



Harvard Law Record

America's Oldest Law School Newspaper

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25 CENTS

Former Judge Decries Politicization of Judiciary

By Ankur Jay Goel

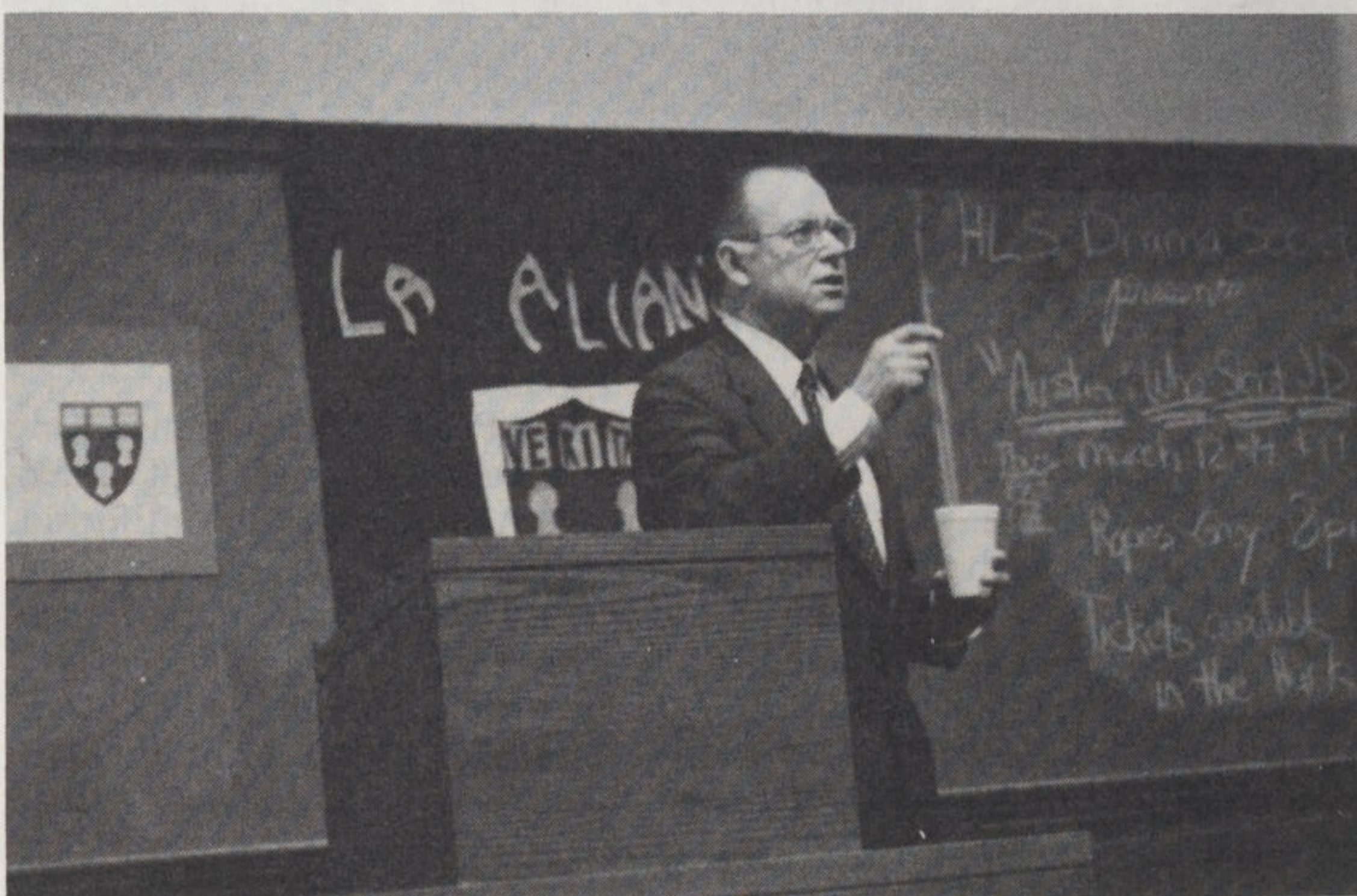
Former California Supreme Court Justice Cruz Reynoso, voted out of office last November, said March 13 that voting for judges was inconsistent with judges' duty to "enforce the Constitution, which generally is a non-majoritarian document" and that the campaign was a "right wing attack" on the Court.

"Constitutional democracy means there are some matters that are too important even for a majority to take away," Reynoso said. Because the judiciary is charged with preserving those rights, election of justices is inconsistent with their role, he said.

California voters chose not to retain Reynoso, Chief Justice Rose Bird, and Justice Joseph Grodin after a powerful campaign was waged to unseat the three, all of whom were appointed by former Governor Jerry Brown. Opponents of the three contended that the justices were against the death penalty and should be removed because they were not applying the will of the popular majority supporting the penalty.

Speaking to about 100 people at an event sponsored by La Alianza and the HLS Democrats, Reynoso said voters were misled into think-

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Sal Casente

Former California Supreme Court Justice Cruz Reynoso recently addressed HLS community.

Nuclear Arms Policy Debated

By Vincent Chang

In a forum sponsored by the *Irish Times*, a Boston publication, four senior Soviet and American officials debated at HLS about nuclear arms policy. The debate will be televised in Australia, Ireland, and the United Kingdom in March. It featured United States Ambassador to the Soviet Union Henry F. Cooper and Deputy Assistant Secretary of State for European and Canadian

Affairs Thomas W. Simons, Jr. defending the American side of the question, "Is It Possible to Make the Transition from Mutual Assured Destruction to Continuing Assured Survival."

Countering them were Soviet Ambassador to the United States Viktor Karpov and Deputy Chief Minister Evgeny Kutovoy.

The debate focused primarily

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Rzeppa: The Man, The Myth, The Campaign



Sal Casente

Joe Rzeppa, 3L, poses in front of "campaign wall" at the Pub.

By Greg Herbert

Candidate Profile:

Full Name: Joseph Jude Rzeppa

Age: 27

Born: Outside Detroit, Michigan

College: Texas Christian University

Other Pre-HLS Experience: One year as seminary student at St. Michael's Abbey, El Toro, California.

Special HLS Accomplishments: Received every grade on the scale from A+ to D.

Activities: Member, Stilettoes, Detroit-based organization pre-

serving "spirit of the 1950's."

Smokes: Pall Malls and Bright 100s Peppermint Cigarettes.

3rd Year Paper Topic: Does not have one yet.

Platform Highlights:

— Have Harvard replace Three Aces with national fast food chain.

— Give Pub hard liquor license, allow Coffee Shop to sell beer to go.

— Establish national Elvis Presley holiday and add his face to Mt. Rushmore. ("The greatest entertainer this country ever had and the last great American hero.")

— Abolish the American League designated hitter rule. ("I'm sacrificing regional loyalties for the national interest.")

You've seen him in the Pub every night, sporting a pompadour, duck's ass, black leather jacket and sideburns that wrap around his face. He is firmly planted in a chair, a pitcher placed religiously in front of him, a Pall Mall growing from the space between his first and second knuckle from which smoke emanates mysteriously, enveloping him in an eerie, mystical, guru-like aura. A plastic cup half-filled with Miller seems surgically attached to his palm, as he looks ahead stoically, gnomishly, as though contemplating becoming the all-being master of time, space and dimension, tranquilly creating a unicorn-like presence resembling a cross between an accountant and a Harley-riding, tequila-swilling axe murderer, and you've said to yourself, "He isn't actually a student here, is he?"

Yes, Joe Rzeppa is a 3L at HLS, and he's running for 1987 class representative. If elected, he and four other class reps will be responsible for organizing social events for graduation.

Rzeppa advocates an activist role for the class rep position. His platform is a curious mix of Fifties nostalgia, consumerism and national sports reform. "The times cry out for a strong leader with the courage to speak out," he said.

But where's his buttondown oxford, a naive 1L might ask. Where's

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HARVARD LAW RECORD

UHS Counsels Students Taking AIDS Tests

By Vincent Chang
and Hillary Richard

The Law School Council (LSC) recently circulated a memorandum to "inform the law school community of the availability of AIDS screening tests through UHS." In line with the nationwide concern over the issue, UHS has decided to offer free tests for those who suspect that they have been exposed to the AIDS virus.

Jay Ward of the Law School Council wrote in his memorandum that "as the risk of infection associated with AIDS has spread more rapidly through the population, personal anxiety about the risk of exposure has increased dramatically." Acting upon this anxiety, the memorandum cautioned "all students gay or straight" to be "informed and to know how to protect themselves." According to the memo, the results of the test will be confidential and a UHS physician will be available to discuss "safe sex" practices and help "individuals assess their risk of exposure."

There is a two week wait for appointments with results following approximately two weeks after that.

The Committee on Gay and Lesbian Legal Issues (COGLLI) distributed a memo to respond to and supplement the LSC memo. COGLLI felt that students should know the full scope of the AIDS testing issue.

The COGLLI memo made the following points: 1) The test given by UHS is not a test for the presence of AIDS, but for the antibody to the virus. It can not give you a "clean bill of health" because of the incubation period and it does not tell you whether or not you *have* the disease, but whether or not you've been exposed to it.

law prohibits the divulging of AIDS testing results to certain groups, such as employers, other groups, such as insurance agencies, are not included in the legislation. There have been a number of cases of breach of confidentiality leading to discrimination, stemming from positive AIDS tests.

3) The important message that should be conveyed to students is that sexual behavior should be altered, regardless of test taking or test results.

4) Alternative Test Sites. Acknowledging the difference in levels of confidentiality and counseling in test sites, COGLLI listed a number of alternative sites with available AIDS testing facilities.

The LSC memorandum came soon after U.S. Surgeon General Everett Koop spoke at Harvard on the AIDS problem. Koop called for proposals similar to those that HLS has adopted, noting that AIDS education programs in other areas have achieved beneficial effects. In par-

ticular, Koop noted that the rate of infection among gay men in San Francisco fell from an 18 percent increase per year during the years 1982-84 to a 4 percent increase in 1985. Without such measures, Koop added, the virus could kill 54,000 by 1990 — the same number of Americans who died during the Vietnam War.

The last similar UHS effort dealt with a considerably less deadly disease. In March 1985, in response to an outbreak of measles among 50 Boston University students, UHS encouraged students to determine if they were at risk and to receive immunizations to prevent further spread of the disease.



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Candidates Compete For Class Committee Votes

By Vince Chang

In marked contrast to last year's version, the elections for Class Marshal, Class Secretary, and Class Committee for the graduating class of 1987 have been hotly contested.

According to Bill Sarraille, 1L, president of the Law School Council, the student body administering the election, nineteen people were running for seven slots. In only two hours of voting on March 16, one hundred and twenty-four people out of the class of 550 had cast their ballots. The balloting continued until March 19.

One class marshal, five class committee members, and one class secretary will be elected. All seven office-holders will keep their positions for life, Sarraille added.

The class committee members will plan commencement events, parties, and other get-togethers during commencement week and will "have a role in providing the alumni office with assistance in approaching class members for donations," Sarraille said. The class secretary will preside over the class committee and the marshal's post is strictly an honorary one with the principal duty being to lead the class and carry the flag in the graduation

day procession.

Last year, "they had exactly the correct number of people run for the number of spots," Sarraille noted.

But this year the campaign was far more "intense," he commented.

With twelve people shooting for the five available Class Committee positions, that race turned out to be the primary battleground. While most of the candidates discussed substantive issues, Joe Rzeppa, 3L, attracted the most attention with a wildly unorthodox platform (which is reported in a second story elsewhere in this issue). In contrast to Rzeppa's approach, five candidates chose to emphasize the divestiture issue. 3L's Adam Cohen, Jennifer Granholm, Karen Russell, Pat Horvath, and Lois Murphy turned in identical statements pledging not to "participate in alumni/ae fundraising activities on behalf of HLS until Harvard fully divests from companies doing business in South Africa." Candidate Karen Russell said, "I think it is important to send a pro-divestiture message to the alumni. This year we hope that *all* of the class officers will be pro-divestiture."

The class secretary campaign centered on similar issues. Bryan Blaney, 3L, contended that despite

initial thoughts that the election "is not an appropriate forum for the disinvestment issue, I concluded that it can be . . ."

Walter Effross, 3L, took a somewhat different approach and said he would encourage the class to send either money or a statement as to why no check was enclosed; or, "funds earmarked to fix specific problems here that our class has identified."

The class marshal election turned out to be considerably less issue-oriented than the other two races. Jimmy Morales, 3L, pledged "to stride smoothly" and Dennis Kelleher called upon his military experience as he promised to achieve the high standard set by Bill Murray in the movie "Stripes." In a similar vein, John David Dyche, 3L, commented that "my qualifications for the position include good posture, a brisk but comfortable walking pace, and a fondness for flags." Dyche added that, if he were class marshal, his father could easily recognize him.

Rzeppa: No Ordinary 3L

(Continued from Page 2)

the haughty self-confidence, the smug self-assurance, the superior air, the killer instinct, the bound-for-Capitol-Hill look, the resemblance to a recent president, or at least the lofty intellectual look? Where are all those things I heard and thought about Harvard Law School before I came here? There wasn't anyone like him in Paper Chase or One-L!

"I'm a greaser. It's me," Rzeppa said. "I've always been a greaser at heart. I used to only grease up occasionally, but for about three years now it's been every day."

But does he wear his hair and sideburns like that during inter-

views, the same naive One L might wonder. "Absolutely," Rzeppa responds. "I wear a suit, because you can take that off and on. But once you cut your hair or shave your sideburns, they're gone." Only one interviewer has ever commented negatively on his appearance, he said. "It might have prevented me from getting some corporate jobs," he said, "but I'm not interested in that anyway." Rzeppa would like to work in trial advocacy upon graduation, preferably as a prosecutor. He has not lined up a permanent job as of yet, though a position as permanent ambassador to the Vatican would be Rzeppa's ideal.

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Cutting Through The Smokescreen

Acting on the basis of a Surgeon General's report warning that thousands of nonsmokers may die annually because they inhale second-hand fumes, both the new Cambridge anti-smoking law and the HLS policy implementing that ordinance are reasonable measures. However, both the law and HLS's policy have come under attack from smokers and from libertarians who claim that the measures flout the "right to smoke."

But the pollution an individual generates is no different from the pollution an industrial corporation produces. Smokers' rights, like those of polluters', end when their activities impinge upon the freedom of others. And the Surgeon General has cautioned that the risk of involuntary smoking may not be eliminated by merely separating nonsmokers from smokers; a total ban on public smoking is needed.

Most smokers in a recent nationwide survey appeared ready to accept some restrictions; only 16 percent of smokers opposed all restrictions on smoking in public places. Little wonder that 36 percent of all U.S. corporations restrict smoking at work, as do laws in ten states and 150 municipalities.

But the debate at HLS focuses on a particular sort of regulation: on smoking in dormitory rooms and private offices. Despite the fact that HLS has not yet imposed a total ban on such smoking, libertarians nonetheless rail against current regulations affecting private dorms or offices, calling such rooms an individual's "castle." This argument, however, fails to take into account the externalities which even "private smoking" imposes upon the HLS community.

Most prominent is the fact that vents running between private rooms circulate smoke throughout a building. Moreover, cigarettes increase the risk of fire, pushing up insurance premia. And smoking in dorm rooms or offices can discolor walls and ceilings. Clearly, if HLS can preclude tenants from cooking, loud noise, or owning pets, it can enjoin smoking in dorm rooms.

Nor are restrictions on employee smoking unreasonable. Cigarette smoking increases absenteeism and boosts group insurance rates that all workers pay. As a result, some employers have taken the drastic step of hiring only non-smokers.

HLS has not gone — and should not go — this far, but it *should* ban smoking in even private dormitory rooms or offices — after providing future members of the HLS community with fair warning of impending measures. Additionally, HLS should push the Harvard police to overcome their initial reluctance and to enforce the Cambridge ordinance.

Only then will the right to freedom from poisoned air be preserved.

— VC

HARVARD LAW RECORD

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Fenno

Fenno exited his Somerville palace and walked down the street as he quickly gulped the final few drops of his last Blatz. He couldn't imagine where the twelve-pack he had bought this morning had gone. Reminding himself to check the sobriety of the rats in his apartment, Fenno entered a darkened alley and knocked on the door of an innocent-looking building.

A voice barked, "Who are you?!"

"Just a slightly drunk 3L interested in making HLS a better place to party," answered Fenno, as he tried to stifle a burp.

"Okay, you can come in," said the voice grudgingly as the door opened and Fenno was admitted into his first Contra Hierarchical Force meeting.

Once inside, Fenno saw that the chf consisted of a small group of people who were conversing among themselves zealously. Fenno's heart started to beat with joy; perhaps this was the organization he had longed for.

Fenno sat down as the members of the chf motioned for him to remain silent. The chf leader stepped to the front and the meeting began.

"Greetings to all fellow strugglers old and new," s/he began. "We must continue our militant struggle against the HIERARCHIES that culturally and politically oppress us, and that make the pitiful lives of those who have not been enlightened hardly worth living. THEY continue to try to destroy our wills. For example, moving the student mailboxes was obviously a thinly disguised attempt to throw us into disarray and impede our ability to communicate with the masses. THEY continue to cling to an outmoded grading process which prevents us from proving our brilliance and claiming our rightful position among our classmates as militant paternalistic keepers of the flame of public interest Stalinism. But most of all, on pain of being excluded from our cell, remember that you must follow Bluebook Rule 16(a) and cite our newsletter, the Lizard, correctly in all of your communications with the masses."

After a few more speakers, Fenno woke up and followed the group to a dark working-class bar. Fenno began to like the chf; the meetings gave him a chance to catch up on some much-needed sleep before the main event.

Fenno quickly chugged eight beers to make up for lost time. He then went to the bathroom. On his way back, Fenno saw that most of the members were still on their first beer and were complaining about someone being 'boorish' and 'rather common.' As Fenno sat down, everyone else left.

Fenno sat at the table looking perplexed and a little drunk; the last thing he heard as they walked out the door was one member whisper, "He probably went to a state school."



Readers' Forum

HLS Should Increase Tolerance of the South

by Curt Haygood (3L)

I'd like to echo Dennis Kelleher's sentiments expressed in the March 6 issue. However, Mr. Kelleher has overlooked the full scope of his arguments. By couching his concerns in terms of racism and sexism, Mr. Kelleher fails to address the more general problem: prejudice. Racism and sexism are just two of many possible particular manifestations of the underlying problem; certainly prejudice exists on other bases as well, some of which just aren't recognized to exist because the targets of those prejudices are perhaps considered fair game. To be sure, Mr. Kelleher's presentation was more balanced than most along the particular dimension that concerns me; even so, it's possible to do a lot better still.

Mr. Kelleher's reference to "the unambiguous racism of the Klan's white hoods and confederate flags" bothers me greatly. Despite the fact that I'll be somewhat critical of Mr. Kelleher because of that reference, I'm grateful to him for the impetus that his otherwise unimpeachable piece provided me to set to paper these sentiments of mine that have been lurking in my mind for up to nearly three years now awaiting public expression.

First, let's get one thing straight right off. I share the same attitude toward the Klan that I charitably attribute to all of my more liberal classmates: the Klan is a shameful and abominable part of the price we pay for the First Amendment freedoms we enjoy in this country. In fact, as will presently appear, I have even more reason to be bothered by them than others, except for those who are in demographic groups that are the traditional central targets of Klan activities.

I feel it safe to assert that most of you here have never been up South for any appreciable amount of time. For the purposes of which I'm thinking two weeks or even a "full" winter term doesn't qualify. I can tell you from my personal experience over the course of two visits to Australia, that a place that seems much like home (or vice-versa) can give a very different impression during a longer stay. I submit to you that those who haven't really been up South have inadequate knowledge upon which to base some of the opinions people here so freely see fit to formulate and express anyway.

Case in point: when referring to the Forsyth County disturbances, Mr. Kelleher treats the display of a Confederate battle flag (as distinguished from the national flag, which few of you would recognize) as a conclusive indication of racism. Again, in fairness to him, however, he's certainly got lots of company in this regard: in reference to the same events, the *Boston Globe* and NBC Evening News both have shown us displays of the Confederate battle flag without further

comment, as if to say, "See! If that isn't racism, what is!" The underlying presumption, that racism is the only possible reason to display the battle flag, is insupportable.

That the Klan and some others use the battle flag in that way seems plain upon even cursory analysis. However, the Klan's displays are merely the most visible displays of the Confederate battle flag, and usually occur in connection with some newsworthy event. Therefore, their displays are the only ones ever to be reported in this end of the country. However, the Confederate battle flag is often displayed as a symbol of regional pride by Southerners in contexts which have nothing to do with either racists or racism generally or the Klan in particular. I use it in that fashion myself. To do so doesn't require approval of everything that constitutes part of our history. On the other hand, though, neither does the historical fact that slaves were once kept there require that any of us be ashamed of who we are or where we come from. All that happened over a hundred years ago, and none of us is old enough to have had anything to do with it. Any explicit or subtle attempts to hold us responsible for it, even in any attenuated fashion, are fatuous and deserve only to be rejected completely and unhesitatingly. It's surprising that the same people who, hypothetically, would profess so readily to understand a desire on the part of blacks to take pride in their history and origins find it impossible to understand and accept that same desire on our part.

Of course, the ready retort must surely be: the two groups' situations are distinguishable in that blacks never occupied the role of the oppressor at any point in their history. As pointed out above, however, that test is surely spurious. Consider the internment of Japanese by the U.S.A. not eighty years later. Few would defend that episode in the history of the U.S.A., yet few Americans would allow it to abrogate their pride in being same because to do so would be manifestly silly, in that it would make that one historical fact the be-all and end-all to the exclusion of all else. For any Southerner to allow an analogous abrogation of his regional pride would be no less silly.

For those of you who aren't quite convinced yet, I refer you to a few examples of the phenomenon of which I speak: (1) The editor of the *Washington Post*, Joel Garreau, in his book *The Nine Nations of North America* (a work about regional differences which I highly recommend) uses the battle flag as a symbol for the South without any racial significance at all. (2) See the front page of the *Houston Chronicle* of August 25, 1986, for a description of a black man's use of the battle flag to rally a non-racial cause.

(3) In the Atlanta Hartsfield Airport terminal building, you can buy a bumper sticker which incorporates the battle flag and the legend "American by birth and Southern by Grace of God."

To us, the meaning of the battle flag is quite akin to that of the flag flown by the Commander-in-Chief of the U.S. Navy during the American Revolution. No doubt you've seen it at some time or another, even if you don't recognize it by the description: it features a coiled rattlesnake and the legend "Don't tread on me." That same independent spirit persists today in my home, and the battle flag is expressive of it. Perhaps the confederacy should have put the same legend on its battle flag, so that the spirit in which the use of that battle flag is most often intended today would be apparent to you all here one hundred and twenty-two years later.

Are you incredulous? Consider international practice. The Australians make similar use of the flag of the Eureka Stockade today. In 1854, during a brief rebellion against the commonwealth government in Ballarat, Victoria, the rebels flew a modified Southern Cross on a blue field. Today the Builders' Labourers Federation, for instance, now locked in an escalating series of confrontations with the federal government, uses the Eureka Stockade flag as its defiant emblem, together with the legend "Hands off NORM (their leader) and the BLF."

Having said above that the purpose for which the Klan and some others use the battle flag seems plain upon even cursory

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About The Readers' Forum

The RECORD welcomes views from all perspectives. In addition to Letters to the Editor and more elaborate Off-the-Record ruminations, the RECORD features another avenue for reader contributions: The Readers' Forum. The purpose of the Readers' Forum is to allow students, alumni/ae, and faculty to express their thoughts on various areas of the law, the profession, and life at HLS; we would like to stress that we welcome all viewpoints on subjects outside the scope of Harvard Law School as well. Please limit Forum pieces to a length of 500 words or less. The Editors reserve the right to edit Forum submissions for length or objectionable language.

Forum submissions are due by 5:00 p.m. on the Monday preceding the issue in which they are to appear.

Constitution's Bicentennial Should Be Celebrated

James L. Oakes (HLS '47) became a Second Circuit Judge on The United States Court of Appeals in May, 1971.

Prior to that he was in private practice and held numerous state offices in Vermont.

The following is an excerpt from his remarks at the Inaugural Ceremony of the Second Circuit's Committee on the Constitution's Bicentennial.

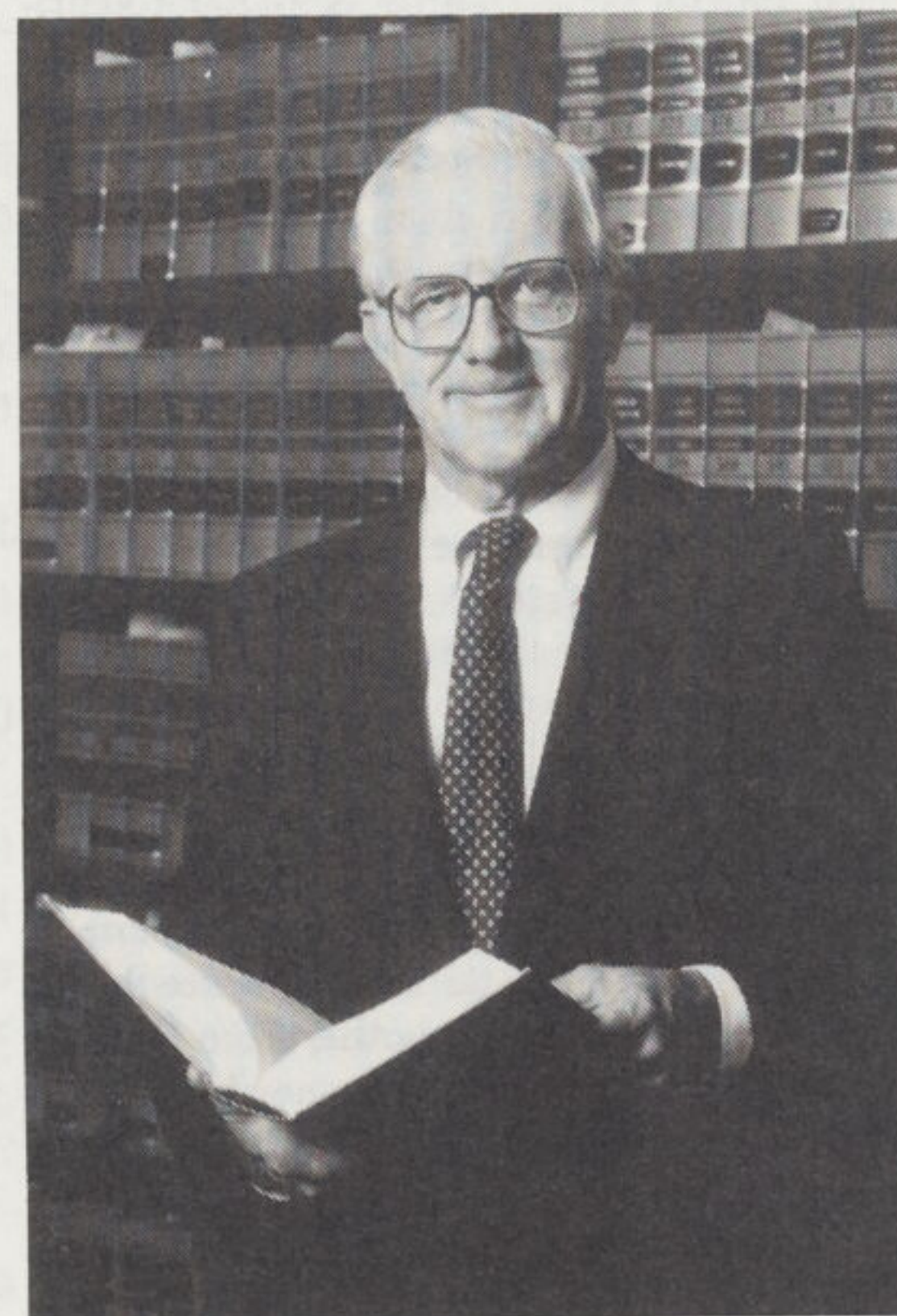
I would like to comment on the spirit in which I think the Bicentennial of the Constitution should be celebrated. Like Professor Laurence Tribe, I look upon our constitutional history as involving three great eras. Each of these three great eras, however, involved some negatives or shortcomings, some errors of omission or commission. Not to recognize these is not to appreciate the fragility and tension of our system, our government, our precious liberty; is to forget the devotion and the sacrifice of those who made it possible; and is to be complacent and insensitive to the feelings and condition of many of our citizens.

The first era, of course, is that commencing with the Revolution of 1776 and extending through the adoption of the First Ten Amendments, the Bill of Rights. This era, for all its bloodshed, raw courage, and magnificent exercises of wisdom, contained the potential of its own destruction in recognizing slavery (even though it permitted Congress to abolish the slave trade after 1808 [Art. I, sec. 9(1)]). It recognized slaves as only 3/5 persons; while it recognized women as citizens, they were purely of the second class — with no right of suffrage [*Minor v. Happersett*, 88 U.S. (21 Wall.) 162 (1874)]. We tend to forget also that Madison's proposal to make the Bill of Rights applicable to the states failed of passage in the First Congress.

The second great era was that which attempted to rectify two of the Founding Fathers' three omis-

sions; it extended from 1861 and the first shot fired at Sumter until March 27, 1876. During this period with its attendant loss of blood, not only was slavery abolished but the Thirteenth, Fourteenth, and Fifteenth Amendments were ratified, and Congress enacted a series of civil rights laws to enforce those amendments, effective against the states. I say March 27, 1876, because it was on that day that the Supreme Court's *Cruikshank* and *Reece* cases, by striking down an 1870 Civil Rights Act, effectively permitted certain states to deprive their black citizens of the right to vote for almost another ninety years, or until the Voting Rights Act of 1965. The Supreme Court of the day went on to emasculate the Civil War amendments and to nullify the civil rights acts of the time.

And the third great era of constitutional history commenced in 1937 and encompassed the years of the Warren Court, an era highlighted, of course, by the *Brown V. Board of Education* school desegregation case of 1954 and involving, through selective extension of the applicability of the Federal Bill of Rights to the states, a criminal law revolution and a civil rights revolution which with active congressional leadership extended not only to education but to voting, housing, employment, as well as to assembly and protest, and not just for minority races but, to a greater or lesser extent, for women, the handicapped, mental patients, prison inmates, juveniles, the elderly, the poor, and the other disadvantaged groups. Still we nonetheless have tens of thousands of homeless; we have a resurgence of racist incidents North and South, reminding us that Martin Luther King's dream remains too much unfulfilled; and we have had far too many tangled webs of deception of the American people in high circles. Worse, perhaps, we have a public that is too apathetic — at least if the low percentage of



James L. Oakes

voters in national elections is an indicator. A principal function of our Committee's work as I see it is to concern ourselves with this apathy.

Let us not, then, forget that, however great our Constitution is, however noble the intentions of the Founding Fathers were, and however much blood has been spilled in the attempt to bring their aspirations to fruition, our Constitution is only so strong as, as suggested by a great chief judge of this court, the hearts and minds of the men and women who constitute our country. What Learned Hand said, of course, in his *Spirit of Liberty* address, was that in the final analysis, "Liberty lies in the hearts of men and women; when it dies there, no constitution, no law, no court can save it." I have taken the liberty of adding "minds" to his "hearts" for I fear lest liberty lie in our hearts sufficiently strong but in our minds too weak. With respect, I tend to be less skeptical than Chief Judge Hand as to what can be done by us all to preserve liberty generally and by the courts

Off the Record

With Tolerance, Awareness, And Compassion

by James L. Oakes

in particular, though others may disagree. But I surely agree that each of us must be ever alert to the dangers of tyranny that sometimes are hidden in the "hearts of men and women," even as we are alert to the dangers of apathy sometimes lurking in our minds.

Let us, then, celebrate the Bicentennial of our Constitution in a spirit of inquiry, in a spirit of tol-

erance, in a spirit of enthusiasm, but a spirit of awareness, and of compassion. Let us seek to expand our knowledge, not only of what our Founders did, but to recognize what they did not or could not do or try to do. Let us seek by example, and to compel our government by example, to demonstrate the ideals that make our system of government great. Let us seek at least by

continuous and generous dialogue to explore the challenges we as a people have and that our Constitution faces in the *next* two hundred years. And let us remind ourselves once again that to the extent the blessings of liberty have been secured to us by others, we have a very serious burden and responsibility to secure them to those who will follow us. ❧

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analysis, let me undertake a somewhat less cursory analysis. Originally I was willing to concede that the Klan and some others use the battle flag as a symbol of racism was "not subject to dispute." However, the possibility has since been suggested to me by a good Yankee buddy that the Klan's use of the battle flag could instead be an attempt to give the outside world the impression that the Klan's views are shared by the entire Southern region; perhaps what they've done is to co-opt a symbol which most of us use in the manner I've described and to pervert its meaning in the eyes of you up here whose sole sources of information are the *Boston Globe*, the NBC Evening News, et al. Unfortunately, what would be more obvious if an extremist organization were to attempt to wrap itself in the U.S. flag to attempt to equate patriotism with its organizational purposes, is apparently lost when such an attempt involves the Confederate battle flag, precisely because people engage in cursory analyses.

I'm not the only temporarily displaced Southerner that feels this way, nor am I or any of the others being just plain oversensitive. We put up with a lot of undeserved abuse here, which goes far beyond knee-jerk reactions to the battle flag. Consider the following: recently I suggested to a classmate that he should come visit me in Houston next year to learn something about what the South really is like. His response was to the effect that "They lynch Jews down there, don't they?" During four years in Houston, I read the papers and watched the news and never saw a thing about a single Jew ever being lynched down there. (There was one Jew I will admit to having at times wanted to do violence to, but that was a function of his insistence upon keeping me awake late with his reading light; otherwise, he was a fine roommate.) That's not to say that racially-based abuses haven't ever oc-

cured even in contemporary times: in 1977, for instance, an hispanic man named Joe Campos Torres was handcuffed, beaten, and thrown into Buffalo Bayou by Houston police officers. But Chief Lee Brown, a black man, has not turned the HPD around, to the point where, if they ever did, they no longer deserve to be the butt of the gallows humor. Spotting a police car in traffic used to warrant: "It's the HPD! Quick, look Anglo!"

Even if, hypothetically, such worries were justified on my classmate's part, to respond in such a fashion to an invitation to someone's home is extraordinarily insensitive and rude, by any reasonable standard. Moreover, let's suppose he does someday decide to accept the invitation. If he comes down to Houston, he may well experience some hostility; however, it's much more likely to be in response to some similarly extraordinarily insensitive and rude act on his part rather than the result of prejudice against him. I have little doubt, though, that he'd be unlikely to figure out what, paradoxically, seems to be for him the more complicated explanation — that people whom you treat badly will dislike you — and instead he'll attribute any harsh words to prejudice against Jews.

Consider also the day before that, when the lecturer at the MPRE review told us about use of nicknames on letterheads: "Say your name was Monrovia, but everyone had always called you 'Skeeter', or if you're from the South, 'Bubba'..." So far, so good; that's a common nickname in some places back home, and I've made fun of its seeming ubiquitousness myself with a joke wherein a man named introduces his wife, son, daughter, and dog — all named Bubba. My native Massachussettsian classmate turned to me and whispered "Oh, that's so racist." Again, the problem is forming those opinions without information: the nickname isn't limited to any particular racial group, and has not the slightest or most attenuated racial connotations.

Finally, consider that it wasn't just that

this was a bad week, either. All the way back in my first year of classes here, a professor referred in class to the "violent subculture" in the South, citing a number of racial incidents as putative proof but somehow conveniently forgetting about South Boston High School et al.

I applaud Mr. Kelleher's appropriately outspoken letter. Let's all just remember that racism and sexism never have been limited to the South. Prejudice is a more pervasive and insidious problem than often imagined. Don't presume that a person is a racist because of his regional origin, or political party affiliation, or otherwise ascribe to him negative characteristics based on a superficial criterion — especially when it's one like the display of the battle flag, with which (until now) you (most likely) weren't sufficiently familiar to interpret properly. Such ascription is the essence of what's objectionable about racism. It's damn surprising that it's obvious to people here that that's the problem when X presumes that a man is (something) because he's black, yet apparently quite obscure when Y presumes that a man is a racist because he comes from my home, which is no less a part of the land of the free and the home of the brave!

More generally still, the problem is intolerance. HLS has a lot of people who are so far at one extreme in their opinions on certain issues that at the merest hint that another is in less than total agreement with them, they conclude that he's at the opposite extreme. That is, with respect to racism, for instance, they proceed on the theory that the presence of what looks to them without their glasses like a match surely and inevitably indicates the presence of a raging conflagration. The flip side to that way of thinking is exemplified by one old section-mate who once lamented over the departure of another section-mate at the end of our first semester, saying "Oh, I'm so sorry he's gone;

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I liked him so much. He was so liberal." My protest that political opinion was a obscene way to choose one's friends met with an unabashed instant retort: "Wise up, honey. Everyone does it, and if you can't handle that then go live in a cave." That's simply not correct; not everyone does it. Even if it were, that wouldn't make it any more right or any less a form of prejudice. People are entitled to be judged on the basis of the content of their character; one's opinion on political questions, about which reasonable people can disagree, is *not* an element of character.

Perhaps that old sectionmate, among others, will have concluded by now that I'm a member of the Society for Law and Public Policy, or that I'd fit in better at University of Chicago if only it were further to the right. If the meaning intended is that I'm some kind of ultraconservative or reactionary, then first, that metaphor is probably unfair to at least some members of both those institutions, and second, the conclusion with respect to me is as wrong as it could be. I'm no happier with extremists on the right than with extremists on the left; in

my experience, neither group is any wiser or more tolerant than the other, and the victims of this manifestation of extremism aren't necessarily limited to those at the other end of the political spectrum from the perpetrators of a given incident.

Consider the first-semester class in which we examined a Good Samaritan statute which mandated that one go to the aid of another in specified circumstances, one of which was "when the other is in danger of grave bodily harm." Someone expressed the opinion that the statute should require intervention on behalf of one in danger of being raped; others replied that that was obviously included within "grave bodily harm". I recognized the problem with that formulation, but kept silent; I anticipated that if my wording were anything less than perfect, precisely what in fact next happened would happen. A classmate we later came to know to be extremely liberal raised the point: specific reference to rape should be included in the statute, because otherwise the argument that rape isn't grave bodily harm will inevitably be made. The comment precipitated a chorus of hisses and comments, because people hadn't really *listened* to him, including the professor. Students don't always listen

attentively every minute in class, I grant you; I can't fault them for that. However, even the most powerful commitment to women's special concerns doesn't excuse jumping down someone's throat like that before knowing whether it's warranted. It might be an honest mistake; nevertheless, it's nowhere near reasonable or even defensible, in my book.

As Mr. Kelleher says, "we all have traces of racism and sexism," and of other prejudices as well, no doubt. Those prejudices will never be extirpated completely, because xenophobia is to some irreducible extent instinctive to all human beings. To aspire to that goal of complete extirpation of prejudices is all right, so long as there's no intrusive or coercive character to the enterprise. None of us is entitled to invade another's mind and police his thoughts, to be sure that he never (in an angry moment negotiating local traffic, for instance) mentally hurls a forbidden epithet; even my more candid liberal friends admit to the occasional shortcoming. However, I think we are entitled to demand of each other that we not thoughtlessly chip away others' value and dignity, as Mr. Kelleher so aptly put it.

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Reynoso Criticizes Voter Approval of Judges

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ing the election centered on the death penalty. The real issue, he said, was "a right wing attack on the Court," but the California press, unlike the out-of-state media, adopted the characterization offered by his opponents.

The election, Reynoso said, marked the end of a fifty year tradition of an independent judiciary, a tradition which began in 1934 when California moved from election of judges to a process of appointment and confirmation. There was an understanding, Reynoso said, that partisan politics would not be part of the confirmation. The independence of the Court helped California become a leader among state courts during the last 20-30 years. The 1986 campaign was the first one in modern California "where partisan politics were leveraged against an independent judiciary," he said.

Voting on judges is inappropriate because judges don't have any "goodies" to give out, Reynoso said,

and judges are therefore at the mercy of powerful interests.

"If [the justices] make powerful business and political interests unhappy, there will be a campaign against them," Reynoso noted. In his campaign against the justices, Governor George Deukmajian issued a list of decisions which he labelled anti-business, some of which the governor had won when he was attorney general.

"We were being criticized for obeying and following the law by some whose economic interests were hurt by those laws," Reynoso said. Many lawyers, who "should have protected an independent judiciary," looked at the economic interest of their clients instead, he claimed.

Reynoso cited Deukmejian's decision to oppose confirmation as the turning point in the campaign. Because it was politically unpopular to do so, only one statewide candidate came out in support of retaining the judges.

It was a "campaign where evil people took the lead — particularly the governor" and the good people

did nothing, Reynoso said. Most Democrats "sat on their hands" and "Latino public officials [were] as cowardly as other public officials," he contended. Concerned primarily about their own political standing, they often supported Reynoso in front of Latino audiences, but said nothing to Anglo audiences, he charged.

Reynoso said Black and Jewish voters supported him most strongly, with Latinos behind them. Because of their longer history of suffering as minorities, these two groups appreciate "the protecting in the judiciary of a non-majoritarian view." Latino voters, he maintained, have not yet developed that consciousness.

Reynoso suggested a system of appointment by the executive and confirmation by the legislature or preferably by a non-partisan commission. Retention votes would not exist in this scheme.

Reynoso is now in private practice at O'Donnell and Gordon, a small firm in Los Angeles.

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Diplomats Clash Over Star Wars Policy

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upon the Reagan Administration's Strategic Defense Initiative (SDI) designed to intercept incoming ballistic missiles. While the American side argued that such a system would usher in a new and more stable nuclear equilibrium, the Soviets saw the system as merely a perpetuation of the arms race and a dangerously provocative project.

"No state should use scientific and technological resources for developing new arms of Armageddon," Kutovoy said. "No state should transfer the arms race to space."

Ambassador Cooper responded by endorsing SDI as a defensive shield against nuclear attack. He added that the Soviet Union engaged in similar research and that the two nations should be building up their defensive forces designed to mitigate the effects of nuclear attack, rather than concentrating resources on systems designed to increase offensive damage.

Although most observers praised the level of discourse on the SDI

issue, a former Harvard debater and national debate champion, Edward T. Swaine, noted that the speakers had missed some important issues. "I am utterly and completely aghast that neither of the participants mentioned the political and military synergy between SDI and civil and air defenses," Swain commented. But Swaine noted that such issues were difficult to present in a public format and claimed that "they did a good job on the few issues they covered."

Besides SDI, the diplomats also clashed over the prospects for future arms control. The Americans charged that the Soviets had put forth phony arms reduction proposals, while at the same time building up their nuclear forces. For their part, the Soviets claimed that American paranoia was impeding cooperation.

"When an attitude of hostility is cultivated it affects diplomatic relations," Karpov said. "It is important to educate the American people to see us as partners, and not enemies."

Finally, the two parties disagreed on the issue of linkage. The Americans claimed that nuclear arms talks must be "linked" to broader discussions of Soviet foreign policy, including discussions about alleged Soviet human rights violations and military interventions in third world countries. By contrast, Soviet officials claimed that nuclear arms negotiations should be given priority and that other issues should not overshadow efforts to reduce nuclear arsenals.

Edward Swaine, however, thought that the priorities of the speakers and of the sponsor, the *Irish Times*, may have been somewhat skewed. "Instead of arguing about nuclear deterrence, these ambassadorial types should be manning the hotlines. Who knows what could have happened during this useless exchange of non-views?" Swaine rhetorically asked. Moreover, Swaine wondered aloud about the role of the *Irish Times*. "I think the Irish have enough problems of their own without messing around in those of other countries," he said.

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