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Tribe Assesses Kennedy Choice

By Chris Crain

The nomination of U.S. Appeals Court Judge Anthony Kennedy '61 to the Supreme Court has won tentative support from many who earlier opposed President Reagan's controversial nomination of Judge Robert Bork. Professor Laurence Tribe '66, an outspoken opponent of Bork, said the Kennedy nomination "is sufficiently within the constitutional mainstream so that it does not raise the same kinds of issues as the Bork nomination."

While emphasizing that his position on the Kennedy nomination was subject to further review of the more than 400 opinions Kennedy has written in his 12 years as a federal appellate judge, Tribe said Kennedy "seems sufficiently open-minded and fluid. The Senate oughtn't to require the opinions of a nominee [to] appear to match that of the Senate, as long as the Senate doesn't feel the nominee poses a danger to the Constitution."

Tribe declined to "pigeon-hole" Kennedy on an ideological spectrum, saying he doesn't like "being the pigeon, myself." But he did say that Kennedy would serve, if confirmed, as "more of a centrist" on the high court. "He's conservative on a great number of issues. I don't

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Patricia Lee

Rudolph Giuliani addresses HLS crowd as a guest of the Forum in its annual Rappaport Lecture.

Giuliani Backs Crime Crackdown

By Troy Morgan

Rudolph Giuliani, U.S. Attorney for the Southern District of New York, delivered the annual Rappaport Lecture of the HLS Forum to an audience of over 250 on Mon., Nov. 9 in the Ames Courtroom.

Giuliani who spoke about the prosecution of crime in the United States, focused on "Organized Crime, Corruption and Insider Trading."

Giuliani stressed that long-term solutions are to be achieved in the "political and educational areas, not by investigating, prosecuting and sending people off to prison. The case that bothered me probably the most," he explained, happened when

"recent grads from elite schools were busted on insider trading." Giuliani said that when he gave the commencement address at one of those universities after the incident, he realized that "we don't train young people in ethics." He stated that the training should not wait until college, business and law school, but should begin instead in grammar school.

Giuliani urged his listeners to "avoid the notion that teaching religion is not different from teaching ethics. Socrates walked around Athens talking about ethics," providing a kind of education "necessary for a strong democracy." People

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Lawyer Turned Sports Executive Plays Ball

By Jeffrey Gershowitz

Add major league baseball to the list of career paths that HLS graduates have chosen to follow. Though Sandy Alderson '76 isn't on the field with the Oakland A's, he is intimately involved with the team's fate as general manager, and on Nov. 12 he took time to discuss the team and various issues concerning professional baseball in a talk jointly sponsored by the HLS Business Club and the Committee for Sports and Entertainment Law.

Alderson was named the A's G.M. in 1984, after serving as the team's general counsel and outside counsel prior to that. Alderson, who went to work for a private San Francisco law firm upon his graduation from HLS, got the chance to get into baseball through his association with A's president Roy Eisenhardt, a partner at the same firm.

According to Alderson, the legal work involved in the "small business" that is a major league team "is not that extensive or that challenging." When he came to the A's as general counsel, Alderson explained, he was hoping to get beyond the legal responsibilities and gain an "opportunity to get involved in the business." He spent his first years with the A's learning about the baseball aspects of the team, trying to "overcome the stereotype" of an attorney while picking up baseball experience.

Being a general manager "requires several types of expertise, none of which resides in a single individual," said Alderson, arguing that there is "no real correlation between what your background is and what the results are."

"I have found it a really wonderful way to spend time," said Alderson. Comparing it to legal practice, Alderson noted that baseball is "a failure game" where "you have to learn to lose. Baseball has a way of mellowing one out. I don't know if I could go back to law."

Alderson spent much of his time discussing and fielding questions on many issues relating to the

business of baseball, including the impact of racially related statements made by former Los Angeles Dodger G.M. Al Campanis.

Alderson first noted that he had just seen Campanis in the Dominican Republic the previous week and stated that Campanis, in accepting an award for contributing to baseball in that nation, made remarks similar to those that created an uproar last April.

"That doesn't represent baseball as it exists today," said Alderson. "Those statements reflect someone over 70 in baseball for 50 years

whose ideas haven't really evolved since the beginning of that time."

The A's, said Alderson, are among the leaders in minority hiring, with minorities making up over twenty percent of their non-baseball employees, with the only black manager of a full-season team in organized baseball and with the highest ranking female employee in baseball. "All of those existed and were functioning before Al Campanis said one word," he said.

Alderson also confronted the issue

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Who's That Dog In Pound?

By Andrew Pollis

You may not know exactly who she is yet, but you've probably seen her dog, Tansy. Tansy is already an institution in the placement office and has brought Dana Bullwinkel her own share of notoriety at HLS.

Bullwinkel was hired last summer to replace Carrie Leggett, who went on to work in the social services field. Although Bullwinkel is hard-pressed to identify her job title, she "coordinates public interest functions" from Pound 314A and works mostly with public interest placement director Ron Fox '63, career counselor Dr. Mark Byers and career and personal counselor Dr. Jay King, himself a recent addition to the Placement Office. Bullwinkel said there is no worry that she will be twiddling her thumbs; she has already coordinated the Placement Office "Introduction to the World of Law" series and has helped other student organizations with the Student Public Interest Jobs Fair, held Nov. 18.

A native of Darien, Connecticut, Bullwinkel graduated in 1985 from Bowdoin College with a degree in "biologia" — Spanish and biology — and then taught Spanish and coached soccer and lacrosse for two years at private high schools, Northfield Mount Herman and

Gunnery ("not a military school," she's quick to explain). Bullwinkel found HLS through Bowdoin's Placement Office, which got wind of the job vacancy from Fox. Though she was looking for openings in college admissions offices, Bullwinkel expressed no regrets about coming to work here. "I love working with [Fox and Byers]!" she said, adding that King is also "wonderful to work with." She explained that her HLS job is in the field of educational administration, which is what she wanted to do, and that she appreciates the "relaxed atmosphere and friendly environment" in the Placement Office. Bullwinkel admitted, however, that "during interview season, it becomes a very tense place." She said that most of the tension comes "from the students" but that "it's only natural." She added that she tries to do her best to ease the tension.

To visit Bullwinkel's office is also to visit Tansy's office. Strangers are immediately introduced to the 14-year-old Jack Russell Terrier — Bullwinkel's canine companion since the age of ten. Bullwinkel said she appreciates her co-workers' attitudes towards Tansy. "There aren't many places that would allow a dog to come in," she explained. "At first they were a little skeptical" when

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Moot Court Teams Prepare For Final Showdown

By Erick Hachenburg

The final argument of the 76th Ames Moot Court Competition will be held Mon., Nov. 23. "It's going to be scary to argue in front of Scalia," said Ames finalist Greg Friel 3L, referring to Supreme Court Justice Antonin Scalia '60, who will be one of the judges for the moot court.

Judge Dorothy Nelson of the Ninth Circuit and Judge Sam Ervin III '51 of the Fourth Circuit will complete the panel of three judges that will hear the case. Robert Gerber, 3L, whose team will oppose Friel's, also expressed anxiety. "I'm nervous because Scalia has ruled against us in similar cases in the past," Gerber said.

The members of the Corazon Aquino team, who represent the respondent, are third year students, Lisa Neuville, Marge Berry, Greg Friel, Lee Schott, Jeff Shorba, and Asim Varma. The Henry J. Friendly team represents the petitioners and is made up of Patrick McElhinny, Donna Attanasio, Fiona Branton, Mark Batten, Robert Gerber, and Lisa Rodensky, all 3Ls.

The two teams that will compete Monday night began their journey to the finals as 2Ls last fall. Friel said, "We kind of got together by accident. We were all trying to put a team together when our groups backed out." When it came to putting a team together, he added, "we knew each other and thought we could work together, so we decided to form a team."

Only four of the six members who make up a final team compete in the first round. McElhinny described a much different beginning. "We enjoyed [Ames] as 1Ls, so we decided to give it a shot." All four members of the original Friendly team are currently roommates.

This year's case, *Fletcher v. Herman*, was derived from a case that had already been decided, but the teams were restricted from looking at that case specifically. "Usually the cases are pending, so I was a little disappointed that our case had already been decided," commented Gerber.

The main issue in the case involves libel. A columnist in a nationally syndicated column writes an article about a Marxist professor being appointed head of a political science department at a university. The main issue will be broken down into two parts.

The first part of the case involves whether the article represented opinion or fact. If the article reflected only opinion, then it is absolutely protected, but if the article was factual, then the case can go to court to decide whether the facts were accurate. The second part is concerned with whether the professor is a public figure or not. If the professor is a public figure, then the respondent has to prove that the petitioner acted with actual malice. If the professor is not a public figure then the respondent only has to prove that the petitioner acted negligently.

Both teams diplomatically as-

sessed their chances of prevailing. "It's tough to say. Everyone did a good job. The briefs are all in and they look good. I can't really say who will win," McElhinny stated.

Gerber complimented the Board of Student Advisors on their execution of the competition. "I have faith in the judging and scoring because it has produced quality teams," he stated.

The first round of the competition began with three sets of six teams each with four members, competing in three different cases. The winners in each of the three cases and one "wild card" team advanced to the spring competition. The four teams, after adding two more members, competed against each other in two new cases last spring, and the winner of each of these rounds advanced to the finals.

The teams are free to choose

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Drama Society Briefly Entertains

By Michael Reilly

The HLS Drama Society's fall musical revue, "Hollywood Briefs," again demonstrated that at least some law students have talents and capabilities beyond those of shepardizing and the like. Staged in the transformed Ropes-Gray Room cum Boston Pops, "Hollywood Briefs" entertained over 750 students, faculty, parents and friends over the weekend of November 14-16. The show featured old movie soundtrack standards interspersed with original musical arrangements, choreographed song-and-dances and skits.

Pamela Thomas, 2L, turned in the most memorable performances of the evening with smoldering renditions of George and Ira Gershwin's torch song "But Not For Me" and Rogers and Hart's "Bewitched, Bothered and Bewildered." Standing alone, spotlighted on the barren stage, Thomas' elegant presence and full-textured voice touched the entire audience.

Thomas' performance merits even more praise when compared to the less-inspired performances of additional serious love songs on the program. Other than Thomas and Marc Benjamin, 2L's "Begin the Beguine" (relieved by 1L's Kathleen McAchran and Maurice Hoo's background "Fred and Ginger" routine), most were somewhat less than unforgettable. The colorless singing of several duets typified these low points of the production.

Fortunately, most of "Hollywood Briefs" focused on the Drama Society's strongest genre — light, humorous melodies with witty lyrics. Carolyn Curtis, 2L, was brilliant as the sophisticated gold-digger extolling that "Diamonds Are a Girl's Best Friend," and as a Betty Boop flapper singing "I Wanna Be Loved By You." Catherine O'Neil, 1L's flirty, zestful duet with Robert Johnson, 2L, in "They Can't Take That Away From Me" likewise won hearty applause from the audience.

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"Hollywood Briefs" Spotlights Student Talent

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Also delivering solid performances were Susan Power '87 belting out "Boogie Woogie Bugle Boy," and the ever-enthusiastic Shawn Hays, 3L, tapping out "It's All For the Best" with Johnson.

Highlights

The funniest moment and overall highpoint of the show occurred when Gary Harrington, 3L, Everett Carbajal, 1L, and Jeff Walker, 3L, performed "Triplets" from the show "Bandwagon." Dressed as tots, complete with diapers, bottles and bonnets, the three carried on like true brats, all the while singing the intricate and hilarious lyrics in unison. At the close of their song, nearly a third of the room was bent

over in laughter, while the remainder clapped furiously.

Harrington also contributed to "Hollywood Briefs" as a skit writer and as director of "Frankie Stays in Hollywood, Annette Goes to Harvard." Other skits in the show included a scene from "High Society," ably directed by Karyn Langhorne, 2L, and "Saturday Night Cleaver, A Disco Horror Skit," written by Michael Hughes, 2L, and Tim Moore, 2L. This latter segment featured Terry Franklin, 2L, as a cocaine-dusted Beaver Cleaver who murders his ex-buddy Eddie Haskell after Eddie tries to pick up Mrs. Cleaver in a sleazy '70s disco. Marty Mead, 1L, played Eddie while Elizabeth Turner, 1L, was a delightfully dippy June Cleaver.

The final element of the production, major song-and-dance routines,

proved to be weaker than the medley and skit components. One exception, however, was the solid rendition of "New York, New York," performed just prior to intermission. Three sailors on liberty in the Big Apple, played by Hughes, Mead and Johnson, were joined by stereotypes of other New York regulars — harried lawyers, hookers, joggers, bag ladies and crooks — dancing in a well-choreographed conclusion to Act I.

Indeed, the overall direction and choreography of "Hollywood Briefs," produced by Craig Smith, 3L, deserve accolades for presenting an enjoyable evening. The nine-piece band under the direction of Scott Zesch, 3L, and Kim Richards, 2L, provided underappreciated accompaniment to the HLS stars in front of the footlights. ❦

Ballpark Attorney Confronts On-Field Issues

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of substance abuse in baseball. "A player, unlike most employees, is an asset," he explained, and drug and alcohol use thus hurts not only the player but also the team ownership, since the abuse diminishes the player's asset value. Treatment therefore involves the rights of the player and rights of the employer "protecting its investment." Alderson was quick to note, however, that "I'm convinced that there is no more problem with drugs and alcohol in baseball than there is in society in general."

Alderson pointed to both minority advancement and "employee assistance" (i.e., substance abuse treatment) as areas "where people with backgrounds like you and I can make a difference."

Predictions

Alderson also predicted an expansion of major league baseball within two to three years. "People in the U.S. have come to expect professional sports as part of their

way of life," he said, calling the current alignment of teams an "historical anomaly," and noting that the enormous price of a franchise like the A's rests "not [in its] intrinsic value, but because it could be sold to Indianapolis."

As for free agency, "I don't think you're going to see major changes, but you will see signings," said Alderson, who further stated, "I believe every player should be a free agent because I believe in the law of supply and demand." According to him, the decrease in free agent movement has come about simply because more teams are concerned "about the bottom line." In a similar vein, he explained that the A's no longer give multi-year contracts, even to stars such as Mark McGwire and Jose Canseco, and instead sign players on an annual basis "and take the risk of performance instead of the risk of non-performance."

Alderson, on his way back from scouting talent in the Dominican Republic, also noted that "approximately twenty percent of all players currently signed come from countries outside the U.S., and the re-

liance on foreign players is only going to become greater," due to the greater expense of developing American players.

Alderson also took time to talk about the A's and his role in the improvement of the Oakland franchise. Noting that his main task was "setting a tone, setting a direction," he explained that "we decided to build our team around power," and detailed how the A's drafted 1987 American League Rookie of the Year McGwire in the first round of the 1984 amateur draft, making him the tenth player chosen overall, "a foundation, a cornerstone for our team."

"Some is residue of design, but very often it's luck," Alderson pointed out, noting that the A's had McGwire rated number one in the country, yet nine other teams passed him before the A's opportunity arose. He also pointed to the A's drafting of 1986 A.L. Rookie of the Year Canseco in the 15th round as further proof that much of baseball is "really just a stroke of luck." ❦

Kennedy Clerk Praises Nomination Of Judge

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have any illusions he will be liberal. But he shouldn't be opposed just because of that."

Views Of A Clerk

More enthusiastic support for the latest Reagan nominee came from Michael Mollerus, 3L, who was selected last year as a clerk for Kennedy on the Court of Appeals for the Ninth Circuit in Sacramento. Mollerus, who is unsure whether his clerkship will transfer should Kennedy be confirmed to the Supreme Court, said he found Kennedy to be "a very, very bright man."

"That's the thing that makes him a good judge; he really is impartial. While he has his own views and beliefs like anyone else, he does his best to set them aside when he is hearing a case, and does make an attempt to decide a case on the facts and law."

Mollerus described Kennedy, whom he met during interviews last summer, as "a very down to earth man. He lives in the same house his parents lived in, and when a new neighbor moves in, he throws them a block party." He added that Kennedy, who is 51 and a Roman Catholic, has a reputation for being a regular churchgoer and "fairly religious." "He really is the epitome of the middle class," Mollerus said.

In comparing Kennedy to the image of Judge Bork that arose during his confirmation hearings, Mollerus said Kennedy is "very bright in a different sense." While Bork was "very willing to be creative and tell you about his opinion of the law in general, Kennedy does what a judge is supposed to do: he just decides the issue in front of him," Mollerus said.

Tribe hedged in applying to Kennedy "the brilliant legal mind" description used by many to characterize Bork and former HLS Professor Douglas Ginsburg. "I don't like the way the phrase is thrown around. I wouldn't have used that description in any of the recent nominations. But I certainly think

[Kennedy] is very bright. He has shown both intelligence and substantive command of the law," Tribe said.

To Be Swayed?

Concern expressed by some that, once on the Supreme Court, Kennedy would be swayed to the conservative "clique" led by Chief Justice William Rehnquist, is "misplaced," according to Tribe, who said Kennedy is "too independent-minded" for that to occur.

The Tyler Professor of Constitutional Law dismissed as an "irrelevant consideration" the question whether Kennedy will act as a swing vote on many major issues, thereby continuing in the role of the justice he was nominated to replace, Lewis F. Powell, Jr. '31, LL.M. '32. Tribe said the nomination should be evaluated according to whether his constitutional philosophy "falls within an acceptable range," and not on what role he will play in Supreme Court dynamics.

"Bork was not qualified because his constitutional philosophy was unacceptable. For some senators, [his potential role] might have made a difference, but it was not pivotal for me," he said.

Tribe said he viewed the Kennedy nomination as "a clear retreat" by the Reagan administration from its attempt to place more controversially conservative appointees on the Court.

Adding that he is "not among those who gloat in the President's retreat," Tribe said he "very strongly opposes this idea of treating the nominations like a game. We all have a lot to lose by a nominee who threatens constitutional guarantees. And we all, including the Reagan administration even though they may not realize it, have a lot to gain by a nominee who supports the constitutional advances made since World War II."

Kennedy has been the target of criticism by some civil rights advocates who question his record on discrimination suits. Kennedy

struck down the doctrine of "comparable worth" as required by federal sex-discrimination law in the case of *A.F.S.C.M.E. v. Washington*. In a separate case, he was overruled by a 7-2 margin on the Supreme Court after ruling that real estate agents are shielded from civil liability when they "steer" customers toward neighborhoods excluding certain minorities.

"He doesn't show the degree of sensitivity [toward minorities] I would like to see in a justice," Tribe said, "but I hope he is not beyond education on that subject."

Kennedy has attracted some criticism from the right and left for his moderate position on a constitutional right to privacy, which led the Supreme Court to the controversial abortion decision of *Roe v. Wade* in 1973.

Seven years ago, Kennedy upheld in *Beller v. Middendorf* the right of the U.S. Navy to discharge homosexuals.

Tribe criticized as "fundamentally misguided" any opposition to Kennedy based upon his decision in that case. Claiming Kennedy "expressly reserved the right to privacy outside the military context," Tribe said "those who say all that matters is the bottom line are missing the point. To be so result-oriented is to say that the opinion itself doesn't matter."

In *Middendorf*, Kennedy wrote, "We recognize, as we must, that there is substantial academic comment which argues that the choice to engage in homosexual action is a personal decision entitled, at least in some instances, to recognition as a fundamental right and to full protection as an aspect of the individual's right to privacy. . . . There is substantial authority to the contrary, however. . . ."

"Upholding the challenged regulations as constitutional is distinct from a statement that they are wise. The latter judgment is neither implicit in our decision nor within our province to make."

A number of conservatives, in-

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U.S. Attorney Giuliani Delivers Second

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need to "understand reasons why they ought to obey the law," he said.

Hall of Fame

Professor Alan Dershowitz introduced Giuliani as "one of the very, very few baby-boomers I know who could actually survive a Supreme Court nomination." Apologizing that his next statement might "hurt Rudy's nomination," Dershowitz added, "I would support him." Dershowitz praised Giuliani as "one of the great prosecutors of all time," belonging in the "Hall of Fame of Prosecutors."

Dershowitz asked Giuliani why one of the best U.S. Attorneys, who, he said, has been so successful at uncovering and prosecuting ordinary criminals, "can't get to the source of illegality *within* the Justice Department." Dershowitz referred to the problem of members of the government prosecution or the Justice Department leaking defamatory or otherwise damaging information from the grand jury room to the press. He specifically asked about the case of Bess Meyerson, who lost her job with the City of New York when such a leak revealed that she had pleaded the Fifth Amendment's right against self-incrimination.

Giuliani said that prosecution of such cases is difficult, because once you have targeted three or four people, all of whom deny responsibility, "you must force the reporter to tell you his source." Reporters, he added, are so uncooperative on such matters that they "won't even eliminate names," and often give ambiguous descriptions. He said that the prosecutions of leakers in the ABSCAM capers were facilitated by circumstantial evidence and confessions.

Giuliani suggested that one reason to seek to stop such leaks and "force reporters and grand juries to give up sources" would be to "frighten others." He asserted that "sometimes, leaking comes from the defense side, when lawyers of other

witnesses want to get someone prosecuted." He concluded that leaking was "counterproductive and damaging to the government," since it is "better to investigate secretly than in public." Later Dershowitz said that he did not understand why, if the district attorney could narrow the suspects down to three or four in the Bess Meyerson case, those people were not called before a grand jury to testify under oath about whether they were the source of the leak.

Giuliani complained that the three types of crime he came to discuss, all committed by the "politically powerful and wealthy," have never been prosecuted vigorously enough. "Only once a decade," he said, "is a major leader of organized crime" convicted. He recalled that although Al Capone was only "one of fifty at that time" of his stature in the crime world, they "only got *him*, and *that* was on tax evasion." He boasted that in fighting organized crime the government has done in "the last four to five years a much more effective job than has ever been done in the history of the United States."

Organized Crime

Giuliani stated that organized crime has its roots in the "immigrant experience of the United States" and took the form of "one group growing and growing." He suggested that a comparison of mobster Joe Bonanno's and J. Edgar Hoover's biographies reveals the historical ineffectiveness of government prosecution of organized crime. Joe Bonanno's biography, Giuliani said, describes Mafia growth from the 1920s to the 1950s as it developed from "individuals to international family corporations to cartels." Meanwhile, in his biography during these years, J. Edgar Hoover "was [quoted as] saying that organized crime was a myth."

As crime syndicates gained institutional power over business, labor and politics, Giuliani asserted, it became obvious that "the empire survives the capture of one or two

leaders." He stated that prosecutors "now [have] more success, since Congress recognized that organized crime is an enterprise." The change came about, he said, in the late 1960's with the RICO (Racketeering Influenced and Corrupt Organizations) statutes adopted in response to the *Vallacci* case. Since that time for certain offenses or combinations thereof, criminals "must forfeit the property they own, the businesses they have, and their money," to eliminate the possibility that a successor might step in and continue business as usual.

Giuliani mentioned that from the 1930s to the 1980s, the government "consistently convicted the head of the Genovese crime family, but the family crime enterprise structure grew and grew. Now criminal forfeiture proceedings take the institutional power from these organized crime groups." When "new groups" sprout up, he added, prosecutors are now getting them "in the early stages of development."

"The same is true," Giuliani commented, "in the white collar crime area. From the 1970s until now there has been an increasing emphasis on crimes committed by businesses" (tax evasion, fraud, etc.) and by "public officials" (bribery). He denounced such organized crime, because it "unhinges the respect for the law" when the "big guys" break the law to go for huge amounts of money. Giuliani asserted that prosecution for such crimes cannot effectively be accomplished at the local level, where officials "lack the resources and the jurisdiction" and must therefore "concentrate on violent crimes." He claimed that the federal counterparts can step in because they can issue subpoenas all over the country and the world and can employ the FBI.

Lax Prosecution

Giuliani maintained that the federal government has been lax in its prosecution of perpetrators of securities fraud and insider trading.

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Rappaport Lecture To A Packed House

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He stated that the "United States Congress fifty years ago made insider trading illegal," but that from 1933 to 1984 only "twelve people were prosecuted and convicted," mostly in the last decade. Since 1984, fifty more have been convicted. The temptations of money when "no deterrent was present, no one getting caught and punished," resulted "even in the early 1980s" in a "statistically zero" chance of being caught, he suggested.

Giuliani also protested that "tax evasion gets much too little attention." When he became a U. S. Attorney in 1983, Giuliani said he thought the sums involved in the Marc Rich case were extravagant. "Mr. Rich became a fugitive" after accruing \$90,000,000 in taxes not paid. Giuliani then cited a tax evasion case for \$150,000,000, then one for \$400,000,000, and what is "now close to a billion-dollar tax evasion case." If Americans paid these taxes, he claimed, there would be no deficit problem, since "hundreds of billions of dollars" are involved in tax evasion cases.

Giuliani stressed that more evaders must be tried, convicted and given prison terms. Although "serious white collar crimes deserve prison," he said, only "one third of white collar convicts see the inside of a prison." Conceding that there are "plenty of exceptions to prison," he added that "the percentages must change."

Giuliani lamented that "we have not been able to change consistent ongoing patterns of corruption. What we have never done in New York," he said, are those things that have to be changed to reduce and turn around corruption — public officials taking and offering bribes. He said that "we haven't seen emphasis on conflict of interest laws and campaign financing. Every time we indict or convict someone in public office we are alienating people from government, creating cynicism and distrust of public officials. In fact, it should have just the opposite effect — we should see

huge increases in participation in elections and government by people who are straight."

Giuliani recalled a group of priests, ministers and rabbis from the South Bronx who became concerned enough about political non-participation that they sought to raise money for educational programs for citizens in the area. Because corrupt politicians discourage people, Giuliani said, it is vital to "bring people into political life and hold public officials accountable." He advocated "selective prosecution by example," since "we have a great deal of crime to deal with." Although he did not know the figures for white collar crime, he said that Americans commit violent crimes like murder "ten times more than Englishmen and twenty times more than Japanese."

Posing Questions

Giuliani responded to accusations that the RICO statute is being abused, causing defendants threatened with treble damages to settle their charges. He insisted that the problem is "not the statute, but the use of the statute" in civil actions by private plaintiffs. It was unacceptable in such cases for two mail frauds to constitute a pattern of racketeering, he said, suggesting that "Congress should limit that." He asserted that the statute should not be used everywhere — just against major organized crime, white collar crime and political corruption — for "large scale crime." The Justice Department has to defend its use of RICO, he said, adding that they have a record to show that they used it in only forty cases when they could have used it in one hundred and twenty.

Giuliani responded similarly to suspicions about the forfeiture of fees in drug and organized crime cases. He asserted that the procedure is "used very sparingly and used with discretion," claiming that "rigid standards" are applied in "good faith" to ensure that the "money is proceeds of a seriously criminal activity." Giuliani added

that it was "not a gross interference with the right to counsel" even when used against someone with as much tainted money as the Genovese family, who "have both legitimate and illegitimate income and can pay lawyers with their *legal* income."

When asked about his personal safety as a prosecutor, Giuliani said that criminals of the kind he was discussing "don't attack public officials, law enforcement officials or agents," because they realize that that would be "irrational" and "harmful to their business.... That's the only rule they have that I agree with," he quipped.



Ding Letter Contest!!

Submit those nasty dings to the RECORD box in the Hark.

Next RECORD:

December 4, 1987
Happy Thanksgiving

Professional Dry Cleaning
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Firm Indifference Curves

Now is the time for all good 3Ls to come to terms with the real world. The first NALP deadline has fast come and gone and most 3Ls look to the next deadline for their permanent employment offers with classic indecisiveness.

Consider the indifference curve. Any economics major will explain that these curves vary from person to person but will always meet at some point designating the optimal bundle of goods for that individual.

Consider the law firm bundle: city choice, size of firm, type of practice, percentage to make partner, types of fellow workers, fringe benefits, hours worked, and salary. Assuming the law student wants to work in a law firm and assuming the student can find a firm that meets the first six of the above criteria, the average law student is still left with some weighty variables. It is now time to balance those other factors in order to reach the often elusive point of optimality.

Consider two cities. One offers a salary of \$72,000 and the other one of \$55,000. On first impulse it would be easy to say one "pays more" than the other. Look again. The first city works, on average, 2300 hours per year, the second works 1900 hours per year. They're not paying a hefty salary for nothing.

Consider hourly wage. In the first city the rate works out to be about \$31 per hour and in the second \$29. This is before taxes. After taxes, the rate works out to be about \$21 in the first city and \$20 in the second.

Consider then the conclusion that one city pays more than the other. It seems the real difference is one or two dollars per hour.

Consider the more important question: How much do you value your leisure time? If the student values her leisure time very highly, paying one or two dollars per hour more while requiring 400 additional hours of her time which could be better spent away from the office, would certainly not be enough. If, on the other hand, "work is play" is the law student's motto, she would be in the office anyway so why not be paid, however little more.

Consider your preferences. Consider your personality. And the next time you hear someone saying she's accepting a job because of the money, sit her down and work it out on paper. It may be, upon reevaluation, that this law student has landed on a less efficient spot on her indifference curve. Maybe not. Just consider it.

T.M.F.

HARVARD LAW RECORD

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Fenno

Thanksgiving. In Cambridge, a time for traipsing through mounds of golden leaves scattered in picturesque fashion over the broad green lawns of Harvard. In Somerville, a time for slushing through puddles of melted, discolored snow and avoiding trampled - into - mush leaves. In all of New England, a time to get out and return home.

These longings for the simple pleasures of home stirred and rumbled to life in the heart of Fenno. He savored the delicious memories of Thanksgivings past, where the entire Fenno clan gathered around the traditional meal of roast, stuffed Spam basted in beer sauce and surrounded by pretzels. Uncle Fenster would belch and then all the family would dig in furiously.

"You know," Fenno sighed to his pet gerbil, "a guy needs his family at a time like this. Don't think those Hallmark guys didn't know what they were up to when they started this whole holiday business," he said to the rodent.

Throwing a six - pack and some Ding - Dongs in his knapsack, Fenno prepared for his voyage. "Hmm. Gotta travel light. Lord only knows I won't have much room in that luggage compartment." Tossing his pet a few gnarly rolls and bidding it best wishes for a happy holiday, Fenno headed for the airport.

Before he knew it, Fenno was on his way home. Along with every other student in town (est. 100,000), Fenno was breathing heady exhaust fumes of the Sumner Tunnel.

"Wow man, like I haven't felt like this since I hung out at the Duplicating Center." His cab driver grunted an incomprehensible response. Several hours later, Fenno signed over his GSL check to his driver.

"Happy Thanksgiving, Sir. And God bless us, every one!" cheered Fenno.

Fenno was in a quandary: should he head directly to the cocktail lounge, or go first to the ticket counter?

Placing his destiny in the hands of the fates, Fenno flipped a beer cap - heads.

"I win!" he shouted and skipped to the bar.

In the dark interior, he noticed a familiar figure: "Rocky, is that you? I just saw you in *Rocky XI - The Wrath of Jabba*."

"Yo, Fenno. How's it goin'?" the husky voice boomed out of the shadows. "Do ya' wanna have Thanksgiving with me? I'm bringing my old friend Bullwinkle."

Fenno looked at the fresh moose steaks. "My that does look tasty, and I do have some brews to go along with it," he salivated.

A quick look at the clock settled Fenno's mind: 12:01 A.M. Friday, November 27. He had missed Thanksgiving. Not letting on, he accepted his timeless friend's offer.

"You know Rock," he said as the headed off together, "did you ever try stuffed Spam?"



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CHARLIE

"DON'T LET THE BASTARDS GRIND YOU DOWN - PART ONE"

Little Charlie, like most perfassers, Hasn't yet heard of the word "hers."

THE JUDGE TURNS TO THE EXPERT WITNESS - AN EMINENT DOCTOR - AND HE SAYS TO HIM, "WAIT." NOW YOU KNOW THE LAWYER - DO YOU EXPECT HIM TO OBJECT? HOW ABOUT THE DEFENSE LAWYER - WILL HE?

Judges and lawyers, guards in the jail, Appear in hypotheticals, invariably male.

Oh, "ladies" do show up in class, For Charlie likes his "tits and ass" -

CAN ANYONE GET IT UP FOR THIS WIFE-BEATING STUFF?

OK, TURN TO "OCCUPATIONAL HAZARDS," THE PROBLEM IN WHICH THE HOUSEWIFE INITIATES SEX WITH A SERIES OF DELIVERYMEN...

And when students' anger reaches a crescendo, Charlie's answer is smug innuendo.

BUT I'M NOT SEXIST - MY WIFE TELLS ME SO!

CRIMINAL LAW CLASS, 1985

EVIDENCE CASEBOOK, PAGE 198

Helpless clients, the willing rape victim, Help him explain the High Court's dictum.

PROFESSOR, I FIND YOUR DISCUSSION OF RAPE QUITE OBJECTIONABLE...

WELL, I'M IN THIS FAR, I MIGHT AS WELL GO ALL THE WAY!

Yes, Charlie's quite a guy, oh so clever and oh so sly...

HERE'S TO FALSE CONSCIOUSNESS!

WAS HE THIS BAD LAST YEAR?

WORSE

SHASH THE STATE

EVIDENCE CLASS, 1987

STUDY GROUP

by KA

HEROIC PROF GIVES SELF A CESAREAN

Stranded in class, uses can opener to deliver baby

WEEKLY LAW SCHOOL 351

NEWS

NOVEMBER 20, 1987 30587 VOL. 35 Issue 9

GHOST OF ELVIS HELPED ME IN CIVIL PROCEDURE!!

UFO GAVE ME CALCULUS OF RISK

JUDGE UNSEEN HAND SPILLS THE BEANS!!!

HEY MAN, c'mon, LET BYGONES BE BYGONES!

NOBODY AXED ME! REAGAN'S MAN AN AXE MURDERER! "HELL, IT WAS 20 YEARS AGO ANYWAY" NOMINEE SAYS

36 HOURS IN THE SWAMPY SWAMP! I WENT DOWN THE SLIPPERY SLOPE AND LIVED!!!

MELT OFF THOSE POUNDS WITH THE AMAZING LAW SCHOOL DIET!! COFFEE, CIGARETTES AND CANDY!!

FRONTLINE

IDEOLOGICAL COMBAT

DOCTRINAL BLOOD AND GUTS

FIRST THEY GOT BOBBY... THEN THEY GOT DOUG, IF EVER THERE WAS A HELL ON EARTH... IT WAS HERE... HERE ON THE IDEOLOGICAL BATTLEFIELD!!

KENNEDY, A

Op. Op. Ed.

By "The Printer"

I feel somewhat like the other woman in a romantic triangle, and yet I am not the new player in this relationship. I am "THE PRINTER." Until now, I have silently observed and listened to criticisms by and about both sides in this mini Civil War. At this juncture, I feel compelled to share my feelings and experiences with the present and past staffs of the RECORD.

I have been associated with the RECORD for nearly 20 years. During this period I have dealt with above average intellects, misguided arrogance, unqualified editors, changes in style and schedule, spendthrift business managers, egos that could serve as cornerstones and, on some occasions, students who had matured and made a serious contribution during their tenure with the RECORD.

In the past, the lack of maturity and qualifications and the arrogance of some [Alumni] Association members was not an issue I, as the "Printer," was forced to deal with. My singular responsibility as the "Printer" has always been to produce a timely, cost effective newspaper for the Harvard Law School and, in return, receive timely payment for my services.

As the Treasurer [Donald Mitchell] points out [see RECORD, Nov. 13, 1987], he is a volunteer and therefore not accountable for his absences or lack of time to properly coordinate his efforts with the RECORD staff. I'm not positive, but I was under the impression that the Editorial staff of the RECORD was also volunteer. As mentioned in both editorials, I did, in fact, cancel the three-way meeting involving Mr. Mitchell, the RECORD staff and myself. Running a successful business for fifteen years while gaining the respect and trust of the majority of professional publishers in both Boston and New York allows me the luxury of not being summoned like some child by a gentleman trying to cut present costs while refusing to pay outstanding in-

voices. Perhaps what Mr. Mitchell is experiencing is the frustration of dealing with the changing of the guard at the RECORD every 10 issues with all parties disavowing any knowledge of past or future problems. I have found that communicating with the staff as adults and in a mature manner as opposed to a Napoleonic attitude of "Do you know who I am?" works quite well for me.

As for Mr. Mitchell's theory of bidding the RECORD out annually, may I assist in setting up the basic qualifications.

1. You need a courier willing to sit on Everett Street in the bitter cold some evenings until 1:00 A.M. or 2:00 A.M.

2. You need a production staff committed to producing a 16-page newspaper on an insane schedule.

3. You need a part-time psychologist to deal with the idiosyncrasies of every new editor and staff.

4. You need a mailing house willing to take the RECORDS for a ride each week until the Association decides to pay the U.S. Post Office.

5. And then after all this fun, you will be granted the honor of waiting 180 days for payment of your invoices.

Many members of the Association have, in the past, worked on the RECORD and subsequently with my staff. I, therefore, feel justified in making the following statement: The criticisms with which Mr. Mitchell so lavishly anoints the present staff of the RECORD are totally undeserved. I have dealt with nearly 40 RECORD staffs and I find the present administration to be refreshing, organized, honest, and in the top ten.

H. Wayman Rogers, Jr.
President, GRAFACON, Inc.



New Lodge For Bullwinkel

(Continued from Page 2)

Bullwinkel asked her colleagues for permission to bring Tansy to work a few days a week; she wanted to attend evening classes through Harvard Extension — Latin American literature (in Spanish) and history of the Italian Renaissance — without stopping off at her Watertown home to help Tansy with her doggie exigencies. But one look at Tansy won them over. "Now she's just a regular employee," declared Bullwinkel doggedly, though Tansy is not yet on the payroll.

Cartoon Connection

One question is inevitable, and Bullwinkel no doubt grew up teased on school playgrounds with this one: is she any relation to the cartoon moose? She who laughs last, as they say, laughs best; Bullwinkel the

Moose was actually named after Dana Bullwinkel's family. "There was a contest when my parents were first married to name Elsie, the Borden cow, . . . and her calf Daisy," Bullwinkel recalled. Though her parents didn't win the contest — they had submitted "Bullwinkel" for Elsie and "Beverly," Bullwinkel's mother's name, for Daisy — "a man who worked with Borden . . . liked the name 'Bullwinkel.' He called my parents and said that he was creating a new moose cartoon," she said, and of course, the rest is moosestory.

Bullwinkel acknowledges people's natural inclination to call Tansy "Rocky." But Tansy is no flying squirrel and thus takes the bus to work with Bullwinkel, who said that "the whole bus laughs every time."



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Gephardt Aims For Protectionist Nations

by Richard Gephardt

Rep. Richard A. Gephardt (D.-Mo.) is a candidate for the Democratic Presidential nomination. Following is a column he wrote which appeared in the New York Times, July 15, 1987.

To win the economic battles of the future, America must address both sides of the trade equation — our failure to maintain a competitive economic environment at home and the removal of protectionism abroad.

First, we must correct the fiscal madness of the Reagan era. A reordering of budget priorities that neglect human needs and nondefense research and development is also required. Does anyone really think the nation can compete successfully in the 1980's with a high school dropout rate of 25 percent? Our competitors abroad understand the need for a highly educated workforce. Why do we settle for less?

Does anyone think we can stay ahead in the race for the best technology when we squander 75 percent of our research dollars on military projects? The Japanese spend 3 percent. During a visit to the I.B.M. plant in Burlington, Vt., where they make the most advanced semi-conductors in the world, I asked the manager, "How far ahead of the Japanese are we?" He replied: "Six months — and we fight for every day of the lead!"

Clearly, there are many solutions to our trade problems, but I reject the protectionism for specific industries favored by many in organized labor. Closing our markets would hardly provide added incentives for labor and management to make the best possible products at the lowest possible cost.

The nation cannot hide from the fact that about 80 percent of the \$160 billion trade deficit is our own fault. That still leaves 20 percent — the big issue in trade. How, then, do we open foreign markets? The Gephardt Amendment to the House trade bill would do it.

As passed by the House, the amendment would increase American exports through negotiations for the removal of unfair foreign trade barriers. It would not shut off our markets from competition.

The Senate has passed, by an overwhelming 87-7 vote, its own measure requiring the President to act against unfair foreign trade. It is not as strong as the House version. Nonetheless, I am confident that whatever emerges from the House-Senate conference will be forceful legislation.

Judging from some media commentary surrounding the trade debate, it's clear that critics choose not to understand why the amendment is necessary. My views are based on a single premise: If America continues to ignore the challenge of international economic competition, our standard of living, which has been growing steadily for decades, will soon begin to decline.

Thus, the next President must be as tough in negotiating the terms of trade as Mr. Reagan has been in negotiating with the Soviet Union. If we are not strong economically, we cannot be strong militarily — not for long. Meeting this challenge will require new economic policies and new political leadership that does not pepper us with short-sighted, self-congratulatory messages of contentment, Reagan-style.

One look at the unprecedented growth of the trade deficit since 1981 tells us how lightly other nations have taken President Reagan's rhetoric about treating America fairly in world trade.

By contrast, the Gephardt Amendment instructs the President to negotiate with countries that use a pattern of unfair trade practices to build up huge trade surpluses with us.

If agreement is reached to eliminate the practices, no further action is required until the next year.

If not, the President is required to use any means at his disposal to



Richard Gephardt

reduce that country's exports to the United States by a dollar value equal to that of American exports barred by such barriers.

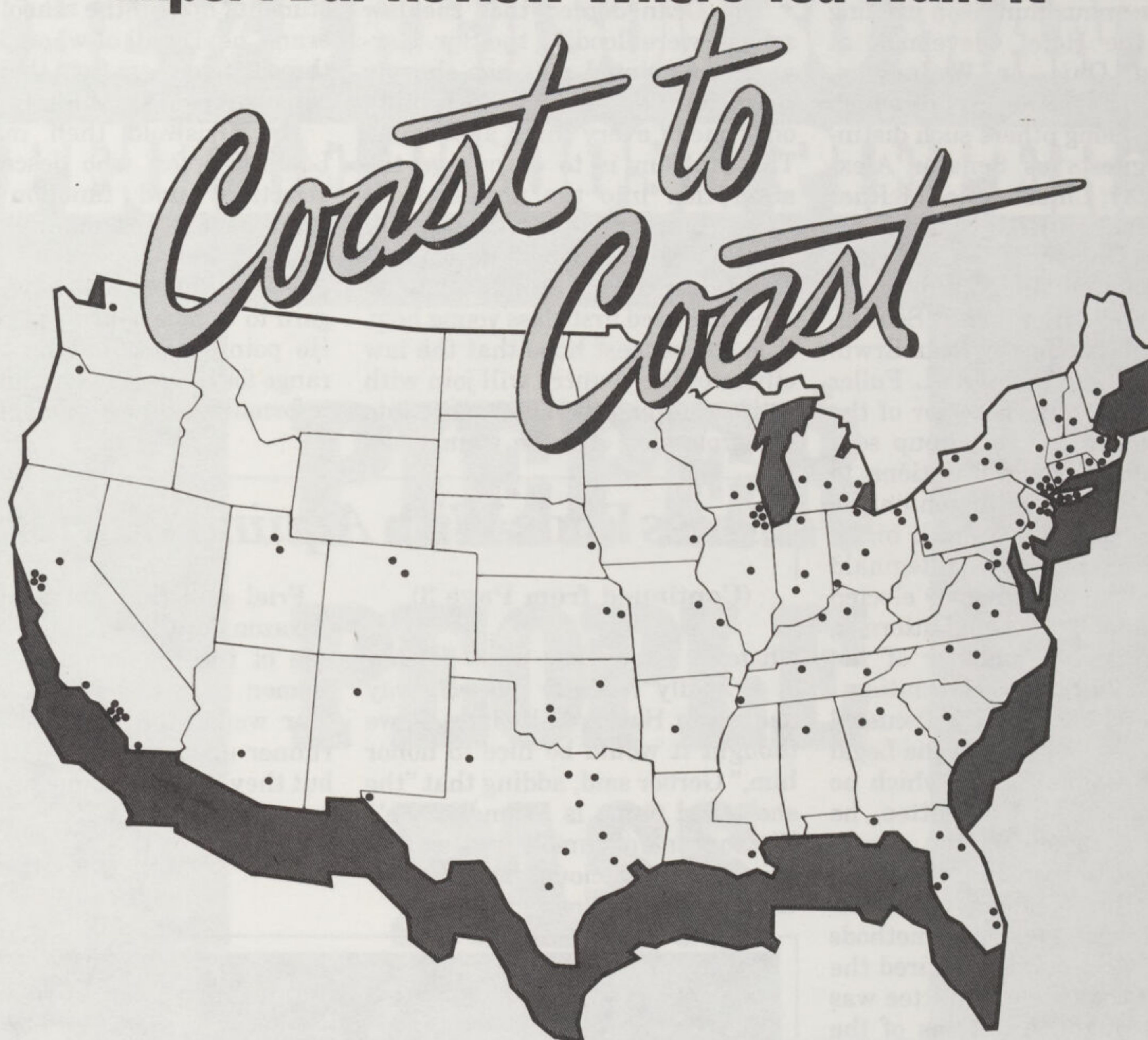
A year later, the United States Trade Representative checks to see if the country has lived up to its agreement with us or has reduced its surplus. Only if the pattern of unfair practices remains and the surplus is still excessive would the President be required to insure that the surplus comes down by 10 percent per year for each of four years.

How would offending nations respond to such pressure? Every time the United States has cracked down on trade, barriers have been eased; likewise, barriers have fallen only after we have applied pressure. But such brinkmanship should not be the centerpiece of our trade relations.

Finally, my legislation is flexible: If the President feels that enforcement of its provisions is not in our economic interest or that negotiations are on track, he simply notifies Congress. A two-thirds vote of both houses would be required to overrule him.

(Continued on Page 16)

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Years Ago . . .

Three hundred members of the Harvard Law School Association met at the annual luncheon meeting held in the Hotel Cleveland, at Cleveland, Ohio, on Wednesday, Sept. 24, 1947. The group, which included among others such distinguished guests as Senator Alexander Wiley, Chief Justice McRuer of the Canadian High Court, President-elect Gregory of the American Bar Association, Judge William L. Ransom and Mr. Murray Seasongood, heard speeches by Dean Erwin N. Griswold, Professor Lon L. Fuller and Louis Toepfer, Director of the Placement Office. The group sent a telegram of congratulations to Professor Samuel Williston on the occasion of his eighty-sixth birthday, and on motion by Reginald Heber Smith, unanimously elected Dean Griswold, Cleveland attorney, an honorary life member of the Harvard Law School Association.

Professor Fuller briefly discussed the objectives and work of the Legal Education Committee of which he is chairman. The Committee, he stated, was reviewing the curriculum and at the same time working with the other members of the faculty in exploring teaching methods in the Law School. He assured the graduates that the Committee was cognizant of the traditions of the Harvard Law School and that it did not intend to change the essence of the case method of teaching nor to dictate to any individual on the faculty as to his method of teaching.

Professor Fuller was followed by Dean Griswold who spoke of the operation of the school for the past year under the accelerated program, and of prospects for the future.

The School, he stated, will turn out over 1000 graduates in 1948 - 350 in January, 350 in June and 350 in September. Despite this concentration of new lawyers, he said, "over the ten year period from 1940 to 1950, we will not turn out more graduates than we would have done in a normal ten year period. In other words, all we are doing is to make available a legal education to the same number of men who would have had that opportunity if they

had not had their normal lives disrupted by the war."

The Dean denied that the law schools were flooding the Bar. Harvard, he pointed out, has sharply restricted enrollment, accepting only one of every three applicants. The problem is to encourage the absorption into the profession of these prospective graduates. "I think it can be done," he said. "I think that there are many law offices that need first class young help. It is our earnest hope that the law offices of the country will join with us in regarding the admittance into the profession of these young men

as a genuine and important war service. Ninety-three percent of the students now in the school are veterans, nearly all of whom lost from three to five years from their normal careers because of military service."

Mr. Griswold then introduced Louis Toepfer, who described the objectives and function of the Placement Office and invited practicing attorneys to send him any inquiries they might have with regard to their employment problems. He pointed out that he could arrange for interviews and furnish full information on all students.

✽

Ames Ends With Aquino v. Friendly

(Continued from Page 3)

whatever name they want. "Henry J. Friendly recently passed away and was a Harvard alumnus, so we thought it would be nice to honor him," Gerber said, adding that "the shortened name is Friendly. We'd like to think of ourselves as an outgoing and vivacious group rather than a real studious group."

Friel said that his team picked Corazon Aquino because "we were one of the few teams with more women than men." The team has four women on it. Friel said the runner-up name was Vanna White, but they felt that name would have been "too frivolous."

✽



Patricia Lee

Karen Burke, 1L, displays her sculptures in the library reading room in Langdell Hall.

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New Court Nominee Called Mainstream Jurist

(Continued from Page 5)

cluding Sens. Jesse Helms (R-N.C.), Strom Thurmond (R-S.C.) and Orrin Hatch (R-Utah), earlier threatened to withhold support or even to fili-

Freer Trade

(Continued from Page 12)

In short, critics of the legislation, as well as President Reagan, may choose to worship at the altar of a false and rigid free-trade ideology at the expense of American workers, farmers and businessmen. But count me out.

We can no longer afford to settle for a global marketplace in which Americans are free to buy but not to sell. Our people need to know that if they make high-quality products, their Government will fight for open markets overseas.



buster a Kennedy nomination because of the privacy issue. Tribe added that Kennedy's opinions in this area "would be a stress for the people who most strongly supported Bork. But it also shows how wrong those are who consider him indistinguishable from Bork."

Tribe discounted the fear by some that Kennedy's apparent moderate position owes more to his status as a lower court judge than to genuine belief. "Clearly, Bork showed as a circuit court judge how much room there is for circuit court judges to show they're chomping at the bit to change the law," he said.

Tribe said he felt the Bork hearings vindicated the effect a more active Senate consideration can have on Supreme Court nominations, and predicted that Kennedy will not need to be as forthcoming with the Senate Judiciary Committee as Bork was forced to be.

"I expect him to perform ably and impressively," Tribe said. "But it's certainly not necessary that the

nominee make commitments to particular senators on particular issues." He characterized Bork's statement to Sen. Arlen Specter (R-Penn.) that Bork "recognized" *Brandenburg v. Ohio* as "a campaign promise of sorts."

"Bork was a special situation," Tribe said. "He had already said all the constitutional advances since World War II were wrong. . . . When a nominee does not pose that issue, then there is considerably more room for the nominee to be more circumspect and undecided," Tribe suggested.



Correction

In a picture on page 16 of Vol. 85, No. 8, the RECORD incorrectly identified Comedy Night as being sponsored by DSAC. Law School Council sponsored the event. The RECORD regrets the error.

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