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25 CENTS

Babbitt Bashes Budget Busters

By Andrew Pollis

Warning that the recent stock market crash put the nation "within minutes of a complete collapse of the American economy," Democratic presidential candidate Bruce Babbitt '65 told a capacity crowd in Ames Courtroom Nov. 20 that of all the candidates' budget-balancing proposals, only his would solve the problem.

The former Arizona governor and attorney general spoke on "Fiscal Truth Telling vs. Miracle Cures: An Economic Agenda For America." His speech was sponsored by the HLS Democrats, whose member, Peter Beshar, 2L, introduced Babbitt as the only HLS graduate "funny enough to star on 'Saturday Night Live,'" referring to the candidate's recent stint as guest-host of the popular late-night comedy program. Babbitt said that his own children "think that 'Saturday Night Live' was the absolute climax of this entire campaign."

Babbitt began his speech with a brief stand-up comedy routine in which he confessed, in the heritage of Hart-Biden-Ginsburg, to having gone through express supermarket check-out lines with more than eight items and to not having been

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Pauline Scalvino

Whoopi Goldberg expounds on being an actress. Story on Page 3.

Ames Climax Confounds All

By Chris Crain

The three-judge panel in the 76th Annual Ames Moot Court Competition left many confused by an unusual split decision, awarding best brief and best oralist honors to the Corazon Aquino team, representing the respondent, but reserving best team honors for the petitioners' Henry J. Friendly team.

Best oralist honors went to Greg Friel, 3L.

BSA organizer Yoon-Young Lee, 3L, said it was unusual for a team to win the overall honors without capturing the best brief or best oralist awards, but that it was possible "if both teams were really close otherwise." The panel included U.S.

Supreme Court Justice Antonin Scalia '60, Judge Dorothy Nelson of the Ninth Circuit, and Judge Sam Ervin III '51 of the Fourth Circuit.

Friel, who will receive \$1,000 for his award, said he was "really shocked" by the judges' decision on best oralist honors. "I really didn't think I was going to get it at all," he said, adding that immediately after finishing his presentation he "didn't think it had gone that well."

Friel said the team members, including 3L's Lisa Neuville, Marge Berry, Lee Schott, Jeff Shorba, and Asim Varma, were "really pleased" with winning best brief honors because "the brief is the toughest

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Cruz Ponders Solutions To Nicaraguan Malaise

By Troy Morgan

On Nov. 19 former *sandinista* and former *contra* leader Arturo Cruz stood behind a podium and a line of tables placed end to end in order to address a crowd of students in the Ames Courtroom. Security officers guarded every entrance and required that bags be checked. In light of the Adolfo Calero incident of October 2, a wave of laughter washed over the audience when Professor Detlev Vagts '51, who introduced Cruz, said that he hoped the discussion would remain "within the bounds of civilized discourse." The speech proceeded without incident.

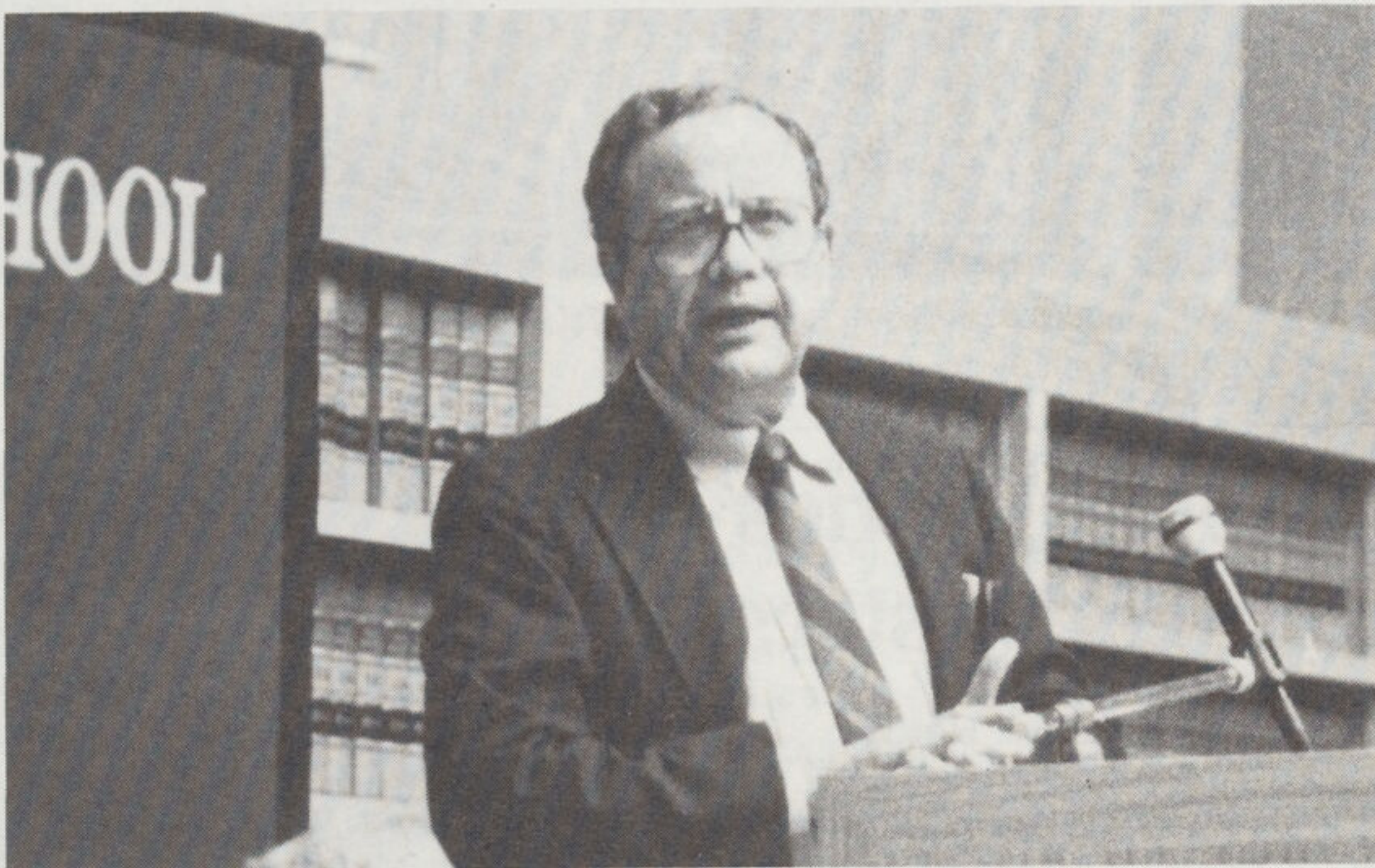
Cruz stated that after fulfilling the HLS Forum's request to explain why he left the Directorate of Unified Opposition in Nicaragua, he would expound on the "more worthy" subject of the prospect of peace in his homeland. He expressed mild resentment at being the center of attention, since "more than once [he has] played the role of slave in the Roman Circus."

Cruz explained that "Nicaraguan dissidents" like himself "believe in the Revolution," but are opposed to its orientation. "The real struggle is both poles against the center — there is a democratic center," he said.

Cruz admitted that at the "end of 1986 the Iran-Contra scandal obviously influenced [his] decision to leave" the *contras*, but added that it was only a "trigger." He claimed that other considerations, such as his "duty as a Nicaraguan" and as a family man, along with "self guilt" and a "fed up" feeling, were the underlying causes of his departure.

The Political Situation

Cruz called his 1985 decision to join the Nicaraguan resistance a "mistake," and referred to Barbara Tuchman's *The March of Folly*, in saying that he "decided that [he] had to accept [his] errors." He explained that because the *contras* had "failed to give a political dimension to [their] cause," no one saw them



Pauline Scalvino

Former sandinista and former contra Arturo Cruz sees Nicaragua from many sides.

as "freedom fighters," and U. S. policy foundered without domestic support. Nor does Calero favor the *sandinistas*, who, in his judgment, are "a regime based on force" and "guilty of injustice," he said.

Before his decision to leave, Cruz explained, the major faction of the *contras*, the *F.D.N.*, was divided geographically between *somocistas* (followers of the ex-dictator Somoza), *guardias* (national guardsmen) and *campesinos* (country folk), all in the North, as well as *sandinista* dissidents and *guardias* who had rebelled against Somoza in the South.

Cruz claimed to lean toward the South. He said that to the *somocistas*, anyone who believed in the revolution, for instance a *sandinista* dissident, was "a wandering dog." Because the Northern "clique" would not commit to human rights, democratic principles and pluralism, Cruz decided not to "stay in an alliance with those who [were] not [his] friends."

Cruz declared that Costa Rican President Oscar Arias is the "new reality" in the region. The Arias Plan, Cruz said, is not just "another platitude," because it "removes all pretexts for the *sandinistas* not to accept it." According to Cruz, Arias would bring to Nicaraguans the respect for human rights, democratic

principles and pluralism that the *sandinistas* have thus far denied them.

Rights Violations

In particular, Cruz mentioned three violations of human rights by the *sandinistas*. First, the "right to elect and to be elected" identified in 1984 by the human rights commission of the Organization of American States is violated, he said, when the *sandinistas* put themselves in a superior position during elections.

Second, he accused the *sandinistas* of "injustice" for keeping thousands of former members of the national guard imprisoned, when only one hundred of them might be "murderers and torturers," while the rest were, he asserted, orderlies and privates. Cruz proclaimed, "The shield of protection of the revolution is not war; the shield of protection of the revolution is justice." Third, Cruz accused the *sandinistas* of "recklessly" causing food shortages and other problems that he attributed primarily to the ideological inflexibility of the *sandinistas*. He said that "the first duty of a statesman" is to "protect people," and "we have a duty to work for peace."

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HARVARD LAW RECORD

Whoopi "Karen" Goldberg Wows Forum Masses

By Rick Genow

Addressing a full house Nov. 20 in Ames Courtroom, Whoopi Goldberg left her crowd laughing despite the fact that she described herself as an actress and not a comedienne. Goldberg's talk was sponsored by the HLS Forum.

The dreadlocked performer was introduced by Professor Martha Minow, who commented that "it's not often that we have the opportunity to have someone with such a varied and distinguished legal career in this room." Goldberg, Minow stated, has portrayed a police officer in the film "Fatal Beauty," a criminal in "Burglar" and a criminal justice reformer in "Jumpin' Jack Flash."

Goldberg discussed her involvement in various political and artistic projects and responded to a multitude of questions ranging from the mundane to the profound.

"I was blown away when I received the invitation to speak at Harvard," said Goldberg, who immediately informed her mother that she was going to "lecture" at Harvard Law School. "Which for someone who didn't finish high school is pretty remarkable," she added.

Goldberg stated that she is "politically paranoid," involving herself in a host of polarized issues. She recently participated in a march sponsored by gays and lesbians against AIDS. Goldberg said she particularly resented the treatment by "close minded people" of children stricken with the AIDS virus.

The problem of homelessness is another issue which has occupied the actress. Goldberg recently participated in the Comic Relief program with Robin Williams and Michael J. Fox, among others. The program was designed to raise funds to aid the homeless nationwide. Goldberg summed up her varied political activities by saying, "I try to be a voice in the wind, which is sometimes like urinating off the bow of a boat."

Goldberg opened the floor for questions and was asked about her recent feature film "Fatal Beauty,"

which the actress fondly refers to as "Fatal Booty." The film co-stars Sam Elliot, a white actor. The role played by Goldberg was originally slated for Cher, and the original script included a sex scene between actor and actress. Goldberg said that the directors deleted the scene because of the interracial context.

Hollywood Lives

"I was supposed to be Cher," Goldberg said, "and when they saw me, they said 'Oh no, you're not going to get any nookie from Sam Elliot.'" The scene was rewritten to stop at mere intimacy, but in the end this was cut as well. Goldberg added that in Hollywood, it was "not okay to show interracial sex, but it was okay to show them blowing away 15,000 people."

When asked why she gets the types of roles that she does, Goldberg said she doesn't think that Hollywood quite knows what to make of her. She said they say, "there's a black woman. She's mildly funny. Who can we make her like? Eddie Murphy!"

In response to a question as to whether "Whoopi" is her real name, the actress quickly retorted, "No — it's Hurray!" Goldberg then explained that her real name is Karen Goldberg. The name "Whoopi" comes from her days as a stage actress when the sounds she made when upset or upon awaking were likened to that of a whoopie cushion. As for her last name, Goldberg said, "I'm half Jewish and half Catholic and don't practice either. I'm a devout humanist."

Blue Eyes & Dreadlocks

Goldberg was also questioned about her choice of wearing blue contacts as a black woman. Goldberg said wearing contacts is like "changing your lipstick." She said she didn't think that by wearing the contacts she was denying being black. She has also received criticism for wearing her hair in dreadlocks, which she has done for years, even before being aware of the Rastafarian movement.

"Let me get some Whitney [Houston] hair and a Michael [Jackson] nose and the next thing you know they're writing in *Rolling Stone* that Whoopi wants to be white. So you're damned if you do, and damned if you don't," Goldberg said.

When questioned about her preference amongst the 1988 presidential candidates, Goldberg said that "Paul Simon is my likely candidate just because he's there." She described Simon as "being on top of the abortion issue." The actress noted, "abortion is like prostitution — it will never go away. It's not a moral issue. It's a matter of alternatives. It's like AIDS — it's not a moral issue it's an . . . epidemic."

Goldberg described herself as a proud American. She suggested that Europe has drastically changed due to increased racism and less tolerance and has become a place where "cops are more than cops, they carry submachine guns." Goldberg said that Americans "have not lost the ability to speak out, which makes me proud," although she noted she was not proud of some things, specifically mentioning the problem of homelessness.

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**Next RECORD:
Next Semester . . .**

**Good Luck
On Exams!**

Arizona Democrat Outlines Three-Pronged Plan

(Continued from Page 1)

"a particularly diligent student" — an affirmation greeted with applause. He then expressed his serious admonition that future candidates in the audience should think about what they do "every second of every day," lest their pasts come back to haunt them.

Reagan and the Crash

With respect to the problem of the budget deficit and its effect on the economy in general, Babbitt blamed the recent Wall Street crash on the deficit, and he blamed the deficit on the Reagan administration and on Congress. Babbitt told his audience that he is "absolutely certain that your future is tied up" in the events leading up to the Wall Street crash. Babbitt confessed that nobody "can explain exactly what did happen or what's coming," but he insisted that "we have to be honest about that deficit."

"Ronald Reagan and his allies have piled up the largest deficit in history," explained Babbitt. Blaming Reagan for the deficit problem is a tactic Democrats have used since the 1984 election, but Babbitt gave it a new twist by asserting that the Reagan administration is deliberately using the deficit "to destroy government, . . . to hack away [at] the achievements of the New Deal [and] the Great Society." As a result, Babbitt concluded, "We're abandoning the progressive agenda."

The candidate said that the Gramm-Rudman Amendment, requiring automatic budget cuts if no

agreement is reached by Congress and the President, does not "reflect our priorities" because it doesn't distinguish one area of the budget from another.

Babbitt then went into a series of attacks on the deficit-cutting proposals of his fellow presidential candidates, both Democratic and Republican.

He called Vice President George Bush's tax-cutting plan "voodoo economics, part two," claiming that Bush's "stomach apparently is a lot stronger than his backbone." He remarked sarcastically that Senator Albert Gore's proposal to cut waste will cause the "waste lobby to go after him."

Babbitt accused Senator Paul Simon of proposing expensive social programs without regard to their costs, and he criticized Reverend Jesse Jackson's call for a slash in the defense budget as too extreme. Finally, he attacked the tax collection proposal of his "good friend" and front-runner Michael Dukakis '60 as unrealistic, claiming that it was done "in Arizona a couple of years before Massachusetts" but that a "small success in one state is not an answer in a national campaign."

Budget Solutions

Babbitt then outlined his own three-pronged plan to solve the deficit dilemma: a five percent national consumption tax structured to keep the burden off the poor, which he said would bring in 40 to 60 billion dollars per year in additional revenue; substantial federal spending cuts, both military and domestic;

and a national program of "workplace democracy" giving workers more managerial and ownership interests in American businesses.

Calling for "a consumption tax that's progressive," Babbitt acknowledged the political danger of proposing a tax increase. "There I go again," he chuckled. "I know what you're thinking — Mondale," Babbitt said. But Babbitt insisted that "we're not going to fool the American people by pretending these issues don't exist. We're going to win it with straight talk."

Babbitt concluded his prepared speech by relating the budget deficit problem to the traditional values of the Democratic party. He warned that no matter how valuable social programs may be, "if we don't get serious about this budget issue, all we're doing is window shopping."

After his speech, Babbitt took questions from the audience on his deficit reduction proposal and on other issues, including foreign policy. Asked if he thought his criticism of other Democratic candidates was harmful and divisive, Babbitt responded that he "could support any one of them for President."

In a question and answer session for the press following his speech, Babbitt blamed current government leaders for what he calls a "conspiracy of silence" with regard to the deficit issue and the need for increased taxes. "Voters elect representatives to lead and to tell the truth," he explained. "When the leaders are hiding in the bushes . . . how can you blame that on the American people?"

Babbitt's speech may have won the candidate some new supporters. Everett Carbajal, 1L, a native Arizonan, remarked that Babbitt "dispelled a lot of the misconceptions that he's a bad speaker. I think he was very presidential." Carbajal added that "a lot of my friends that had chastised me for supporting someone who's not a front-runner have now joined . . . the Babbitt bandwagon."

Somerville Bar Review

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Arias Plan May Depend On Other Nations' Moves

(Continued from Page 2)

After the speech, Cruz lamented that it is "hard for the world to believe that the dragon-slayers of 1979 [the *sandinistas*] are now the dragon." He suggested that instead of boycotting the elections of 1984, the opposition should have gone to the assembly "day in and day out," using the elections to denounce violations. They could have protested and then withdrawn from the elections the day before, he said.

Cruz stated that a "cease fire has to be negotiated." He said that "there should not be surrender on either side," but that there is "a distinction between discussing a cease fire and negotiating peace;" the former is done with the people in arms and the latter between leaders within Nicaragua.

Cruz said that the United States should comply with the Arias Plan, even though it is not a party to it, by withdrawing support from the rebels "when it becomes apparent that Arias is working." He added that "Honduras should also comply" by not allowing anything on its territory that the *sandinistas* could label a threat.

Cruz suggested that "nine-tenths of the people in Miami" who he described as *pro-contra* Cubans who fled from Castro and Nicaraguan emigres who fled from the *sandinistas* are against the Arias Plan, along with the "bourgeoisie of Managua." In the rural areas, people "probably don't know what the Arias Plan is," he said, but "sophisticated Nicaraguans" support it.

Cruz addressed two arguments commonly invoked against the Arias Plan: that only force will work on the *sandinistas*, and that with the *contras* there is hope, but without them there is no hope. To the first he replied that before one can use force effectively, one must "earn political legitimacy." Cruz said that the "*sandinistas* should have been left alone," that there "never should have been an insurgency," because the result has only been to weaken the "moral authority" of the opposition.

In reference to the second argument, Cruz asserted that "we must reexamine that reasoning." Arias, he said, is "the way to bring peace and democracy" to Nicaragua, but

"[we must] be sincere" and show that "[we are] not just out to taunt the *sandinistas*."

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Reader's Forum

Iranian Comments On Geopolitical Realities

The recent developments in the Persian Gulf and the debate and enthusiasm that surrounds discussions regarding that area have compelled me to hope for a more elaborate understanding between the two cultures. It is incumbent upon us all to try and understand how perceptions about America and Americans have changed over the last fifty years. In Iran during the last fifty years there has been a drastic change in attitudes. In the past, America was seen as a counterexample to the colonial policies of Russia and the United Kingdom, both of whom have long engaged in a struggle for power in that region. America and Americans, however, were well-liked and regarded as "God-fearing" (maybe religious), somewhat naive, but nevertheless "good" people. Today, Iran has a day dedicated to the hatred of America, "the Great Satan." What has happened during the past decades? I am sure that we all have our speculations about what is exactly going on in Iran and similar third world countries. In the States, it is very easy to come up with "form" answers. There is a danger in this and that is that we do NOT think for ourselves. After all, all we know is what we hear and see as presented by the media. We cannot, however, continue like this indefinitely and not expect to feel the shattering effect when things do not fit into our vision of the world.

My world was shattered once, and the experience shall be with me forever. Being

brought up in Iran in late 60's and throughout the 70's, I came to have expectations of my country, its people and government — NONE of which were *real*. Even today, with reality glaring in my face, I cannot believe it!

Growing up in Iran, every morning I saluted the flag in school and wished for the health and well-being of our King. Every afternoon, the news and any other television announcement started with these words: "The Shahanshah (the king of kings) said (this) or did (that). . . ." The Shah was, to me, almost immortal. All this will seem unnatural and difficult to understand for people brought up in western democracies, but one thing is for sure; even as a nine year old, I had a world-view, a wrong one perhaps, but nevertheless one that was easy to recognize, hence criticize and correct. In a country like the United States it's much harder to recognize what are our world-views and *how* they are formed. Indeed, some of us never have come face to face with this question. However, with this generation and the responsibility it has to insure the survival of the human race, we need to look very carefully and try to analyze *why* we are the way we are? Why do we make assumptions about law, life and liberty and what [are] those assumptions?

Religious fundamentalism and Islamic fundamentalism [are] real enough for those of us whose lives have been touched by them.

We cannot dismiss it. We cannot afford to dismiss anyone as a fanatic.

Religious fundamentalism is a 20th century phenomenon. In the third world, it comes at a time when there is a "quest for identity," for an alternative to *both* capitalism and communism (*both* products of Western Civilization), and when disenchantment with the West has become prevalent. Gone are the times for "open-eyed" enthusiasm. The Iranian Revolution should not be taken lightly. It is as "great" as any of the "great" revolutions of the past and like them is both a particular and universal interest. On one hand, it is important for our understanding of Persian history, culture, Islam and Shi'ism. But as important is the general question: Why did this revolution happen at this time in the history of MAN? Long gone are days when our duty was only to our family, tribe or nation. Universalism and internationalism is here to stay. We can either accept it through our own free will or be forced to, when it might be too late.

I hope that this note opens a dialogue. A dialogue that is above nationalism and partisan politics. A dialogue which we engage in as members of the human race, the race whose survival is dependent on *this* generation. For our generation more than any other: there is *no* hiding place!

Padideh Alai, 3L

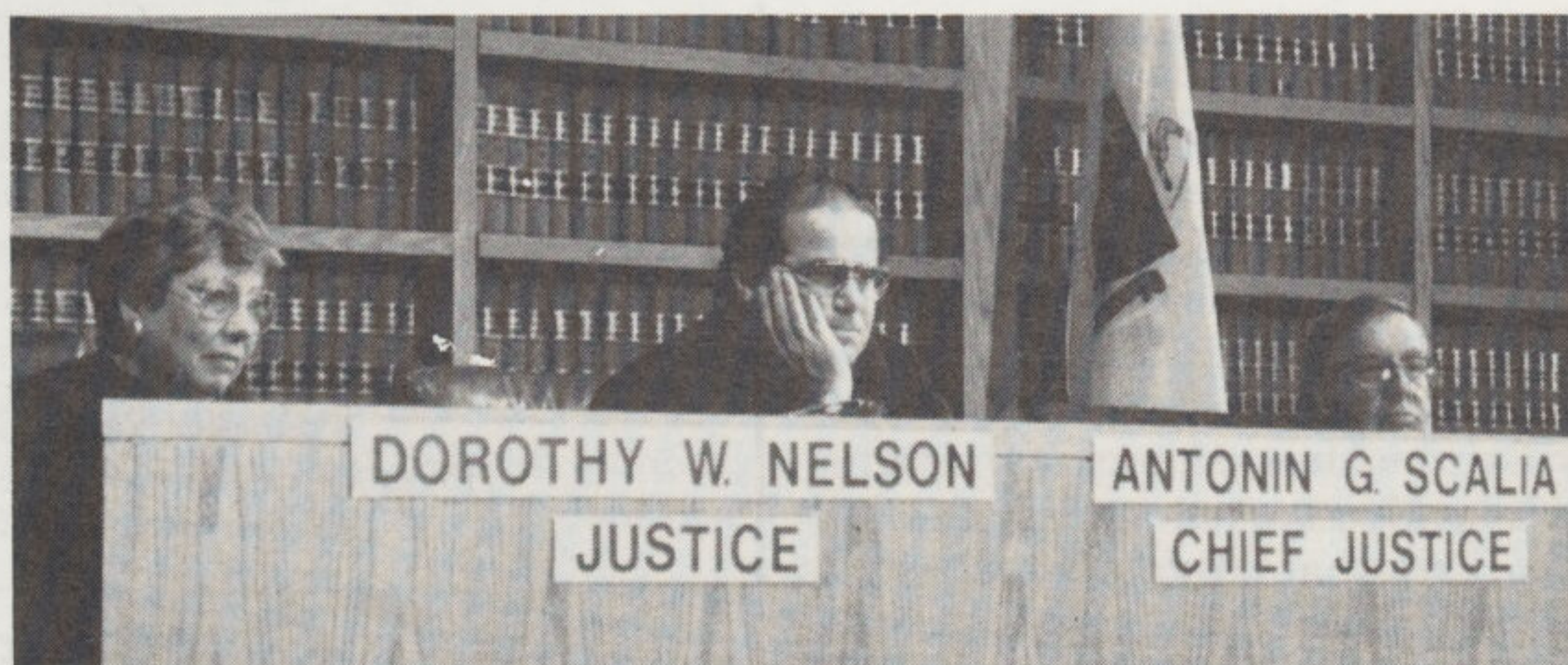
Both Teams Succeed After Fletcher v. Hermann

(Continued from Page 1)

thing. You get a draft, you argue about it, and you fight about it. You put so much work into that part" of the competition.

Best team honors, which carry with it an award of \$200 per person, went to the Friendly team, which included 3L's Patrick McElhinny, Donna Attanasio, Fiona Branton, Mark Batten, Robert Gerber, and Lisa Rodensky. Lee said best team honors did not signify the judges' decision on the merits of the moot court case, but the "best overall effort" by an entire team, including brief and oral presentation. The panel split 2-1 on the best team award, and was unanimous in the other two honors.

This year's case, *Fletcher v. Hermann*, was based on a case recently



Patricia Lee

Ames panel ponders an oralist's assertion.

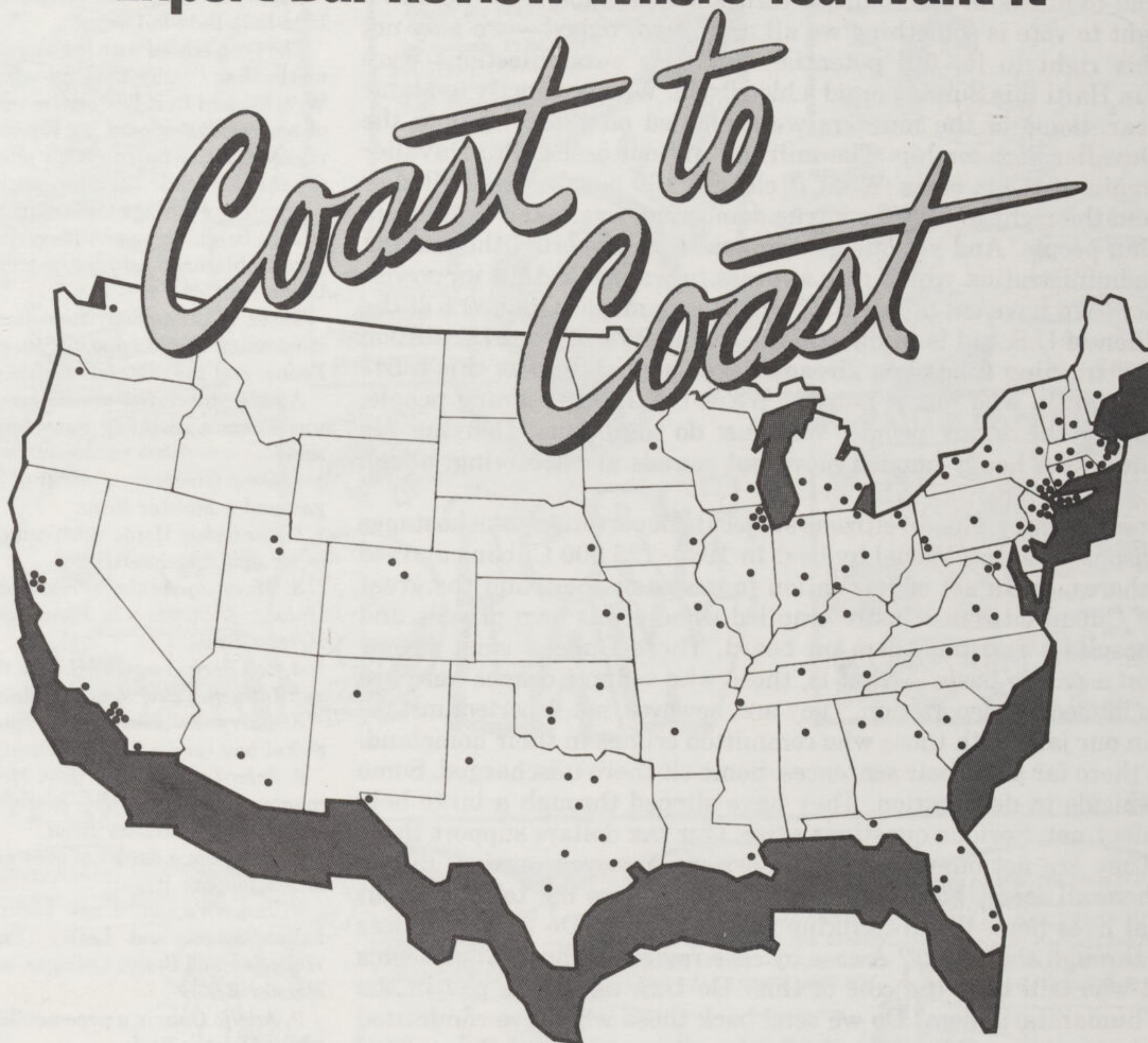
heard by the D.C. Court of Appeals, and dealt with a libel claim against a nationally syndicated columnist who wrote an article that labeled a political science professor a Marxist. The case hinged on the court's interpretation of whether the article constituted fact or opinion,

and on whether the professor should be considered a public figure.

Scalia, who sat on the D.C. court at the time the real case was decided, apparently had dissented from the majority opinion for the columnist, Friel said.

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Rights To Vote And Live

The Constitution in question, or more accurately our notion of the applicability of constitutional rights to the formation of a new government abroad and to aliens in our country. Haitians and Cubans in the news.

The right to vote is something we all appreciate today — we may not utilize this right to its full potential, but it is ours. Elections were canceled in Haiti this Sunday amid a bloodbath. Who is directly to blame is not clear. Some of the murders were blamed on those loyal to the former Duvalier dictatorship. The military did not assist. Pro-Duvalier forces? Again, it is not clear. What is clear is 100 people were killed or injured and the right to vote for a true democracy was taken away from the Haitian people. And yet our government has supported the current Haitian administration which now appears to want to retain its power. Democracy? We have cut-off all U.S. aid. Strong move? Only 30% of the \$108 million of U.S. aid is in question here and 95% of the \$1.2 million in military training funds has already been spent. Who has this hurt? More importantly who has it helped? We're hurting the wrong people. We're helping the wrong people. We must do something. Denying aid may sound like a heavy-handed move but sounds are deceiving; action is not.

In our own country, Cuban citizens subject to deportation take hostages in our prisons. Leaving Mariel by boat in 1980, 125,000 Cubans arrived on U.S. shores. In an act of retaliation to our open doors and the great exodus of Cuban citizens, Castro emptied some of his own prisons and mental hospitals and put them on board. These Cubans exist in our country on a parole basis — that is, those who commit crimes here are subject to immediate deportation. They are, however, not deported; instead they sit in our jails with those who committed crimes in their homeland. Some sit there far past their sentences. Some sit there mischarged. Some commit suicide in desperation. They have slipped through a large hole in the safety net. Serious questions arise. Our tax dollars support these people. They are not our citizens. The prisons are overcrowded. But to deport them all seems harsh to say the least. We are not talking about individual lives here. We are talking about families. Do we risk others slipping through the cracks? A case by case review of those jailed seems fair. But who will bear the cost of this? Do U.S. taxpayers pay in the name of humanitarianism? Do we send back those who have committed more serious crimes and submit for review those who have committed less serious ones? Whose definition of serious do we use? These are difficult questions. Who's to blame? Jimmy Carter? Immigration laws? Again, it is not clear. One thing seems clear: Fidel is still laughing and he, of all people, should not be.

T.M.F.

HARVARD LAW RECORD

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Fenno

"Deck the halls with boughs of holly, fa-la-la-la-la-la-la-la-la. . ."

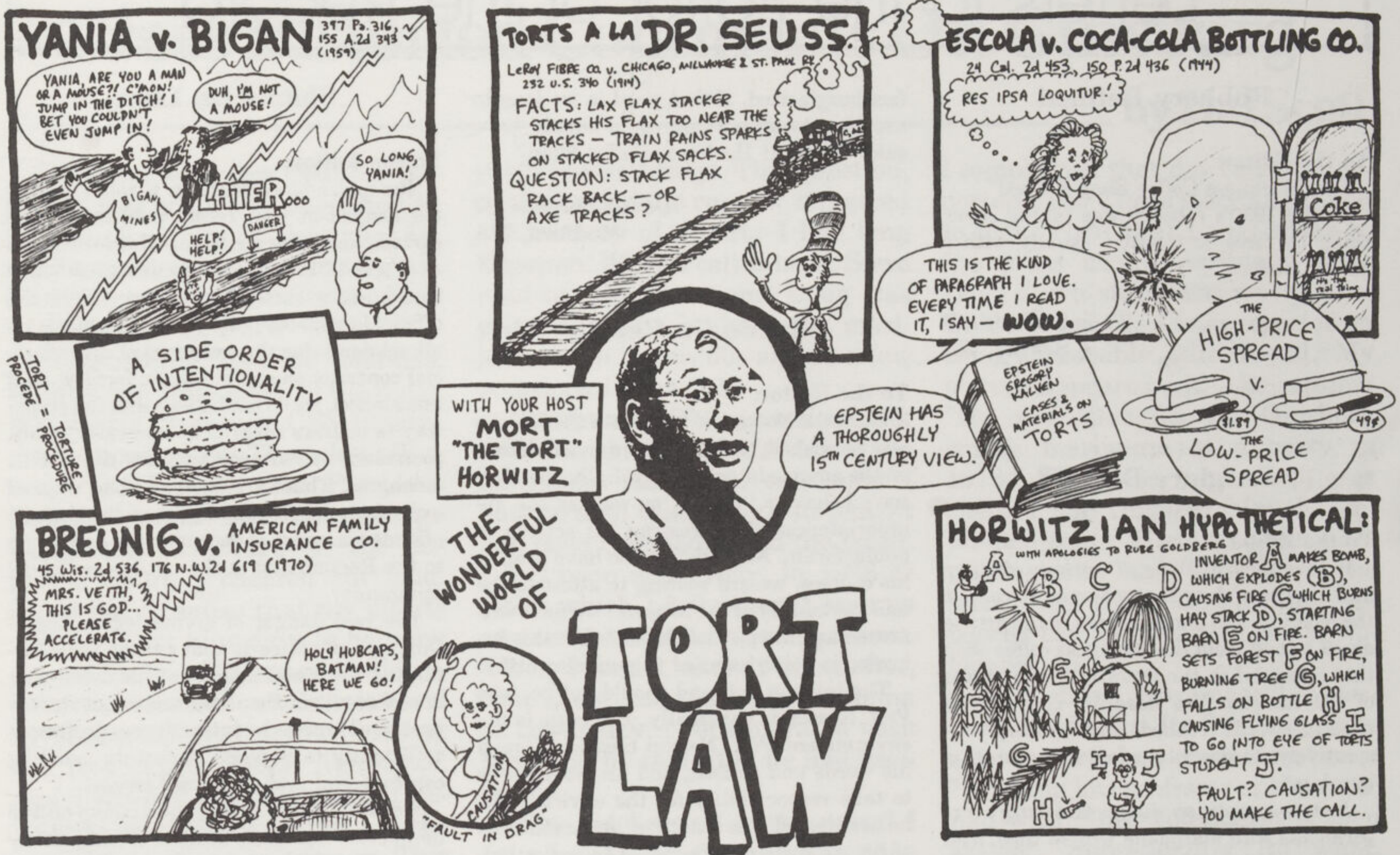
The Coop echoed with the sounds of holiday music. Bing Crosby, the Chipmunks, Tammy Wynette, and Burl Ives serenaded the hordes of scurrying shoppers. At the nearest cash register, Fenno balanced his pile of gifts on the counter while simultaneously trying to extricate his vintage Coop card and fend off a large Brighton housewife eyeing the Harvard-emblazoned ashtray he had chosen for Uncle Fenster.

Three B.U. women then assaulted him screaming: "Fenno, what did you get for me?!" Fenno, and his pile, fell with a clatter.

Amidst the clutter of packages and boxes was Fenno's shopping list. Here's what it said:

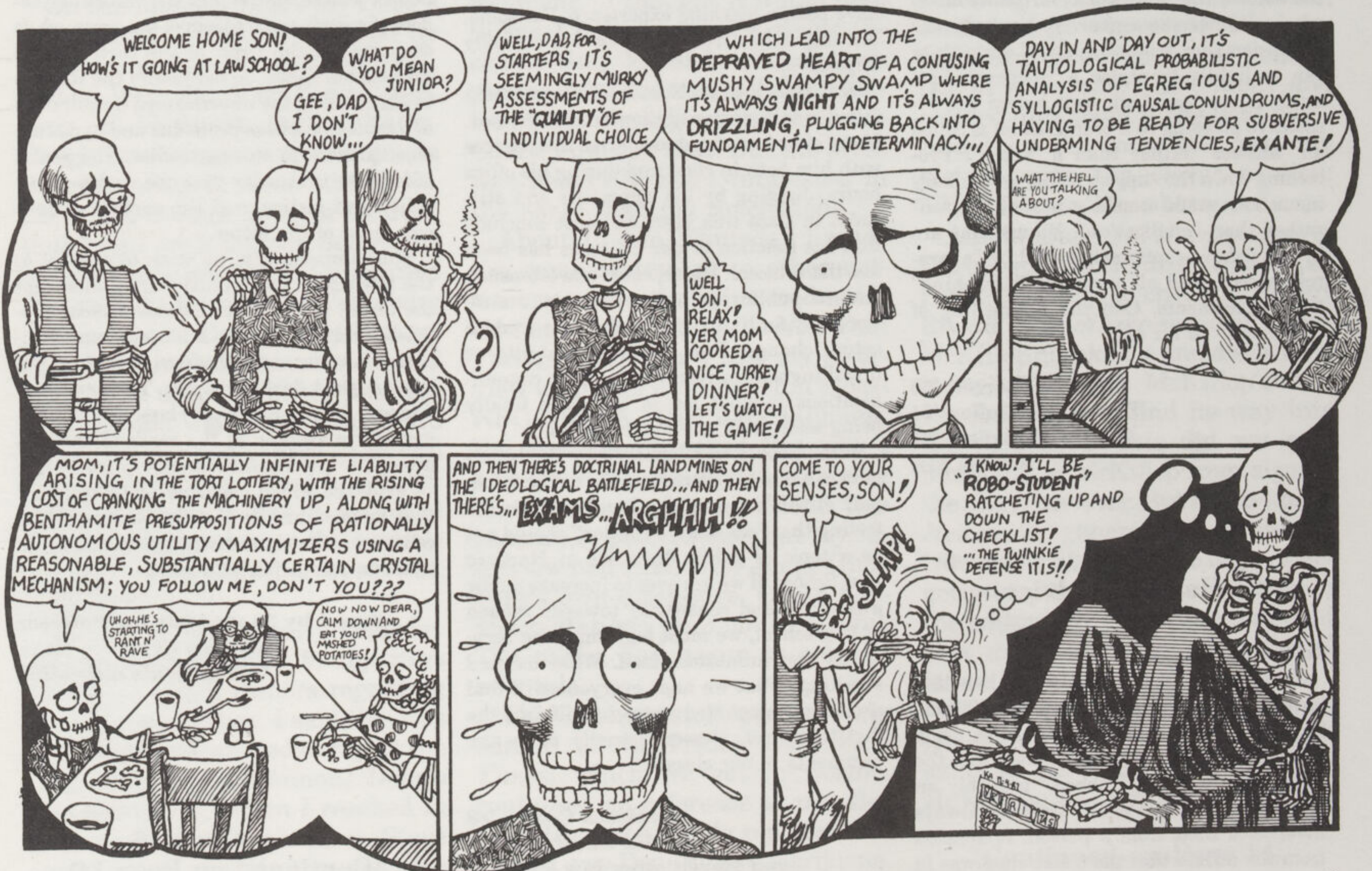
1. *Doug Ginsburg*: a poster of Nancy Reagan and a Meister Brau.
2. *Joe Biden*: Home video camera and projector and a Meister Brau.
3. *Mary Jo Ashley (President, Southern Union)*: A blizzard in Birmingham and a Meister Brau.
4. *Bob Bork*: a copy of *How to Win Friends and Influence People* and a Meister Brau.
5. *Larry Tribe*: a cellular phone and a nickel bag (and a Meister Brau).
6. *Peter Levine and Wilson McLeod (chief counter-hegemonds)*: one more copy of the *Reptile* and a Meister Brau.
7. *The Pub*: a carpet of odor-eaters and a keg of Meister Brau.
8. *Lincoln's Inn*: a new shuttle between Follen Street and Lesley, Pine Manor, Wellesley and Smith Colleges, and a keg of Meister Brau.
9. *Adolfo Calero*: a popemobile of his own and a Meister Brau.
10. *HLS Republicans*: massive injection of quaaludes — calm down, man — and a Meister Brau.
11. *HLS Democrats*: massive ego reduction and a Meister Brau.
12. *Scott Jacobs (DSAC King)*: What do you get for an ex-rock star? A Meister Brau maybe?
13. *Jim Vorenberg*: a couple of cups of coffee, good health, and a Meister Brau.
14. *Charlie Nesson*: An invitation to dinner with Luke Cole and a Meister Brau..
15. *Suzie Estrich*: Mickey Mouse, or is it, Mickey Dukakis? Maybe a copy of Gilbert's *Advanced Crim Law*? And a Meister Brau.
16. *Tony Kennedy*: A skeleton for his closet, and a Meister Brau.
17. *Tegan Flynn (RECORD Queen)*: A cold Meister Brau shower and the realization that we're through!
18. *Rusty and the Hamster*: Meister Chow. HAPPY HOLIDAYS!





STUDY GROUP

by KA



Letters to the Editor of the Record

Robbery Defined

To the Editor:

Re: "Harkness Coffee Shop Robbed"

In the 1930's robbery was taking something by force or threat - usually with a deadly weapon.

Thomas Todd '33
Seattle, WA

Burglary Defined

To the Editor:

It is with a mixture of outrage, dismay and a sense of duty that we write to correct the headline and photo caption in the article about a theft from the Harkness coffee shop that appeared in the October 2, 1987 issue of the RECORD. The headline and caption used the words "robbed" and "robbery", respectively, to describe what was plainly a burglary.

Just as surely as Judge Ginsburg's experiments with marijuana will, in time, lead him to ruin through the use of cocaine, LSD and heroin, so this seemingly minor transgression, if left uncorrected, would cause the writers and editors of a journal we much admire to become embarrassments to the profession they will soon join. If a burglary can so lightly be styled a "robbery", how much longer must we wait before the responsive pleading to a counterclaim is called an "answer" rather than a "reply"? Proceeding down the slippery slope, preliminary injunctions would soon be sought by "motion" rather than "application", things that are in fact "above-captioned" would be "above-referenced", and all would be "breaching" their agreements. Can the misspelling of "judgment" be far off?

Lloyd M. Starrett '58
Thomas A. Mullen '81
Steven M. Sayers '81
Boston, MA

Headline Advice

To the Editor:

Shame on the RECORD. Your lead headline in the issue dated October 2, 1987 (Volume 85, No. 3) states "Harkness Coffee Shop Robbed." The article makes it clear that the coffee shop was not "robbed," probably an impossibility in any event. Robbery always involves a theft from a person. It appears from the article that the coffee shop was in

fact burglarized. If that word is too long to use in a headline, you could simply have said: "Theft at Harkness Coffee Shop."

David Berman '63
Medford, MA

Shame On Charlie

To the Editor:

Since the November 20 issue of the RECORD was published, there has been much debate on the appropriateness of Prof. Charles Nesson's behavior in class, as well as the appropriateness of addressing his actions in public forum. As students who have been in his courses, we are writing to attest to the unacceptability of the behavior we have witnessed and to applaud the fact that this behavior is being exposed to public scrutiny.

The issue is not, and should not be, who Prof. Nesson is personally. The issue is the environment Prof. Nesson creates through his words and actions, and his willingness to take responsibility for the environment he has created. The reality is that as students of his we were often exposed to sexist language and offensive innuendo. The environment created by his actions was alienating and seriously detracted from what should have been a learning experience. For some, learning in Prof. Nesson's class was virtually impossible.

We believe Prof. Nesson has repeatedly failed to take responsibility for his behavior. Many of us have tried to address these issues with him both in class and during his office hours. Judging by his comments and attitudes in class this year, we must conclude that his reaction to our concerns has been less than sincere. His repeated and ostensibly sincere public apologiae serve to arouse sympathy for him, but have failed to produce actual change. Prof. Nesson's inability or unwillingness to respond to direct communications is what led to the issue finally being addressed in a public forum.

Many people were shocked by the bluntness of Luke Cole's cartoon. In our opinion, part of this sense of shock comes from the feeling that "sex discrimination" should not be a topic of public discourse at Harvard Law School. If we are ever to increase public awareness and sensitivity towards women at this school, we must legitimize the issue of sex discrimination itself. What we find shocking, what we hope everyone will find shocking, is not the cartoon itself, but the fact that Prof. Nesson actually made the comments in our classes.

Carleasa Coates '88
Jill Burkhardt '88
and eleven other law students

Shame On Luke

To the Editor:

The undersigned students write to express our disgust at your recent publication of a cartoon depicting Professor Charles Nesson as a "sexist." It is outrageous that you allowed this libelous cartoon to be printed in the official law school newsletter (sic). While we all acknowledge the existence of diverse social concerns among students, faculty, staff and alumni, we do not believe that the proper way to address them is to randomly attack professors who arouse the ire of the artistic among us. There are good and bad ways of expressing one's opinions, and the cartoon offends our sense of decency. It is degrading to the RECORD and to the entire law school community.

The real danger of giving legitimacy to this type of satire is that rather than furthering the social agenda of the cartoonist, it will result in the deterioration of the educational process by intimidating professors sufficiently to provoke them into avoiding controversial and emotional issues.

We want to notify the subscribers of this newsletter (sic) that despite the animosity reflected in that offensive cartoon, there remain a good number of sensitive students of varying ideologies here at Harvard Law School who recognize that the values of freedom of speech and freedom of the press, while they protect the right of the cartoonist to express his views, do not justify the RECORD in sanctioning the unprincipled humiliation of a professor whose pronouns and hypos are objectionable to the cartoonist. The realm of legality is broader than the realm of morality and justice, and the cartoon offends our sense of the latter.

Most importantly, we wish to express to the law school community our opinion that the target of the unscrupulous attack, Professor Charles Nesson, is a caring and competent teacher, and a person for whom we have a great deal of respect. The perennial demand for his Evidence class, and our eagerness to awaken at the crack of dawn to attend it, are incontrovertible proof of this — evidence which could never be reflected in a cartoon, just as post hoc endorsements can never remedy the damage caused by an irresponsible editorial decision.

Signed by 34 students in Professor
Nesson's Evidence class,
two students dissenting

(Continued on Page 14)

Press Distorted Comments On Ginsburg

by Hal Scott

The following piece entitled "Betrayal" was originally published by the New Republic on December 14, 1987 and is reprinted with the publication's permission. Hal S. Scott is a professor at HLS.

I was rooting from the sidelines, alone in my office glued to the radio. When Rita Braver of CBS breathlessly reported, on Thursday afternoon, October 29, that President Reagan would nominate Judge Douglas H. Ginsburg for the Supreme Court, I cheered out loud. Little did I realize that my efforts over the next nine days to help my closest friend of 25 years would result in a tale, told on television and by such respected publications as the *New York Times*, *Newsweek*, and *The New Republic*, that I betrayed him by turning him into the press for smoking marijuana. This is the true tale about their false one.

On the Monday following Doug's nomination, I was interviewed by Al Kamen of the *Washington Post*, and on Wednesday by Nina Totenberg of National Public Radio. Doug's involvement with marijuana never came up in these interviews, nor in any contact, direct or indirect, that I had with anyone before the story became public. I later learned that calls by Kamen and Totenberg to the Justice Department had resulted in Doug's disclosure of limited marijuana use. Totenberg has said that anyone who doubts my word - that I was *not* a source - can call her. Although the *Post* has "multiple" sources, it has a standard policy against reducing the possible sources by eliminating even one. Catch-22.

Out of the blue, on early Thursday afternoon, November 5, reporters called me about rumors regarding Doug's use of drugs. I said this was ridiculous, but wanted to report the matter to Steve Cannon, Doug's representative, whom I reached in Senator Robert Dole's office. Steve asked me to identify the year of a

party in Cambridge. This question, on the heel of the rumors, triggered my memory of a party I had long forgotten. When I called back, Steve read me the statement Doug was going to make: he has used marijuana once in the '60s and on a few occasions in the '70s.

At around 6:30 I agreed to talk with David Lewis of ABC about the marijuana story, but only *after* I had verified that Doug's statement had been released. I told the truth. I had been at a party, in 1978 or 1979, which I left when I became aware that marijuana was present. When I heard, shortly thereafter, that Doug had smoked marijuana at that party, I remonstrated with him, and he indicated he had been wrong.

Why did I speak to the press? I feared, as Doug's friend and by then widely quoted spokesman, that I would damn him by saying "No comment." I thought it would help to say I only knew of a single incident that he had long ago regretted, which should not disqualify him from serving on the Supreme Court. I did say that. But the press was generally more interested in the party than my conclusions.

About 10 p.m. Thursday I made the same statement to other networks, and to the print media, including Chris Wells of the *New York Times*. At 11 p.m. I saw my interview with Dan Rea of Boston's local NBC affiliate. When Jack Williams, the anchorman, asked Rea why I had made my statement, implying that I had ratted on my friend, Rea accurately pointed out that my interview had come after Judge Ginsburg's own disclosure. Other television stations were not so careful. The media had begun to spin its own tale.

The Ginsburg stories in the early edition of the Friday *New York Times*, which we get in Boston, contained no reference to me. But the late edition falsely reported that I said I *saw* Doug smoke marijuana.

I complained that day to *Times* reporters. The *Times* story also failed to make clear that I only spoke to the press about marijuana *after* Doug's own statement was public. On Saturday the *Times* reported on Doug's probable withdrawal. My picture appeared with the caption: "He saw Douglas H. Ginsburg smoke marijuana at a party in 1978." The false implication was clear: I had fingered him. I complained again. Their correction, admitting they had "misstated" the facts under the picture caption, appeared the following Tuesday, November 10.

On Monday, November 9, *Newsweek* weighed in. Its Ginsburg cover story reported on a conversation a "left-wing law professor at Harvard" had with Nina Totenberg. It then stated: "Subsequently [to what, when?] another Harvard professor, Hal Scott, who describes himself as Ginsburg's 'best friend' [sarcasm] confirmed [to whom?] that he saw Ginsburg take a couple of puffs of pot at one party [invention] and scolded him about it the next day." And then the coup de grace, my picture with the clever caption: "With friends like these . . ."

Ann McDaniel of *Newsweek* says she questioned the story and asked Peter McKillop to check it. Robert Rivard, chief of correspondents, says McKillop checked it and discovered it was false, but McKillop's true version failed to find its way into the magazine. This did not stop McDaniel or McKillop from signing the story, however. But not to worry. *Newsweek* generously agreed on November 20, after two days of negotiation, to publish my letter to the editor with a one-line comment that they regret the error. But it is not in this week's edition.

This false judgment was then joined by Marty Peretz of this magazine in his "Cambridge Diarist." He saw me as "betraying" my friend,

(Continued on Page 14)

On The Presidential Trail, Dole Asserts That

Senator Robert Dole (R.-Kan.) declared himself a candidate for the 1988 Republican presidential nomination on Nov. 9, 1987. The following is an abridged version of his announcement speech.

I'm talking about making a difference. One person who has is Ronald Reagan. He restored America's posterity, rebuilt our military strength and revived our spiritual well-being. Ronald Reagan set us on a new course, and history will be grateful. But the Reagan record is not something to stand on. It's not something to run on. It's something to build on.

I want to lead America into an even greater era of opportunity for our people and security for our nation. And so I offer a lifetime of experience and a record that shows not merely where I stand, but the hopes of a lifetime rooted here in Kansas. I offer a willingness to work hard, to hang tough, to go the distance. I offer the strength and determination — molded in America's small-town heartland and tempered during a career of public service — to bring common sense answers to the complex problems facing America in its third century.

America's great heartland Presidents were plain-speaking men whose clear-eyed vision enabled them to make the tough choices: Abraham Lincoln, Harry Truman, Dwight Eisenhower and Ronald Reagan. My vision, like theirs, is shaped by the aspirations of shopkeepers and farmers, workers and everyday Americans. Like them, I see the opportunities before us. Like them, I see the dangers. Like them, I'm willing to make the tough choices needed to preserve opportunities for generations to come.

The Federal budget deficit is the single greatest threat to a prosperous and dynamic America. We do not expand opportunity when we burden our children with debt from our own self-indulgence. We will either sacrifice for our children or

we will continue to make our children sacrifice for us. We have the privilege of choosing. Our children do not.

Since the deficit problem began, every Administration and every Congress has tried to postpone true reckoning. At no point has our government been willing to face and weigh the tough choices, to act resolutely to cut spending.

My pledge today is that we will tackle the runaway federal budget head-on — without raising tax rates.

With the single exception of programs to assist vulnerable Americans, no area of Federal spending will be off-limits. Americans are fair-minded people. They are willing to endure some changes in federal programs — if they know everyone is sharing equally.

There's nothing complicated about what needs to be done. It requires the same common sense and discipline every responsible wage-earner uses to balance the family books. We can no longer rely on stopgap economic fixes that only reel from one crisis to the next. I will sit down with the Congressional leaders during my first weeks in office and we'll stay there as long as it takes, and we will not stop until we come up with a renewed commitment to a multi-year plan — a new compact — that ends with a balanced budget.

I will also seek an iron-clad assurance that we will never again confront such overwhelming deficits. That goal will require approval of two long-overdue measures.

First and foremost, it's time to amend the Constitution to require a balanced budget. Without a Constitutional restriction, Congress will always fall back on deficit spending.

The will of the people has been ignored for too long. I will once again ask Congress to give the people what they want. But if I can't get satisfaction, I will go over the heads of those in Congress and call

for a Constitutional Convention to approve a balanced budget amendment.

Just as important, the President — whatever his party — must have a line-item veto. Today, the Chief Executive too often is faced with a take-it-or-leave-it choice when Congress approves huge, all-or-nothing spending bills. The President is put in the position of the car buyer forced to accept an automobile loaded with options he doesn't need or want. A line-item veto would allow the President to reach within massive spending bills and strike out wasteful and unnecessary pork-barrel projects.

A thriving economy must also include a new global community linked by fair and open trade. We cannot be seduced by the delusion that if only we build trade walls high enough, we can shut out a flood of foreign-built products. But neither will we play the patsy. Our workers are the best in the world, and we will fight for their right to compete. Where we are competitive, we will insist on access. And where we find a persistent pattern of unfair trade practices, we will act.

Our Nation is not only saddled with an economic deficit. We're also facing an education deficit. And making the tough choices means re-examining our priorities. At home, education must be at the top of the list. State and local governments, communities and parents bear the main responsibility for the education of our children. But the Federal Government can stimulate school systems to improve what goes on in our classrooms.

Certainly, we must accelerate the move to basics — back to emphasizing English, math and science — and we have to begin during the pre-school years.

We must reaffirm our commitment to education as the great equalizer — as the door to opportunity for millions of children who may start a step behind others.

America Must Return To Heartland's Values

by Robert Dole

We must carefully target our assistance to programs of proven effectiveness — merit pay for good teachers and magnet schools that focus on students with special needs and abilities.

In the highly competitive world of the 1990's, we can't afford to squander a single talent. As a start, we must cut the drop-out rate by at least 10 percent a year, and we must reduce by 2 million a year the 23 million adult Americans who can't read or write well enough to fill demanding jobs.

We are not going to produce qualified people for the work force of the next century until we commit to programs that emphasize technical skills and scientific knowledge. We should establish national fellowships to train outstanding teachers in the uses of technology and encourage partnership programs that allow elementary and secondary schools to tap into the expertise of universities and the private sector. And finally we must remember that learning is for everyone, and it extends through a lifetime. But it is also necessary that those who borrow federal tax dollars must repay their debt.

While we work to improve our schools, we must also remember that our national commitment to children cannot end in the classroom. We must nurture our children in the traditional values of home and family, and dependence on God. And as President I would continue my consistent and lifelong effort to protect the rights of the unborn — the first of which is the right to life.

Just as our children's minds constitute a vital national resource, so too is the good health of our citizens. This Nation's health care system must be judged not only by its ability to cure us, but also by its ability to keep us well. As we balance the competing priorities on our national agenda, we must be certain that we provide adequate medical care at

both ends of the age spectrum — for infants and children as well as our elderly citizens. We're still not giving our infants the fighting chance they deserve to be born healthy, and prenatal care is the key.

At the same time, the graying of the baby-boom generation — and projections of a rapidly expanding elderly population — provide the impetus for a complete review of our health spending priorities.

Today's health care system has serious gaps and leaves many of the elderly and disabled without any assistance — and strikes terror in the hearts of those who will need long-term care.

As we make the hard choices and re-examine what is most important, we must never lose sight of the fact that our number one priority is liberty and freedom — hence a strong national defense.

Under President Reagan, we have rebuilt our defenses, revitalized our alliances, and rekindled our hopes for real nuclear arms control.

America has become strong again, but we must keep our guard up. We will not tolerate waste or inefficiency in defense spending. But we cannot afford to short-change the defense modernization programs that keep us strong.

Keeping our alliances vibrant is also vital to our own defense and security. Long-time friends achieve that status for a good reason: We share common concerns and mutual trust. Our European and Asian allies deserve first consideration in our foreign policy deliberations. But they must also recognize that an alliance is a two-way street. It's high time for those who owe their own security to America's military might to assume their rightful role, and bear their rightful burden, in the defense of our common interests. Let us start the next administration with an alliance summit — aimed at forging a new formula for burden-sharing: Our allies can afford to pay



Senator Robert Dole

their share — and they should.

Today, as we prepare for a summit with our adversaries in the Kremlin, we must also remember what brought them to the table, the linchpin of President Reagan's arms control strategy — the development and phased deployment of the Strategic Defense Initiative.

The American people understand, more clearly that many in Washington, that SDI is our best insurance policy against a still-uncertain future. The Soviets are working on strategic defenses at a furious pace, and so must we. There must not be curbs on our research effort. Ronald Reagan has galvanized the nation into action on SDI — and I will begin phased deployment when it's ready.

Our security must always include a willingness to negotiate. But any missile reduction treaty has to provide for adequate verification, ensure firm compliance and strengthen — not undermine — the Western alliance. Abolition of intermediate-range nuclear missiles can only be the first step toward eventual reductions in long-range strategic missiles — those that can actually strike here, on the very

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Dole Details His Goals For The Future

(Continued from Page 13)

soil where we stand. Any treaty must also be accompanied by a restored balance of conventional forces in Europe.

But arms control is not the only item on our agenda with the Soviet Union. Whatever Glasnost turns out to be, it is not democracy. We must use every opportunity to address the plight of Soviet Jews, the Poles, Armenians and the People of the Baltic States whose basic human rights continue to be crushed. We must press the Soviets to pull back from their reckless involvement in Afghanistan, Kampuchea, Angola and Nicaragua. But our commitment to freedom should not end there. We must stand in support of genuine freedom fighters who hope to escape from terrorism, dictatorship and oppression. And this I pledge: When I am President, America will never retreat from those who need our help. We will act with the knowledge that freedom is indivisible not

only for Americans, but for all humanity.

I came here today because my home is at the core of everything that I believe about America. Our families, our neighbors, our communities were at the center of everything we did. We welcomed all newcomers who were willing to band together for common goals. And if it does nothing else, my campaign will make clear that our party will never practice the politics of exclusion. The Republican Party, like our Nation, has an open door.

Just out of sight is the Vietnam Veterans Memorial, and across the river, Arlington Cemetery — and they made a difference too.

And I looked back on my career, and thought about the step I am taking today. Was I really ready? Was I strong enough? Could I really make a difference?

Then I thought about America, and what the giants of America's history — our past Presidents and our people — have been able to achieve over the last 200 years. And I realized that the President gets his strength from the people.

And I thought about you, and this place. And the fact that people are my strength.

Together we are strong enough. Together we will make a difference.



No Betrayal

(Continued from Page 11)

as "turn[ing] in Ginsburg to the press," and as serving as a "reliable informant." He apparently missed the *New York Times* correction that appeared before his magazine went to press.

Television stations failed to make clear the crucial chronology. The *New York Times*, our "paper of record," published the fingering photo with a caption that they had been earlier told and have since admitted was inaccurate. *Newsweek* ran a story that they knew beforehand and have promised to admit was false. And the *New Republic*, like others, mistakenly relied on these reports to reach a false conclusion. This journalistic cascade, resulting in a fictitious "tale" of betrayal of friendship, is a real tale of how the press betrayed its special responsibility to all of us to tell the truth.



Letters (Continued)

Respect Speakers

To the Editor:

While your presentation of the controversy concerning the attempt of Calero to speak presented all sides, the story leaves me perplexed.

If the administration and the professors at Harvard Law School have so little respect for the Constitutional right of freedom of assembly, what statesmanlike qualities can we expect from Harvard Law School students?

Douglas F. Stevenson '49
Chicago, IL

Republican Brats

To the Editor:

[On Nov. 23] most law students found stuffed in their boxes a copy of an article by the *New York Post's* Dorothy Rabinowitz entitled "Free Speech Depends on who's talking," discussing the disruption of Adolfo Calero's speech on October 3. Since this occurred while the HLS Republicans sold tickets to Calero's rescheduled speech, I assume they distributed the article. If by that they intended to adopt her muddle-headed logic, I urge them to think (again). Rabinowitz, with little concern for truth, asserted that Calero was attacked by a Tufts student who intended to kill, and who had the sympathy of law school liberals. In particular, she suggested that Professor Tribe was a hypocrite

for opposing Judge Bork's nomination partly because of Bork's views on the free speech clause, while not doing more to ensure free speech on campus. The argument is weak and unworthy of people with competent minds.

The Republicans' sanctimonious, self-serving whining about infringements of free speech is getting tiresome, and has gone too far if Rabinowitz's article is representative of their views. Leaving aside the gross distortion of facts by Rabinowitz, the problem posed by a lone, extremist student on a law school campus is laughably insignificant in comparison with the problem that many people honestly felt would arise if Judge Bork's free speech views reigned. Calero's attacker was arrested and punished for his act; he obviously hasn't prevented Calero from returning to our campus. On the other hand, Judge Bork's tolerance for government control of citizens' speech could result in the jailing not of those who disrupt, but of those doing the speaking. Even the slightest use of government power can be devastating to free expression, as many artists discovered during our McCarthy era. For some of those artists, that power not only limited their expression of ideas, but also destroyed their careers. I think they, and those who might follow them into the jaws of government abuse, are much more worthy of our sympathy than are Calero and the HLS Republicans.

The campus problem is, however, serious, and has been treated that way by the Law School administration, faculty, and students.

(Continued on Page 16)

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Letters to the Editor (Continued)

Brats (con't.)

(Continued from Page 14)

While perhaps some speeches will not be accorded the polite reception to which high society is accustomed, no one — not even Professor Tribe — has condoned what the Tufts student did. Professor Tribe and the rest of the regular faculty did not distribute a press release condemning the Calero event, nor was it their duty to do so. It is, however, the province of constitutional lawyers to study and comment upon the constitution and interpretations of it, as Professor Tribe did with Judge Bork's views.

The Republicans' disappointment over the Calero incident has been granted due respect and attention from those it is expected from

— Dean Vorenberg and all those he has asked to address the problem. However, the Republicans apparently do not seem to feel that Professor Tribe deserves similar respect. He and many others expressed fear that Judge Bork's limited view of the free speech clause could leave many Americans, including artists and actors, with no more rights to express themselves professionally than those recognized by the Soviet Union. That is a fear worth acting upon, even if one decides not to commiserate with a bunch of privileged brats that theatrically portray themselves as victims of liberal censors.

David Fiol '88
Somerville, MA

Letters Policy

All letters submitted to the RECORD are read by the RECORD's staff. Many of them appear on our pages, subject only to editorial discretion. We encourage letters on any subject, particularly those subjects which have not been covered in the RECORD. Short letters are more likely to be printed.

Letters must be received by 2:00 P.M. on the Tuesday before the issue. Letters should be addressed to the RECORD rather than to third parties. In no event will the RECORD publish letters by writers who have not identified themselves to the RECORD. Organizations should identify the specific individual(s) responsible for approving the letter. All letters submitted become the property of the HARVARD LAW RECORD Corporation.

**“Happy Holidays To You . . .”
—from the RECORD Staff.**

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