

# HARVARD LAW RECORD

*America's Oldest Law School Newspaper*

© 1980 BY THE HARVARD LAW SCHOOL RECORD CORPORATION

VOL. 71, NO. 8

NOVEMBER 26, 1980

TWENTY-FIVE CENTS

## Wisdom Team Triumphs in Ames Final



Photo by John Morris

*Bob Morse, Kathy Sullivan, Eric Havian, Cheryl Noble, Dan Goodwin, and Steve Branson celebrate Ames victory last Thursday.*

By Marisa Manley

Last Thursday's Ames Moot Court Competition had a little something for everyone: references to the well known Rule 26(b)(3) and *Hickman v. Taylor* for first year students, mention of "generally accepted accounting principles" for second and third year students, and brisk repartee about the Second Circuit's status as "mother court" for a general audience of legal cognoscenti.

Besides jargon, jokes, and general merriment, this year's BSA-sponsored moot court competition presented a well briefed and argued legal problem. Kathleen Sullivan of the J.Minor Wisdom team was declared Best Oralist, and the J.Minor Wisdom team was found to have the best brief and the best overall performance. The panel of judges praised the performance of both teams. One judge felt it would have been easier to decide the merits of this difficult case than to have to judge between the two teams arguing last Thursday.

Chief Justice on the bench in the Ames Moot Courtroom was Justice Harry Blackmun of the United States Supreme Court. Sitting with him were Judge Amalya Kearse of the Second Circuit Court of Appeals, and Judge Robert Keeton, former professor at HLS now sitting on the bench of the United States District Court for the District of Massachusetts.

Well before eight o'clock, all 500 seats in the Ames Courtroom were filled. Four video cameras and a cadre of photographers were ready

(Continued on Page 8)

## Bell Toasted by 200 at Farewell Tribute Dinner

By Wanda Payne

On Saturday, Nov. 15, more than 200 HLS students, faculty, and administrators gathered to honor Prof. Derrick A. Bell, Jr., the Dean-designate of the University of Oregon School of Law, at a testimonial dinner in the George Washington ballroom of Cambridge's Sheraton Commander Hotel. The dinner-dance, which commenced at 7:00 p.m., was a very elegant affair. The atmosphere was filled with a mixture of serenity, sadness, joy, and hope.

The capacity crowd at the semi-formal affair heard speeches from several representatives of the University community. First to toast Bell was his old HLS colleague, Walter Leonard, former assistant dean of HLS and Special Assistant to President Derek Bok and currently President of Fisk University in Nashville, Tennessee. Leonard urged the crowd to recognize the need for a Derrick Bell at HLS. He said, "If it is appropriate for Harvard to train those who will advise

(Continued on Page 13)

# Richardson Steers Sea Treaty Toward U.N.

By John Morris

Sixty-five people braved the snow and cold last Tuesday, Nov. 18, to hear Ambassador Elliot Richardson speak to the Law School Forum about the Third United Nations Conference on the Law of the Sea, to which Richardson is the President's special representative.

This is only the latest high-level position Richardson has held in administrations dating back to Eisenhower's, in which he served as Acting Secretary of Health, Education and Welfare. Under Nixon, he served in the State Department and was later Secretary of Health, Education and Welfare and then of Defense. He became something of a hero in 1973 when, as Attorney General, he refused to fire the Watergate Special Prosecutor, Harvard's own Prof. Archibald Cox, and was consequently fired himself. He returned to the government again under Ford, first as Ambassador to Great Britain, and then as Secretary of Commerce.

## Comprehensive Treaty

In his talk, Richardson sought to convey the complexity and importance of the current U.N. Conference which is drafting a comprehensive treaty to govern the seas. If adopted, it will cover territorial claims over coastal waters, pollution, the preservation and conservation of marine life, and maritime research.

In its final form, accompanied by regulations and rules, the treaty will be very detailed and will intervene in areas which are now governed only by the laws of individual nations; in other areas, it will make law where none exists



J.M.

Elliot Richardson, '47

now. It will create an authority to which applications for deep seabed mining rights can be made, and it will provide formulas for computing royalties on such operations. In the area of pollution, the treaty will require individual signatory nations to make their courts available so that suits may be brought against their citizens for pollution whose effects are international.

If ratified by the required 60 nations, the proposed treaty will come into effect and the signatory nations will be bound by its terms. They will also be required to abide by the decisions of arbitrators when disputes arise. In this way, the Law of the Sea Conference is unlike the U.N. General Assembly, which can "assemble to vote on pious resolutions which can promptly be ignored," Richardson said.

Richardson feels the success of the Conference in drawing up a treaty is remarkable and that the treaty can serve as a model of international law in other fields. The

treaty recognizes the interdependence of all nations — a fact not always understood in this country.

## "Failure of Imagination"

"I'm appalled at the failure of imagination I see, particularly on the part of young people, in this country," Richardson said, explaining that by imagination he means the ability to conceive of other people's positions in endeavors like the treaty. "How many people don't believe the interests of . . . countries below the equator don't exist . . . But [there are] no problems facing you and the United States which can be solved without help" from other nations.

When asked later about President-elect Reagan's understanding of foreign concerns, Richardson said he welcomes Reagan's election because Reagan "shows a healthy respect for the realities of the world, and the interdependence of the United States and the Third World is a reality."

Asked about voters' concern with what they perceive to be America's weakening position in the world, Richardson said he thinks this is just a passing phase: "What we've seen is a spasm of Miniver Cheevyism — [a desire to] return to a world where we had a greater measure of independence. . . . There are some people in this country whose outlook is nostalgic and whose imagination cannot handle the true direction of change in the world," he said.

## Ratification Expected

Richardson thinks the required 60 signatory nations will be found because the trade-offs of the treaty in the end net everyone more than they could achieve without a treaty. He does think that there will be resistance to ratification in the U.S. Senate, though, but the treaty won't be considered there until 1985, after the regulations and rules have been drawn up. He says the Senate has never been faced with such a lengthy, complex, or important

(Continued on Page 7)

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138. Telephone 617-495-4418. Subscription price: \$7.00 year mailed; \$9.00 year mailed outside U.S.; students \$4.00 year distributed at the Law School. Individual copies including back issues: 25 cents at the Law School, 50 cents mailed. Second class postage paid at Boston, Mass. Copyright 1980 by the Harvard Law School Record Corporation. The opinions expressed in the Harvard Law Record are those solely of the students comprising the Board of Directors of the Harvard Law School Record Corporation. POSTMASTER: Send address changes to Harvard Law Record (ISSN 0017-8101), 23 Everett St., Cambridge, Mass. 02138.

**ALUMNI:** Alumni who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138. Each alumnus receiving a Record subscription through the Harvard Law School Assn. should be on notice that \$4.20 of his H.L.S.A. annual dues are used to purchase the Record subscription he receives. Dues paid at any time during the H.L.S.A. fiscal year which began in April 1980 and ends in March 1981 will purchase a subscription which begins in September 1980 and expires in August 1981, and so on in following years.

# Dean Sacks, CORDS Discuss Hiring

By Mary Tarduno

The Coalition of Responsible Dean Selection (CORDS) will interview several HLS faculty members it considers to be candidates for Dean. According to Fritz Byers, 3L, CORDS spokesman, Profs. Derrick Bell, Gary Bellow, Abram Chayes, and Morton Horwitz have agreed to be interviewed by CORDS. Profs. Frank Michelman, Charles Nesson, Richard Stewart, and James Vorenberg, however, have refused to speak to the Coalition as Dean candidates.

Many of the candidates speaking to CORDS, admitted Byers, are not rumored to be leading candidates for the position of Dean. "Rather than just interview people acknowledged as candidates, we decided to interview people the Coalition felt were good candidates," he explained. Byers said the interviews would help students become aware of the views of these faculty members.

CORDS members plan to con-



Photo by John Morris

*Fritz Byers, 3L, one of the leaders of CORDS.*

duct the candidate interviews this week. Summaries of those interviews will be available for student review at the Langdell receptionist's desk after Thanksgiving.

CORDS is also continuing its activities on the issue of affirma-

tive action in the HLS appointments process. In a recent meeting with Dean Sacks, students expressed their concerns on this issue and agreed to hold some kind of open meeting with Sacks on affirmative action and the appointments process. Several CORDS suggestions and requests, however, such as that of direct student involvement in the appointments process, were rejected by Sacks.

The suggestion to hold an open meeting was Dean Sacks's idea, Byers said. "He thinks (the issue) should be a matter of public discussion," Byers explained. While originally CORDS planned to sponsor one meeting with Dean Sacks and Prof. Stewart, chairman of the Appointments Committee, the Coalition is now considering a series of meetings with various faculty members and administrators. For example, Byers said, one idea is to have an open discussion with Profs. Michelman, Nesson, and Vorenberg on affirmative action and the appointments process, since all three professors are members of the Michelman Committee.

According to Byers, Sacks was "quite strongly" against the suggestion that student representatives sit on the Appointments Committee. He explained that Sacks feels the appointments procedure is adequate, and that there is a significant risk in allowing stu-

(Continued on Page 15)

## S.Ct. Cutting Women's Rights Litigator Explains to Forum

By Thomas Isenberg

*The annual Ames Final Argument is an occasion on which Harvard Law School honors the Supreme Court; it is an appropriate time to consider the political role that the court plays in our lives. During the Warren Court ERA, after years of political organizing and litigation, the hope was rekindled that this country would guarantee equal justice to racial minorities, women, the poor, and other people historically excluded from power in our society. Now that hope dwindles. Especially since the appointment of four Justices by Richard Nixon, judicial priorities seem to have been reversed. Of course, it would be an oversimplification to say that no Burger Court decisions have favored the rights of the least powerful in this country, but the pattern is one of insensitivity —*

*even opposition — to their interests. We feel compelled to demonstrate that many members of the legal community continue to share the commitment which the Court has largely abandoned.*

*From the Preamble to the Harvard Law Guild's Pamphlet "The Burger Court: A Critical Assessment."*

On the eve of the grand finale of the Upper Round Ames Competition, Wednesday, Nov. 19, the Harvard Law Guild presented its Fourth Annual Burger Court Forum. The Forum was born four years ago when Harvard invited Chief Justice Burger to preside over the Ames final argument; Burger's illness prevented his presence in 1977, but the Forum lives on in his "honor." It lives because of his continued command of the Supreme Court of the United States.

(Continued on Page 14)

# One Ls, Alums Meet With Success

By Gabe Varges

"I hoped to get in touch with people who would help me see that it is all worthwhile," was 1L Neil McCarthy's explanation of why he chose to participate in the Harvard Law School Association Alumni-Student program. Now in its second year, the program matches first year students with HLS alumni located in the Boston area. It is coordinated by the Alumni-Student Committee of the Association and has become one of its most notable activities.

"I've been surprised by the enthusiasm on both sides," said Dean of Students Mary Upton, who serves on the committee. Judge Rudolph Kass, '56, the chairman of the committee believes the program has had an excellent start. "It is the most successful program designed for 1Ls in recent years," he observed.

## Student Contact Benefits Alumni

One reason for the program's success has been the interest that the participants have shown in the program's objectives. "I definitely think contact with students is beneficial to lawyers," said an alumnus who was involved in the program last year. "I graduated from the Law School some years back and even though I live in Cambridge, I rarely have the chance to stop back at the school. Through the program I had the first student contact in years," he added.

John Muller, the Assistant Secretary of the Harvard Law School Association agrees. "The program affords alumni an opportunity to 'catch up'," he said. "It is a way for them to get a view of what students think today and to witness the breadth and diversity of the student body."

Students, obviously, have different perceptions of the program's objectives. While most seem to believe that there is merit simply in meeting a past graduate, many students point to specific reasons

for wishing to establish contact with alumni.

"I am interested in public interest law," explained Mike Soloff, 1L, "and I think having the chance to discuss the field with someone who is active in it will better allow me to decide if it is really what I wish to pursue." Sandee Lambert, a 1L from Berkeley, also believes the program to be helpful in obtaining a better sense of the various options available in law. "My particular interest is tax law; yet, unless one speaks with a practitioner, one may be unaware of the many different aspects of tax law and of the professional opportunities in each," she said.

## What A Lawyer "Really Does"

The usefulness for students in establishing personal contact with attorneys, judges, and others active in law becomes more evident in light of the relative unfamiliarity of a surprising number of first year students with the various legal professions. "I was a literature major and never had much interest in law before applying to law schools," admitted a section II 1L. "Unlike many here, my father is not a lawyer and I have never set foot in a lawyer's office or in a court. I honestly don't know what a lawyer does all day," she said.

Finding out what "a lawyer really does" is of course important for law students in making career decisions, but for 1Ls seeking summer employment it acquires a more immediate relevancy. One student explained that his performance at a recent job interview might have been enhanced had he been able to support with more details his preference for working in a small law firm. "I made intelligent guesses of what the differences between a small and large law firm might be, but I really didn't know if I was right," he said.

## Computer Dating

Unlike similar programs at other schools, the Harvard Alumni-

Student program does not match students and alumni randomly. Because of this, the mechanics of pairing participants becomes one of the most challenging aspects of the program.

"It's like a computer dating service," remarked Laura Lux of the Dean of Students Office. She and Carol Krensky, of the same office, have had the arduous task of "putting people together" according to their expressed interests. Last year, upon signing up for the program participants were only asked to mention preferences by field of law. This year, in order to make more compatible matches, both students and alumni were encouraged to list their hobbies, special interests, undergraduate major, and college. While this does not assure pairings which develop into successful relationships, it does seem to provide a way of determining some common ground between participants. One student with undetermined law preferences, for example, was matched with an alumnus who shared his interest in flying. "It certainly gave us something to talk about," noted the student.

## Interesting and Helpful

While only in its second year, the program has been from all accounts very successful. The results of a questionnaire administered by the Alumni Office this spring indicated that more than four-fifths of last year's alumni and student participants found the program interesting and helpful.

A random sampling conducted by the RECORD last week would tend to predict similar results for this year's participants. An excited 1L from California explained that his experience with his matched alumnus has been "incredible". "I have met with him three times already. He brought me to see his firm and has invited me to sit in on a few meetings. Because he knew I was from the West Coast and would not be going home in December, he even asked me to spend Christmas

(Continued on Page 12)

# Law Review Members Saved by Outlines

By Barry A. Brooks

Wouldn't it be great if you were a member of the *Harvard Law Review*? Scholastic life would be so simple. Don't bother going to classes. That's dull. Don't fret over reading assignments. How passé.

Take advantage of your position. Just pick up one of those famous *Harvard Law Review* outlines for each of your classes a couple of weeks before exams, leisurely peruse the wisdom passed down from the heavens, and ace your finals with sparkling, insightful prose far superior to that of your classmates who have been sweating all semester in the tedious process of synthesizing principles from the assigned readings, *Gilbert's*, and lectures.

Stop dreaming. It just ain't so. The members of the *Review* are not as confident about classes as the rest of the Law School population would infer from the mystique, the rumors, and the assumptions that have been made. In fact, those on the *Review* express little confidence in the outlines' usefulness for the crunch before finals.

## Voluntary Sign-ups

The *Law Review* outlines are written by current *Review* members who are interested in participating in the outlines. Outlines are done for most of the large classes at HLS, and are done fresh for each semester.

At the beginning of each semester, sign-up sheets are posted at Gannett House. Any *Review* member who wishes to may sign up to



Photo by John Morris

*It was the first snow of the year last week that Mark Olinsky, 3L, had to walk through in passing Gannett House.*

do a portion of an outline for a class in which he or she is enrolled. Participation in the outlines is completely voluntary. Although not obligated, most members do participate in one or more outlines.

Instructions to those participating state that "[t]ypically, all (outlines) are due at the beginning of reading period, except for the last couple of weeks which are due shortly thereafter." The instructions ask that portions of outlines not be finished tardily so as to insure against individual members having to do the work on their own in an effort to avoid "calamity."

## Equalizing the Disadvantage

It's known that *Review* members spend large numbers of hours working on the respected publication during the academic year. In fact, many 2Ls on the *Review* work 30-40 hours, and sometimes more, per week. This severely cuts down on the amount of time they are able to devote to class.

Because of *Review* obligations, many members cannot attend class and even more find it difficult to keep up with reading assignments. For most, it is not really a question of choice, nor is it a feeling that they are somehow released from

the obligation of going to class.

The outlines, in the words of a 2L *Review* member, simply "equalize the disadvantage" that *Review* members experience due to the workload imposed on them. Despite the existence of the outlines, some *Review* members report that maintaining their grades is quite difficult.

## "Not All That Good"

Despite all the press they get, *Law Review* outlines are not panaceas for members. It takes a strong stomach to spend the semester ignoring classes while counting on colleagues, who are all overworked, to come up with short answers to the problems in the law. Despite instructions that outlines must be complete "since many miss classes and don't get to readings," at least one 3L member has reported that the outlines are "not all that good."

As finals roll around this year, those on *Law Review* will be working to catch up to where the rest of us, theoretically at least, should be. Those not on *Law Review*, though having to fend for themselves, should not feel that they are at a disadvantage. *Law Review* outlines "ain't all they are cracked up to be." ❧

**FLEMING & SON**  
INCORPORATED

Printers Since 1910

FORTY WHITE STREET  
at Porter Square, Cambridge  
SOMERVILLE, MASS. 02144  
623-3047 623-3909

# Class Sees Argument on Courtroom TV

Most students take their class trips to Washington D.C. in their senior year of high school. But a group of HLS students got a second chance on Nov. 12, when Anthony Lewis's class on "The Constitution and the Press" traveled south for a day in the nation's capital. Instead of taking tours of Congress, the White House, or the monuments, the 25 law students spent the morning at the Supreme Court and the afternoon with Associate Justice Harry Blackmun.

Lewis had arranged the trip so class members could watch oral argument in a free press fair trial case, *Chandler v. Florida*. At issue was a Florida law permitting TV broadcast of state trials. The petitioners, a pair of former policemen, claimed that the electronic coverage of their trial was "inherently prejudicial," and that their convictions should be overturned.

Much of the questioning from the bench revolved around whether the presence of TV cameras in the courtroom somehow alters the behavior of judges, witnesses, or jury members. Justice Blackmun alluded to the issue Thursday night during the Ames moot court finals at Harvard, joking that the videotaping of the event might make him more conscious than usual of his judicial mien.

## "Lively Argument"

The argument in the Supreme Court was "lively," as Lewis said afterwards, with every Justice present and asking questions of counsel. At one point, Chief Justice

Warren Burger and Justice William Rehnquist fired sharp questions in quick succession at counsel for the state of Florida, seeming to aim their points at each other more than at the lawyer. Finally, counsel joked that he couldn't attempt to mediate a dispute between the two of them. Somewhat later, Associate Justice John Paul Stevens commented on Florida's open-trial philosophy, saying, "I understand that Florida is a sunshine state in many ways . . ."

Discussing the issues briefly after the oral argument, class members said that while they enjoyed the session and thought each side had made important points, they didn't think the argument would have much effect on the outcome of the case. Lewis appeared surprised by that assessment.

## "A Little Unnerving"

Later in the afternoon, those class members who remained in the city met Justice Blackmun for informal

discussions. The session was "just terrific," according to Lewis, who told students who had passed up the trip that they had made "a great mistake." One student had a slightly different impression. "It was a little unnerving," he said. "He didn't act like a Supreme Court Justice."

Another student, who had managed to avoid the plane fare to Washington by combining the trip with a job flyout, said, "He was a sweet, nice guy. It wouldn't have been worth spending your own money to go all the way to Washington for, but. . ."

✽

## Next RECORD Dec. 5

### HARVARD ENVIRONMENTAL LAW REVIEW

invites you to read our upcoming issue,  
Volume V

HELRL provides what you, as a lawyer, judge, administrator, or student, need to know about developments in environmental law and energy production and use.

Vol. V will include articles on compensating victims of toxic waste, new regulations under the Resource Conservation and Recovery Act and the Clean Air Act, forestland preservation, and analysis of the Fishery and Conservation Management Act, among others.

To order a SUBSCRIPTION (\$15.00 per year, includes two issues), fill in the order below, and send it to HELRL, Harvard Law School, Cambridge, MA 02138.

Name \_\_\_\_\_

Address \_\_\_\_\_

Note: HELRL renews subscriptions automatically unless advised otherwise.



# Richardson Steers Sea Treaty Toward U.N.

(Continued from Page 2)  
treaty.

Even before the treaty is brought to the Senate, Richardson expects efforts to have provisions changed. He thinks Reagan will find himself under pressure to reopen negotiations on some of the terms of the deep seabed mining sections. Richardson thinks that would be a great mistake, however, for the sections as they stand now are the result of arduous negotiations and subtle compromises, and any rejection at

this point would necessitate lengthy negotiations. He said he will be on the lookout for such attempts to alter the compromises reached. ☛



1680 Mass. Avenue  
Cambridge, Mass.  
(Opp. Holiday Inn)  
Open  
11:45a.m.-10:00p.m.  
492-0900 354-8335

## AUTHENTIC GREEK DINING DINNER FOR TWO 10.95

Includes Choice of Main Course, Soup, Salad, Coffee  
and a Half Carafe of Chilled Wine  
(Offered Sunday thru Wednesday)

### FEATURING

Shishkebab, Lamb Dishes, Greek Salad, Mousaka  
Fresh Seafood and Cocktails

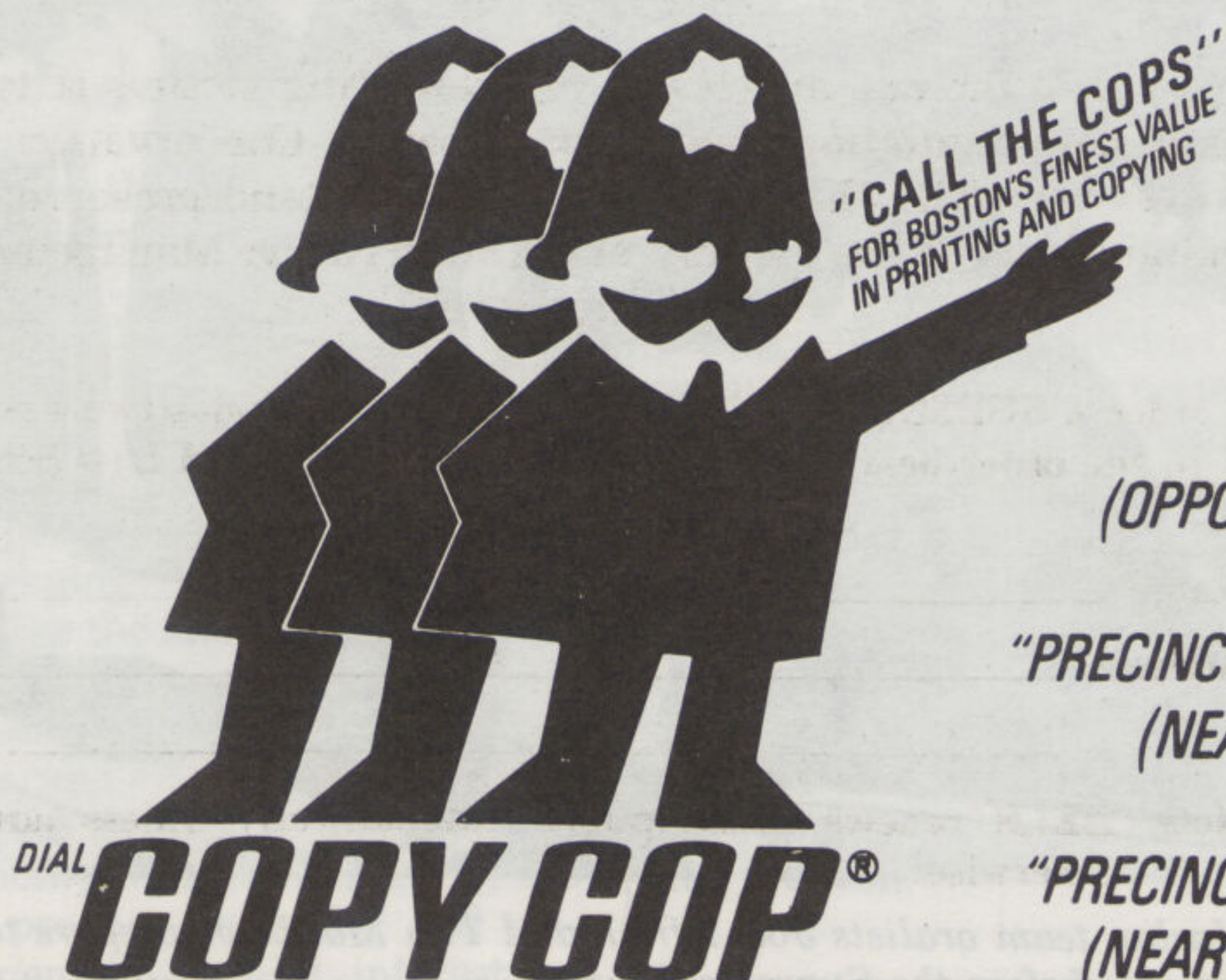
LUNCHEON SPECIALS SERVED DAILY  
UNDER \$3

# THE PRINTING POLICE ARE AFTER YOUR JOB.

*Copy Cop has a full squad of crackerjack printing police to collar your toughest printing job. From typesetting resumes to producing multi-color brochures with photographs. Not to mention manuals, pamphlets, newsletters, envelopes, reports and proposals.*

*In fact, Copy Cop has a full line of typefaces and papers for you to choose from. And don't worry if you don't have time to come by one of Copy Cop's precincts. They've got an entire patrol of trucks ready to pick up your job. They're even open nights and Saturdays.*

*Call the Copy Cops. Because when it comes to high quality, low cost printing, they're untouchables.*



**"HEADQUARTERS"**  
AT 815 BOYLSTON ST.  
(OPPOSITE PRU) DIAL 267-9267

**"PRECINCT 2" AT 13 CONGRESS ST.**  
(NEAR STATE) DIAL 367-2738

**"PRECINCT 3" AT 85 FRANKLIN ST.**  
(NEAR FILENE'S) DIAL 451-0233

# Wisdom Team Triumphs in Ames Final

(Continued from Page 1)

to record the evening's events. Shortly after 8:00 the panel of judges entered and was greeted by an audience that knew when to stand up to show its respect, but was not

sion. Three principal issues were presented: the extent of the corporate attorney-client privilege, whether certain subpoenaed documents should be protected from disclosure under the Federal Rules

who furnished the information.

According to the record, Imperial Products, in June of 1978, undertook an internal investigation to determine whether the corporation had violated the Foreign Corrupt Practices Act. In December of 1978, the Securities and Exchange Commission, pursuant to a separate investigation, caused a subpoena *duces tecum* to be issued demanding that Imperial produce documents connected with Imperial's internal investigation. Imperial refused, claiming that such disclosure would violate corporate and individual attorney-client privileges and the guarantee of attorney work product immunity. The district court for Ames rejected petitioners' claims and granted the SEC's motion for summary judgment, the Court of Appeals for the Ames Circuit affirmed, and the case reached the United States Supreme Court on certiorari, in record time, Justice Blackmun added.

Eric Havian opened for the petitioners, arguing the personal attorney-client privilege; Kathleen Sullivan then argued the corporate attorney-client and work product privileges. Questioning began even before Havian had finished his statement of the facts, and contin-

(Continued on Next Page)



Photos by John Morris

*Best oralist Kathleen Sullivan argues before Justices Kears, Blackmun, and Keeton while Court Crier Lorenzo Little, 2L, looks on.*

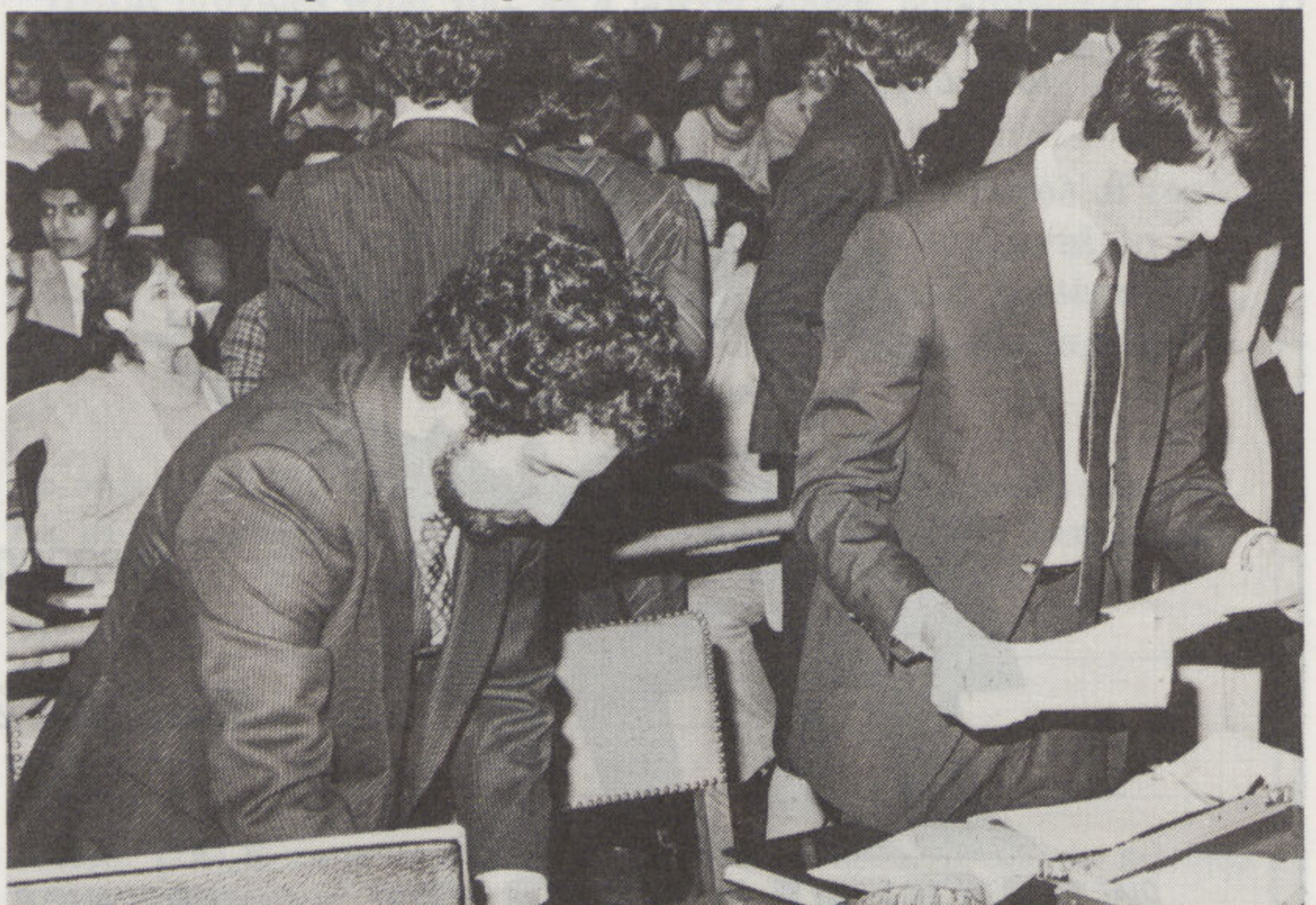
quite sure when to sit down. Justice Blackmun took the opportunity to open the evening's colloquy: "My colleagues at the bench will note what television in the courtroom does. I've never had such a long wait in getting to my seat." But the audience and the judges did sit down, and the argument began.

Arguing for the petitioners was the J. Minor Wisdom Team composed of Kathleen Sullivan and Eric Havian as oralists with Steve Branson, Daniel Goodwin, Robert Morse, and Cheryl Noble on the brief. Arguing for the respondents was the John Marshall Harlan Team with Joel Africk and Timothy Matthews as oralists and Mitchell Berg, Patricia Bowman, Mark Friedlander, and Edward Himmelfarb on the brief.

## Attorney Privileges

The case was *Imperial Products Company and Edward Wade, Vice President and General Counsel v. Securities and Exchange Commis-*

of Civil Procedure because they constitute the work product of an attorney, and whether the disclosure of certain documents would violate the Fifth Amendment's privilege against self-incrimination of the corporate employees



*Harlan team oralists Joel Africk and Tim Matthews prepare to argue their case before the Supreme Court.*

# Justices Name Kathy Sullivan Best Oralist

(Continued from Previous Page)

ued at a lively pace throughout the arguments presented by both sides.

## Question and Parry

Judge Keeton seemed intent throughout on pressing counsel for both sides to fill in the details — suggesting several times that the case ought to be remanded to district court. Justice Blackmun took time between firing off questions to rock back and forth in his chair looking contemplative, and Judge Kearsse at her end of the bench seemed intent, asking occasional questions that — almost — stymied the oralists. The judges were all well prepared, quoting from the record and briefs as they asked questions, pressing points hard, and returning to personally favored themes throughout the argument.

After Havian's lead, Sullivan continued the argument for petitioners. She was able to parry Keeton's suggestion that the case should be remanded for further fact finding, and used his suggestion as a springboard to continue her argument rejecting the "Control Group" test relied on by respondents. From there, Sullivan argued policy, contending that eroding the attorney-client privileges would hurt the legal profession and was a short-sighted litigation tactic on the part of the SEC.

Next, arguing first for the respondents, was Joel Africk, who addressed the corporate and individual attorney-client privilege. He argued that the policy of broad disclosure reflected in the Federal Rules of Civil Procedure insures benefits to society and to law enforcement efforts which outweigh other policy considerations, such as encouraging internal investigations like the one conducted by Imperial. Kearsse and Keeton peppered Africk with questions. Judges, oralist, and audience all seemed to enjoy the lively give and take.

Timothy Matthews, arguing the work product immunity and employer/employee joint interest is-

sues, closed the argument for respondents. When asked by Justice Blackmun if *Hickman v. Taylor*, on which respondent relied, wasn't just a bit old, Matthews answered that the 1947 decision was a "revered opinion," and the audience, judging from their applause, agreed.

At the close of respondents' argument, petitioners chose to use their reserved rebuttal time. Sullivan limited her remarks to three points highlighting procedural and substantive issues in the case. A red light flashed at the rostrum, the judges retired to deliberate, and the teams gathered at the bar to speculate and wait.

The panel returned with comments from Keeton and Kearsse before Blackmun announced the final rankings. Keeton compared judging moot courts to real world trials, commenting with a hint of humor that he enjoyed being back where "students were always thoroughly prepared for every question." Kearsse

said this was one of the best moot courts she had seen in 20 years of judging oral arguments. Then she gave some advice that may help future Ames oralists: "Listen. Listen to questions and try to understand what the judge is getting at." Along with praise for all the participants and his colleagues on the bench, Blackmun too emphasized the need to answer questions directly and to be willing to let a prepared argument "go down the drain if that's not what the judge wants to hear about."

Then, close to ten o'clock, after almost two months of hard work, but less than two hours since the evening's argument had begun, 1980 Ames Moot Court Competition was complete.

## Join the RECORD

## Participants Enjoyed Ames

Participating in the final round of the Ames Moot Court Competition was a monumental undertaking for the students involved. But after this year's competition, both winners and losers had only good words for their experiences.

Eric Havian, of the J. Minor Wisdom team, said that he and other team members were "incredibly close as a group of people — this was by far the best part of the competition." The fact that the team members respected one another and enjoyed each other's company contributed to the team's doing a good job, Havian explained.

Mitchell L. Berg, of the John Marshall Harlan team, also commented on team work, explaining that the competition was worth the time and effort devoted to it because it teaches students to work as a group. Berg said that discussion about issues among team members sharpens the perceptions of individual members; for this reason, the Moot Court competition provides a better experience than does law school work which is done largely by students in isolation.

Kathleen Sullivan, J. Minor Wisdom team member and best oralist in the competition characterized the experience as "mainly a lesson in technique that you don't get anywhere else in the Law School. You spend two months preparing for a 20 minute presentation . . . but in the last analysis, it's the technique of getting things across that counts." According to Sullivan, the "true feeling" that she and her teammates had on going into the final round was that it was "okay if we won or lost." She added, however, "Of course, we're very happy that we won."

M.T. and G.R.

# Love It or Leave It?

This week we are printing a letter from an alumnus who is critical of current HLS students' efforts to make their concerns heard in the current Dean selection process and ongoing faculty recruitment debate. The gist of his comment is that students at Harvard should appreciate what they have here and not try to topple the hallowed bastions of Langdell. "HLS, love it or leave it," puts the author's view rather succinctly.

We find such an attitude tough to accept, but we worry that it might be all too prevalent among those of us in the legal world who think being successful means not rocking the boat. Recently we heard that the *Law Review* voted not even to send a non-voting observer to CORDS meetings. That isn't taking a stand: that's putting one's head in the sand.

We are becoming ostriches, and the implications are frightening. We say things like "one could argue that . . ." in order to avoid expressing our feelings and opinions. We tell interviewers what they want to hear, not what our interests truly are. We keep tightlipped about so many things that the question soon arises, "Do you trust your classmates?"

By going along, you get along, the cliché states. You also make no impression — and therefore no contribution either. Thousands of people have passed through the halls of Austin to become rich attorneys. How many left HLS anything besides a forwarding address? How many made HLS richer (not financially) by their presence?

Not everyone who attends HLS is trying to exploit it. A few care enough about it to try to improve it by seeking a Dean responsive to the needs of everything and everyone at HLS, including those who should be here but aren't yet.

## Farewell, Prof. Bell

Derrick Bell is leaving HLS at the end of this semester. We wish him the best possible success in his new position as Dean of the University of Oregon Law School.

More importantly, however, we will miss Derrick Bell at HLS. Bell has been an effective and beloved teacher during his tenure at HLS. He has presented a viewpoint uncommon in the faculty's ranks. While many of his teachings may have seemed somewhat unconventional and controversial in the Law School curriculum, they were sorely needed and always appreciated. Even those students who had never taken a course with Prof. Bell could not help but be impressed and inspired in knowing his reputation as a man who loves to teach and who truly cares for his students.

### HARVARD LAW RECORD

EDITOR ..... Dan Hershman  
 MANAGING EDITORS ..... Mary Tarduno, Laura A. Taylor  
 BUSINESS MANAGER ..... Eileen Brownell  
 CONSULTING EDITORS . Bennett Murphy, Newton B. White, Jr.  
 BOOK REVIEW EDITOR ..... Fritz Byers  
 SENIOR EDITOR ..... Steve Friedland, Jack Lange  
 ASSOCIATE EDITORS: Barry Brooks, Tom Heywood, Ben Littauer,  
 Eric Merrill, John Morris, Joan Ohlbaum, Gretchen Rule, Rob  
 Woolington  
 EDITORIAL STAFF: Joe Danowsky, Benne Hutson, Thomas Isenberg,  
 Pat Kelly, Marisa Manley, Gabe Varges  
 PHOTOGRAPHY STAFF: Ben Littauer, Marisa Manley, Erich Mer-  
 rill, John Morris, Wanda Payne, Monica Rodriguez, Newton B.  
 White, Rob Woolmington  
 BUSINESS STAFF: Monica Rodriguez

## Fenno

"Fenno, you're so sweet and funny," the young woman said to the RECORD's resident wit.

"I know," he said, with all the humility he could muster. It wasn't much.

"Week after week you come up with hysterical commentaries on life at HLS."

"I know," Fenno agreed.

"You're clever satire cuts right to the heart of Law School bull," she said.

"Naturally," Fenno mugged.

"And I don't like you," she said.

"I don't understand." Fenno was puzzled.

"You don't understand what being a law student is all about, Fenno."

"I guess I don't."

"When's the last time you met with a study group?"

"Gosh, I don't know," Fenno said.

"When's the last time you read a law review article? A treatise? A hornbook?"

Fenno not only hadn't looked at supplemental materials all semester, he'd even ignored his primary assignments. He had been too busy going to parties, entertaining friends, and being what he thought was a regular guy to concentrate on the books. Fenno preferred dancing with women to thumbing through Am. Jur. 2d.

"Yes, you're nice, Fenno, but you aren't well-rounded," she told him.

"All right, who are the scholar-humans around here?" Fenno queried.

"Look at your profs. Phil Areeda, Charlie Donahue, Charlie Fried are three *complete* men. You're just a goof-off. You're warm and friendly, just like they are, but you don't have that intensity they do."

"Could I pass as a Hal Scott?" Fenno added.

"Maybe an Irving Younger."

"You mean I don't fit in at HLS?" Fenno worried.

"No, Fenno, you don't. You're too nice."

**JAMES F. BRINE INC.**  
**29 BRATTLE ST.**  
**HARVARD SQ. 876-4218**

*SPORTS EQUIPMENT AND APPAREL  
 FOR THE ENTIRE FAMILY*

|         |        |          |
|---------|--------|----------|
| SKATING | SQUASH | JOGGING  |
| HOCKEY  | DONNAY | WARM-UPS |
| FIGURE  | GRAYS  | SHOES    |

EXPERT FITTING OF  
 ATHLETIC SHOES.

WARM WINTER CLOTHES:  
 Down Parkas & Vests, Long  
 Underwear, & Wool Sweaters.

CHRISTMAS GIFT IDEAS:  
 Scarves, Mittens, Gloves,  
 Turtlenecks, & Slipper Socks.

**"BETTER BUYS AT BRINE'S"**

## Letters to the Editor of the RECORD

### Chutzpa

#### To the Editor:

The University seismograph must have recorded the turning over in their graves of the bodies of the patriarch Deans of the Law School caused by the RECORD's Oct. 17 item, headlined: "Student Coalition Mobilizes for Role in Dean Selection".

The attitude of the CORDS leadership may be characterized precisely only by resorting to the Yiddish word *chutzpa*, which Leo Rosten defines as "gall, brazen nerve, effrontery, incredible 'guts', presumption-plus-arrogance such as no other word, and no other language can do justice to". Rosten comments that: "Chutzpa is that quality enshrined in a man who, having killed his mother and father, throws himself on the mercy of the court because he is an orphan."

How does Michael Borrus, 2L, arrogate to himself the right to "interview potential candidates for the deanship"?

Why does Larry Coben, 3L, feel that he is entitled to "open the Dean selection process to the Boston and Cambridge communities"?

Who anointed Fritz Byers, 3L, to organize a boycott of classes, demonstrations at alumni functions, and a boycott of University fundraising efforts?

These young men and the other "activists" whose bizarre activities and pronouncements are chronicled in the RECORD from time to time seemingly do not comprehend the difference between being given a Thanksgiving Dinner at the Salvation Army and buying one's own dinner at the Ritz. A dissatisfied recipient of the Salvation Army's bounty has but two choices — eat or get out! The privilege of criticizing the chef or complaining about slow service is reserved to those who pay their own way at the Ritz!

Each year we read of the wide choice of applicants facing the Admissions Committee. Cannot the Committee devise a chutzpa litmus test by which it could screen out the troublemakers who would set up a picket line at the Salvation Army? Positions in the entering classes should be reserved for those who will appreciate properly the privilege of attending the country's finest law school! Let the picketers, boycotters and demonstrators be relegated to the second and third rate schools!

Peirce Wood, '39  
Melbourne, FL

Editor's note: See editorial, page 10.

### Worthy Litigants?

#### To the Editor:

The sad (and tedious) saga of David Quinto's efforts to vindicate his copyright claims (isn't it the RECORD's copyright in any

event that has been infringed?) graphically illustrates why our courts are in such desperate shape today. Has it never occurred to him that courts are not computer games designed to give every *pre se* litigant a bit of practical experience in federal court litigation? I am willing for the sake of argument to assume that he had a good case in claiming copyright infringement at the unauthorized reprinting of his RECORD article. But, quite aside from the absence of any real harm to Mr. Quinto, one gets the uncomfortable feeling that he was more anxious to have some litigation fun than to attempt to settle this dispute. As between an over-zealous plaintiff and an apparently irresponsible defendant there is little to choose. But what about the public burden of this kind of litigation? Given the overburdened state of our courts today, judicial time devoted to this type of petty squabble necessarily diverts the court from some of the urgent and critical issues with which they are being asked to deal. That seems to me an unfortunate result.

Perhaps some alternative form of dispute settlement, such as arbitration or mediation by a volunteer lawyer, would be the best way to deal with claims like Mr. Quinto's. But surely some forbearance and sense of proportion on the part of plaintiffs is also needed.

Frank E. A. Sander  
Professor of Law  
Cambridge, MA

### Don't Sell Out

#### Dear Public Interest Oriented 3L:

It's a grim time of year, no?

While you cope with post-election depression, most of your classmates seem to have gorgeous tans from their all expenses paid trips to check out sunbelt law firms. They already have dozens of job offers. You have a series of discouraging form letters — if you are lucky — from Public Citizen, a dozen legal service groups, every progressive labor union in the country, a host of State Attorney-General consumer protection units, and even some Federal agencies you didn't know existed (or which may soon cease to exist).

The outlook is bleak. No one is encouraging. There are just no damned public interest jobs available! The daily spectre of classmates in three piece suits and freshly pressed pleated skirts makes you feel like an uneasy extra in the "Invasion of the Body Snatchers."

Perhaps it's time to sell out? Not yet, we write to say, not yet.

We are two recent HLS graduates who know what you are going through. As similar victims of third year job anxiety, we feel for you. So, we offer two pieces of advice.

One is general, the other specific. We hope they help.

First, hang in there. The government and public interest groups do a lousy job of recruiting and hiring. However, many of you who stick it out will be able to land a "public interest" job. David got his job offer in April. Gene in August. It takes a good deal of persistence. Letters have to be followed up with phone calls. Interviews held, if only to make contacts and develop leads.

Second, we suggest that you check out Public Interest Research Groups (PIRG's) across the country. PIRG's are rarely mentioned as an option to recent law school graduates. Yet they are in the forefront of social change and provide fabulous training in being an all around advocate. AND THEY HIRE RECENT LAW SCHOOL GRADUATES!!! NYPIRG will have at least two and possibly four openings in New York City and upstate next Fall. MassPIRG also has openings.

Yes, there is a public interest life possible after law school. We both love what we do. In the last two years, we have: taught college level public interest advocacy courses; testified at legislative, administrative and community hearings; directed scores of student projects, such as small claims court assistance centers, prescription medication abuse speaker's bureaus, and anti-redlining studies; helped in the organization of the May 6th and September 23rd anti-nuclear rallies; run consumer conferences; and conducted legal and social science research in such areas as housing, health care, mass transit, and taxation.

We would be happy to talk with public interest oriented 3Ls (and 1Ls and 2Ls as well). For encouragement, for support. And to recruit you for PIRG's or for NYPIRG.

We wish you good luck.

David Fleischer, '80  
Gene Russianoff, '78  
New York Public Interest  
Research Group, Inc.  
5 Beekman Street  
New York, N.Y. 10038  
(212) 349-6460



Professional Dry Cleaning  
and Shirt Laundry

at

*Rite-Way*  
DRY CLEANERS, INC.

547-8008

4 Hudson St., Cambridge  
(off 1672 Mass. Ave.)

# One Ls, Alums Meet With Success

(Continued from Page 4)

with his family," he added.

Another 1L, Rob Woolmington, also expressed satisfaction. "[The alumnus] is exactly what I wanted. He does trial work and is a sole practitioner. I'm certainly looking forward to meeting with him again," he remarked.

Not all participants in the program, however, have had equally positive experiences. An alumnus from the class of 1960 found his assigned student to be too narrowly preoccupied with getting a summer job to establish a good relationship. "I kept having the feeling he just thought of me as some kind of placement office," he complained.

A current 2L who participated in the program last year was also disappointed. "My match was a nice man. But neither of us knew what to expect from each other. We met once and that was it."

## Hesitations Typical

Alumni Assistant Secretary Muller admits that this is a frequent problem. Expectations on both sides are sometimes unclear and participants become confused about what to do after the first meeting. Even in terms of establishing the initial contact, hesitations by students and alumni are typical. One 1L confessed to not having made any effort to contact his assigned alumnus because he thinks the first step should come from him. "I'm sure he is a busy man and I think I'd rather have him contact me at his convenience than my calling and imposing on him."

Muller, however, emphasizes that the nature of the program is such that no participant should feel he is imposing on the other. In the letter introducing the alumnus to the student, Muller informs the student that if he does not hear from his match, he should feel free to be the first to establish contact.

Another problem relates to the actual matchings made. While every attempt is made to pair people of similar interests, the limitations posed by the number of participat-

ing alumni and by the Boston area itself lead to no appropriate match being available for some students. Boston, for instance, is not a major center for the practice of international law. Yet many of the students who state international law as a preference are disappointed when their assigned alumnus turns out to have little interest or background in that area. "That is where the other expressed interests are useful," pointed out Laura Luz. What participating students ought to do in those cases, suggested one committee member involved in the program, is to make the most of the contacts they are provided and to try to learn as much about the fields in which their respective alumnus might be involved or interested in. "Who knows," he said, "maybe [the students] might change their minds upon seeing other things."

## Still Experimenting

Possible ways of improving the program are being considered by the Alumni-Student Committee. Chairman Kass underscores that the Committee is still "experimenting with the kind of program it ought to be." Muller also noted that his office was willing to listen to any suggestions for the program.

One of these suggestions is to expand the program to include alumni from cities other than Boston. While formal matching might not be possible in a program that would, for instance, include alumni from New York, Washington, Chicago, and elsewhere, the compiling of lists of alumni by fields of practice would be possible. Thus, a student (and not necessarily a 1L) from the Washington, D.C. area, or one doing a summer clerkship there, who is interested in environmental law would be given a list of HLS alumni in the area active in the field whom he could contact.

Muller thinks the suggestion to be very positive and says he is "absolutely in favor of it." Chairman Kass does not oppose it in principle, but believes that "as a

practical matter, it would be very hard to engineer such a program." "Nonetheless, it is something to explore," he added.

Whether expanded or not, the current Alumni-Student program does seem to represent a very worthwhile contribution to the law school community. The nearly 400 first year students who signed up for the program indicated the interest in it by students. While participation by more alumni would be helpful (there are still some 25 students without a match), the most important theory seems to be that those who participate recognize the mutual benefits to be gained from participation. As Muller put it: "If there has been a single objective of the program . . . it has been to suggest both to alumni and to students [that they] are part of a continuum, and that the distinction between alumni and students . . . suggests a division without a meaningful difference. At most, students are only 3 years away from becoming alumni, and all the alumni were students in the past."

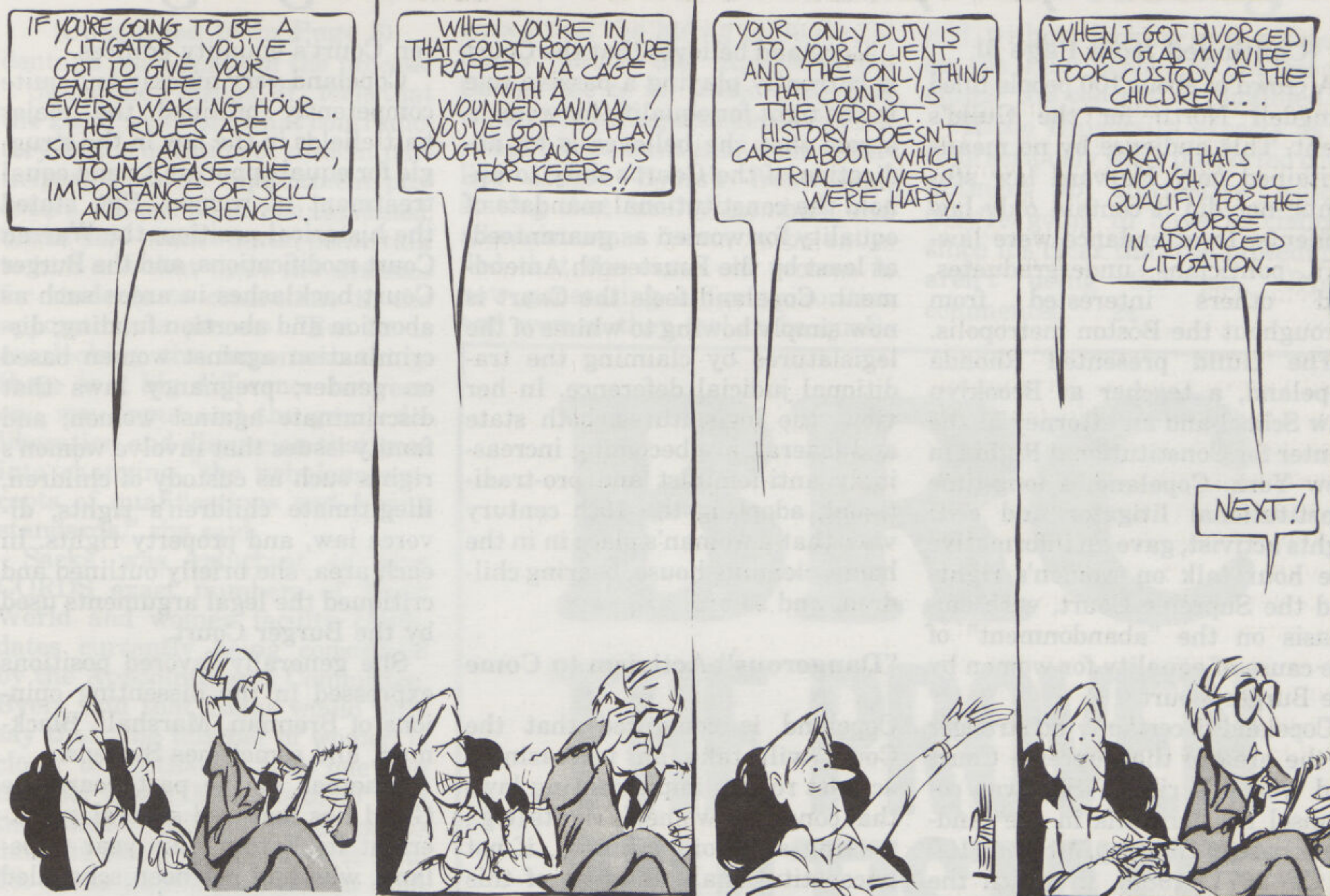


## SPORTS QUIZ

NOTE: This week's Sports Quiz deals with past or present athletes who have tried to develop a movie career.

1. This former Olympic decathlon champion has appeared in numerous television commercials and has had a major role in the recent movie *Can't Stop the Music*. Who is this person?
2. Formerly a member of the Boston Bruins, this player enraged National Hockey League officials when he made a fully-clothed appearance in an X-rated movie. Who is this athlete?
3. Perhaps the greatest running back in both college and professional football, this man has appeared in a number of feature movies including *The Towering Inferno*. Who is this athlete-turned-actor?
4. A towering player in the sport of professional basketball, this person was also a captivating performer in the recent smash comedy movie *Airplane*. Who is this athlete?
5. After a brief and fairly uneventful career with the Los Angeles Dodgers, this athlete transferred to Hollywood and became known for his starring role in the successful television show, *The Rifleman*. Who is this famous actor?

(Answers on Page 16)



## Hundreds Honor Bell at Farewell Dinner

(Continued from Page 1)

the leaders of those thousands of miles away, it is equally important for this institution to have the descendants of Harriet Tubman, Alexander Hamilton, who was black, by the way, Sojourner Truth, and others who helped this nation to move toward what it should and indeed can be." Recognizing the many contributions that Bell has made in the HLS community and to society at large through his civil rights accomplishments, Leonard said, "I just hope we don't let too many days pass without another voice like Derrick's."

### "Vision of a Humane Institution"

Echoing this sentiment, Associate Dean James Vorenberg, who spoke of the honored guest as a good, personal friend, impressed

upon the audience that "Bell's departure is an enormous loss for the Law School. The faculty is losing a colleague with the vision of a humane institution." He reminded the crowd that Bell had come from years of fighting for racial justice and continued that fight in the Law School and on the outside. Turning to Bell, Vorenberg said, "Derrick, we have tried to understand, all of us, and we have tried to act on that understanding. But it would be a lot easier if you were still around." Vorenberg very accurately summed up the efforts and struggles of Bell when he said, "Derrick may be the only academic for whom a deanship will be a move toward peace and simplicity." Vorenberg added that the only consolations in Bell's departing are the very fine memories he leaves behind.

Commenting on the elegance of the evening and adding humor to

an otherwise solemn affair, Vorenberg said, "This is one of the great events at the Law School. It's nice to see that three-piece suits are used all the time!" Vorenberg shared with the crowd the many contributions that Bell had made to his personal life, ranging from being introduced to "gloomy movies and restaurants" to "no longer having to face the humiliation of not knowing the 'finer' things in life like German cars and Hasselblad cameras."

### Missed But Not Forgotten

Cleophus Thomas, 2L, spoke for all the students when he said that Derrick Bell will be missed but not forgotten. Addressing Bell, Thomas stated, "Even so, this is not a sad occasion because you are a good teacher and we've learned our lesson well." The lesson to be learned

(Continued on Page 16)

# Attorney Says Court Is Curtailing Rights

(Continued from Page 3)

A crowd of about 100 people filled Langdell North for the Guild's event. This audience by no means contained only Harvard law students; nor did it contain only law students. In attendance were lawyers, politicians, undergraduates, and others interested from throughout the Boston metropolis.

The Guild presented Rhonda Copeland, a teacher at Brooklyn Law School and an attorney at the Center for Constitutional Rights in New York. Copeland, a long-time constitutional litigator and civil rights activist, gave an informative one hour talk on women's rights and the Supreme Court, with emphasis on the "abandonment" of the cause of equality for women by the Burger Court.

Copeland is certainly no stranger to the area of the Supreme Court and women's rights. She was co-counsel for plaintiffs in the landmark case of *Harris v. McCrae*, 100 S. Ct. 2671 (1980), in which the Burger Court struck a severe blow to the cause of women's equal rights by upholding the validity of the Hyde Amendment against constitutional attack. This amendment denies Medicaid funding to women, even for abortions that are medically necessary, unless the woman's life is in danger.

## "Things Can Get Far Worse"

Copeland's theory is that "the Court is a back and forth reflection of political movements." The Burger Court is currently responding to pressure from various conservative factions, such as the "Moral Majority," by turning back many of the positive gains made for women and racial minorities by the Warren Court and even by the early, pre-1974 Burger Court. Despite the setbacks the women's movement has suffered at the hands of the Burger Court, Copeland believes that "things can get far worse, worse than anyone now can imagine" with the recent election of Ronald Reagan and his possible appointments to the Court.

Copeland believes that the Court is currently playing a passive role in the fight for equality for women, a role that she believes is an abdication of the Court's duty to uphold the constitutional mandate of equality for women as guaranteed, at least by the Fourteenth Amendment. Copeland feels the Court is now simply bowing to whims of the legislatures by claiming the traditional judicial deference. In her view, the legislatures, both state and federal, are becoming increasingly anti-feminist and pro-traditional, adopting the 19th century view that a woman's place in the home, cleaning house, bearing children, and so on.

## "Dangerous" Activism to Come

Copeland is convinced that the Court will take an increasingly activist role in implementing laws that constrain women's rights (e.g., making abortions criminal, if not unconstitutional). Because of this conservative, and what she terms "dangerous," activism on the part of the High Court, there will be increasing pressure on the lower courts, federal and state, to conform. The greatest challenge in the coming decade, believes Copeland, will be for the lower courts to retain their integrity and concern for human rights of all varieties. She believes, however, that the Carter appointees will respond well to this task and resist the pressures from above through what little room for discretion and constitutional interpretation they maintain.

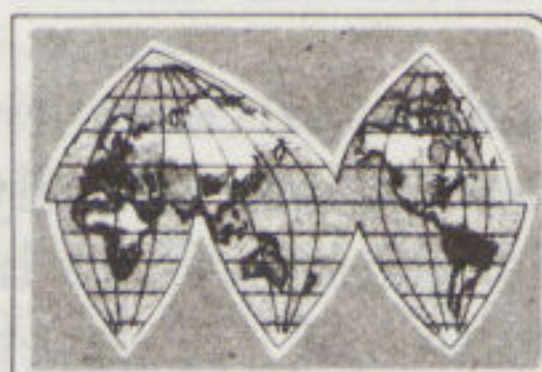
According to Copeland, the years ahead will also be a challenging time for the legal community. She argued that it must maintain its integrity and fight tooth-and-nail for human rights and true equality; it must stand up to forces of conservatism and not be intimidated. Copeland also noted the important role the academic legal community could play in protesting the Court's irrational denials of women's rights and by so doing pressure the Court to perhaps ease up on the destruction of the War-

ren Court's equality edifices.

Copeland very quickly and quite competently outlined the major battlefields in the law in the struggle for equal opportunity and equal treatment of women. She stated the historical position, the Warren Court modifications, and the Burger Court backlashes in areas such as abortion and abortion funding; discrimination against women based on gender; pregnancy laws that discriminate against women; and family issues that involve women's rights such as custody of children, illegitimate children's rights, divorce law, and property rights. In each area, she briefly outlined and critiqued the legal arguments used by the Burger Court.

She generally favored positions expressed in the dissenting opinions of Brennan, Marshall, Blackmun, and sometimes Stevens.

Whereas in the past years the Guild has featured several speakers at its Forum, this year Copeland, who had not been scheduled to speak originally, had to carry the whole weight of the show. The other three speakers scheduled to speak at the Guild Forum could not attend.



**JOSEPH ESKENAS**

GENERAL MANAGER

*Holiday Inn*

1651 MASSACHUSETTS AVE.

CAMBRIDGE, MA. 02138

617/491-1000

## KOBY PHOTOGRAPHERS

8 Boylston Street  
Harvard Square  
547-7552

Portraits  
and  
Instant Passport  
Photographs

# Dean Sacks, CORDS Discuss Hiring

(Continued from Page 3)

dents to participate in the process.

Stephanie Phillips, 3L, feels that the Dean was somewhat contradictory on the question of student participation in the appointment procedure. On one hand, she explained, Sacks said students can come talk to him and that there are avenues for students to contribute to the appointments process. "But he is overlooking the important thing: there is a big difference between one way input and the group deliberation and discussion that goes into changing 'the nebulous concepts of qualifications and hiring standards,'" she said.

Sacks was reluctant to give CORDS exact numbers of Third World and women faculty candidates currently being considered by the Appointments Committee. Byers said that Sacks would only say that "the number of women is closer to 10 than it is to one and is closer to ten than it is to 50" and the number of Third World candidates is closer to five than it is to 10. Sacks likewise refused to comment on exact figures to the *Record*; however, he left open the possibility that offers are currently being made to women and minorities to join the HLS faculty.

Sacks, said Byers, pointed out that in the 10 years he has been Dean, three minority members have been offered tenured positions while overall 20 to 22 people have received tenure. Sacks then stated, said Byers, that if HLS had three minority members on the faculty and more being considered in the appointments process, he would be happy. CORDS members, however, felt that the success of the appointments process in achieving affirmative action had to be measured in terms of the number of minority faculty members currently in the faculty as a whole, Byers explained.

Sacks and students also disagreed on the ability of the current appointments process to achieve affirmative action. Sacks commented to the *Record* that "the process is a good process. . . . In my view there is good reason to hope it will produce women and minorities." On the other hand, Byers

stated that the hiring procedure is faulty since the Appointments Committee is all white male and it invokes hiring standards having racial biases built into them. Phillips shared Byers's frustration, stating that faculty members and administrators "seem to be satisfied that the same old process is now generating a few minorities and women they feel to be quali-

fied, without looking at the impact on the Law School of not broadening" the concept of "qualified."

"If the University expects us to take seriously their purported commitment to affirmative action, they're going to have to change, since it's clear that the procedures aren't doing the job," Byers commented. ☛

## BRC THE PROVEN MULTISTATE EXPERTS

Every bar course claims to have expertise on the Multistate Bar Exam, but only BRC has the proof.

Several years ago information provided by the Clerk of the Supreme Court of a major Multistate jurisdiction revealed that BRC students very *substantially* out-performed the national mean on this rigorous 200 question exam.

While the national average scaled score was under 140 that year, the BRC sample cross-section of about 400 BRC students from all types of law schools averaged 146.4, more than enough to pass with ease in any state in the nation. In addition, over 21% of our students scored over 160 on that exam.

No one has come close to beating us yet on the Multistate, and the bar exam won't beat you if you'll let us help.



# Hundreds Honor Bell at Farewell Dinner



Photo by Wanda Payne

*Guest of honor Derrick Bell playfully gestures while others on dais were caught unaware.*

(Continued from Page 13)

was the ways in which basic human dignity and freedom might be secured for all who would call themselves Americans. Thomas challenged students to pursue "the lesson of our mentor Derrick Bell, to gain that certain moral, physical, and intellectual fitness required to pursue that goal of helping others." He proclaimed, "In order to free others one must first free himself. That freedom must involve a certain state of mind — the crossing of an intellectual boundary, the Mason-Dixon line of the mind."

Also among those paying tribute to Bell that evening was Peter Gomes, University Minister at Harvard's Memorial Church. Noting the elegance of the affair Gomes joked, "Those of us in the College have always wondered what those in the Law School do. Now I see!" He added, "I am very often called upon to speak about the dead and fortunately they are not around to correct it!" Gomes made this remark as he confidently spoke of Bell as "a counselor, a dependable colleague, and an ally both publicly and privately." "Derrick," he stated,

"shows us that it is possible to survive here, to do well, and to maintain integrity in the bargain."

Advising Bell of his new undertaking Gomes then said, "You are about to undergo a transition, a transformation [from the good and helpful professor to the mean, evil dean]. When you become a dean at the University of Oregon School of Law look into the mirror and tell yourself, 'I am an evil, but am I a necessary evil?'"

Finally, Gomes turned to Bell to thank him for the inspiration and enlightenment that he has added to our community. He said, "Thank you for what you've been, for what you are, and for what you will become. Derrick, thank you so much for just who you are!"

## Final Word to HLS

Last, but by far not least, to speak at the dinner was Prof. Bell.

## SPORTS ANSWERS

1. Bruce Jenner.
2. Derek Sanderson.
3. O. J. Simpson.
4. Kareem Abdul-Jabbar.
5. Chuck Connors.

SECOND CLASS  
PAID AT BOSTON, MA

RETURN ADDRESS:  
HARVARD LAW RECORD  
(ISSN 0017-8101)  
HARVARD LAW SCHOOL  
CAMBRIDGE, MA 02138

He prefaced his message by noting that if his wife, Jewel, were there she would urge restraint, i.e., "to say 'thank you' and to sit down." But Bell marched onward by saying, "To sit down would be appropriate but inadequate." Recognizing the import of the evening Bell commented, "God has not seen fit to burden me with undue modesty, yet some small remnant of propriety tells me that this is not all for me." Bell delivered his message in recognition of the fact that the evening's purpose spoke to his failures as much as it did to his successes. "My failure to convince the HLS faculty that other black lawyers without *Law Review* could make meaningful contributions to this faculty," Bell lamented, "is obvious from the very small percentage of HLS students who will have the opportunity to have non-white teachers in their three years here." Professor Bell then thought back to his arrival to HLS back in 1969 and said, "I came as a symbol of the racial heterogeneity that the HLS faculty has to become. I was the first black, but not the only one." Turning to the student audience Bell urged, "Students must share in this failure. For it was student persistence that got me here eleven years ago and it is by student persistence that another will come." He warned us not to get caught in the trap of "being everything to everyone else and nothing to ourselves." His final point was to say, "My only regret is that I leave Clyde Ferguson the way he found me — alone! It is unfair, it is unwise, and it is unnecessary."