

HARVARD LAW RECORD

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25 CENTS

Lech Walesa Team Sweeps Ames Final

By Sheryl Silver

The atmosphere in the Ames Courtroom on Monday, Nov. 22, was one of almost-palpable anticipation, anxiety and excitement. The two teams participating in the Final Round of the Ames Moot Court Competition had worked their way up through the qualifying and semi-final rounds, distinguishing themselves along the way for their persuasive briefs and oral argument. Monday night was the culmination of all their preparation in an oral argument which pitted the two best teams against each other. The judges who presided over the competition added intensity and drama to the event. Justice Sandra Day O'Connor, of the Supreme Court of the United States, Judge Ruth Bader Ginsburg of the Court of Appeals for the District of Columbia Circuit and Judge John J. Gibbons of the Third Circuit Court of Appeals provoked and challenged the competitors.

The case argued was that of *Peter Rogers and William French Smith v. James Mendez*. Mendez, an American citizen convicted of drug-related crimes in the country of Rossland, was subsequently repatriated to the United States to serve his sentence here under the terms of a prisoner-transfer treaty between Rossland and the United States. The treaty prevented him, as a transferred prisoner, from challenging the validity of his foreign conviction in the U.S. once his consent to the transfer was given. Mendez contended before the Su-

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John Morris

This year's panel judging the Ames final round: Judge John J. Gibbons, Associate Justice Sandra Day O'Connor and Judge Ruth Bader Ginsburg

Faculty Discusses Hiring

By John Morris

At its Wednesday meeting, the faculty discussed but failed to adopt two resolutions which would affirm its support for affirmative action in faculty hiring. A vote in favor of some form of resolution seems likely at the next meeting, 10 days from now. The faculty also heard reports from the Appointments Committee and its subcommittees on current efforts to recruit women and minority faculty.

The meeting was called in part to respond to last month's student vote endorsing a Law School Council resolution that urged the faculty to make "the goal of increased representation of women and minori-

ties . . . a primary consideration in all future appointment and tenure decisions." The meeting was also intended to help publicize the faculty's past efforts at affirmative action.

LSC President Brian Curran, 3L, told the faculty that the council had developed the resolution because it thought the issue of affirmative action in hiring had been obscured in the debate over the Third World Coalition's boycott of the Racial Discrimination course. Curran said the council feared that minority students had come to think they stood alone in favoring affirmative action and that a statement of the school's commitment was needed.

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Friends, Clerks Remember Frankfurter

By Jack Robinson

The centennial celebration marking the anniversary of the birth of Felix Frankfurter, held on Nov. 19, lived up to everyone's expectations. The event began with a convocation in the Ames Courtroom featuring an elegant, touching and informative address by Prof. Paul Freund. In the address, Freund reminisced and reflected on Frankfurter's life and personality with a vigor unmatched by any other speaker. On one occasion, Freund said, after the court had "torn apart" Freund's opposing counsel's argument, Freund stood up and pointed out a typographical error in his brief, then sat down — that being the extent of his presentation. Referring to that argument, Frankfurter later said: "I have heard many learned, powerful and eloquent arguments in my career; but I have heard only one perfect argument."

Lively Panels

The several panels presented during the event ranged in content from "Personal Reminiscences of Frankfurter" to "Supreme Court Law Clerks Then and Now." Some panels were exciting and well-received, others less so. "American Zionism in the 20th Century" was perceived by many to have been the most academic and scholarly of the panels. "Personal Reminiscences of Frankfurter" proved to be intensely interesting and humorous, as old friends of Frankfurter related their personal experiences with him to the audience.

Retraction

During the "Supreme Court Law Clerks Then and Now" panel, Dean Harry Wellington of the Yale Law School told the audience that Supreme Court law clerks during his time were better than they are now. Later, when asked for a clarification, Dean Wellington said that he meant the "institution" of law clerks



Erich Merrill

Frankfurter panelists, including Former Dean Sacks, left, and Judge Henry Friendly, far right.

was better during his time as a clerk.

The day's events concluded with a reception in Pound Hall for all the participants and members of the audience. Judges, senior partners and 1Ls alike talked about the different panel discussions over assorted cheeses and hot cider. Everyone was in agreement that Prof. Freund's opening address was the highlight of the event. In terms of audience enthusiasm,

Judge Charles Wyzanski, Jr., and Edward Prichard were runners-up. Prof. Abram Chayes, coordinator of the event, was particularly pleased with the student attendance throughout the event commenting; "I was pleased with the turnout; people got their 'money's worth'." Without a doubt, the event fulfilled its goal of encouraging, as Chayes put it, "conversations that Frankfurter would enjoy being a part of."



Sports Quiz

Note: In this week's sports quiz each question asks you to identify two sports figures who have the same name.

1. This NFC kicker who scored 121 points in 1981 has the same name as an American League switch hitter who in 1982, for the second time in his career, hit .300 or better and drove in over 100 runs. Name these athletes.
2. This NBA head coach has the same name as a running back who was instrumental in turning the Washington Redskins into an excellent football team in the early 1970's. Name these men.
3. An alumnus of St. John's and forward with the Indiana Pacers, this man has the same name as a shot-blocking center

who began his lengthy NBA career with the Golden State Warriors in 1972. Name these players.

4. This Georgetown guard, who is best remembered for a miscue in last year's NCAA championship game, has the same name as a veteran NBA guard who is well known for his long-distance shots. Name these basketball players.
5. A pitcher with the Oakland A's for the last three seasons, this man has the same name as a basketball player who was a starter on last year's University of Virginia team and a fourth-round draft choice of the Indiana Pacers. Name these athletes.

(Answers on Page 14)

HARVARD LAW RECORD

O'Connor, Ginsburg Discuss Women's Roles

By Charles Thensted

"I have a sense that Harvard Law School is today a place for women as well as men. The change is exhilarating." Thus Judge Ruth Bader Ginsburg set the tone of a thirty-minute question-and-answer session she and Justice Sandra Day O'Connor conducted before an overflow crowd in Austin Hall the afternoon

of Nov. 22, 1982, a few hours before they and Judge John J. Gibbons of the Third Circuit Court of Appeals were set to judge this year's Ames Competition Finals.

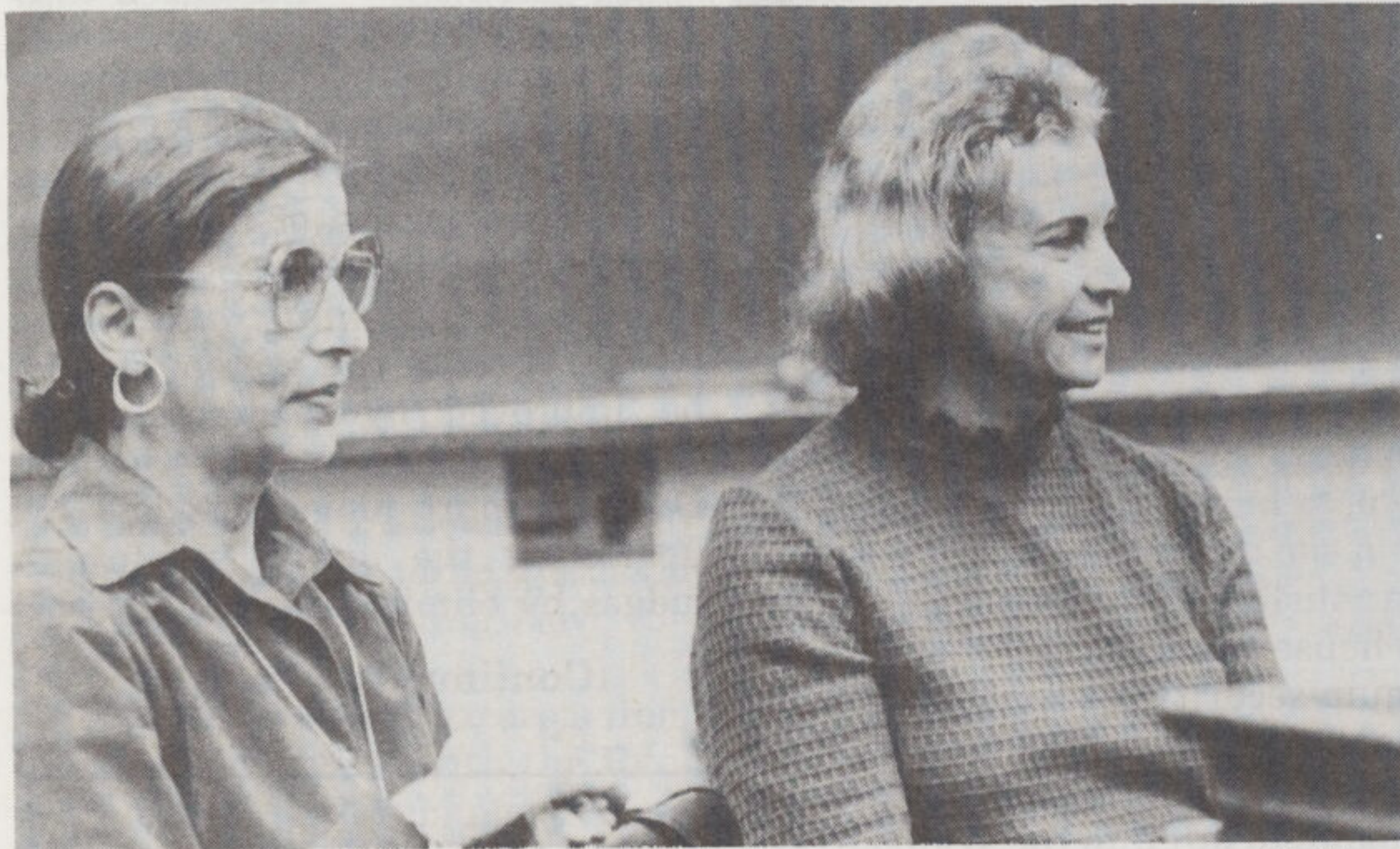
Justice O'Connor, a Stanford Law School graduate, noted that this was her first visit to HLS and that she was glad to see the large number of women at the event sponsored by the Women's Law Association,

although the attentive, almost reverential crowd was in no way limited to women. She noted that 18 to 19 percent of the lawyers who now appear before the United States Supreme Court are women, and she added, to the delight of the audience, that "they do extremely well in the argument — as you might expect."

Judge Ginsburg of the D.C. Circuit Court of Appeals recalled bittersweet memories of HLS where she completed the first two years of law study, before family pressures, including an infant daughter (who has since graduated from HLS) and a husband settling into law practice in New York City, forced her to spend the third year at Columbia. Although it had long observed a policy of awarding diplomas to transfer students spending only the last two years at HLS, Harvard declined to give her a diploma at that time, notwithstanding her assertion that the first year's training under the Langdell method was critical.

Under such circumstances, Judge Ginsburg argued at the time, her

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Bob Peterson

Judge Ruth Bader Ginsburg and Associate Justice Sandra Day O'Connor

BSA Announces Ames Semifinalists

By Jack Robinson

On November 22, the Board of Student Advisers announced the winning teams of the qualifying round of the Ames Competition which will compete in the semifinal round in the spring of 1983.

The qualifying round is the first level of the three-part moot court competition at the Law School. Ninety-six 2Ls, organized into 24 teams, tested their legal research, brief writing and oral advocacy skills in the competition. The top four teams will proceed to the semifinal round next spring which will determine next fall's teams in the final round.

In the qualifying round students working in teams of four wrote briefs on both sides of the case assigned to them. In pairs, the par-

ticipants argued before two different panels of judges. The oral arguments, concluding six weeks of hard work, took place at the Law School from November 15 through Nov. 18. A total of 144 judges — Law School faculty, selected 3Ls and attorneys — sat on the panels and evaluated the briefs and oral arguments, assigning point scores that determined the results.

The new semifinalists will include: Linda Bradshaw, Mark Dosker, Shelly Levitan, Sheila Mosmiller; Carey Dunne, Richard Jerome, Penny Merliss, Stewart Morse; Sara Lord, Howard Morse, Gary Reiff, Michael Tuteur; and Diane Archer, Kimberly Crenshaw, Carol Petsonk, Bob Shapiro.



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Reform: An Investment in Humanity

By Dick Sinapi

This is the last of four articles in which the author comments on his experience working for the Massachusetts Public Defenders in the summer of 1982.

Authorities agree that efforts to reform the criminal justice system should aim to achieve certainty of punishment, consistent and appropriate sanctions, and the prevention of crime. Reform in Massachusetts should include the following major elements: intermediate sanctions short of incarceration, presumptive sentencing, improved crime prevention and detection, better administration of the system, and expanded social welfare and rehabilitative programs.

Intermediate Sanctions. An essential element of reform is the formal establishment of intermediate sanctions short of incarceration and the creation and expansion of facilities and programs to effectuate them. Probation departments should be vastly expanded and staffed by personnel trained in social work. In- and out-patient programs which provide drug/alcohol, psychiatric, educational and vocational programs also should be significantly expanded.

Conditions in Massachusetts jails like Deer Island are deplorable. New intermediate-detention facilities, particularly for juvenile and young offenders, must be constructed. Such minimum-security facilities should be located within communities to allow for easy access to rehabilitative programs and frequent visitation by family and friends.

Judges would then have a significantly larger number of options in imposing sanctions on an offender — particularly the young repeat offender — and would no longer face the choice between two extremes: incarceration or release on probation. Sanctions could be tailored to fit the crime and the background of the individual offender, thus more effectively achieving society's goals of punishing, deterring and reforming offenders while protecting the public. Sanctions such as probation

with the requirement of residency in a drug or vocational rehabilitation center could be imposed. More extensive supervision could be supplied by an expanded and more qualified probation department. The use of weekend sentences, "boarding house" restrictions for non-serious young and juvenile offenders, and work-release programs could be vastly expanded. A judge could use weekend sentences in community facilities to show wayward probationees that he or she means business.

Only the most violent and dangerous offenders — a small minority of all offenders — would be sentenced to terms at a fortress prison like Walpole. Even for such offenders, humane conditions and some rehabilitative programs must be made available. The state should establish medium-security prisons to house offenders for whom a minimum-security placement would be inappropriate or has failed previously, but who are not dangerous enough to fall into the Walpole category.

Presumptive Sentencing. Criminologists agree that it is not the length or severity of a sentence which deters offenders but the certainty of detection and punishment. Presumptive sentences — including intermediate sanctions — should be established for all felonies with a presumption of pre-trial probation for all first-time, non-violent offenders. Detailed pre-sentence reports and a full evidentiary hearing would be required before any criminal sanctions could be imposed.

A judge, or in the case of a plea bargain, a prosecutor, would be forced to justify any departure from the statutory scheme. The judge's decision would be fully appealable by each side. Such a system would establish uniform sentencing standards throughout the state while allowing enough discretion to insure justice in the individual case. Streamlining of the criminal code also may be necessary in order to consolidate similar crimes under the same title and to establish similar penalties for similar offenses.

Crime Prevention and Detection.

The number of uniformed police on patrol should be increased, particularly in high-crime areas — even though people in those areas may not vote or contribute heavily to political campaigns. The use of foot and horse patrols should be increased. Efforts should be made to assign uniformed police to specific neighborhoods so they can get to know the residents they serve and the geography and demography of the area. More sophisticated investigative techniques — including more frequent use of fingerprints — should be utilized.

Improving Administration. Administration of the system should be improved by moderately increasing the number of Superior and District Court judgeships and by upgrading the quality of future judges by eliminating some of the

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"BETTER BUYS AT BRINE'S"

Berman Talks on Russia After Brezhnev

By Peter Lebold Cohen

Prof. Harold Berman, an expert on Soviet law, recently returned from Moscow, where he was attending a meeting of the U.S.-U.S.S.R. Trade and Economic Council as a member of the council's legal committee. In attendance were about 250 top representatives of U.S. businesses — including some law firms — and 300 to 400 of their Soviet counterparts.

According to Berman, the Americans were received with enthusiasm by important Soviet officials. The most stringent U.S. trade sanctions were lifted by President Reagan on Nov. 12, two days after the death of Soviet President and Communist Party Chairman Leonid Brezhnev Nov. 10, allowing the effects of that move to be discussed at the council's meeting Nov. 15-18.

Following are some excerpts from Berman's interview with the RECORD concerning the change of leadership and the direction of law in the U.S.S.R. following Brezhnev's death:

Regarding Brezhnev's funeral: It was an extraordinary ceremony. There was a feeling that death is something that even communism cannot overcome. . . . They were expecting it, but it still took 26 or 27 hours for them to announce his death. No other country, except perhaps China, would withhold information for 26 hours that its leader had died.

The succession is still a problem for the Soviets. You may say the revolution is settling down, but I think it will take the next succession to show that they have developed a legal process for it.

Was the succession prearranged?

No, or it could have been done in two hours. Our reports indicate that the Central Committee of the Communist Party played a role in the selection of a successor. If this is true then it is a very important development.

The problem of the succession created an atmosphere of enormous tension and excitement that you

could feel in Moscow in this period. Some people were in a panic while others were very self assured. I had long talks with many, many people, everybody from personal friends of long standing in various walks of life to taxi drivers to Soviet officials. I heard a wide spectrum of views. Some people were very anxious.



John Morris

Prof. Harold Berman

Will Andropov's ascent to power have any effect on the Soviet dissidents?

I doubt that there was any disagreement among the top leaders of the Party in the Politburo about the treatment of dissidents. Andropov was probably made head of the KGB to consolidate party control of the KGB just as Ustinov was made head of the army to control the army.

Andropov's policy was Brezhnev's policy. If he adopts a different policy from Brezhnev it won't be because he is a different person from Brezhnev but because the circumstances are different now.

Do you have a sense that circumstances are different now?

The one thing that everybody in Moscow feels is that now is an opportunity for some changes. In other words, the mere fact of the succession creates the opportunity for changes which are very much wanted by many people.

What kind of changes?

Following his return from Moscow, French Communist Party chief Marchais stated that he was very optimistic that the Soviet govern-

ment would now find a way to withdraw its troops from Afghanistan, that he thinks that the situation in Poland is improving, and that a Sino-Soviet rapprochement is a possibility.

This was of course an expression of the interests and desires of the French Communist Party, but everybody predicts what he wants to happen, because by predicting he helps make it happen.

How is it that the succession itself will allow for changes when Andropov and Brezhnev were men of the same generation, came from similar backgrounds, etc.?

If it were Brezhnev himself in disguise who came back as Andropov there would be a change I think. The leading group of the Politburo under Brezhnev was committed to certain statements and policies up

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Alumni Retain Congressional Seats

By Lee Christie

For the most part, graduates of Harvard Law School held their ground in last month's nationwide elections. Of the 19 HLS alumni who sought re-election as governors, U.S. senators or U.S. representatives, only two were defeated. Of the 80 new members elected to the House of Representatives, three are HLS graduates. On balance, the Law School emerged from Election '82 with graduates in three governorships, eight Senate seats, and

14 House seats. (On your Congressional scorecards, that means HLS held even in the Senate and had a net loss of one seat in the House.)

In the U.S. Senate, three HLS alumni — Spark Matsunaga, '51 (D-Hawaii), William Roth, '49 (R-Del.) and Paul Sarbanes, '60 (D-Md.) — won re-election by healthy margins. A fourth senator, John Chafee, '50 (R-R.I.), was re-elected in a tight race. These winners will rejoin four other alumni whose Senate terms did not expire in 1982: Thomas Eagleton '53 (D-Mo.), Carl Levin

'59 (D-Mich.), Larry Pressler '71 (R-S.D.) and Ted Stevens '50 (R-Alaska).

In the House, incumbents John Rhodes, '41 (R-Ariz.) and Henry Reuss, '36 (D-Wisc.) retired. Two more incumbents, both from Ohio, were beaten on Nov. 2: Democrat Bob Shamansky, '50 and Republican Ed Weber, '56. But the Law School made up for three of these four losses by sending three newcomers to the 98th Congress. Democrat Mel Levine, '69, a former state assembly delegate, won California's 27th district, which was left vacant when Republican incumbent Robert Dornan ran unsuccessfully for his party's U.S. Senate nomination. Democrat Sander Levin, '57 won his first term in Michigan's 17th district with over two-thirds of the vote. A third new Democrat, Frank Harrison, '64, defeated incumbent Republican James Nelligan in Pennsylvania's 11th district.

Off the RECORD

Socialism for the Rich?

Peter Lebold Cohen

Is that lefty-liberal standard-bearer of the greater-Cambridge area, the *Boston Phoenix*, helping to perpetuate the dream of Ronald McDonald Reagan's hidden agenda, i.e., socialism for the rich and "the free market" for everybody else? This is what I pondered when I discovered that the *Boston Phoenix* that I had been buying religiously every week at my local corner store for 75¢ is distributed free at HLS under the slightly different title of *Phoenix B.A.D.*

Upon comparison I ascertained that the two papers are identical except for the names, price and the fact that the *Boston Phoenix* had a

few large cigarette advertisements on pages where *Phoenix B.A.D.* had other advertisements. I mused: Does the *Phoenix* take pity on us poor impoverished law students because they think we cannot afford the 75 cents per week, or because they figure that we would not buy their paper on the principle that the rich stay rich by pinching their pennies and they would lose a valuable advertising market?

Unlike so many other things at law school, the answer to my questions turned out to be only a phone call away. Marcia Orovitz, the

(Continued on Page 14)

House Reps Return

The eleven HLS incumbents who won re-election to their House seats were: Anthony Beilenson, '57 (D-Calif.), Barney Frank, '77 (D-Mass.), William Green, '53 (R-N.Y.), James Jeffords, '62 (R-Vt.), Ken Kramer, '66 (R-Colo.), Richard Ottinger, '53 (D-N.Y.), Claude Pepper, '24 (D-Fla.), Thomas Petri, '65 (R-Wisc.), Patricia Schroeder, '64 (D-Colo.), Charles Schumer, '74 (D-N.Y.) and Chalmers Wylie, '48 (R-OH). With a total of nine Democrats and five Republicans, the HLS House delegation will be only slightly more Democratic than the House generally.

In the gubernatorial races, both Daniel Graham, '62 of Florida and Bruce Babbitt '65 of Arizona won easy re-election. The third HLS governor is Delaware's Pierre duPont IV, '63, who won a four-year term in 1980. Former U.S. Senator Adlai Stevenson III, '57, had hopes of adding to the list of governor-alumni, but was narrowly defeated in his bid to unseat Illinois Gov. James Thompson.



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Ring, Ring, Buzz . . . Click

Daniel M. Berman

Interviewers often advise law students to call them, collect, to ask questions subsequent to the interview. Such telephone calls are easier to suggest than to place:

(ring, ring, ring, buzz)

Operator 1: Yes, may I help you?

Student (slowly): Yes. I'd like to make this call collect, please . . .

O 1: Your name.

S: My name is Daniel Berman, B-E-R-M-A-N, and the call . . .

O 1: Thank you.

S: And the call should go to David Hill, H-I-L-L.

O 1: Thank you.

O 2: So then Delores threw him out!

(ring, ring)

O 1: Well, she's better off without him.

Receptionist: Good morning, Cabot Fitzhugh & Goldberg.

O 2: I should say so! The way he was carrying on.

Recep.: Hello? Cabot Fitzhugh & Goldberg.

O 1: But Delores was no princess herself.

Recep.: Hello?

O 2: Really? I haven't heard any of this.

(click, dial tone.)

(ring, ring, ring, buzz)

O: Yes, may I help you?

S: Yes. I'd like to make this call collect, please . . .

O: Your name.

S: My name is Daniel Berman, B-E-R-M-A-N, and the call . . .

O: Thank you.

S: And the call should go to David Hill, H-I-L-L.

O: Are you Berman or Hill?

S: I am Daniel Berman, and I'd like to speak to David Hill.

O: Well, is this a person-to-person call?

S: No, it's a collect call; the number I dialed is a switchboard for two hundred people, and David Hill is the person you should ask the switchboard operator for.

O: But he's the only person you're willing to speak to.

S: No, I'll speak to anyone who will accept the call.

O: So who is Hill?

S: David Hill is the person to ask for first, but if he's not there then I'll give you another name.

O: So, is it a person-to-person call?

S: Call it whatever you like, but please ask for David Hill.

O: And if he's not there, you'll speak to somebody else?

S: Yes.

O: Okay.

(ring, ring)

Receptionist: Good morning, Cabot Fitzhugh & Goldberg.

O: Collect call for David Hill.

Recep.: I'm sorry, he is out of the office today. Can someone else help you?

O: No, the party will speak only to Mr. Hill.

(click, dial tone.)

One Ringy-Dingy . . .

(ring, ring, ring, buzz)

O: Yes, may I help you?

S: Yes. I'd like to make this call collect, please . . .

O: Your name.

S: My name is Daniel Berman, B-E-R-M-A-N, and . . .

O: Thank you.

S: And the call should go to Robert Jones, J-O-N-E-S.

O: Thank you.

(ring, ring)

Receptionist: Good morning, Cabot Fitzhugh & Goldberg.

O: Collect call Richard James from-Donald Berwick.

Recep.: Excuse me?

O (impatiently): Collect call, Ronald Parker from David Bernstein.

S: That's Robert Jones from Daniel Berman.

Recep.: Oh. One moment, please.

O: What did you say your name was?

S: Daniel Berman, B-E-R-M-A-N.

O: Okay.

Secretary (female voice): Mr. Jones' office.

O: Collect call Roger Jenkins from-

Darrell Brown.

Sec'y: Excuse me?

S: That's Robert Jones from Daniel Berman.

Sec'y: Just a moment, please.

O: Is this Mr. Jones?

Sec'y (puzzled): No. I'll see if he's in.

Jones: Robert Jones, speaking.

O: Is this Robert Jones?

Jones (also puzzled): Yes it is.

O: CollectcallDouglasFernwood.

Jones: From Douglas Fernwood?

S: No, it's Daniel Berman.

Jones: Oh, hi Dan. Yes, I'll accept the call.

O: Is this Randolph Jarvis?

Jones: No, it's Robert Jones.

O: Will you speak to Robert Jones?

S: Yes, I'd be happy to.

O: And will you accept a call from Samuel Lucas?

Jones: Who is Samuel Lucas?

O: I'm sorry, the party will not pay for the call.

J and S: Wait!

(click, dial tone.)

Next RECORD: January 21

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Ruiz to Retire from Financial Aid Office

By Michael Malamut

At the end of this academic year, HLS will lose Marion Ruiz, its Financial Aid Director of 15 years. Since she started in the Financial Aid Office as the only full-time employee (she was assisted by one part-timer from the Admissions Office), Mrs. Ruiz supervised the full extent of the Financial Aid Office's growth.

Mrs. Ruiz built her office through hard work and devotion to students. It is because of the many grateful students that she helps along their way through HLS that Mrs. Ruiz enjoys her work. While she looks forward to retirement, she thinks that she will miss some of the hustle and bustle of the office. But her plans for retirement don't seem to allow for much rest. Before coming to work, she had a well-planned garden that would always have flowers in bloom from spring through fall. Mrs. Ruiz intends to resume her gardening, devote more time to her sketching, travel (perhaps to Egypt, a place she has always wanted to visit), and spend more time with her grandchildren.

Changes through the Years

Just as the size of the Financial Aid Office has changed over the years, the duties of the office have evolved as well. Originally, a higher percentage of aid was in grants than in loans. However, since school fees were much lower then, not as many students needed aid as do now. Furthermore, the government at that time did not have extensive grant and loan programs as it does now. When Mrs. Ruiz started, the Financial Aid Office was very much an in-house operation. The amount of aid required by students was calculated by the office and not by Educational Testing Service, as it is today. Moreover, there was not as much governmental red tape to plow through.

Even now, all calculations in the office are done by hand, and Mrs. Ruiz has for several years been advocating the installation of a computer. In the meanwhile, the cal-

culator on her desk is indispensable when students come in to discuss their aid problems. Last year the office handled about \$5 million in government loans, \$7 million in total loans, and \$1,848,000 in grants from all sources.

Student Contact

For someone like Mrs. Ruiz, who still hates figures and who finds paperwork aggravating, the saving grace of her work is that she is able to deal extensively with students. Asked whether she ever found work frustrating, she answered: "Frustrating? Well, maybe sometimes, but never boring. I've been upset. I've been concerned. But I've never been bored." It is in a large part due to Mrs. Ruiz's personal attention to so many of the students' problems that the Financial Aid Office is such a friendly and cheerful place, instead of being a faceless bureaucracy. Mrs. Ruiz says, "I don't like to think of us as a bureaucracy," and because of that philosophy, she delves into the personal aspects of her work. She sees her job as bending the rigid red tape and rules to accommodate students' needs within the basic framework of the financial aid system.

One of nine children, Mrs. Ruiz understands well the problems of

growing up and needing help to find extra cash for basic necessities. Therefore she can easily empathize with the students she sees. Her greatest concerns are for the students from truly poor families who come to school already burdened with large debts and who are grateful for any aid and for the students from fairly well-to-do families who are independent from their families but who are not eligible for aid because of their family's assets. Mrs. Ruiz stresses that she does all that she can for such people, but there is only so much aid money to go around, and decisions must be made as to which allocation will best serve the needs of the whole Harvard community.

Aid as a Service

Mrs. Ruiz stresses that her job was to serve, helping students make ends meet. Financial aid is scarce — decisions must be made as to who needs it most. While she acknowledges that certain students have been resentful — particularly those who spent the summer in large corporate firms who just had to buy \$300 suits — Mrs. Ruiz down-plays their dissatisfaction by pointing out that HLS encourages summer work in public interest law by not requiring as much in summer savings from those who work in the public sector at much lower-paying jobs.

Overall, Mrs. Ruiz hopes that the level of service in the Financial Aid Office remains personal, that HLS will be able to assure all deserving students of their financial aid requirements, and that the government aid programs will continue to help deserving students. Looking back, Mrs. Ruiz finds that the years have gone by quickly at HLS and that her most memorable experiences have been in her day-to-day contact with students. She takes with her a great fund of stories about students who have gone on to do interesting things. Marion Ruiz will be missed by staff and students alike.



Erich Merrill

Director of Financial Aid Marion Ruiz

Prof. Frug Urges Critical Look at Law

By Lee Christie

Prof. Gerald Frug challenged 150 listeners in Austin Hall on Tuesday evening to think about law — and the way we study it — in a new way. Speaking as part of the Critical Legal Studies series, Frug said our structure of legal doctrine cannot be understood separate from a liberal political tradition in which Frug includes Hobbes, Locke, Madison, and Mill.

Frug uses "liberal" in the classical sense — a set of assumptions about human society which cast our political and legal thought in a particular mold. The same mindset, Frug quipped, is shared by almost everybody, "from Stockman to Vor- enberg, Helms to Tsongas, Larry Bird to Lady Bird."

Frug's summary of "the liberal idea" is startlingly simple. The state creates a system of law and rights to optimize "conflict and harmony," fostering useful conflict and preventing destructive conflict. But a state strong enough to do this is also strong enough to destroy freedom, so there must be a clear line between the state and the society it regulates.

But "legal realists," Frug points out, have long protested that the line between "private" law — tort, contract, property — and the "public" law that defines the powers of the state — constitutional and administrative law — is artificial. For example, even "private" rights under contracts exist only because the state recognizes them, so the very business of deciding which kinds of obligations and privileges to recognize is, by definition, political, not private.

Frug feels that lawyers have failed in the basic assignment they received from the liberal theorists, who conceived a state which they thought could reconcile man's competing urges of conflict and coexistence, and told lawyers, in effect, "to draw up the papers." Frug says the "bewildering" doctrines lawyers have created allow for both conflict and the suppression of it, so that doctrines are malleable enough to

permit any result, and law becomes purely rhetorical. Legal doctrine fails to provide solutions because much of it merely restates the problem.

For Frug, the implications of all this are unsettling: "The realization that legal doctrine is flexible can be both liberating and terrifying, depending on who we think is doing the flexing."

Frug wonders why the legal order

tends to perpetuate itself even when all of its insiders *know* that it need not do so. Frug urges students and others to start small in their rethinking of order and hierarchy — to try to imagine a workplace or law school class where no person fears another, and where the people tend not to compete but to share their talents in a common quest for competence.



Mass. Trial Comes to Ames

By Bill Lash

A Massachusetts Superior Court convened in the Ames Courtroom on Nov. 22 to try the case of Kisteneff v. Boston University.

The case concerns Dr. Kisteneff's claim that he was wrongfully evaluated by B.U. during his unsuccessful bid for reappointment to the Department of Urban Affairs. His complaint states that B.U. failed to follow provisions of his employment contract relating to faculty review. Kisteneff is seeking more than \$2 million compensation for salary and consulting fees he claims he would have received for the next 35 years had he remained a professor at B.U.

B.U.'s attorney claimed that the plaintiff's termination was based on the inadequacy of his scholarship and research.

On the stand, Kisteneff said he came under fire from the B.U. administration in 1976 for not having completed his dissertation. In response, he instigated a student letter-writing campaign on his behalf. After cancelling a class he was teaching, Kisteneff set aside his original dissertation and submitted another one for his Ph.D.

Kisteneff claims the B.U. administration began a second round of harassment after he cast a pro-union vote in a faculty meeting. He says he was "expelled" (B.U. claims he was "rotated") from university

committees. The contract he was asked to sign for 1977 gave him a smaller raise than those received by most of his colleagues, and left questions about his position as a tenure candidate unanswered.

When denied reappointment in the spring of 1978, Kisteneff filed suit against B.U. claiming that he was wrongfully evaluated by faculty members without Ph.D.s who were unqualified to review his work due to their lack of familiarity with the field.

Presiding over the case is Superior Court Judge Hiller B. Zobel, '59. Zobel, who was responsible for bringing this case to HLS, said he was sorry more students could not attend the trial. "I'm sure that for those who appeared, this trial was very valuable," he said.

The trial adjourned on Nov. 24, to resume in Boston on Dec. 27.



Story Ideas?

Many of the stories in the RECORD spring from ideas suggested by readers. If you think of an event or subject which should be covered, give us a call at 495-4418 or leave a note in Dave Horn's 3L mailbox.

Placement Policy Backfires

We hope the faculty has noticed that since on-campus interviewing ended November 19, tape recorders have outnumbered students in many second- and third-year classes. Under the new placement policies, this was supposed to be impossible or at least impossibly impractical. Students were supposed to wait until the holidays to take their flyouts, which they could easily do, since they didn't need to respond to offers until January 10. Right?

Wrong. Faced with a choice between getting a job or starting to cram for finals, most students have, understandably, opted for employment. Because of the interviewing schedule at other law schools, many employers have already made most of their hiring decisions. HLS cannot realistically expect those employers to reserve a few spots for Harvard students whom they haven't even seen yet. Knowing this, the great majority of job-hunting 2 and 3Ls have been criss-crossing the continent with suitcases full of textbooks and outlines, scrambling to fathom Article 9 and cursing into their airline coffee that they wish they could have got all this business out of the way weeks ago.

They — we — could have, if the faculty hadn't decided to experiment with placement policies in an effort to make us study harder. The ironic result of their policy is that most of us now have far less of that precious, uninterrupted, end-of-the-term free time in which to review our course materials. Like it or not, a big chunk of the learning that goes on at HLS takes place during this period, and we hope the faculty will allow interviews to begin and end earlier next year so that we won't have to choose between unemployment and academic mediocrity.

A Thought for the Holidays

As the holiday season approaches, it is time for all of us to reflect on our blessings. 1Ls can be grateful that they have survived the first, most traumatic semester of law school. 2Ls can be happy that they are no longer 1Ls, and do not have to study for finals during the holidays. 3Ls, meanwhile, are pleased that they will soon be basking in the glory of a real-world professional practice. Professors, finally, can just be thankful that they don't have to go to law school anymore.

Best wishes and a cheery season to all.



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Fenno

Fenno was nestled all snug in his bed, while visions of perquisites danced in his head. He was staying in the hotel Swank — a guest of the prestigious law firm of Large & Stuffy, where he would interview the next morning.

But his dreams of Lexis machines and river rafting were shattered by an eerie voice: "Fenno-o-o-o." A pale figure hovered at the foot of his bed. "I am the ghost of legal futures," intoned the spirit.

Fenno pulled the covers up over his head. "Go away," he shouted. "You're probably just a glob of that greasy burrito the airline served me for dinner."

The spirit sighed. "At least Scrooge knew how to turn a phrase," he muttered.

Fenno slowly lowered the covers. "But why are you here?"

"To warn you," hissed the wraith. "Here you are on a fly-out. I've heard rumors that you plan to study for finals. And worse, you've thrown away your 'Make Love, Not Law Review' T-shirt. Come with me!"

Fenno found himself looking in on a crowded room filled with smoke. Although the well-dressed people within were pretending to enjoy themselves, Fenno could tell they were actually miserable. "Spirit," he whispered, "what is this place and why are these people in such agony?"

"This," replied the apparition, "is a typical firm cocktail party. The associates endure such suffering in hopes of becoming partners someday."

The scene shifted to the empty shell of a run-down office building. It looked as if it had been recently abandoned. "This used to be a legal services office," said the spirit. "But now it has no lawyers."

Once again the vision shifted. Fenno stood in a small, dimly lit office — stacks of briefs covered a large desk. "The briefs," explained the spirit, "are for a products liability case. The lawyer who sits at that desk is working day and night to prevent widows and orphans from collecting damages. Look at the nameplate on the desk."

Trembling, Fenno approached the desk and read the small nameplate: **FENNO**.

"No!" screamed Fenno, sitting straight up in bed. The morning sun was filtering in through his hotel room window. "Then it was a dream," he breathed.

He got out of bed and began to put on his three-piece suit. Then he stopped and scribbled a short note. "Dear Large & Stuffy: I have enclosed a dime with this note. Take it, call corporate America, and tell them you've failed my interview. Fenno."

Fenno wasn't sure, but he thought he heard a sigh of relief and then a low voice whisper: "God bless us — everyone."



Letters to the Editor of the Record

Student Unity

To the Editor:

The Law School Council affirmative action referendum represents a tremendous display of student unity across racial, ethnic, gender and even ideological lines. The 79 per cent vote in favor of affirmative action in hiring to increase the number of minority and women faculty should send several messages to the HLS faculty, to the wider community of legal scholars and practitioners, and to students themselves.

The first message is that of "consumer demand". Students — the consumers — have said to faculty — the service providers — that the HLS education is, in significant respects, a deficient product. The range of the sample (over half the student population) and the reliability of the method (a secret ballot) give the referendum an authenticity even greater than the RECORD poll taken earlier this semester. Consumers have lodged a complaint and defined a straightforward remedy: the rapid and substantial increase of minority and women faculty.

The second message is implicit in the first. It speaks to the issue of qualifications or, better to say, the quality of the HLS education. For years, Harvard has used the rhetoric of "qualifications" and "standards of excellence" to obfuscate the discussion of faculty desegregation. Students have, in effect, turned this upside-down discussion right-side-up. This highly select, competitive and quality-conscious student body has said that the quality of their education suffers from the lack of racial and gender diversity in the faculty composition. To desegregate the faculty is not to jeopardize its quality, but to enhance its reputed excellence.

Thirdly, the LSC affirmative action referendum should give courage to those well-

meaning but faint-hearted members of the faculty and administration who share the students' views but view too vocal advocacy as impolitic. In light of the referendum results, any savvy academic politician must recognize that further foot-dragging is sowing the wind. It is obviously in the institutional self-interest of the Law School to move boldly, to seize the initiative. This requires a resolve by faculty leadership to move beyond the closed circle of its old-boy plus safe-replicant network to pursue minority and women candidates whose excellence is not necessarily measured by those parochial traditions which have historically excluded them.

To be fair and objective, we all must admit that HLS has done a not bad job in minority student recruitment, gauged against all but a few other law schools. This has been accomplished by selecting the "best" students from the available minority pool, a commendable and result-oriented practice. A similar approach to faculty hiring would expand prospects exponentially. There are roughly 11,000 Black J.D.s in this country. There are significant numbers of other minority lawyers. Women attorneys number a multiple of the minority figure. Of course not all of these have the inclination or competence to teach law. But in the face of such numbers, the argument that minority legal scholars can not be found is an argument without objective basis. The numbers and the moment are more favorable than ever.

The fourth message is one that students themselves, especially minority and activist students, should take to heart and take heart from. That is that action in pursuit of justice can yield results. Although much maligned for their decision to take the boycott step, the women and men in the Third World Coalition are owed a debt of appreciation. Their concern, decisiveness and steadfastness triggered a series of processes of which the LSC referendum is neither the first nor the last. The maturity of the Black Law Students Association, other minority students, the

Guild and the Affirmative Action Coalition is evidenced by their approach to the affirmative action referendum: seeking the involvement and support of *all* students without making support for every minority-student tactic a litmus test for non-minority solidarity.

Here at Harvard and even more certainly in the world beyond, those who feel most keenly the impulse to social justice must do what we must do to enable others to do what they can. Students have initiated good processes. It is upon the faculty to deliver just results.

Muhammad Kenyatta, 2L

Volleyball and Principles

To the Editor:

The other night I played in a volleyball game. During the match, the two teams developed some bad feelings, and eventually I reached the point where I wanted to win the match more than I wanted to play volleyball. I reached that point with the match score tied at a game apiece and my team leading in the final game, 13-11. It was my turn to rotate in, and Mike's turn to rotate out. Mike is big; I am small. Mike ends points by drilling spikes over the net. I end points by dribbling shots under the net. It was not a hard decision. I told Mike to stay in.

But Mike refused. He insisted on coming out because that is the way we have always played: Everyone who shows up plays, and we all play the same amount. He insisted that we not waver from the principle that games are to be played first and won second. I went in. Mike came out.

I was not the only person who wanted to win that match. I am sure that Mike did also, just not so much that he was prepared to lose the principle to win the score.

All too often we become disenchanted with Harvard Law School and assume that principles do not exist here because they are not handed out in class. But principles do exist here, and if we will only push aside the cynicism, pettiness and insecurity that burns a little too warmly in all of us, we will find those principles, in each other.

The other night I played in a volleyball game. That is a lot more important than it may sound.

Randy Lee, 3L



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Berman: Chance for Changes in U.S.S.R.

(Continued from Page 5)

until his death. Now there is room for new developments. Of course this doesn't mean it will necessarily happen. What goes on behind the scenes nobody knows.

Do you have any predictions as to the likely direction of developments in Soviet law that may result from the succession?

Brezhnev placed enormous emphasis on legality in spite of what we read in our press, which has mainly to do with the illegal treatment of dissidents. Even under Stalin when they had open terror they had an enormous emphasis on legality in certain areas. That is very important, because the whole economy runs on the basis of legality. The control of crime and corruption is also a question of legality.

Brezhnev tried to use law to stabilize social and economic relationships. He did this more, and more effectively than Stalin. Brezhnev even made the trials of political dissidents into public trials for the first time in decades. The trial of Sinyavsky and Daniel in 1965 was the first time since the '30s that political dissidents were tried openly in public trials. Under Khrushchev they were tried secretly. Often even their families weren't told.

Brezhnev tried in many ways to strengthen the legal system. For example, the number of lawyers went up to over 200,000, a very rapid increase in their numbers. Law reform initiated under Khrushchev was carried forward under Brezhnev.

Some American scholars have taken the view that law has taken the place of ideology as the dominant justification of Soviet authority. They have spoken of the "juridization of Soviet life." When people misbehave they are charged with a violation of law, not of Marxist-Leninist ideology. This leadership has tried very hard, especially since Stalin's death, to make law the key to stability and efficiency. I think that Andropov will carry this movement forward now.

What policies should the United States adopt in order to lead an improvement in relations with the Soviet Union?

The Reagan administration should give up its notion that it will obtain political advantages by sharp reductions in trade and cultural exchanges with the Soviets or with other Eastern European states. This is a disastrous policy. We should reverse it immediately.

We need a whole series of agreements with the Soviets. This is essential if we want to create the environment necessary to negotiate the political and arms control agreements that we would like with the Soviet Union. Incidentally, this view was shared, I believe, by the 125 American businesses represented at the conference in Moscow that I was just at.



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Elocution, Confrontation Mark Ames Final

(Continued from Page 1)

preme Court that his consent to the transfer was involuntary and that he was innocent of the charges for

tween the judges and the oralists sprinkled in.

The four oralists, as well, were distinguished by their different styles. Lloyd Randolph of the Lech

than his teammate, he dealt with the voluntariness of respondent's transfer and the necessity of prisoner transfer treaties for those languishing in foreign prisons.

First to argue for the respondents was Jim Goering of the Lu Hsui-lien team. The most heated moments of the argument came when Judge Ginsburg pressed Goering on whether his client had suffered due to his transfer to the U.S. prison system, allegedly without being fully informed of his rights under the treaty, since he would have made the same choice even if he had been fully informed. Goering held up well under some forceful questioning.

Finishing with Flourish

Ed DeAngelo concluded the argument in a much calmer and quieter style. During his argument, Judge Ginsburg's questioning seemed more relaxed, as if he had had a tranquilizing effect after her heated debate with his co-counsel. DeAngelo argued that his client was entitled to another opportunity to litigate the question of his quilt, due to the unfair nature of his conviction in Rossland. The human rights issue raised by this argument — whether one persons' rights should be allowed to triumph over the rights of the many protected by the treaty — was brought up by the judges, but DeAngelo refused to be pinned down to such a black-and-white issue, phrasing it in more persuasive shades of gray.

After Nelson's rebuttal, the court deliberated for a very short time. The judges extended their compliments to both teams and said how impressed they had been with the argument. Justice O'Connor then announced that the winning team was the petitioners, who swept the awards for best brief and best oralist. After a standing ovation for both the judges and the teams, the Supreme Court adjourned for another year.



John Morris

(Left to right) Lu Hsui-lien team members Ed DeAngelo, Jim Goering, Larry Studnick, Jody Jakosa, Fairlie Dalton and J. David Stahl; and Lech Walesa team members Lloyd Randolph, Sharon Oxborough, Mike Zachary, Fred Haber and Laura Besvinick. Behind them are Judge John J. Gibbons, Associate Justice Sandra Day O'Connor and Judge Ruth Bader Ginsburg.

which he had been convicted. His case called into question the constitutionality of the treaty and others like it, and a prisoner's right, even when convicted abroad, to the basic standards of fundamental fairness of the U.S. criminal justice system.

Each of the judges had their own style. Judge Ginsburg was most aggressive in her questioning, described by one spectator as "piranha-like." She was sharp, clear, to the point, and tolerated no nonsense. Justice O'Connor asked fewer questions, was less assertive and generally less colorful than Ginsburg. Judge Gibbons was the most soft-spoken of the three, phrasing his questions slowly and carefully. They worked very well together, with the questioning alternating from grilling to gentle probing, with a few dramatic confrontations be-

Walesa team, in the unenviable position of icebreaker, and the first to argue for the petitioners, spoke slowly and deliberately, with unerring grace. Before the judges were seated, unbeknownst to them, the Board of Student Advisers had allocated two minutes in which to take pictures. As Randolph rose to speak and Justice O'Connor asked him to begin, Randolph, with shutters clicking all around him, smoothly informed the judges that a picture-taking session was in progress, smiled, and waited until things calmed down before he began. Through some rough questioning, he never lost his composure, even when it was necessary, as it often was, to pass questions to his co-counsel, Frederick Nelson.

Nelson did an admirable job, and for his efforts was named Best Oralist. Quicker and more animated

Women Judges Discuss Sexism, Careers

(Continued from Page 3)

case should have been the easy one — she had completed the crucial first year at Harvard. The powers-that-were either could not or would not recognize the force of her argument. Columbia, on the other hand, did not hesitate to give her a diploma despite the brevity of her attendance there. That diploma, Judge Ginsburg fondly noted, now means a great deal to her, and she would not trade it in for any other. When years after her graduation, HLS, in a spirit of enlightened generosity no doubt, offered to award her its diploma in Columbia's stead, she declined, true to her word and affection.

Responding to audience questions, Judge Ginsburg predicted that the shortages of women on law school faculties would be a short-term problem. Justice O'Connor added that women might find clerking for the Courts of Appeals or the Supreme Court helpful in their pursuit of law teaching positions.

Ad Hominem Discourse

Turning to the question of ad hominem discourse in recent Supreme Court opinions (the example of Justice Brennan describing one of her recent opinions as "sentiment in reason's clothing" was offered by a member of the audience), Justice O'Connor remarked: "Personal relations between the justices are excellent. I don't detect any animosity there. You must remember that judges writing opinions become advocates sometimes." Judge Ginsburg added: "You can get a tremendous charge out of writing a burning dissent. Often after I've done so and have had time to reflect I tone it down considerably. With the Supreme Court's heavy workload, perhaps the Justices don't have the luxury of a second draft."

Both jurists were applauded warmly following their responses to a question about the problems faced by a woman combining career with family commitments. "Women are very strong in terms of their ability to handle many roles well.

You find that you have little time for yourself; I can't recall any. But by doing everything as efficiently as you can at home and work, you can do it all," Justice O'Connor said. "One thing is certain," Judge Ginsburg added, "you don't have psychological problems; you just don't have time for that."

Another questioner asked about sexism, which she felt was pervasive at HLS, and noted that Justice O'Connor, who graduated high in her class at Stanford with service on the law review, was unable to secure a private sector job. In response, Justice O'Connor remarked: "Things have changed greatly. I felt then that I had to do a better job

than a male in the same situation, but I never felt disadvantaged in terms of getting the grades I felt I deserved."

"In the old days," Judge Ginsburg recalled, "there was no place to hide. There were nine women in my class at Harvard. And we were always prepared. You felt if you didn't know the answer to a question you were reflecting badly on your sex as well as yourself. A few years ago a former professor of mine remarked to me that in those days whenever he wanted to be sure to get a correct answer, he would always call on a woman. Nowadays, he said, there's no difference." ❧

Off the RECORD

News for Less

(Continued from Page 6)

Phoenix assistant publisher and vice-president, told me that *Phoenix B.A.D.* is distributed free at approximately 60 colleges and other educational institutions in the greater-Boston area "as a service to the students" and "to maintain a stake in the advertising market." According to Orovitz the *Phoenix* has always been distributed free to students and it reaches approximately 25% of the total student population, no mean feat in an area with such a large concentration of students.

Freebie Version

The question of why the freebie student version of the newspaper omitted the full-page cigarette advertisements intrigued me. Orovitz claims that the cigarette companies have a voluntary policy of not advertising in the student version of the *Phoenix* because "they don't want to be a bad influence on young people." When I heard this, my eyebrows rose involuntarily. Ms. Orovitz was speaking of an industry that has consistently and vociferously denied any link between cigarette smoking and serious health hazards such as lung cancer.

Could it be that cigarette companies are slowly coming to the conclusion that they should go out of business to protect public health? Although a laudable goal, this hardly seems likely to be the motivation of the cigarette industry. Yet no plausible alternative explanation springs readily to mind.

For my part I am certainly happy to save my 75 cents a week. Nonetheless it strikes me as ironic that we, the student population, who ultimately will earn more than our working-class brethren, despite temporary impecuniosity in some cases, should receive the *Phoenix*, long known as an "egalitarian" standard-bearer, for free.

Perhaps we deserve the discount because so many of us bear this same standard ourselves. Is the "invisible guiding hand" of Adam Smith and Ronald McDonald Reagan at work here? ❧

Sports Quiz

1. Eddie Murray
2. Larry Brown
3. George Johnson
4. Fred Brown
5. Jeff Jones

Faculty Discusses LSC Hiring Resolution

(Continued from Page 1)

Prof. Alan Dershowitz expressed concern over the resolution's statement that "traditional methods of, and criteria for, recruitment, hiring and advancement have failed to achieve [the] goal" of more women and minority faculty members. Dershowitz said he wanted to know if the resolution's assertion was based simply on the results of the appointments process or rather on some particular, unfair aspect of it.

"There has been an indictment here without a bill of particulars," Dershowitz said. If the charge was that "an implicit or explicit number" of women and minorities hadn't been reached, Dershowitz said, "then I plead guilty."

Prof. Martha Field replied to Dershowitz by saying that the "qualifications are defined in terms of white males" and "are administered by white males." She said if the criteria were administered by a committee of women and minorities, they would result in a significant number of women and minority appointments.

Alternative Proposed

A working group composed of Profs. Bernard Wolfman, Frank Michelman and Susan Estrich, appointed by Dean James Vorenberg to consider the best way for the faculty to respond to the LSC resolution, developed a resolution of its own which Wolfman presented to the faculty. It contained no criticism of present policies, but acknowledged that "minority group members and women historically have been, and continue to be, too few among this school. . . ."

Prof. Christopher Edley proposed two amendments to the resolution. "Overall, the efforts of the faculty have been inadequate. . . . A sufficient effort [wasn't made] to achieve results," he said. Although a great deal of attention has been paid to the issue this fall, he said, "I'm worried about whether the effort will be sustained."

He proposed first that the resolution be amended to continue the

subcommittee until such time as the faculty can certify that a sufficient number of minorities have been hired. Second, Edley suggested that the Appointments Committee be instructed to investigate the possibility and desirability of establishing numerical guidelines by which to judge the success of its affirmative action efforts.

Several faculty members spoke against the second amendment. Prof. Duncan Kennedy then proposed another amendment, a provision which would simply establish a minimum standard for "performing creditably" as an HLS professor. From among the persons who met that standard, the best qualified women and minorities would be selected until a "reasonable number" were on the faculty.

With little time left to discuss the resolutions and amendments, the discussion was postponed until the Dec. 15 meeting.

"My hope and expectation is that there will be a resolution in which the faculty will support the efforts which are going on, and which have been well documented, which show a determined effort," Dean Vorenberg said after the meeting.

Efforts Summarized

Before discussion of the resolutions, the faculty heard of the efforts towards affirmative action to date. Appointments Committee Chairman Prof. Alvin Warren said, "The most attractive candidates are not ready to go into teaching," and that this was particularly true among minority candidates. The committee's approach is to contact potential candidates early in their career, he said, and to keep in touch with them. "We never take 'no' as a final answer," Warren said.

Prof. Morton Horwitz, who heads the subcommittee on minority hiring, said that, while it is relatively easy to keep track of promising minorities who are recent graduates or who are already teaching, it is much more difficult to locate those who are pursuing different careers.

The head of the subcommittee charged with seeking women candidates, Prof. Robert Clark, said the subcommittee has developed a pool of 89 women teaching at 26 different law schools who the subcommittee thinks warrant attention. Six have already been recommended to the full committee for consideration for offers of visiting professorships. Some of these would later be considered for tenure-track positions.

In searching for women already teaching, Clark said the faculty considered a much greater number of schools than the usual half dozen where attention is focused in most hiring searches.

Greater Efforts Needed

"I'm unsatisfied by what we've done," Clark said of efforts to the present, and he said that greater efforts should be made to use faculty members' connections.

"The pool appears to be of a very high caliber," he said, on the basis of reading publications and investigating teaching reputations. While HLS's five tenured and tenure-track women out of a faculty of 63 is near the national average of 10 percent, Clark said he thought the proportion of women among new appointees could be made significantly higher than that "by shaking the tree a little harder."

At the meeting, Vorenberg distributed figures on hiring since the 1968-69 academic year, showing a total of 42 appointments. Of those, 29 (69%) were white males; eight (19%) were women; and five (12%) were minorities. In that time a total of 59 offers were made, nine to women and seven to minorities.



The staff of the RECORD wishes you a pleasant holiday and the best of luck on exams.

Stopping Crime with Social Programs

(Continued from Page 4)

politics and nepotism from the selection process.

The D.A.'s office, as well as the Mass. Defenders, should be substantially increased in size. This would reduce burdensome caseloads and allow both sides adequate time to evaluate their respective positions. A well-reasoned and fully informed decision could then be made whether to prosecute, plea bargain or go to trial. Not only would this promote fairness, but also both the prosecution and defense would be well-informed of the facts of the case and background of the defendant where, as in the majority of cases, the decision is to plea bargain; this will promote the negotiation of more consistent and appropriate outcomes. This knowledge is particularly important where a more individualized, intermediate sanction must be fashioned.

Selection of new prosecuting attorneys should be based on merit. The training program now required for private attorneys who accept criminal appointments in Boston should be expanded and a minimum level of competency should be required. Remuneration for private, appointed attorneys should be drastically increased. Savings from more frequent use of the more efficient Mass. Defenders would probably offset these increased fees.

Social Programs. This country's commitment to the education and well-being of its young — from

public education to welfare — has been its most productive and worthwhile investment. The current draining of resources away from social programs — school lunches,



Erich Merrill

Dick Sinapi, 3L

education, welfare and unemployment insurance for starters — for investment in the military and industry under the guise of "strengthening" America is the single biggest threat to prosperity and survival that our society has ever faced.

Currently more than 200,000 children in Massachusetts subsist below the poverty level — a rise of 52% in 10 years. The Boston public

school system is a mess — and attendance is the worst of any of the country's 13 largest urban school districts. Moreover, over 2,000 individuals in Boston alone are homeless — a figure which is expected to double in a few years. In the state, an estimated 20,000 people are "discouraged workers" — those individuals who have given up hope of finding a job.

Program of Reform

Criminals are bred amid the ignorance, poverty and despair that grows and deepens in our society today. Vast sums of money need to be spent to provide decent education, safe neighborhoods and the basic necessities of life for all those in need, particularly the children. The right to raise one's children must be recognized as including the corollary duty to provide a decent home life and instruction in the basic values an individual needs to become a productive and law-abiding member of society. The foster parent program must be revamped and more closely monitored, and child-care facilities must be established to take care of the children of unfit parents. The vocational, educational and other rehabilitative programs described above must be made available to people before they commit crimes.

The program of reform I have proposed is not inexpensive. The cost of freedom never is. Because that is what we are talking about: the freedom and dignity of a human being — the very foundation of our legal system — freedom from interference with our persons and property by others, economic oppression and arbitrary acts of government. Unless our society makes fundamental changes, allocating its resources back into human investment — including reform of the criminal justice system — the freedom of all is threatened.

I estimate the cost of establishing the above reforms as about equal to the cost of three MX missiles. I can not even begin to place a value on the potential benefits. ☸

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