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25 CENTS

Richardson Blasts New Politics

By Bruce Kelly

Criticizing a "new kind of politics" in which candidates gain votes by invoking a general vision of America, while refusing to discuss detailed solutions to social problems, Elliot Richardson, '44, argued that nevertheless a role remains for thoughtful politicians. Richardson spoke on Feb. 11, in the Ames Courtroom.

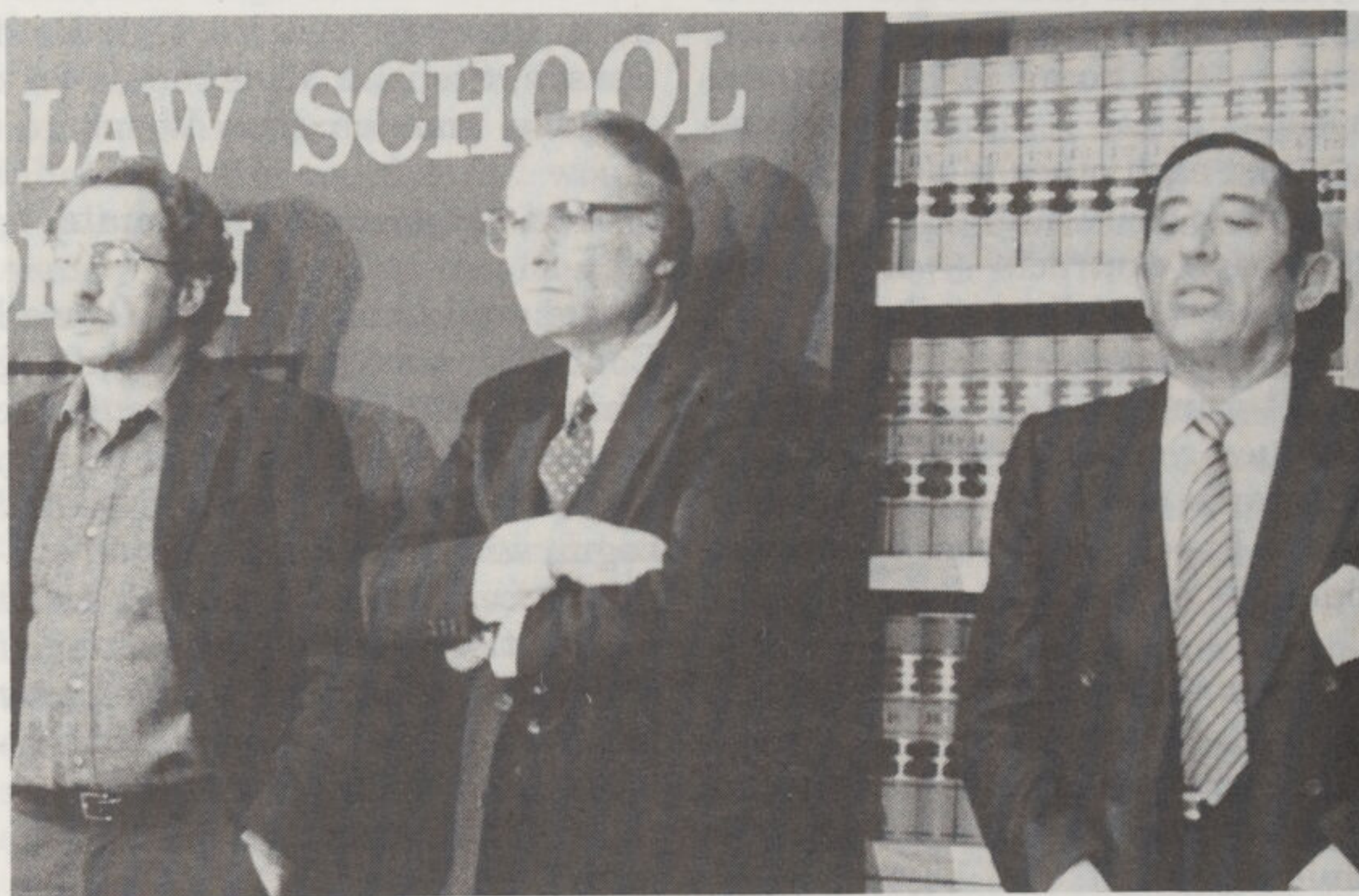
Richardson, who has held various high level government positions, is perhaps best known to the public for his role in the Watergate Scandal. He resigned his position as U.S. Attorney General rather than fire then Special Prosecutor Archibald Cox, who was seeking release of the Presidential tapes.

Richardson was introduced by his former teacher and former colleague Cox, who described Richardson as "the figure in American life who has held more distinguished positions than any other."

In response to Prof. Cox's long listing of his many roles in public service, Richardson joked that "many others, looking over my work history, have commented that I have been unable to hold a job."

The address was sponsored by the Law School chapter of the Ripon Society, an organization dedicated to the preservation of progressive thought in the Republican Party, and Richardson focused much of his fire on members of his own party.

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Jennifer Pitt

Moderator Alan Dershowitz, with panel members Alvin Binder and Abby Mann, views Docudrama.

Atlanta Child Murders Docudrama Sparks Fair Trial Debate

By George M. Borkowski

In July of 1979, a 14-year-old Black youth was found dead in the southwestern section of Atlanta. This marked the beginning of a 22 month period in which 29 low income Black children and young adults were found dead in or around Georgia's capital.

These murders soon received national attention, and culminated with the conviction for two of the deaths of Wayne B. Williams, then 23, a Black free-lance photographer.

The manner in which Williams was convicted, as well as the accuracy of its television recreation, was the topic of a program sponsored by the Harvard Law Forum on Tuesday evening, February 5, in

the Ames Courtroom of Harvard Law School.

"The Atlanta Child Murders: The Trial and Its Continuing Debate" was a panel discussion with Abby Mann, writer and producer of a CBS "docudrama" on the murders, and Alvin Binder, trial defense attorney for Wayne Williams. The program was moderated by HLS professor Alan Dershowitz, and also involved previewing segments from Mann's film "The Atlanta Child Murders," which aired on national television February 10 and 12.

The program began with the viewing of an eight minute summary of the non-trial half of the film. Dershowitz led the discussion, stating that since the Georgia courts

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Student Negotiators Drive Hard Bargain

While most first-year students greeted the new semester and braced themselves for Ames, 128 die-hards dove into the arena of competitive cooperation on January 28 when they entered the annual week-long Williston Negotiations Competition.

Thirty-one of this year's participants were women, more than in any previous year. The Competition, run by the Board of Student Advisors, pitted two-person teams against each other in desperate attempts to write mutually agreeable collective contracts — or face the costs of a crippling strike.

When the ink was dry, only five negotiating sessions had failed to produce contracts. The remaining 54 teams gathered on February 7 in the Ropes-Gray room to hear the opinions of the BSA judges.

Three Categories and Secrets

Awards were given in three categories: best overall contract, best union contract, and best management contract. Contracts were judged by the extent to which they served the interests of each party (delineated in "Secret Instructions" to each side) and by the creativity each group used in drafting its contract language.

Contracts were expected to resolve five major areas of dispute between hospitals and hospital workers, in a mock problem based on recent strikes in New York and Newark.

Awards Emcee John Frascotti, 3L, and problem designer Lorin Reisner, 2L, praised the high quality of the twenty-seven contracts, calling them "the best in recent memory." Reisner lamented his workload in judging the contracts, noting that none could be excluded *prima facie* from consideration for awards.

Giving Away the Farm

Best Union contract went to Teresa Clark and Dauna Williams, while Best Management contract was won by Lou Forster and Bob Gilbert. Clark and Williams' man-

agement-side opponents were heard to acknowledge that they had "given away the farm" as they limped off to reconsider Boulwarism. Forster and Gilbert were jubilant at having oppressed the proletariat; their union-side opponents were gone, presumably deposed by the rank and file.

In the Best Overall division, runner-up honors went to Kyle-Beth Basson, Stephen Thierbach, Mark Daniels, and Jonathan Wiener.

Ice Cream and Stalemate

The top accolade, Best Overall Contract, was given to drafting whizzes John-David Dyche, Marc David Wassermann, Eugene Co, and Ken McVay. The winners had begun with high hopes, but an outing for ice cream fattened each side's expectations — leading to a day of stalemate which was resolved only when Co and co. contemplated hav-

ing to sneer at each other in the Hark for three more years.

Echoing the sentiments of other players, Wasserman described his group's "heroic" writing marathons, at which each word of the contract was debated and each ambiguity brought new panic. By 3:00 AM on the morning of the deadline, they had molded an agreement satisfying the union side, the management side, and, ultimately, the judges as well.

This year's competition is one in a long history of Williston negotiations games. The winners' names are emblazoned on a plaque hanging in Langdell Library and each winning team receives a cash prize. The winning contracts are also on display at the BSA office.

— J.B.W.

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Big Dan's Tapes As Teaching Tool

By Vincent Chang

The HLS Audio-Visual Department announced recently that it has obtained six boxes of videotapes of the *Big Dan's* rape trial.

Big Dan's, a neighborhood tavern in New Bedford, Mass., achieved notoriety after a female patron was brutally raped on a pool table by male customers as other patrons watched. *Big Dan's* soon became one of the most scrutinized sexual assault cases in the nation.

Whaling City Cable TV (WCCTV) of New Bedford taped the trial, seeking to provide coverage for the New Bedford area. After the trial, WCCTV donated the tapes to Harvard with the stipulation that they would be used only at law schools and at other educational institutions.

According to Ellen Miller, head of the Audio-Visual Department, HLS plans to use the tapes to demonstrate "trial skills, such as cross-examination and opening statements, demeanor and style . . . how an attorney behaves in relation to witnesses and the jury . . . [W]e are not interested in the notoriety of the case, the fact that it set precedents."

Even the tapes of the case have been the focus of media attention. Much of this attention stems from the fact that rape trial taping was allowed and from the fact that the tapes disclosed the rape victim's name. Judge William Young, the judge who presided over the Big Dan's trial and a professor at Harvard and BU law schools, described the tape's origins:

"A rule of court in Massachusetts as well as in 42 other states permits the video-broadcasting of trials. The rule in Massachusetts is that such trials may be videotaped and broadcast unless there is a substantial likelihood of injury to persons. I had discretion and exercised that discretion to permit videotaping — subject to stringent limitations."

Among the limitations Young imposed were requirements that the cable company could not videotape

the victim and could not film close-ups of the jury or of bench conferences. But Young did not specifically prohibit the use of the defendant's name claiming, "I assumed it was a tradition not to broadcast the names of victims."

Unfortunately, WCCTV adhered to no such tradition. In what Young termed a "tragic mistake," WCCTV broadcast a direct feed testimony including the victim's name. "It was not something my orders had prohibited . . . [i]n the future I would prohibit such broadcasting. I would require them to take the feed on delay, and bleep out the names," Young maintained.

Young termed WCCTV's broadcast "a lapse of editorial judgment and foresight." Young added that "I will continue to be critical but fairness compels me to say I should have thought of it. They thought they were complying with my order." Young asserted that "it was a case of technology/direct feed overcoming expectations."

After WCCTV's broadcast, Young met with the cable company's president and in the course of that meeting, the company expressed regret for its lack of foresight and began formulating plans to donate the tapes to HLS, or some other "worthy cause."

Young stressed that his involvement with the tapes ended at this point. "Neither I nor the court have any proprietary interest in or ownership of the tapes," he said. Despite the disclaimer, the *Boston Globe* insisted that Young had "obtained" the tapes. In actuality, the tapes were the property of WCCTV and were donated by them to HLS.

The tapes, if erased and reused, would be worth nearly \$3000, but

they may be worth far more than that as a teaching resource. The AV Department plans to spend several months cataloguing and editing the tapes before separating them into 30-40 minute "teaching segments."

HLS routinely tapes student oral arguments to facilitate evaluation of those arguments, and possesses and uses the tapes of five actual trials. The Big Dan's tapes are a significant addition to the HLS collection. Young notes that "the performance of the attorneys was of a very high order." Young remarked that because one defendant was tried in the morning and one in the afternoon, the tapes "give a comparison, one that helps to evaluate trial techniques of different lawyers in different trials using the same set of facts."

Because of the uniqueness of the gavel-to-gavel Big Dan tapes, Young plans to use the tapes at BU Law School this spring in a trial advocacy course. The AV Department also hopes that HLS trial advocacy courses will take advantage of the tapes. The department also plans to rent the tapes to other law schools, probably for the standard charge of \$50 per tape.

Miller has found the department's newfound publicity to be a mixed blessing, on balance advantageous. She concluded "We're getting so much publicity on the coattails of the notoriety of the case. For practical teaching purposes, we don't know it's better than any other trial. But it does bring home the fact that we do have tapes and that they're a good teaching vehicle."



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HLS Profs. Challenge Oklahoma Anti-Gay

By Mike Isbell

Last month, Prof. Laurence Tribe urged the United States Supreme Court to uphold the Tenth Circuit's invalidation of an Oklahoma statute that permits the state to fire any teacher who advocates, encourages or promotes "public or private homosexual activity."

The case, *Board of Education of the City of Oklahoma City v. National Gay Task Force*, involves a facial challenge to the statute by the Task Force (NGTF) on First Amendment grounds. Observers say the case could become a landmark in the field of gay rights.

Tribe, along with Prof. Kathleen Sullivan, represented NGTF free of charge. Tribe and Sullivan were assisted by Brian Koukoutchos, '83.

The Oklahoma statute on homosexuality was added to a statute already on the books that authorized the dismissal of any teacher for actions demonstrating "immorality, willful neglect of duty, cruelty, or ... moral turpitude."

NGTF contended that the general dismissal-for-cause provision enabled any school board to dismiss a teacher who had incited or coerced school children into committing illegal acts — whether homosexual or heterosexual. NGTF argued that the additional regulation dealing with homosexuality was "a separate penalty upon pure speech that expresses a point of view sympathetic to homosexuals."

NGTF claimed that its members, some of whom were teachers and principals of schools in Oklahoma City, were afraid to discuss homosexuality because of enactment of the statute.

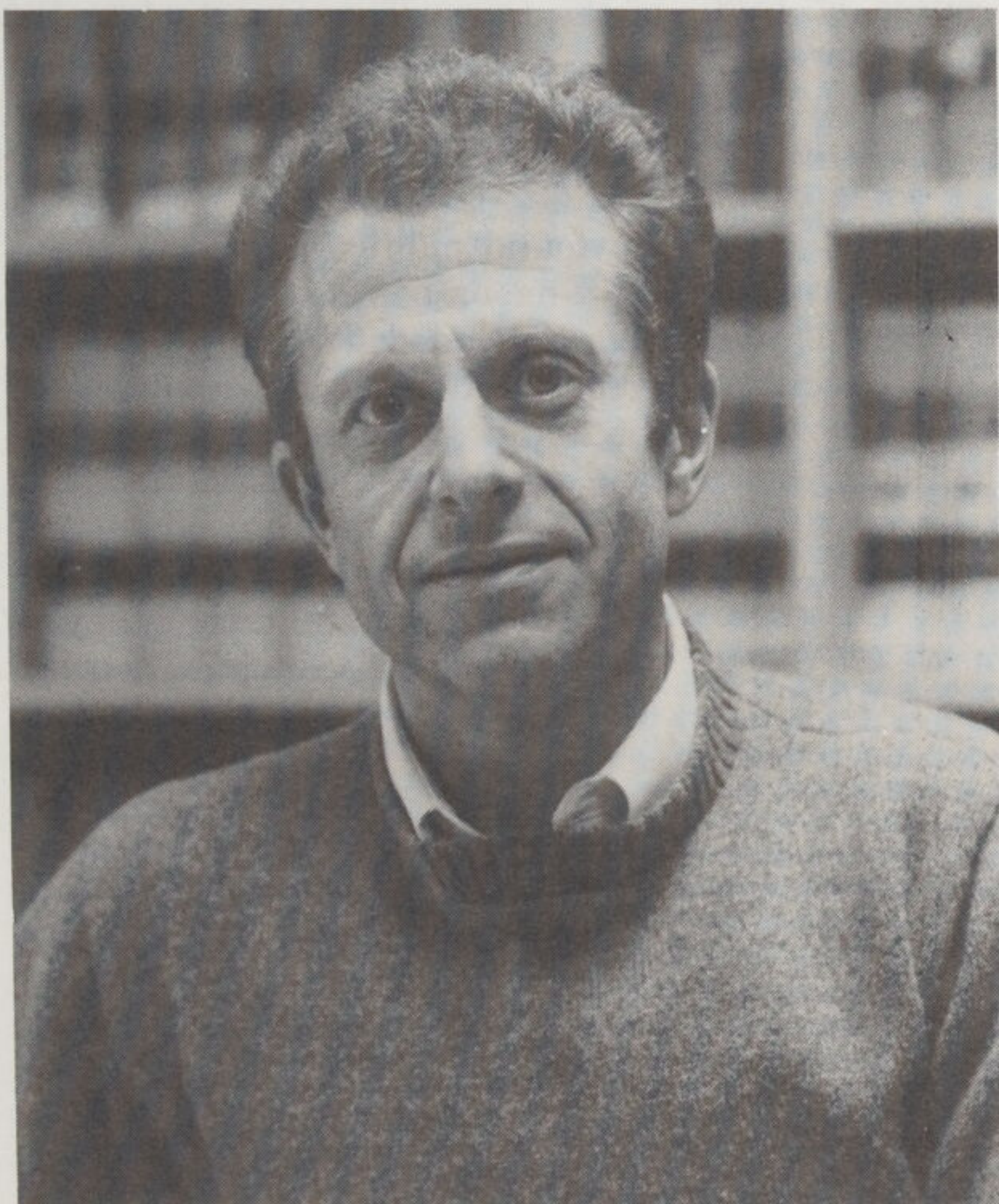
The District Court for the Western District of Oklahoma denied NGTF's motion for summary judgment.

The Tenth Circuit, however, reversed and struck down the portion of the statute that denied public school teaching jobs to those who advocate public or private homosexual activity. The court found that section of the statute to be "uncon-

stitutionally overbroad," with a "real and substantial" deterrent effect on constitutionally protected expression.

NGTF argued that threatening job dismissal for advocating, promoting or encouraging homosexual activity chills all speech expressing a viewpoint favorable to gay people. According to the NGTF brief before the Supreme Court, Oklahoma "has expressly subjected one specified viewpoint to official sanction, while giving the opposite viewpoint free rein."

Citing cases in which the Supreme Court found that the First Amendment accorded protection to those advocating criminal terrorism and sabotage against the government, NGTF said, "(C)learly no less can be accorded speech abstractly advocating, encouraging or promoting intimate consensual homosexual activity which, although still deemed a crime in Oklahoma, has been decriminalized by over half the states. The advocacy of activities one generation calls criminal may



File Photo

Ralph S. Tyler, Jr. Professor of Constitutional Law
Laurence Tribe



File Photo

Assistant Professor Kathleen Sullivan

Statute

well be a vehicle for profound political and social change in the next."

State Censorship

NGTF further argued that the statute's censorship was unnecessary to serve, and did not closely fit, any legitimate state interest. The task force contended that the anti-advocacy provisions were overbroad and that viewpoint-neutral alternatives were available to the state.

Citing the "impermissible chilling effect" of the statute, NGTF also said that abstention by the court would be inappropriate.

In his oral argument before the Supreme Court, Dennis Arrow, attorney for the Oklahoma City school board, argued that the case should be sent back to the state supreme court for clarification. "[W]e are dealing with a statute . . . which has never been construed, it has never been applied," he said. "[W]e certainly do know on the basis of this record that the enforcement policies of the Board of Education of the City of Oklahoma City and of other boards of education in the State of Oklahoma have not been overly exuberant. . . ."

Arrow said that, according to the statute, it was necessary to find an adverse effect on students or employees before a teacher could be fired for violation of the statute.

Arrow said the state's legitimate goal of promoting respect for the law would be undermined by "teachers advocating specified crimes."

"[B]ecause of the *sui generis* nature of the threat to student morality, to proper cultural values, the threat which goes further and may under certain circumstances in specific cases also affect the effectiveness of teacher performance in the classroom, as Justice Frankfurter noted long ago, 'the law of imitation operates,' . . . we think therefore that all of the goals of public education may be threatened

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Legal Briefs

PEOPLE

Some may remember that last year as a 2L, **Steve Warren** won more than \$40,000 in cash and prizes on the TV gameshow "Sale of the Century." As one of the gameshow's top prizewinners for the year, 3L Warren was flown to California for the "Tournament of Champions," featuring the top 18 winners of the year. Unfortunately, this year his luck wasn't as good as last. He made it to the semifinals (6 contestants) but was eliminated thereafter. Nonetheless, Warren still brought home another \$2000.00 in prizes. Fans can see Warren on "Sale of the Century" on Feb. 19th and 20th.

Prof. Alan Dershowitz and **Richard Zabel**, 1L, Section 4, join **Prof. Arthur Miller** on this week's "Miller's Court." The program will air Saturday, February 16, 7:30 P.M. on channel 5.

John Umbland, 2L, has announced that he is running for the New York City Council of New York City.

Margaret Conklin, **Louise Roman**, **Jennifer Raab**, 3Ls, **Jon Laramore**, '83, and **Kent Markus**, '84, have been named to the board of directors of the Harvard Fellowships for Public Interest Law [HFPI]. Markus and Laramore are the first alumni to serve on the board.

Jay Ward, 1L, and **Daniel Zariski**, 1L, have been named to the board of directors of the Lincoln's Inn Society.

The artwork of **Matthew Diller**, 3L, is now on exhibit in the second floor display cases in Griswold Hall. The exhibit, of some of Diller's cartoons, is entitled "He felt the presence of Legal Giants." The opening was toasted by some of the cartoonist's friends at a modest "gala celebration" on Friday, Feb. 8.

John-David Dyche, **Marc Wasserman**, **Eugene Co** and **Ken McVay** were awarded first prize in the Williston Competition on February 7th. (See story, p. 2.)

Karl Fichenschner, 2L, and **James Peck-Gray**, 1L, have been named to the board of directors of the Forum. Fichenschner had previously served as a 1L representative on the board.

SPEAKERS AND EVENTS

Eliot Richardson, '47, spoke as a guest of the Ripon Society, a moderate Republican student organization. **Prof. Archibald Cox** introduced Richardson. (See story, p. 1.)

Wladyslaw Sila-Nowicki, former legal counselor to Solidarity, spoke on "the Prospect of Freedom in Poland" before a crowd which packed into the Graduate Student's Lounge.

Prof. Herbert Hausman spoke on Feb. 8 about "Soviet Parasites, Evasion of the Constitutional Duty to Work."

Daphne Busby, President of the Sisterhood of Black Single Mothers (NY), **Theatice Gentry**, Ph.D., New York's Department of Social Services, **Prof. Martin Kilson**, Harvard University Department of Government and **Leora Neil**, Director of Child Adoption, Counseling and Referral Service (NY), engaged in a panel discussion on The Crisis of the Black Family on Feb. 9. The discussion was one of several activities in Black History Month sponsored by the Black Law Students Association [BLSA].



Ames To Be Judged On The Merits

By Norman Bay

The BSA recently announced two new rules for the first year Ames Moot Court. First, after the oral argument each case will receive a decision on the merits. Second, students will be able to choose the side for which they wish to argue. In the past, the four students arguing a case split into appellant and appellee pairs. Now, all four can argue the same side.

The proposal for a mandatory decision on the merits passed the BSA after hard debate and a close 19 to 16 vote. Harvey Kaish, the Chairperson of the BSA, explained that last year "judges expressed difficulty in judging cases when they were unable to give a decision on the merits. They felt it was hard to say anything critical or complimentary."

Kaish stated that the main reason for the rule was to help judges, particularly in discussing the merits of a case. He added that a decision on the merits makes first year Ames more realistic, while minimizing the risk of ego blows. "The facts," he noted, "may be stacked against one side."

The BSA will also allow students to choose the side of a case for which they wish to argue. Even if all four

students on a team pick the same side of a case, the BSA will make arrangements to ensure that they each make an oral argument against someone and that each side of an issue has been argued.

Fred Galves, a member of the BSA, authored and introduced the proposal. Last year, as 1Ls, he and his three teammates refused to argue the government position in the Ames Alternative case sponsored by La Alianza, the Latino students' organization, out of political and ethical concerns. The BSA finally decided to allow the four to argue the same side of the case, but two had to make an additional oral argument for the government in a later round.

According to Kaish, the Galves

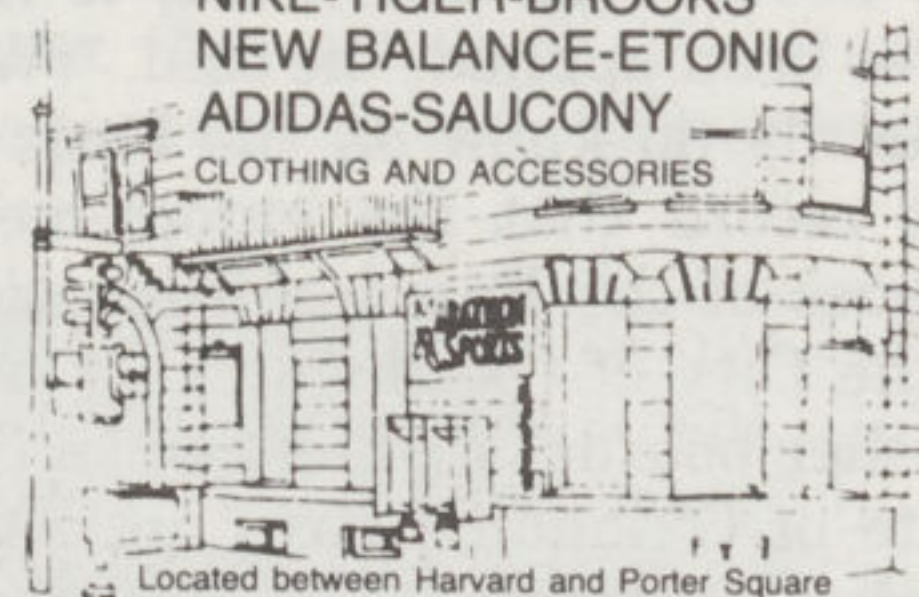
proposal represented a "formulation of Board policy in case the situation arose again. It's essentially what we did last year but this makes it official." Kaish stated, "if people have ethical conflicts in arguing a case, the Board will try to accommodate them. Under no circumstances will a team argue against nobody."

By allowing students to choose their sides, Galves hopes that Ames will become more realistic. Students will "come to appreciate the responsibilities of legal advocacy and the corresponding considerations in ethical choice." He declared, "Participants will . . . realize that they are more than unthinking robots."



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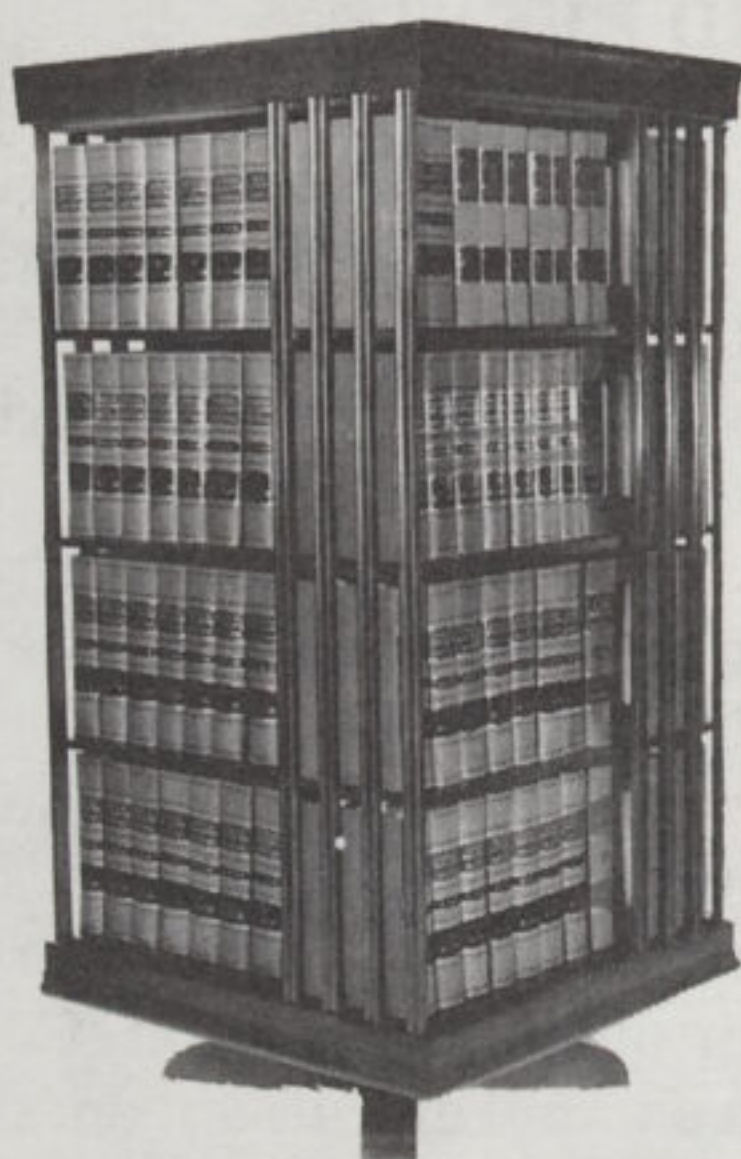


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Financial Aid Recognizes Student's Independence

By Mike Sturm

The Law School Financial Aid Committee recently voted changes in financial aid policy that could substantially affect the amount of aid given to some students. For the first time, guidelines will recognize that a student can be independent of his or her parents, and will eliminate the "imputed parental contribution" for these students when calculating their total financial resources.

At least for next year, a student

seeking to be declared independent of his or her parents will have to meet quite stringent standards. These are:

1) The student's parents have not claimed an exemption for the student on their income tax forms for seven years prior to his or her enrollment at HLS.

2) The student has not received more than \$750 per year from parents for seven years prior to enrollment.

3) The student has not lived in the parents' household for more

than six weeks per year for seven years prior to enrollment.

Students must meet all three requirements to be considered independent of their parents. For students continuing at HLS, the criteria will apply to the seven years prior to the financial aid application for the upcoming year.

Tony Shelley, 1L, a member of the committee, suggests that the changes are a step in the right direction, and "a reasonable compromise based on our available funds and what other law schools are providing." The new guidelines will continue to impute parental contributions for many students who in actuality must support themselves independently. The new standards should, however, prevent situations like a recent one in which a fifty-year-old student was required to impute parental resources in calculating her financial situation.

It is not certain how many students will be affected by the changed guidelines, but those who meet the new requirements may be eligible for substantial increases in financial aid. Students with any questions concerning the new guidelines should contact the Financial Aid Committee.

Tribe: "Chilling Confusion"

(Continued from Page 5)

by teacher advocacy of this specific crime," Arrow said.

Draconian Chilling Confusion

In his oral argument, Tribe argued that the statute was "threatening every day," despite the fact that it has yet to be applied. "This court, I think, has made clear . . . that if a law is void on its face and controls pure speech, then you needn't push the authorities into applying it to you before you get a facial test of it," he said.

Questioned by several of the justices regarding the propriety of abstention in the case, Tribe told the court, "[T]here is no finite list of questions [for the Oklahoma Supreme Court] that would help . . . [T]he very questions already asked from this bench, I think . . . [were] an example of the draconian chilling confusion caused by this law."

Asked by Chief Justice Warren Burger if the Oklahoma legislature did not have a legitimate concern that teachers are role models for

students, Tribe said, "[W]hen President Reagan editorialized against this very law in California, about six years ago, his answer to the role model point was, first of all, as a matter of common sense, there is no reason to believe that homosexuality is something like a contagious disease. He quoted a woman who said that if teachers had all that much power as role models, [she] would have been a nun many years ago."

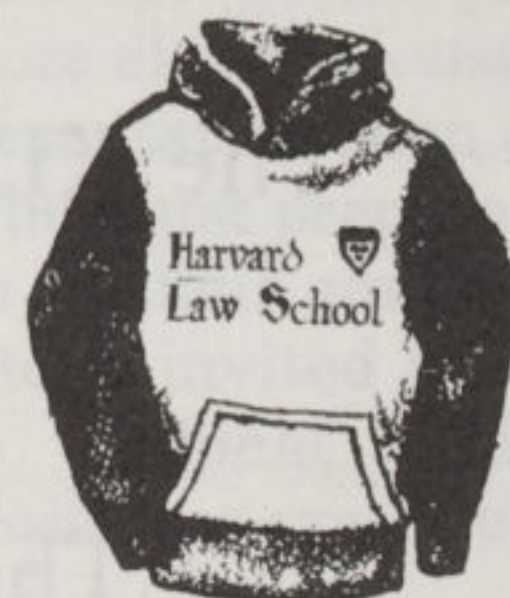


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Next RECORD:
March 1



THE OLIVER WENDELL HOLMES LECTURES

Robert W. Gordon

Professor of Law, Stanford Law School

Lawyers as an American Aristocracy

In America there are neither nobles nor men of letters, and the people distrust the wealthy. Therefore the lawyers form the political upper class and the most intellectual section of society . . . It is at the bar or the bench that the American aristocracy is found.

Tocqueville, Democracy in America (1835)

Tuesday, February 19, 1985 at 7:30 p.m.

The XIX Century: Establishment of the Aristocratic Ideal and its Crisis

Wednesday, February 20, 1985 at 7:30 p.m.

The XX Century: Cycles of Revival and Decline

James Barr Ames Courtroom, Austin Hall

Reception following the second lecture
John Chipman Gray Room, Pound Hall, Second Floor

Harvard Law School

Jessup Team Tackles Reactor Bombing Controversy

By Gregory Klima

The Fletcher School of Law and Diplomacy of Tufts University will host the regional level of the Jessup International Moot Court Competition on March 11 and 12. Harvard Law School will be represented by Duffey Asher, John Barquin, Dan Gordon and Mike Levitin, 2Ls.

The competition, now in its 15th year, is sponsored by the American Society of International Law. The Society has more than 200 member law schools in 26 countries who will participate in the competition.

The process begins at the individual school level. Each member school is allowed to send one team to the regional competition. At HLS, this selection process is currently in the hands of the International Law Society (ILS). ILS also pays the expenses of the HLS team.

A Long, Hard Road

In the past, Jessup was an alternative to the Ames Moot Court Competition for 1Ls. This option was available despite the fact that the Jessup contest required much more work than a usual Ames assignment.

Each law school sends its team

to the regional competition. This year teams from HLS, Boston University, Boston College, Yale, University of Connecticut, University of Bridgeport, University of Maine, Suffolk University and Western New England College will face the home team at the Fletcher School.

The winners in each of the 11 regions then meet in the spring at the national competition in Washington, D.C. The national winner will compete in the international competition held in Washington immediately after the national contest.

Two HLS students will be representing their native countries and competing in the international contest. Alejandro Linares will represent Columbia and Darius Khambata will represent India.

This year's HLS team has been working since early October on their entry. The team prepared a memorial — much like a brief — which will be used at all levels of the competition. The team's memorial for the school competition was extensively revised for the regional competition.

Israeli Attack

This year's case is based on the

Israeli bombing of a Iraqi nuclear test site in 1981. The major difference between the competition's case and the real event is that, in the competition, the bombing was ratified by a regional group similar to the Organization of American States.

The case involves two major issues. The first concerns whether the attack was legal under international law. This raises questions of whether an attack made in anticipatory self-defense, as claimed in the competition case, is legal. The second issue concerns compensation.

Asher and Barquin said that the competition has more formalities than the Ames competition concerning deadlines, format and the like. The contest is also judged only 40% on the memorial and 60% on the oral presentation of their argument.

Asher and Barquin added that HLS traditionally does very well on the scoring of the memorial, but does not do as well on the oral presentation. The two students attribute this to the fact that most of the other schools in the region give credit for participating in the competition, while HLS does not.

As a result, they said, teams from other schools are better prepared and have more elaborate visual aids for their presentation than do HLS students, who must prepare for the competition in their spare time.

The public is invited to come to watch the regional competition. Times and locations can be obtained from the ILS.

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Another Look

An article in the Feb. 11 issue of the *National Law Journal* presents an interesting view of law students and is worthy of some comment.

The *Journal* reports a controversy surrounding a brief section from a June, 1984 article written by Duke Law School Dean Paul Carrington and published in the *Journal of Legal Education*. Carrington argues in that section that radical critics of our legal system, like those in the Critical Legal Studies movement, should leave the teaching profession. "What legal training cannot abide is the embrace of nihilism and its lesson that who decides is everything and principle nothing but cosmetic."

Carrington expresses the fear that "teaching cynicism" may "result in learning the skills of corruption; bribery and intimidation. . . . In an honest effort to proclaim a need for revolution, nihilist teachers are more likely to train crooks or radicals." Thus, Carrington says that "the nihilist who must profess that legal principle does not matter" has an "ethical duty" to leave the teaching profession.

According to the *National Law Journal* Carrington's piece has sparked a debate about "academic freedom" among some of the nation's most respected law professors. It is, indeed, a freedom worth arguing about. But if none have also questioned Carrington's assumptions about student learning, then perhaps these professors are engaging in debate less for the profession's sake and more for their own.

There is no question that students are influenced by the views of the professors who teach them. Yet, the extent of that influence falls far short of that assumed in Carrington's comments. Neither radical scholarship nor radical teachers, is the stuff without which students would never have questioned the soundness of legal principle — not to mention the soundness of a professor's presentation of it.

The debate's participants might take another look at the people who populate the nation's law schools. They will find (perhaps to the shock of some) that law students have many views, values and goals independent of their professors. Whether those students in practice become radical revolutionaries fighting for change or well-dressed conservatives defending the status quo, whether they are "honest" or "dishonest" in those endeavors, it is not likely that either the "credit" or the "blame" will rest mostly on the fact that they had a teacher with a particular view of legal principle in law school.

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Fenno

Fenno's younger brother Roy was in town and the former didn't want to spend any money entertaining the latter. Besides, Fenno had explained that meandering around Langdell Library, austere and magnificent, was the way law students spent their weekends. After four hours they reached the subterranean depths of the great vault. It was cold, damp and musty, inducing in Fenno visions of Amontillado.

"It's a corpse! It's a corpse!" Roy screamed, pointing to a lifeless, bloated mass of man in a tattered, but neatly pressed, three-piece suit.

Fenno bravely pulled the body, stiff with accumulated dust, from under a book shelf.

"Good God," said Fenno in a hushed voice, "It's an alumnus, and it's still alive. I've never seen an actual alumnus before."

The alumnus slowly sat up, rubbed his eyes and checked his Rolex.

"You should know better than to awaken a Partner" he fumed. "Oh, I forgot I'm no longer at the Firm. You see, back in 1959 I returned to HLS for my twentieth-year reunion to relive my finest hours. I decided to check where they had hung my portrait. By the time I found it — men's room, second stall — the library had closed and I got locked in."

"But that was twenty-six years ago, and you're still here," said Fenno perceptively.

"Well, I woke up the next day to find, not my usual coffee, wife and the *Times*, but a water fountain, Xerox machine and the RECORD. Reading the RECORD, it became damn clear that the Communists had taken over HLS. What was I to do? It was obvious that if I took a step outside I'd be ripped to shreds by some crazed feminist environmentalist. Since then, things have only gotten worse: it used to be that Kennedy was a name you could trust in Boston."

"Gee whiz," said Roy, "so you've been here ever since."

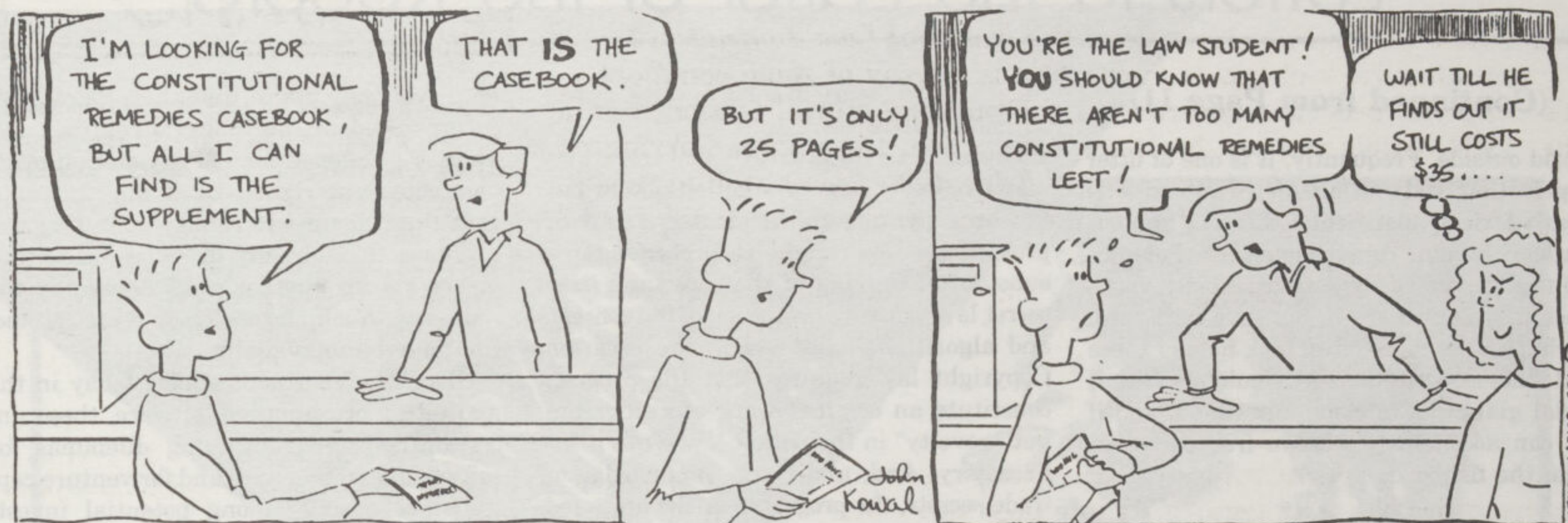
"Yes, but I'm content. All that remains of my favorite professors — before the faculty deteriorated — can be found down here."

"But you're not bored?" queried Fenno, glancing at the portrait of Dean Sacks.

"Of course not," responded the alumnus, "I spend my time writing letters to the RECORD. Though the work is overwhelming and tangible rewards are few, I'm confident we can turn the clock back to when the legal profession was a noble one. Allow me to quote from Holmes, or was that Plato . . ."

"Wait, wait. You can come out now," interjected Fenno, trying to shield his young brother from the alumnus, "Reagan's been elected President. The Good Old Days are back."

"A clever ploy . . . *Red Fenno*" smiled the alumnus, "But somebody tried that very same trick four years ago."



Letters to the Editor of the Record

Good or Bad

To the Editor:

In your January 11, 1985 issue you ran an editorial relating to the Bhopal, India/Union Carbide incident. While I did not generally agree with the opinions stated concerning the lawyers who went to India, I could understand them as following logically from a particular point of view.

However, the last sentence states in part that, "It is Union Carbide and its attorneys who should be condemned. . . ." What is the justification for condemning Union Carbide's attorneys any more than any other attorney for an unpopular client? Would you condemn John Adams for defending British soldiers involved in the Boston Massacre? Would you condemn Melvin Belli for defending Jack Ruby whose murder of Lee Harvey Oswald (which prevented us from knowing the truth

about the JFK assassination) was committed on national television?

On reflection, don't you think that if you believe in your own hype, you shouldn't condemn any lawyer for representing any client — rich or poor, good or bad — no matter who is defining the goodness or badness?

Ralph R. Ferney, '58
New York, NY

Outside The Fishbowl

To the Editor:

Last week you published an article about Rev. [Jesse] Jackson's speech at Harvard Law School. I appreciated his insightful comments and found them extremely significant and relevant to Harvard Law School students, particularly those who have managed to shelter themselves from the reality outside the walls of Harvard Law School.

As I head into the last few months here at Harvard Law School I am reminded of a sprinter who takes a final gasp of air before his whole entire life culminates in a mad dash towards the finish line. Onward she sprints and the challenge is just as much to finish as it is to place. No doubt this form of "spirited" competition has permeated many a career at Harvard Law School besides my own. As I pause, however, it's to note with some regret, and much trepidation, that I bring mine to a conclusion.

But this brief moment also offers a special occasion to reflect upon my original objectives in coming to this esteemed institution that has trained a plethora of legal scholars. I came not only to develop a better mind and a more rigorous mode of thinking about the world, but I also came to become a better person, one who aspires and indeed works

to improve the lot of those cast to, and caught up in, the travails of society's myriad imperfections which typically breed misfortune and want.

It is easy to lose sight of this latter aim in the "fishbowl" in which Harvard students strive. It is a world that few know, or will ever know. Indeed, it is sometimes a world built upon formalistic and self-justifying illusions that inform the winners — i.e., Harvard law students — that they would do well to focus upon personal interests and self-aggrandizement. Favorite topics of discussion revolve around law firm choices, law firm prestige and law firm starting salaries. Few ever venture to ask what else lies ahead and outside of this realm, not because the question lacks importance; it simply isn't germane to life in the fishbowl. Many have lost sight of broader concerns that relate to life outside the fishbowl. It is not a beautiful world for in it lurks numerous turgid imperfections that should palpably remind us that all is not well, just as Voltaire engaged to remind the French in his satiric "Candide."

In the hectic months ahead, I may, no doubt, momentarily lose sight of the world external to Harvard Law School, just as some of my classmates often have. I would hope, however, that the few months ahead lend abundant occasion to impress upon me the sincere need to complete my aspirations so that upon reaching the finish line, come June and graduation, I will promptly commence a new challenge, one which permits me to use my legal training to construct a better world and a less perilous path for those who have benefited less from the fruits of society, often through no fault of their own. I urge everyone, particularly those who presently see only themselves reflected upon the "looking glass" of the fishbowl, to go behind the mirror of Harvard which reflects only the success story so as to view the visible

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

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Letters to the Editor of the Record

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world outside. Frequently, it is one of utter deprivation and misfortune, whether it is South African apartheid, Ethiopian hunger, Chilean human rights violations, Poland's political repression, or America's black youth unemployment, here in our own backyard. Perhaps if we more often took note of these and other imperfections we would not permit social glaucoma to cloud our vision, and if we can accomplish this we free ourselves from the fishbowl.

Larry Stinson, 3L

A "Technical" Misstatement

To the Editor:

I read with interest your recent article, "New Technologies Engender Novel Law". As I commented at the panel discussion sponsored by the Harvard Law and Technology Society, there are more than enough technology-related legal issues confronting the practitioner today to occupy a multitude of third-year papers.

While the article provided a helpful summary of some of those issues, it misstated my views concerning the legal protection of computer software in one important respect. Protection of new computer programs can be a problem, but it is not my view that a program must be "truly novel" to be protected. Novelty is a term of art in the patent field; to the extent a software developer were seeking to patent a program — very much an uphill battle under current law — it would

indeed be necessary to show novelty, as well as non-obviousness.

Under current practice, however, most software developers rely not on patent law, but on copyright and trade secret law for protection — copyright to protect against substantial copying of the code, and trade secret law to assure protection of the concepts and algorithms embodied in the program. Copyright law requires that the program constitute an original work of authorship, but "novelty" in the patent law sense is unnecessary. And, under the common law of trade secrets, the program may be protected, even if not "truly novel," if it is not generally known in the industry and the developer takes reasonable steps to preserve its secrecy.

The availability of these doctrines does not, however, guarantee protection to the software developer. For example, a prior

employer may claim that the programmer incorporated in the program routines previously developed for it, in violation of its own copyright rights. Or it may turn out that the principal routines in the program are ones that already have been disclosed or are known to other programmers in the industry, in which case trade secret protection may be unavailable.

Given the enormous stakes today in the marketing of computer software, these uncertainties pose continuing dilemmas for software entrepreneurs and for venture capitalists choosing among potential investments. As your article suggested, they also produce fascinating challenges for the legal profession.

Donald R. Ware, '74
Boston, Massachusetts

15 Years Ago At HLS

RECORD Vol. 50, No. 2, (Feb. 5, 1970)

For the first time in the history of the Law School, "real" as opposed to "practice" examinations were given in the middle of the first year. And, as with everything else that happens at the Law School, reaction to the exams was mixed.

University of Chicago graduate Melvyn Wald seemed to question the proposition that mid-year examinations would give students an idea of their real ability in legal study. "The exams put a premium on 'What is the law?' And the whole feedback idea is a total chimera. It's just a blatant euphemism for wanting to be patted-on-the-back with a grade."

Whether or not the mid-year examinations can help first-year students evaluate the quality of their work may depend upon the individual student and if he thinks grades

a valid measurement of his ability. And there does seem, at this stage in the educational experience of many first-year students, much truth in a remark made by former Southern University student, William Jefferson, that "after so many times, an exam is just an exam."

The grading system is a topic of concern to many students and faculty members. Some feel that the abandonment of the present system may well, in the long term, end the allocation of reward based on sheer ability and achievement. But other students and professors strenuously disagree.

To those who hold that philosophy and jurisprudence come later Wald stated, "Well, the trouble is they don't. After my second week here, I concluded that if this was the future legal talent of America, we're in trouble. People are so directed, so willing to learn the rules as written. We'll graduate a class of Richard Nixons: people happy taking the law just as it is."

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Richardson: Rhetoric Threatens Political Process

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He began by distinguishing the political ideologue, "who has nailed his or her flag to the mast of principle and would rather go down with the ship than compromise to get ashore," from the moderate, "who defines those problems which require the energies of society and figures out how to [solve them]."

"Looked at this way," claimed Richardson, "the recent battles in the Republican Party have been won by the ideologues if you judge by rhetoric . . . [whereas] moderates are still in charge if you look not at rhetorical matters, but . . . where people are really working at solutions."

The question for moderate Republicans, Richardson said, is whether they are "condemned to be apparent losers of the rhetorical battle," and yet do the work on constructive solutions.

Richardson answered by saying, "I used to believe the Ripon Society could be the force . . . to communicate [Republican] views with the American people, . . . [but] at the moment I don't believe that opportunity is open to Republican moderates. That battle on the rhetorical front is dominated by a different kind of politics."

Richardson began his critique of this kind of politics by contrasting debates over issues, such as whether to go forward with a certain weapons system or social program, with debates over vision, a general view of society's goals.

"Debate in the political arena used to be focused on issues," maintained Richardson. "I am sure voters always decided on [their impression of] the candidate as a human being . . ., but how candidates addressed issues [was] used to judge these less definite perceptions."

"Now, debate is just seen as an attitude on debate," declared Richardson, giving the example of a debate answer to a question about the MX missile which decried "this terrible threat to our children of nuclear war" and insisted on a strong national defense while addressing

the issue only in the last few seconds.

He discussed his 1984 campaign for the U.S. Senate in which he lost in the Republican primary to Ray Shamie, a self-made millionaire, whose genial grand-fatherly nature led him to be dubbed a "Reagan clone."

Richardson told how in debates he would listen to his opponent invoke freedom of opportunity, individual liberty, and other fundamental values, and then respond, "Ray, I don't think any of us would disagree with a word you said, but nothing you said would help to solve a problem."



Judith Aidoo

Elliot Richardson fields student questions at Forum debate.

It is this "rhetorical use of the vision" which Richardson portrayed as a threat to the political process. He did not deny the role of vision in the past, but argued that its role is increasing and that "the change in degree has become a change in kind."

"What has happened," said Richardson, "is that the number of issues has multiplied to such a point that even conscientious citizens have, in effect, thrown up their hands."

"Voters either have to put aside views on a range [of issues], and concentrate on a few," becoming single-issue voters, explained Richardson, "or say, 'I'm just going to try to judge the candidate on his image, the vision he projects.'"

Richardson cited the example of

Ronald Reagan. "People are for [him] because he's for traditional values. . . . He is able to go through any debate or speech without saying any more about an issue than he needs to project the vision. . . . He never goes to the secondary level of details, [although] occasionally he goes below it to anecdotal material."

Richardson said if his portrayal of the new kind of political debate is correct "it creates difficulty for the viability of the democratic process. . . . You can't wish away complexity."

If this is what elections have become, "what then is the future for

a society whose very concept rests on trying to create for the individual citizen a chance to make a difference?" Richardson asked. "Are we to turn over more and more issues to experts not accountable to the democratic process?"

There are a few answers for thinking moderates, said Richardson. "First, work to make clear what the issues are . . . to define problems and come forward with clear, realistic solutions . . . to offset the impact of complexity."

"Second, think of what the priorities are," Richardson advised. "If we can't reduce the number of issues, think of what issues are significant to limit the agenda."

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Dershowitz Condemns Judicial "Flip-Flop"

(Continued from Page 1)

were "not among our most distinguished guarantors of justice," the role of the media in monitoring them, as well as courts in general, was important.

"But who is to monitor the monitors?" Dershowitz asked, referring to CBS's disclaimer that the film was not a documentary, but a "drama based on certain facts" in which "some of the events and characters are fictionalized for dramatic purposes."

Mann, whose credits include an Oscar for "Judgement at Nuremberg" and an Emmy for "The Marcus Nelson Murders," defended the docudrama as a "very accurate" portrayal of what he sees as a destruction of the judicial process.

Mann stated that when he read the transcript of the trial, he found "startling" departures from legal

procedures which "needed airing." The film is "true to the spirit" of the events, Mann said, indicating that a full year's research went into his documentation.

Discrepancies

The discussion turned to discrepancies in the prosecution's case when Binder recalled that he was surprised to find the autopsy on Nathaniel ("Silky") Carter, 28, demonstrated the victim had been dead at least seven days when his body was found, not two as the prosecution "tried to get me to believe." Furthermore, the original autopsy listed the cause of death as "indeterminate," only changing it to "homicide" two months after Williams had been indicted.

Binder said the basic elements of murder were not present, and that the prosecution never proved *corpus*

delicti — the fact that the crime had indeed been committed.

Dershowitz added that a February 3, 1984 story in *The Washington Post* indicated that Richard Bell, the Georgia Supreme Court judge who wrote the December 1983 opinion upholding William's conviction, originally wrote an opinion reversing it, only to change his mind and vote with the majority sometime later. This "extraordinary flip-flop," Dershowitz said, "cries out for greater inquiry and investigation."

Fiber Evidence

After viewing a segment of the film having to do with the prosecution's controversial use of fiber evidence in court, Binder decried such evidence as "subjective."

"You get what the man sees in the microscope," he said, explaining that the result depends on the lab technician's experience, eyes, and the instrument used.

Linking certain fibers found on the victims' bodies to articles in Williams' house is not convincing, Binder said, since the prosecution did not exclude fibers that existed in the victims' environments, including the river in which they had

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Richardson

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"Finally," he said, "there arises out of [these developments] a new awareness of strategy in addressing issues. . . . A strategy, if it is properly formulated, can become a framework for discussion."

"I see, therefore, the future as one in which I would, at least for now, not try to match vision for vision, but rather to move directly into the problem-solving area," concluded Richardson, urging moderate, progressive Republicans to take part in this process through organizations like the Ripon Society.

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Docudrama Questions Wayne Williams' Guilt

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been found. Binder called the prosecution's selective gathering of such evidence "horrible." He said its sole purpose was to convict Williams.

When the discussion switched back to the accuracy of the docudrama, Mann denied that he skewed the film by casting particular actors as "good" or "bad guys." He claimed that in fact he "bent over backward" to give an accurate portrayal and that, if anything, he was "too kind to the prosecution."

Community leaders in Atlanta, including Mayor Andrew Young, who are attacking the film as inaccurate "don't really understand the case," he said.

Despite the fact that he feels he was fair, however, Mann admits that docudramas can be "dangerous" and that whoever makes one incurs "a great responsibility" to be true to the facts.

Pattern Evidence

The final legal issue discussed centered on the prosecution's use of "pattern evidence." Before this discussion began, the crowd viewed another trial scene from the film. As a general rule, Dershowitz explained, evidence of other crimes is not admissible against a defendant. One exception to this rule, however, allows such evidence to be admitted

if the prosecution can demonstrate a "pattern" from the evidence of these other crimes against the defendant.

In the Williams case, Superior Court Judge Clarence Cooper permitted the prosecution's introduction of evidence linking Williams with ten other young, Black, male homicide victims.

Press Linked Williams, Victims

While Binder felt that "probably no juror there did not think of Williams" as being linked to the other victims through newspaper accounts, "I saw no pattern." Each victim was killed in one of *four* ways, Binder explained, and each was found in a different place throughout the Atlanta area. Speaking from the audience, Lynn Whatley, the appellate attorney for Williams, supported the contention that there was no pattern.

In addition, Whatley claimed that the prosecution "ambushed" Williams' lawyers in court. Before the trial, the defense was not allowed to see any of the evidence relating to victims Williams was not charged with killing. Yet four weeks into the trial, Whatley said, evidence pertaining to ten other murder victims was admitted. The effect of this, Whatley concluded, was that Williams "had no notice as to what to defend himself against."

Continuing Doubts

The program ended with a brief question and answer period in which Binder continued to cast doubt on the certainty of Williams' conviction. "Hundreds of young children die in Atlanta yearly," he said. Yet during the period in question, Binder went on, certain bodies, such as those of young Black girls and young Black shooting victims, were excluded from the child killer investigations. Not only did Williams "never, never indicat[e] any guilt to me," Binder said, he was never even convicted of murdering a child, but rather two adults, Jimmy Ray Payne, 21 and Nathaniel Cater, 28.

Binder charged that strong community pressure influenced police to act against Williams. The question at the fore in Atlanta at the time, according to Binder, was "how many more children will die this week before someone does something about it?"

Dershowitz concluded the program by stating that the major benefit of this docudrama is to bring to the surface problems with the manner in which the Atlanta district attorney's office resolved this question.

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