneys and other interested readers about legal issues from a "broader perspective" than can student journals that are directed toward scholarly research, Vorenberg said in what he described Tuesday as an "early draft" of his

lecture.

"It seems anomolous," he wrote, "that the selection of articles to represent the enormous range for intellectual inquiry in the field of law should be almost wholly in the hands of second and third year students, many of whom are having their first exposure to the subjects which, in their most sophisticated form, are the focus of intellectual inquiry and controversy."

Despite the joys available in their profession, many lawyers face a "hard choice" between prestigious, high-paying jobs and positions that allow them to promote "concerns about racial equality, the environment, sending criminals to prison or aiding the poor and powerless," Vorenberg said. "The concern about ending up as a 'hired gun' is real and needs to be part of a decision to become a lawyer and, as a new lawyer, to choose where to devote one's talents."

Vorenberg had the Communications Office cut the half-page passage about the faculty journal out of the 15-page transcript it gave the RECORD last week, but a copy the office had mailed to the newspaper and other press organizations on Nov. 6 contained the statement.

Vorenberg said Tuesday that he decided not to discuss the journal before the alumni because it was a "deviation" from the themes of his lecture and because he was "running short of time." And he said he did not want published versions of the lecture to include "significant" statements he had not made.

The planned journal, which Vorenberg called "controversial," has been without an editor since Professor Laurence Tribe '66 gave up the post last summer, citing other time commitments. Vorenberg, who named Tribe to edit the journal in late 1985 when he announced that the HLS faculty had voted unanimously to start one, has described Tribe's resignation as a "setback."

Some student journal editors and alumni have criticized the planned faculty journal, saying it might take away some of the functions of student-edited law reviews.

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Study Tracks Careers Of HLS Grads

By Doug Ulene

The HLS Program on the Legal Profession recently released a report on a Career Paths Study it began in the Spring of 1985. The statistical analysis of nearly 6,800 graduates from seven northeastern law schools (Boston College, Boston University, Columbia University, University of Connecticut, Harvard University, Northeastern University, and Suffolk University) confirms the flexibility of a law degree and reveals that a surprisingly large number of graduates have taken advantage of this flexibility, changing jobs or careers since they began working.

Statistics for the HLS class of 1981 show that 35 percent of that class's graduates have changed jobs. Twelve percent have left private practice altogether, with the largest number fleeing firms with more than 85 attorneys. (45 percent are currently employed by such firms, down from 52 percent at graduation.) Those class members have opted, in large part, for federal, state, or local government (an increase from 9.5 percent in 1981 to 12.5 percent) and business (up from 3.5 percent to 9 percent), with those in business evenly divided between in-house counsel and executive positions.

Stay In Same City

The study indicates that while they may change jobs, law graduates tend to settle in the city where they take their first job. About 70 percent of the respondents in the four classes surveyed (1959, 1969, 1974, and 1981) indicated that they have remained in the same metropolitan area since graduation. Not surprisingly, 59 percent of 1981 HLS graduates work in six major U.S. cities: New York (18 percent); Washington, D.C. (18 percent); Boston (9 percent); Los Angeles (5 percent); San Francisco (5 percent); and Chicago (4 percent).

Members of HLS' class of 1981 indicated that they work an average of 50 hours per week and two week-end days a month. They can, how-

ever, look forward to the extra time they will have down the road: the Study shows that 1959 graduates work "only" 48.5 hours a week.

Make More Than Parents

The financial picture is somewhat better. The median annual income for respondents from all schools was \$78,000. This is particularly noteworthy as 62 percent of those polled have been out of law school for 12 years or less. By class, 1959 graduates average \$100,000; 1969 graduates take home \$80,000; the class of 1974 averages \$62,500; and 1981 graduates earn about \$45,000 per annum. 54 percent of respondents to the survey from the class of 1981 indicated that their income

exceeds that of their parents, while only 30 percent said that they earned less than parents.

There are, however, wide disparities among median incomes of lawyers in large firms, small firms and solo practice. Moreover, the study indicates that those gaps get larger as time passes. Members of the class of 1959 average \$200,000 in large firms (85 or more attorneys); \$87,000 for those with very small firms (2-8 attorneys); and \$60,000 for solo practitioners. (The class of 1981 averages \$46,000, \$29,000, and \$25,000 respectively for employment in those three categories.) The few persons who reported annual earned incomes of \$1-\$3 million are not practicing

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Working: "Honest Sense Of Realism"

By Jeff Gershowitz

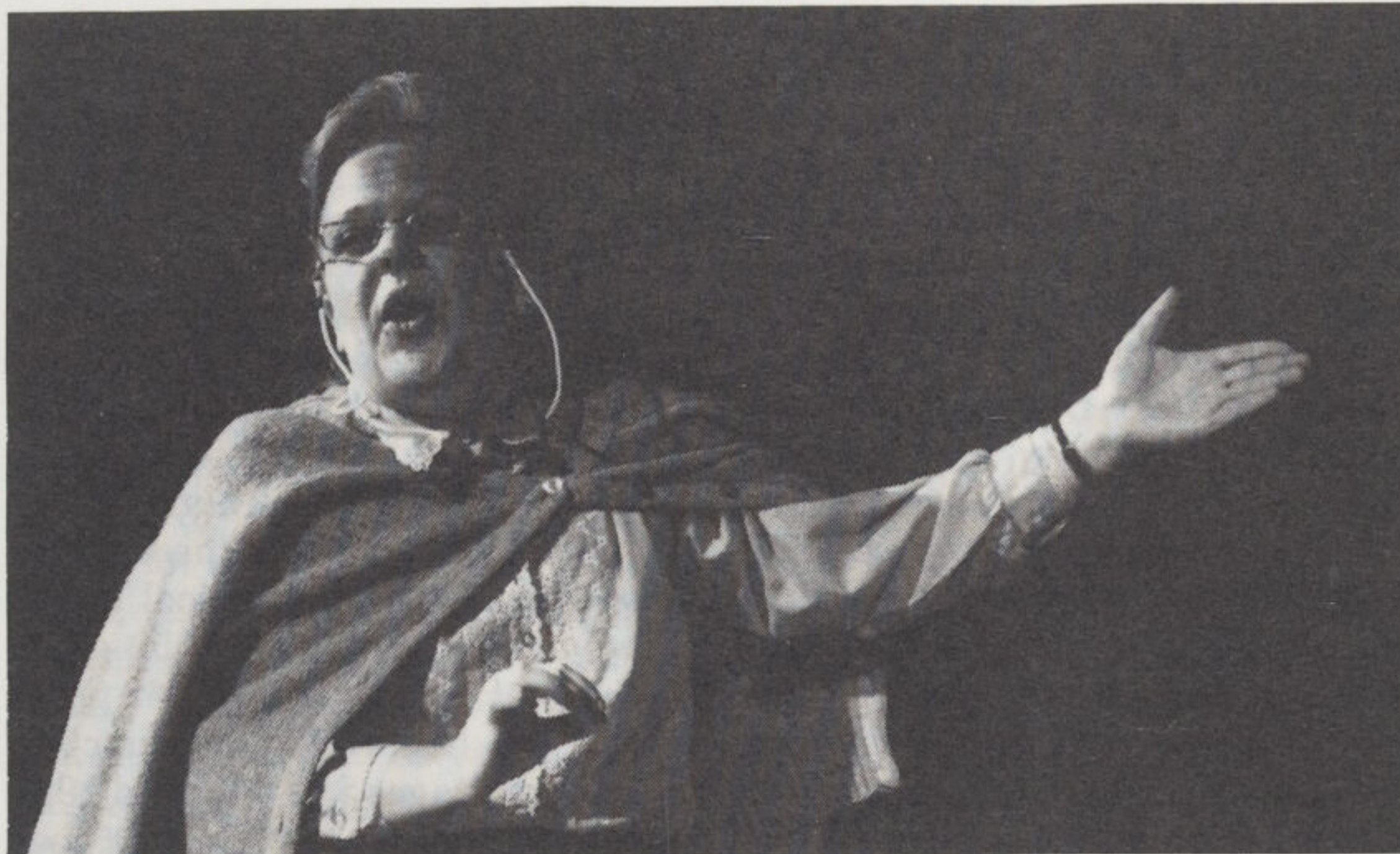
The dreams, despair and everyday life of the American worker were the basis of the Harvard Law School Drama Society's production of the musical *Working* this past weekend. The nonfictional characters of Studs Terkel's book covered the spectrum of worker emotions and experiences in song and dance.

Play Review

The set was simple; only a metal scaffold adorned the stage. It was the realistic characters — average people that were appropriately at the center of attention. The characters spoke the original words of the actual workers, and even the lyrics of the songs followed their sources as faithfully as possible, giving the entire show an honest sense of realism.

The themes of realism and simplicity were reflected best when the performance itself stayed simple — just a few performers on stage and with no choreography or frantic activity — when the dialogue and songs were allowed to speak for themselves.

The show was a series of individualized scenes that introduced the audience to the many faces of



William R. Duke

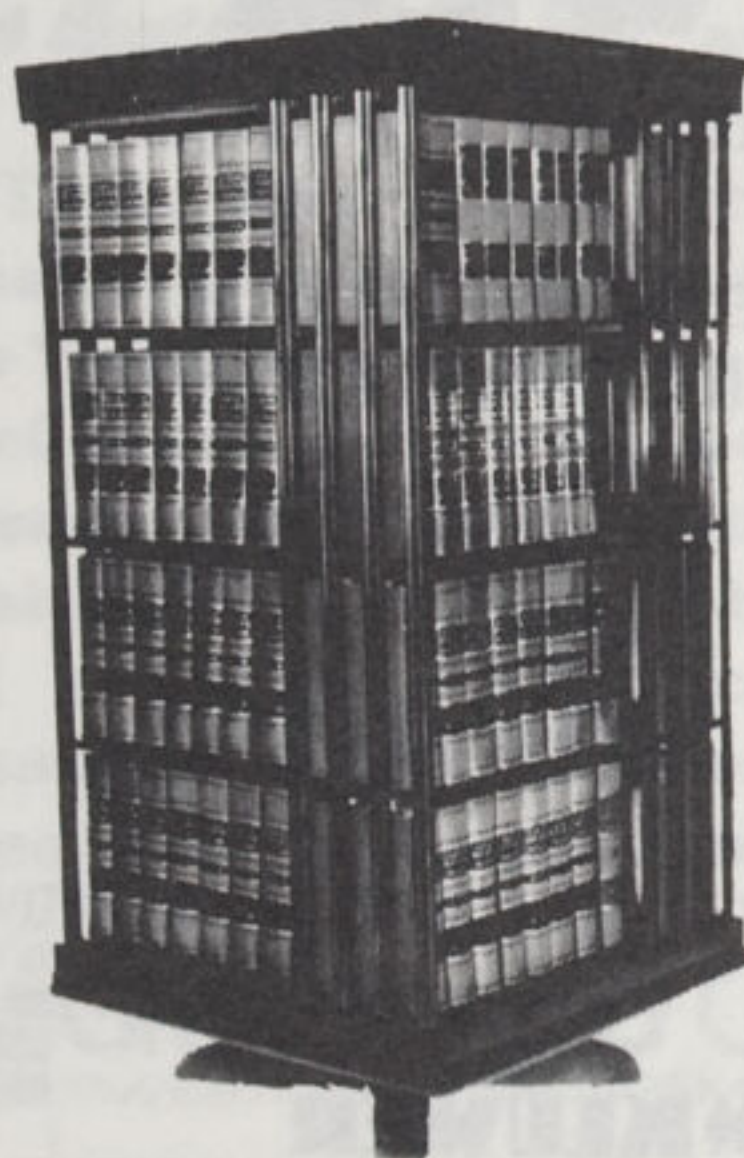
Kathleen Duke, 3L, played a third grade teacher who sang "Nobody Tells Me How."

the "Working American." Though each sequence spotlighted a different worker in a different task, common thoughts and emotions bonded the characters despite their socio-economic divisions.

The parking lot attendant (Jeff Walker) complaining about low tips and the corporate executive (Mike Hughes) downing a "Maalox a minute" both expressed the frustration inherent in their tasks. From the steelworker (Shawn Hays) wondering who drives the car built with the steel he produced to the tele-

phone operator (Roberta Rubin) forbidden from communicating with callers beyond the officially allowed comments, a strong emotional tension emerged, spanning all job classifications. There is anger with life at the workplace coupled with a desire to do work one can be proud of. The show's finale, *Something to Point To*, illustrates the strong attachment, the psychological need, that all the workers had to identify with their work.

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Posner Portrays Judges As Decoders

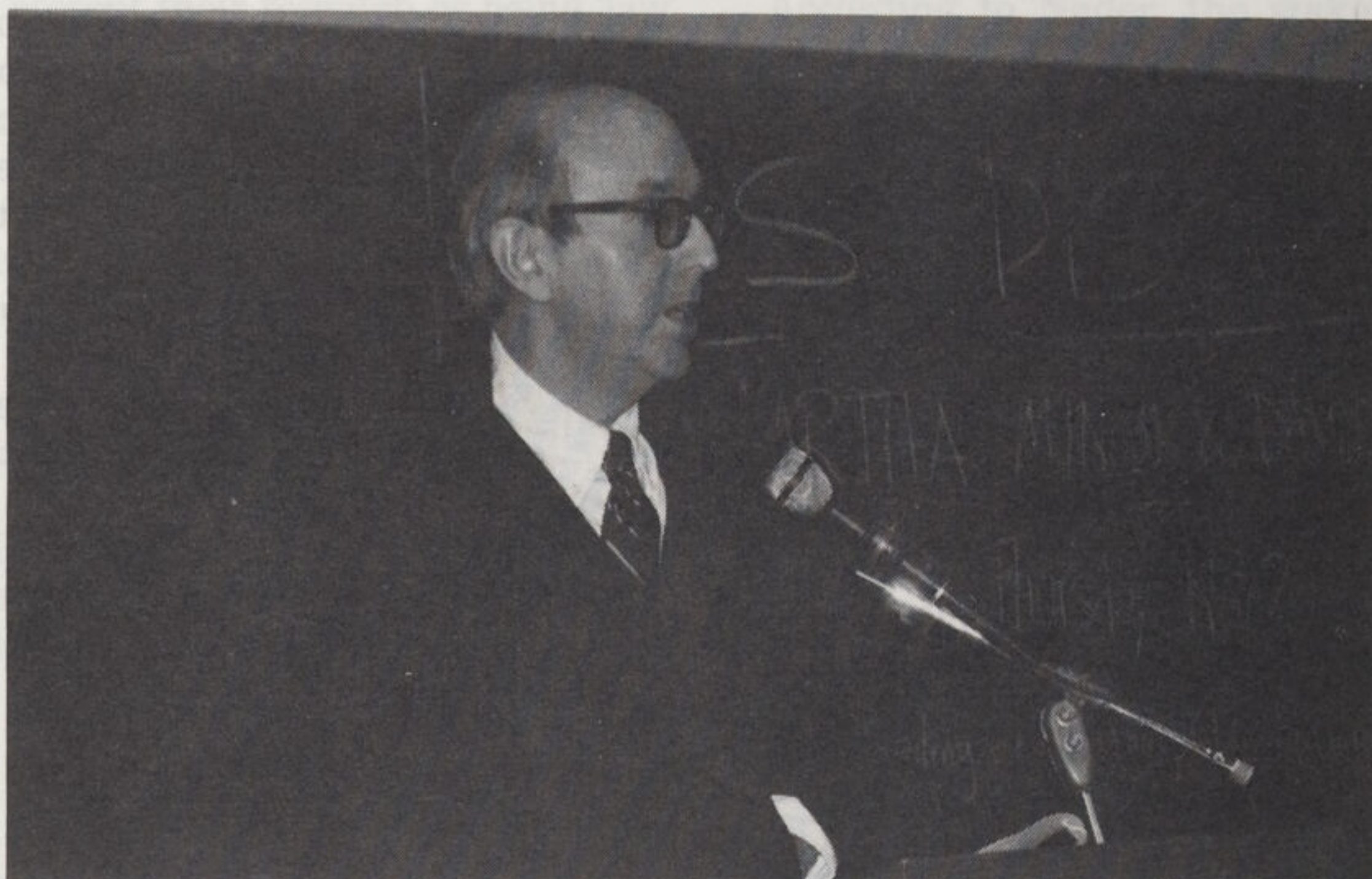
By Jeffrey Levy

Judge Richard Posner delivered a brief speech and fielded a number of audience questions in Austin Hall Sunday night before a crowd of more than two hundred. Posner, a graduate of HLS and currently a member of the Seventh Circuit Court of Appeals, is known widely in legal circles for his work on the penetration of economic analysis into judicial decision making. Posner's speech, "Economics and the Constitution," focused on the role of economics in constitutional adjudications and on the possible application of economics to constitutional law.

Decrying the approach of those who view the Constitution as an "empty vessel" into which judges pour their own ideas of sound policy, Posner instead argued for a consciously non-interventionist approach to constitutional interpretation. Judges, he said, should be constrained by the text, structure, and history of the Constitution, in conjunction with the principles of judicial self-restraint and *stare decisis*. Posner portrayed the role of federal judges as "decoders" of communication from the Framers. But when the communication is not clear, he argued, economic analysis can often help judges decide a case.

Posner used this framework to uphold the constitutionality of capital punishment. Historical evidence, Posner claimed, supports this view: at the time of the Eighth Amendment's inception, capital punishment was widely accepted and regularly employed. Philosophically, he maintained, there are strong retributive and utilitarian arguments in favor of capital punishment. "Immanuel Kant was a great capital punishment buff," Posner said. He also cited a study by Isaac Ehrlich on the economic impact of capital punishment that presents strong evidence of its significant deterrent effect. Finally, Posner said that capital punishment is supported by 75 percent of the nation.

Still, Posner admitted that there



Sal Casente

Seventh Circuit Court of Appeals Judge Richard A. Posner addressing the Society of Law and Public Policy on November 16th.

are many clauses of the Constitution which are unclear. "The task of interpretation," he said, "is not exhausted by a study of textual history. Judges must also abide by principles of self-restraint and *stare decisis*." For Posner, self-restraint cannot be equated with mere caution or prudence; it implies a disposition to limit the power of federal courts in relation to other branches of government. As Posner put it, self-restraint means "pulling in the

federal judicial horns." But, said Posner, self-restraint is "a tie-breaking principle only" and does not preclude judges from ruling on other governmental action.

Posner argued that *stare decisis* compels judges to abide by existing interpretation of the Constitution, unless some good reason to do otherwise is shown. If judges considered each constitutional question

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Ames Final Round Draws Crowd

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escorting Justice Blackmun around the school, noted his wonderful demeanor and attitude toward the competition. Justice Blackmun was an Ames Finalist on the brief in 1932.

The teams this year were; for the plaintiffs, The Anatoly Shcharansky Team: David Bryan Bassett, Saul D. Brenner, Paul A. Engelmayer (oralist), Christopher Grisanti (oralist), Barbara J. Kelley, David S. Wolin. For the defendants, the Six Unknown Named Agents Team: Steven D. Ecker (oralist), Lisa Lang, James P. Kouhandeh, Cameren A. Stracher, Claire M. Sylvia and Richard B. Zabel (oralist). The

Agents took both best brief and best oralist (Zabel). However, all judges noted the excellent quality of all the briefs and arguments, asserting that the winners' margin of superiority was quite narrow.

Several changes from last year's program included an attempt to make the case more accessible to many people. The panel, however, caught one of the oralists on a technical jurisdictional issue which could have potentially thrown the case out of the Supreme Court. Both issues in the case are quite possibly headed for the Supreme Court. The future of this actual litigation is uncertain; however, the Ames Litigation has ended, at least until next fall.

Riding Along With Cambridge's Finest

By Adele Hendrix

From 4 p.m. to midnight on Friday, Nov. 7, Bill and Maureen of the Cambridge Police Department patrol "Sector 6," the area extending from Harvard Square up to Porter Square and from Cambridge Street to Putnam Avenue.

Thanks to the Cambridge Police Ride-Along Program, arranged through the Harvard Government Attorneys Project, I am able to accompany them in their patrol car from 6-8 p.m. that evening.

Bill — who along with Maureen requested that only their first names be used — has been with the Cambridge Police for four years. Originally from New York, Bill took several civil service tests when he moved to the Boston area. Because he found that police work was the most "financially remunerative" of these jobs, he decided to become a policeman.

Maureen has only been with the Department for six months. Originally from Cambridge, she used to work at Cambridge Ridge and Latin High School, but was persuaded by some friends to take the police competency test. She received a perfect score, and decided to give police work a try.

Our first stop of the evening involves pulling over a driver who has let her car's inspection sticker expire. Both Maureen and Bill get out of the patrol car and approach the stopped car, Maureen on the driver's side and Bill on the passenger's side. Both shine flashlights into the car, check the inspection sticker and briefly talk to the car's occupants before returning to the patrol car to write out a citation.

The inspection sticker had expired last April, said Maureen. "If it expired a month ago, we give them a warning, but now we can't let that go," she says. "I hate doing this, but it's life in the big city."

After the \$50 fine has been issued, Bill explains what goes through his mind every time they stop a car.

"You might think I'm abrupt if I pull you over," he said, "but I'm scared. That's why I leave the door

open when I get out of the car, so I can run behind it for protection if I have to. And so they can't open it into me. And that way they have to hand things out to me, I don't have to put my hands in the car. If you put your hands in the car you can get dragged."

"The more time you spend by a car," he said, "the more danger you'll put yourself in."

Besides the chance of physical attack by another person, there are also other more subtle dangers that can befall a police officer.

Disease Is A Risk

Bill is always concerned about the danger of getting a disease from the people he comes in contact with as a policeman. To guard against this he always wears a pair of leather gloves whenever he has to leave the patrol car.

One evening a drunk who had been in a fight had to be taken to the hospital. "I didn't touch him," said Bill. "I don't like touching people who don't look clean. Two months later the hospital called me

and said the guy tested positive for T.B."

Suddenly, Maureen and Bill hear their car called over the police radio. A break-in is in progress over on Church St. and the patrol car speeds down Mass. Ave., lights blazing and siren roaring.

My heart beats faster and I can feel my adrenaline flowing, even though I have had to promise to stay in the police car at all times.

Even with the lights and siren going, some drivers are slow moving aside for the patrol car. "Out of the way, fool!" Bill yells at one driver.

Despite the delays, we reach Church St. in under three minutes.

Bill and Maureen search the area, but any would-be burglars are gone.

We continue driving around Sector 6.

Although Sector 6 technically includes Harvard Yard and the Law School, the Cambridge Police do not have jurisdiction in those areas. Any University owned property is under the jurisdiction of the University

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Working Peaks With Millwork

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Musically, the show was consistent throughout. The small three-piece band of Michelle Yao, Joel Bakan, and David Gregg performed the music of Craig Carneli, Micki Grant, Mary Rodgers, Susan Birkenhead, Stephen Schwartz, James Taylor, and Michele Brouman.

Some songs stood out. *Un Mejor Did Vendra* (sung by Dan Kohn) had a simple urgency that seemed exactly suited to the plight of the migrant worker. *Just a Housewife* (sung by Mary Jo Sterbank Weiner) took the monotonous aspects of housework and converted them into a song that reflected the dull work that is the housewife's lament.

Millwork featured one of the strongest vocal performances of the night, with Susan Power Robinson

celebrating a spirit unbroken by the oppressive forces of the factory. *It's an Art* (sung by Jennifer Matteis) was one of many songs that brought out the role of imagination in a worker's life along with, the need to make work exciting and new every day.

As the show neared its end, it hit a high note with Dan Daniels's rendition of *Fathers and Sons*, a moving piece that brought out the theme running throughout the show — the willingness of workers to sacrifice and toil, often with little or no reward, in hopes of improving the lot of their children.

Overall, *Working* summed up the spirit of the American job scene, its highs and its lows, with an earthy approach that was thought-provoking and thoroughly entertaining.



Nader Group To Watch HLS "Regression"

(Continued from Page 1)

of academic excellence helped resolve the major challenges to the justice system in America?"

HLS Regressed

Since that time, Nader says HLS has "regressed unbelievably. We've gone back to the Fifties." He attributes the change both to a current emphasis on "careerism" and to an absence of "fear and anxiety in the classroom. Professors don't think students care."

According to Nader, professors find external niches rather than trying to change classroom malaise. Whereas previously professors were accused of elevating scholarly research over students' concerns, the Eighties' version of this conflict now finds professors devoting substantial periods of time to outside legal work on behalf of their own clients, Nader charged.

"Being a Harvard Law School professor was once a full time job," recalls Nader. "First came Review articles and treatises, then Professor Casner went to Ropes & Gray. Louis Loss broke new ground by closely involving himself with the insurance industry. Today, professors moonlight too much. It turns off students."

HLS policy allows a maximum of 20 percent of professor's "total professional effort" to be spent on outside activities.

Survey Of Prof. Moonlighting

One of HarvardWatch's first steps, confirms Weissman, will be to accumulate and publish a survey of such outside activities by Harvard faculty members. Nader notes that this is not the first time such a project has been attempted: "A law student named Tim Massas tried this three or four years ago. Something like seven out of fifty surveys were returned."

John Richard, an assistant to Nader, stressed the importance of publishing detailed descriptions of professors' activities: "An absence of disclosure allows professors to

present their research as being 'law' in the pure sense," whereas, Richard states, it is in fact a close approximation of the vested interests of the client.

Dean James Vorenberg, '51, expressed satisfaction with the present policy towards outside legal work. Vorenberg himself monitors compliance with the rules. "I will contact the faculty member and get the facts when I have reason to believe that a faculty member may be going beyond permissible amounts or kinds of consulting," he said. Vorenberg would pursue potential violations when brought to his attention from the media or other sources outside the HLS faculty, he said.

Nader believes that HLS students face conflicts similar to those arising from the outside activities of professors. Speaking at HLS in 1969, Nader urged HLS to develop "students as investigators." Noting that "student activism involves the precarious combination of reform and hedonism and the curious problem of commitment and compromise," he challenged students to seek change by taking advantage of their presence at HLS and its attendant potential for impact. "Changing the law school, changing from within, is more valuable, but activist students still go outside," Nader added. "You can plant 100 trees or pick someone else's fruit."

According to Nader, the stakes have risen: "We have pollution, corporate crime, and the arms race. We also have a sellers' market for corporate law firm jobs. At the same time, the numbers [of lawyers] taking [jobs in] public interest law are declining; debt burdens are immense and repayment subsidies are inadequate. There is a real need for more." It was in his 1969 speech at HLS that Nader originated the concept of students funding colleagues who accept public interest jobs by dedicating five percent of their post-graduate income to a subsidy fund.

When asked whether recent controversies over CLS and tenure issues are indicative of internal growth at HLS, Nader deemed such discussion "hot debate in a remote oven."

While Nader asserts that HLS continues to waste energy and resources over internal squabbling, Vorenberg offers a different assessment: "In general, I believe we have taken advantage of differences of views within the faculty and legal education to try to add to the breadth and diversity of what we teach here and also of the research and reform activities of the faculty." Vorenberg declined to comment on the appropriateness of HarvardWatch as an outside monitor until he can familiarize himself with the newly established organization. ❧

**Next RECORD:
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HAPPY THANKSGIVING!**

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The SEC's Silver Lining

Drexel Burnham Lambert investment bankers have been subpoenaed by the Securities and Exchange Commission in the ongoing investigation into insider trading, a result of Ivan Boesky's frantic attempts to save his hide by cooperating with the SEC.

According to the *Boston Globe*, Boesky's lawyer suggests that despite his cooperation and his agreement to pay \$100 million in fines, Boesky "will be charged with a single crime" and may be headed for jail. The worm may have turned too late.

Unsophisticated observers of the legal scene — members of the Cambridge community who hang out in the Backbench Pub — see the SEC investigation, and the greater attention being paid white collar crimes in general, as one part in a scheme to provide full employment for a greater number of HLS students interested in the study of criminal law.

One HLS neighbor, Bill R., suggests that the rash of insider trading scandals following on the arrest of Drexel Burnham managing editor Donald Levine last spring may be a boon to those members of the HLS student body who choose to concentrate on the study of criminal, rather than corporate, law. Enthusiastic SEC prosecution of complex white collar criminal cases could change the "supply and demand" situation faced by HLS graduates. The SEC demand for lawyers skilled in corporate and criminal matters, and interested in challenging and complicated work, would increase. Further, SEC prosecutions would provide an ample supply of ideal defendants — defendants who can pay their legal bills without carrying the taint that turns a criminal defense lawyer into a "mob lawyer" or a "drug lawyer." Given the increasing number of law school graduates going into money management and investment banking rather than legal practice, one can envision a concatenation of trends that would result in one half of the 1990 HLS graduating class being trained to defend (or prosecute) the other half.

If this prospect is less than compelling for some HLS graduates, an alternative exists. Students of this law school could employ their substantial talents to a recently popular and very exciting career: international gun-running. There is, however, one catch. To avoid being prosecuted for their work in this field, these new alums would need to secure a high-ranking position in the federal government.

R.J.P.
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HARVARD LAW RECORD

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Fenno

In a rare mood, flushed with school spirit, Fenno decided that he should make his annual visit to the Langdell Law Library. Actually, Fenno's bookie was hunting for him and so Fenno needed a place to hide where no one would ever think of looking for him. Fenno quaffed his last can of *Meister Brau* and courageously trudged over to the library.

Fenno dragged himself up four flights of stairs and entered the gaping maw. Once he met with the approval of the ever-courteous door guard by subjecting himself to a strip search as well as showing three pieces of identification and a certified authorization from the governor, Fenno looked around for the Reference Desk.

Through the gloom of the dimly lit cavern — illuminated by six 12 watt lightbulbs — Fenno was able to make out the form of a student gesturing wildly to a librarian. "Probably a 1L doing a research paper," Fenno thought as he groped his way over to the appropriate desk.

After waiting patiently behind the ever-enthusiastic 1L, Fenno asked the reference librarian for a book that he had always intended to read: *The History of the Beer Industry in America*, by X.S. Prophits.

"I'm sorry," replied the librarian, "we don't carry any interesting books here in Langdell. I think that book will be at another library on campus. Why don't you call and have them send it through inter-library loan?"

Fenno shrugged and called around to find out where the book was. Sure enough, it was at the Business School. Fenno called the librarian at the B-School and asked to borrow the book through an inter-library loan.

"I'm sorry," replied the voice on the other side of the phone. "We don't make any inter-library loans to students."

"But," Fenno argued, "I thought Harvard libraries were supposed to serve the students. We pay for them, don't we?"

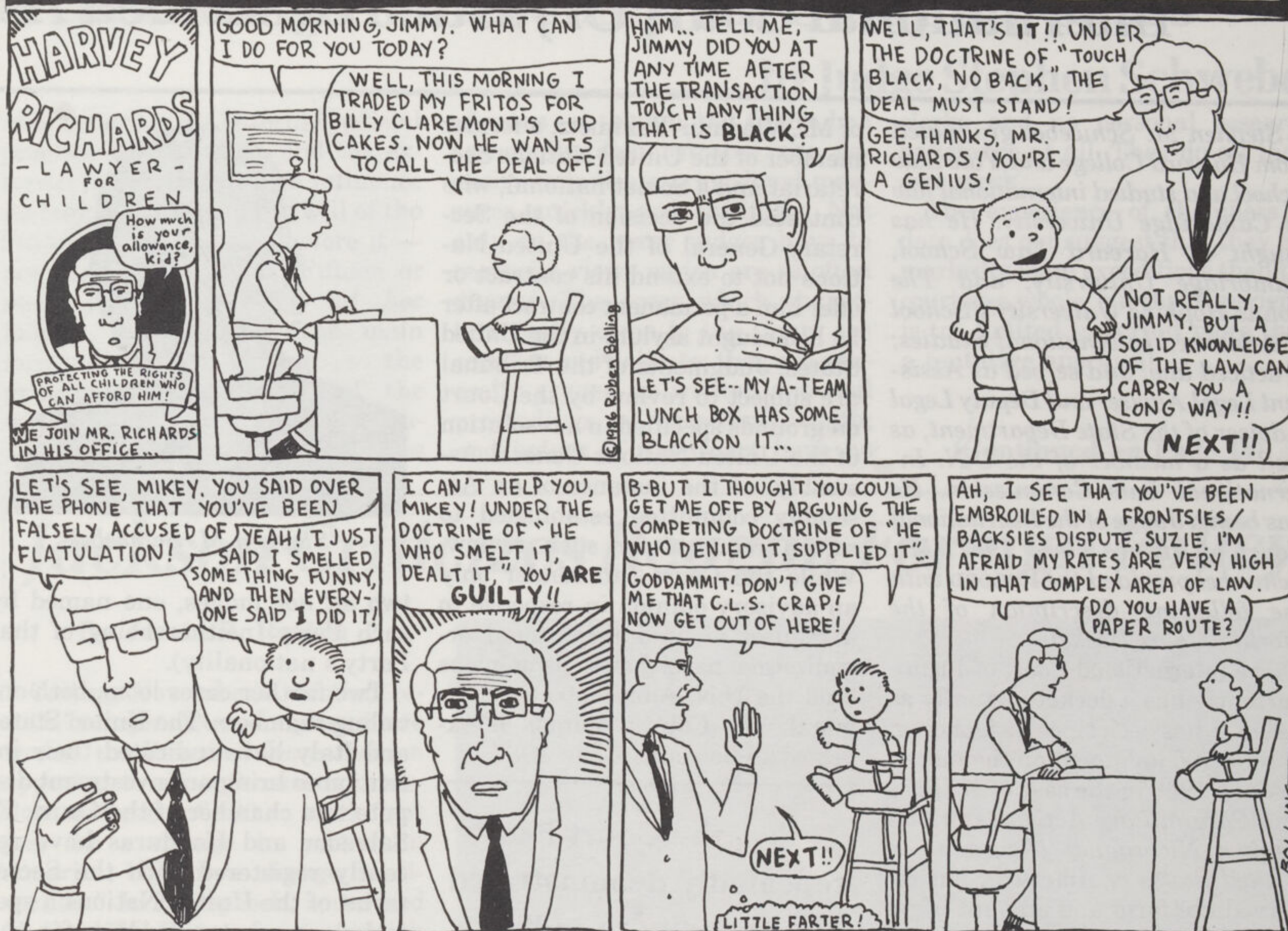
"No, that's a common misconception," the librarian answered. "We only make inter-library loans to paid faculty and staff. You know, people who have cars and who can drive to the Business School. You, on the other hand, will have to walk to the B-School through the snow and sleet to get your book."

Fenno still had to avoid his bookie, so he walked over to the B-School library. Upon entering the library, he was stopped by four uniformed guards. "Here's your cup," one guard snarled, "get in there and fill it up to the second line." Fenno, grateful for all of the beer he had consumed earlier, did as ordered. While the urinalysis was being completed, Fenno placidly waited for permission to enter. Suddenly, the lab technician rushed out screaming "Keep him here! The Med School people are on their way over! This guy is clinically dead!"

Fenno would have to wait for another day to read his first book of the year. ☞

TOM THE DANCING BUG

BY
RUBEN BOLLING



Great Moments in the Law

Kamar International Inc. v. United States, No. 84-05-00718, slip op. at 1-2, 4-5 (C.I.T. Oct. 16, 1986) (Di Carlo, Judge, overruling a classification by the United States Customs service): Plaintiff challenges the United States Customs Service (Customs) classification in 1982 of stuffed toys from Taiwan depicting E.T. the Extra-Terrestrial (E.T.).

The question presented is whether stuffed toys depicting the imaginary character E.T. which do not represent any person or thing known to be living on earth or elsewhere are "toy figures of an animate object" within the meaning of item 737.30, TSUS. Defendant contends that they are not, but the Court finds to the contrary...

The term "animate object" has

not been judicially limited, as defendant contends, only to toy products which represent a living species of person or animal known on earth. If defendant were correct in its interpretation of "animate" potential classifications would result in illogical distinctions. Assuming a stuffed toy of Captain Kirk of Star Trek fame was not classifiable as a doll, it would be odd to have such a toy included in a category for animate objects while similar stuffed toy of a fictional creature from the imaginary planet Vulcan, such as Mr. Spock, would be excluded. This result seems especially incongruous when the only apparent differences between the two would be Mr. Spock's pointy ears and total lack of human emotion.

The precedent relied upon by de-

fendant stands for the proposition that "animate" refers to living beings possessing animal life as opposed to robots or plants. This definition of animate object is broad enough to encompass fictional creatures with humanoid or animal features and characteristics that represent purported life forms on other planets.

The stuffed E.T. exhibits before the Court have humanoid or animal features such as eyes, nose, mouth, arms, hands, fingers, legs, feet, and toes. The movie and book about E.T. reveal that E.T. possesses most traits associated with humans. In these respects E.T. even though fictional represents or characterizes a living being possessing animal life as opposed to robot or plant "life."



International Court Of Justice Described As

Stephen M. Schwebel graduated from Harvard College and Yale Law School and studied international law at Cambridge University. He has taught at Harvard Law School, Cambridge University, and The Johns Hopkins University's School of Advanced International Studies; practiced law; and served as Assistant Legal Adviser and Deputy Legal Adviser of the State Department, as well as a member of the U.N. International Law Commission. He has been a Judge of the International Court of Justice since 1981. Mr. Schwebel provided the RECORD with the following description of the World's Court Docket.

The International Court of Justice currently has a docket virtually as full as it has been since its founding. It rendered judgment on the merits in June 1986 in the case of *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, but reserved the form and amount of reparation due from the United States to Nicaragua (failing agreement between the Parties) for determination in a subsequent phase of the proceedings. Accordingly, that case continues.

In July, 1986, Nicaragua filed two further cases: *Border and Transborder Armed Actions (Nicaragua v. Honduras)* and *Border and Transborder Armed Actions (Nicaragua v. Costa Rica)*. Honduras has challenged the jurisdiction of the Court, and questions of jurisdiction and admissibility will be initially taken up, with the agreement of the Parties, in a preliminary stage of the proceedings, which should be concluded in 1987. Costa Rica has not objected to the jurisdiction of the Court, and the memorial of Nicaragua and counter-memorial of Costa Rica on the merits will be filed in due course.

A fourth pending case is the *Application for Review of Judgement No. 333 of the United Nations Administrative Tribunal*. That Tribunal ruled against the complaint

of Mr. Vladimir Yakimetz, a former member of the United Nations Secretariat and a Soviet national, who contested the decision of the Secretary-General of the United Nations not to extend his contract or offer him a permanent contract after he had sought asylum in the United States. Judgments of the Tribunal are subject to review by the Court on grounds specified in a resolution of the United Nations General Assembly, at the instance of an Assembly committee established to screen requests for such review. While the Court can render only an advisory opinion in response to a request of an international organization, nevertheless its opinions bind the U.N. Administrative Tribunal. The Court's opinion is expected to be rendered in 1987.

"... the Court has repeatedly demonstrated the capacity to indicate provisional measures quickly and skillfully."

While the Court almost invariably has sat *en banc*, as in the cases brought by Nicaragua and in all advisory proceedings (of which Yakimetz is the 18th), the Court's Statute provides that the court "may at any time form a chamber for dealing with a particular case." That provision was invoked for the first time by the formation of a chamber in the *Gulf of Maine* case between the United States and Canada, in which judgment was rendered in 1984. Currently, a second chamber is at work, in the case of the *Frontier Dispute (Burkina Faso Mali)*; a judgment is expected shortly. The chamber in the *Gulf of Maine* case was composed of four judges of the Court, including the judge of United States nationality, and a fifth, *ad hoc* judge named by Canada. In the *Frontier Dispute* case, three judges of the Court have been joined by



Stephen M. Schwebel

two *ad hoc* judges, one named by each Party (neither being of that Party's nationality).

Two further cases loom, both entailing chambers. The United States and Italy have indicated their intention to bring an investment dispute to a chamber of the Court. El Salvador and Honduras have recently registered with the Secretariat of the United Nations a special agreement providing for the submission by the end of 1986 of certain frontier and maritime boundary disputes to a chamber of the Court. Thus when these cases are filed, it seems likely that the Court will have some six or seven cases on its docket.

That will strike a Harvard Law Student, familiar with the staggering burdens of the Supreme Court of the United States, as exceedingly light. In fact, it is not. It must initially be remembered that only States may bring contentious cases to the Court. Thus the body of potential litigants numbers not in the millions, but some 165. Moreover, there are many reasons why States are not prone to submit their legal disputes — of which there is no shortage — to international adjudication; a discussion of that well travelled topic is beyond the scope of these remarks. But in any event, the International Court of Justice, as currently constituted and equipped, is not in a position to dispose of a large number of cases

Off the Record Proceeding Ponderously On Complex Cases

by Judge Stephen Schwebel

in short order. Its internal judicial practice is ponderous, and the external imperatives which influence its tempo — those of the will of the States parties to cases before it — are rarely expeditious. Fifteen or more judges (counting *ad hoc* judges), representing "the main forms of civilization and . . . the principal legal systems of the world", do not form a body calculated to deal rapidly with sheaves

of cases — though the Court has repeatedly demonstrated the capacity to indicate provisional measures quickly and skillfully. Not only do the many judges have to reconcile views which are so often diverse. The cases which characteristically come to the Court are complex and delicate; they are generally argued, in written and oral proceedings, at exceeding length; and judges of the Court have no

clerks and no personal research assistance at all. They do all their own work.

The experience of chambers to date does not suggest that they are markedly more expeditious than the court as a whole, but that experience is too limited to permit more than a tentative appraisal.

(Continued on Page 14)

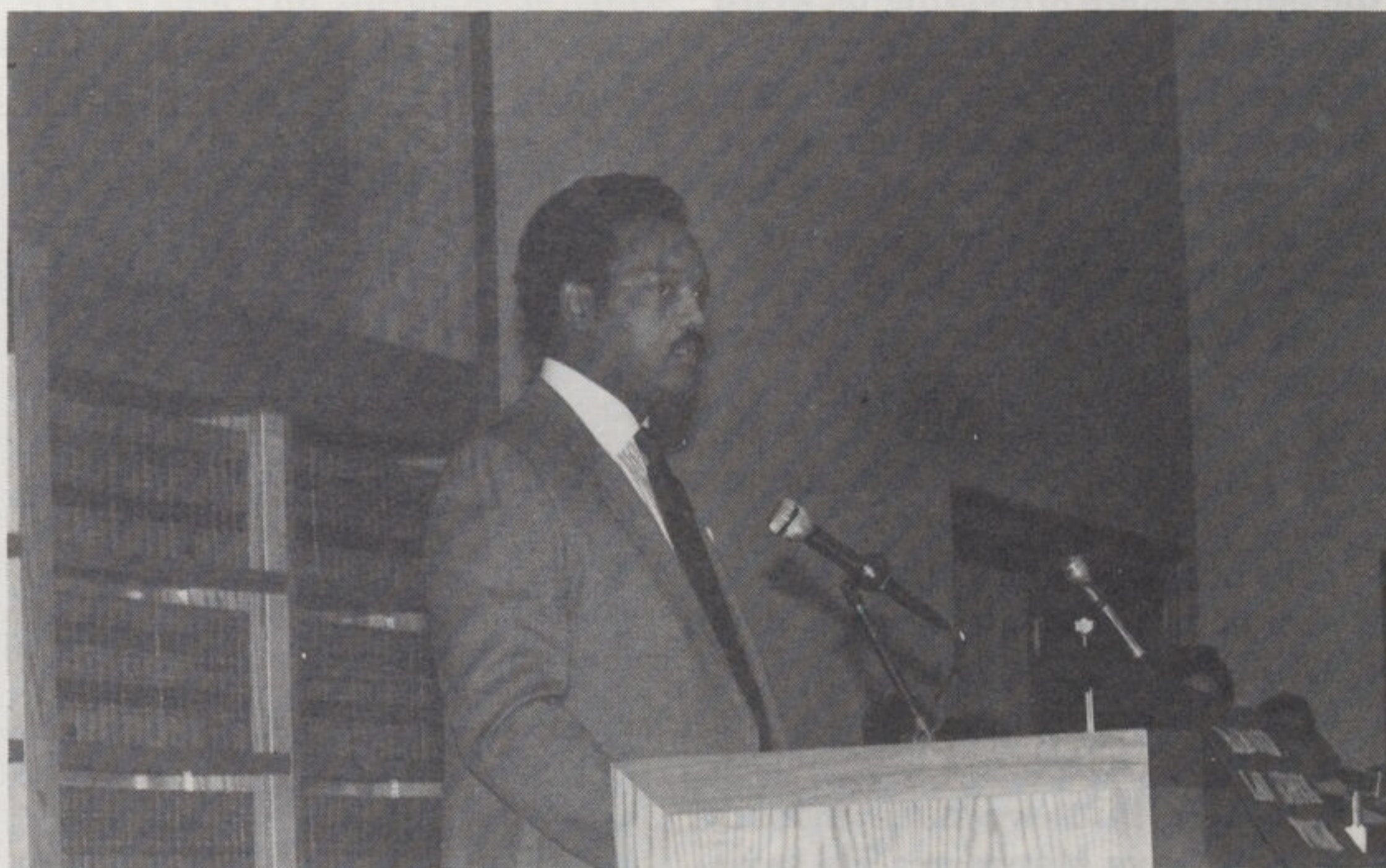
Jackson Criticizes Reagan Foreign Policy

By Jamin B. Raskin

Calling November's election results "a major victory for progressive forces," the Reverend Jesse Jackson appealed to an enthusiastic, overflow audience of 400 to work "not just for a change in parties in America, but for a change in direction." In his speech, sponsored by the HLS Forum for its fortieth anniversary, Jackson attacked military interventionism abroad and "class warfare" against the poor at home.

Jackson, whose 1984 bid for the Democratic presidential nomination galvanized black voters and progressives in a "rainbow coalition," hinted that he might run again despite the official disfavor of the Democratic Party apparatus. "The Fairness Commission was not fair to us," he said, referring to the commission formed by the Democrats in response to Jackson's and Gary Hart's complaints about delegate selection procedure. "And we were locked out of the Policy Commission," he said.

When asked by a student if he might run outside of the Democratic Party, Jackson said that "I prefer to fight rather than switch." The Rainbow Coalition will meet at the end of November to discuss 1988, but Jackson said that he intends "to represent the locked-out wherever the power is."



Sal Casente

Rev. Jesse Jackson addresses the Harvard Law School Forum on the 1986 elections.

Jackson used the revelations of President Reagan's secret dealings with Iran to renew his long-standing criticism of the President's foreign policy. "[The United States has] been exercising power with arrogance instead of with grace. The new deal with Iran jeopardizes Americans in the region by raising the ransom price on their heads."

Jackson stated that the "president has a foreign policy which he can neither understand nor articulate himself."

Drawing loud applause from the audience, Jackson said, "it's time to recognize that most people in our

world are not rich and not white, and we need policies that work for the world's majority."

Denouncing President Reagan's South Africa policy as "destructive engagement," Jackson said that corporations leaving South Africa should not just transfer control of local operations to other teams of white executives, "but actually get up and go and take their business to Tanzania, Mozambique, Zambia, and other countries which are crying out for the capital." Urging that the divestment movement keep

(Continued on Page 16)

Police: Cambridge Relatively Safe

(Continued from Page 6)

Police. And while in general students are not a big problem for the Cambridge Police, there is definitely "more trouble out of Harvard students than out of M.I.T. [students]," said Bill. "But maybe if they had a Harvard Square the Techies wouldn't be as good," he added.

Punks With Weird Problems

In the Square Bill said the punk-rockers can be especially disruptive. "Live and let live," he said, "but the punkrockers are giving us weird problems."

Once, Bill explained, some of the punkers stole some sticky goo from the construction workers in the Square and proceeded to smear it all over buildings in the Square.

But Bill says he doesn't like arresting juveniles. "Maybe it was the way I was brought up," he says, "but I just don't like locking up kids."

Another call comes in for Car 6. A drunk is being a nuisance in a neighborhood liquor store.

Maureen and Bill get out to talk to him.

"We told him 'we have a room for you,'" says Maureen. "He says, 'No, no, no, I'll get going.'"

Being new to the Department, Maureen has some special problems to deal with. "When you're new you bounce and bounce between sectors and you break up friendships between partners. People don't like that . . . It's like marriages in these cars."

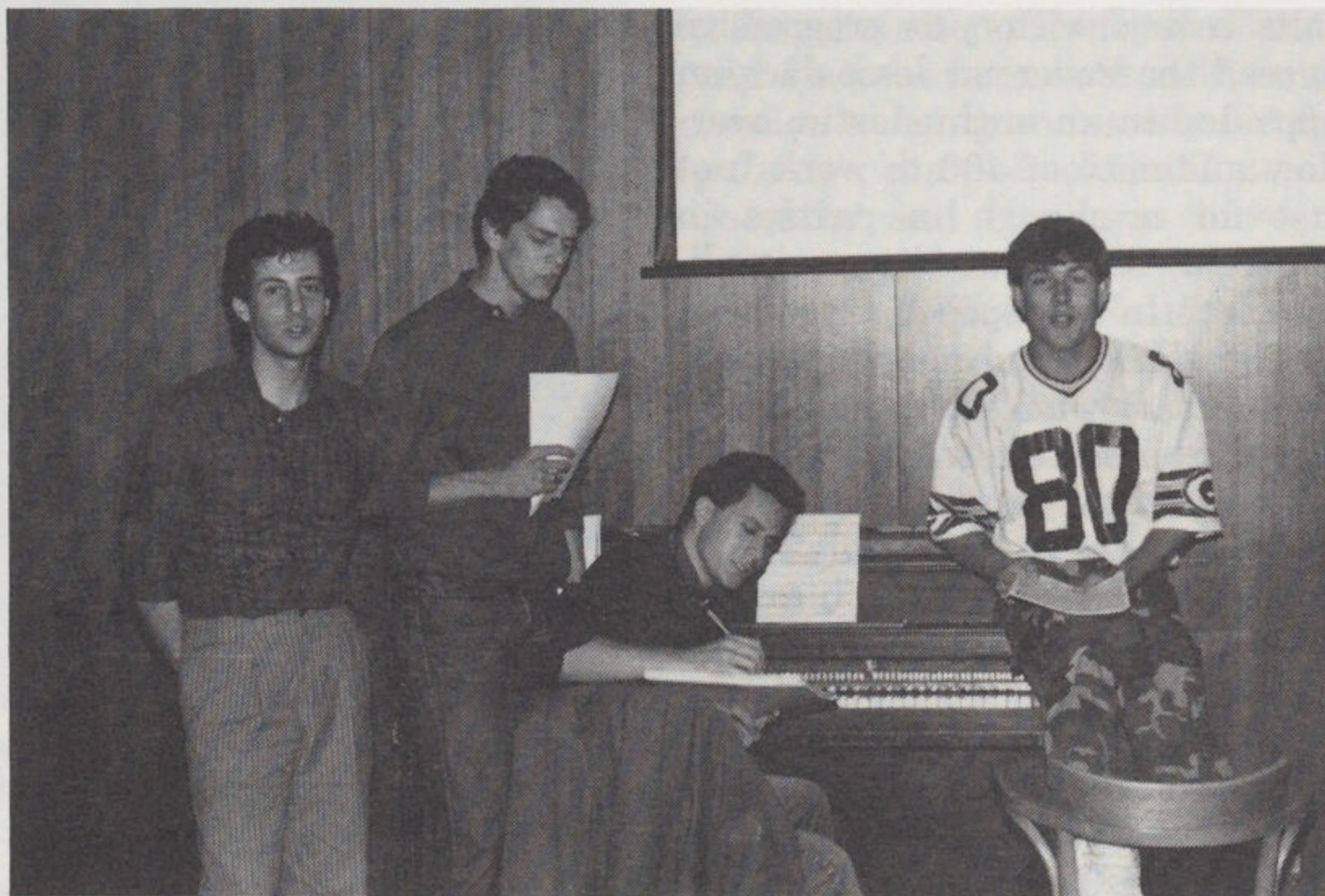
Once Maureen and another rookie were paired together in a patrol car and had to pursue some people who had robbed an ice cream store. "They tell you not to get excited on the radio, but we just started yelling," said Maureen. "We were so nervous. . . . After we caught them we laughed and laughed. Two rookies, boy were we nervous."

Although the dangers that Maureen and Bill face every time they

work are very real, they both agree that Cambridge is a relatively safe place for a police officer.

Although there are a lot of shootings in Boston, neither Bill nor Maureen has ever been involved in a shooting in Cambridge. In Cambridge, they say, the majority of crimes are crimes against property, although they also get a fair number of domestic calls and indecent exposures.

My stint riding along with Maureen and Bill is almost at an end, while they still have four more hours to go before their eight hour shift is through.



HLS Singers Avoid Books

By Greg Herbert

Four law students who got tired of talking about probable cause and actual malice, and wanted to put their musical talent to use instead, have joined HLS barbershop quartet, "Class Action." Bass, Richard Gilly, 3L, baritone, Mark Batten, 2L, top tenor Ron Latz, 2 L, and lead tenor, Brian Trexell, 1 L, have been getting away from their books every once in a while to provide a

Study Results

(Continued from Page 3)

lawyers, but are all investments bankers.

The study also asked graduates about their personal and professional lives. HLS members of the class of 1981 have maintained lofty goals for themselves, rating opportunities for professional achievement, intellectual challenge, and adequate time for family and friends as their top priorities. Though many 1981 graduates believe they've attained financial stability, wealth, followed by public recognition and time activities not related to their careers were most often lacking in their lives.



little light entertainment around Cambridge.

"The best thing about it is just getting together with a group of guys who like to sing and forgetting about law for a while," said Gilly. The group has performed at alumni reunions and is planning some local concerts in Cambridge.

The group originally formed in the fall of 1984 when Michael

(Continued on Page 14)

Posner Argues For Use Of Economic Analysis

(Continued from Page 5)

as "up for grabs," and continually overturned decisions, they would undercut the legitimacy of the federal judiciary by weakening popular acceptance of the force of judicial decisions.

Posner argued that there is an inherent tension between the teaching of judicial self-restraint and of *stare decisis* if courts engage in an extended period of progressive, activist decision-making, but he offered no avenue of reconciliation.

Posner closed his speech with several examples of how economic analysis can help decide constitutional issues, including the effectiveness of the exclusionary rule. The rule is usually supported on the ground that it deters police abuse of private property rights. Posner said that economic analysis shows that the rule over-deters and that tort actions against the police for illegal search and seizure would be a more appropriate remedy.

During a lengthy question and answer session, Posner fielded queries on a range of issues from the meaning of original intent to abortion law to free speech law.

Posner said that historical research ought to be done in deciding constitutional issues, but ought not to be a strait jacket, since no one really knows the Framers' intentions with regard to how the Constitution should be interpreted. Posner said that he was not claiming a historical warrant to use economics in applying the Constitution. Rather, economics adapts itself well to the type of questions asked in

constitutional law and the notions of balance and competing considerations. Thus, he argued, there are "functional rather than historical reasons for using economics" in constitutional adjudication.

Posner skirted a question on the economics of abortions: I don't think that there's much economists have to say about abortion." His response to a question about recent statements by Attorney General Edwin Meese was cautious: "I shouldn't comment on the executive branch of government," since it would be "injudicious."

Posner saw practical problems with employing political ideology in evaluating high court nominees. "What's sauce for the goose is sauce for the gander," he quipped, claiming that if one party uses ideology to harass the other, it opens itself up to this same harassment in the

future when the other attains power.

Responding to a question about the relationship between moral relativism and economic utilitarianism. Posner said that the more morally diverse a society is, the more prudence judges must have purporting to present the morality of the whole society. "Judges ought not to impose their vision of a just society," he said.

Asked about the recent voter recall of three California Supreme Court justices, Posner declined to answer specifically. But he argued that in general, life tenure will produce a much higher quality of judiciary. The electoral process is corrupting, he argued, since money for campaigns comes from trial lawyers. This practice is inconsistent with the notion of judicial independence.

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World Court Hears More Cases

(Continued from Page 12)

In any event, the Court has been more troubled over the years not by the pressure of too many cases but by the lack of pressure of too few. Whether what is certainly a new, and what appears to be an accelerating, trend towards resort to chambers will persist, is unclear. What is clear is that the World Court for the last few years has been busier than it has been for a few decades, and that it will be heavily engaged for at least a few years more. Whether its business will continue to burgeon thereafter is unpredictable.

☛

HLS Singers

(Continued from Page 12)

Tomkies '86 got a few of his friends together from Lincoln's Inn to practice singing barbershop music. One of the group's first concerts was the Lincoln's Inn Christmas Dinner.

Since then the group has gone through some changes — they are no longer associated with Lincoln's Inn and they have moved away from singing only traditional barbershop material. "We're now more of a male *a cappella* vocal group than a barbershop quartet," said Gilly.

The group still sings traditional barbershop songs like "Wild Irish Rose" and "Mr. Sandman," but is expanding its repertoire to include more popular music such as "I Get Around" by the Beach Boys and other 50's and 60's tunes by groups like the Diamonds and the Beatles.

Upcoming events for the group include a concert at Wellesley College, impromptu performances in Harvard Yard and Harvard Square, and the Back Bench's Pub's annual talent contest.

☛



Suzanne Jackson

Mayor Wilson Goode of Philadelphia addressed students in Ames Courtroom. His speech was momentarily interrupted by demonstrators alleged to be members of the Young Spartacist League.



William R. Duke

Members of the Working chorus (L-R): Jean Chmielewski, 2L; Dionne Christian, 3L; Adele Hendrix, 3L; Dan Daniels, 3L; Mike Hughes, 1L; Roberta Rubin, 3L; Kathleen Duke, 3L; Jennifer Matteis, 2L; Gary Harrington, 2L; producer Nancy Linnerooth, 2L; Mary Jo Sterbank Weiner, non-L; Pamela Thomas, 2L; Cheryl Packwood, 3L; producer Dan Kohn, 3L.

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Progressive Party Pushes Employment Plank

(Continued from Page 11)

the pressure on, Jackson said that, "GM has not pulled out, they've sold out."

Declaring that "the black vote was the major factor in the winning 1986 progressive coalition," Jackson heralded the coming of a new liberal majority in the country. "The Afro-American vote does not stand alone. When we move, Hispanics move, and when Hispanics move, women move, and when women move, the peace movement moves. Progressives in coalition can win everywhere. [Senator-elect] Terry Sanford won in Jesse Helms country."

Jackson, who has been touring the country speaking to groups of farmers and urban workers dislocated by economic change, said that, "full employment is the key plank

of the progressive platform because too many people are unemployed too much of the time. Who are they? They are farmers and cab drivers, they sweep streets, they change beds in hotels, they mop halls in hospitals, they're the first to die in war, the last to share in the benefits of peace, the children in the dawn of life, the obstructed geniuses who never got a chance to blossom, our grandparents. They are the working poor and they are losing under the Republicans."

Asked if he was not replicating the mistake of 1984 by relying on the "politics of special interest," Jackson responded, "You can be sure that *Business Week* and *The Wall Street Journal* are going to keep talking in 1988, so I will, too."

Challenging law students to break from "the politics of selfish-

ness," Jackson concluded by saying that, "There is no world market for yuppies, buppies, or preppies, and there is no human need to be fulfilled by selfish materialism without spiritual balance. I urge you all to be on the frontlines of justice. It's your challenge, it's your chance, it's your choice." He received a standing ovation.

Jackson was received after his remarks by the Forum in a wine-and-cheese reception in ILS. HLS Forum President Jim Peck-Gray told Jackson that he thought student response was unusually enthusiastic. After speaking to assembled friends and Forum members for a few minutes, Jackson excused himself: "It's not that I don't like your cheetos and brie," he said, "but I've got to get some sleep."



Correction . . .

In a November 7 article on the UAW's organizing drive at Harvard University [RECORD, Vol. 83, No. 7, p. 3], Jan Schaffer was incorrectly identified as being a Harvard sec-

retary. Ms. Schaffer does not work for the university; she is employed by the UAW as a union organizer. The RECORD regrets the error.



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