Bob "Watergate" Woodward was in New Haven Tuesday, and at 8 p.m. he was trying to squeeze some straight talk out of an evasive and reluctant respondent.

Finally, after more than five minutes of insistent questioning, Woodward got the statement he wanted: "I can't say it's inaccurate," confessed Yale Law School Professor Robert N. Cover, concerning Woodward's controversial best-seller on the Supreme Court, "The Brethren."

Woodward and his co-author, Scott Armstrong, then turned to Yale Professor Robert N. Bork at the forum, held before more than 400 students in the law school's auditorium.

Bork, who had jovially opened the discussion by calling the two authors "ink-stained wretches," said he had found a couple of technical points in error.

"But they don't matter," continued Bork, an acting U.S. Attorney General under President Nixon who balanced Cover's liberal views on the Yale discussion panel.

Woodward and Armstrong, authors of the nation's No. 1 book, took the professors' comments as endorsements of their dead-pan, "just-the-facts" style portrayal of the court, even though both professors argued that the book should have contained more commentary.

But Armstrong suggested that those two professors could never agree themselves on what the commentary should be, and the crowd erupted in laughter.

The "Brethren" co-authors, who spent two hours before their Yale appearance in an interview, said their goal in the book was to make the court's complex operations as clear to the general public as possible.

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"The members of the court are very much an average lot right now, and the country suffers for it."
Yale Law School Appearance

where he met Armstrong in junior high school.

Woodward, quieter, slower-speaking and more preppy-looking than his fellow Yale College graduate Armstrong, said they each felt that the public should know that "the court is simply not doing what it says it is."

"A fraud is being committed on the public" when the legal establishment suggests that the court is beyond politics and "gut instincts" in deciding its cases, Woodward said.

Woodward, the 37-year-old metropolitan editor of the Washington Post, said "The Brethren" evolved from the co-authors' original plan for one book on "the decision-making process" in all three branches of government in the nation's capital.

"We were surprised by how little was written about how the court actually worked, behind the civics book kind of description," said Armstrong, a former investigator for majority counsel Sam Dash of the Senate Watergate Committee.

Armstrong, who joined the Post as a reporter in 1976, said: "Our whole idea was saturation, to go in and get all the material we could possibly collect."

He said their most common technique in overcoming traditional court secrecy was to ask clerks, justices and court workers a lot of broad questions.

"Then we'd say, 'Prove it to me. Show me what you mean.' And they would begin to give us specific examples," Armstrong said.

He said those interviewed had countless individual views of what should be kept confidential.

"But if you're artful you can reconstruct a lot," he said.

The court tradition on secrecy has been widely misinterpreted, said Woodward as he slowly mangled an empty styrofoam coffee cup during his interview in a Yale guest room.

"No one ever really challenged the tradition before "The Brethren,"" he said of the book that shot to the top of best-seller lists immediately upon its publication in mid-December.

Woodward said that, to his knowledge, no justice forbade his former clerks from talking about past cases, and "The Brethren" authors never considered seeking information about undecided cases.

A motivation of the justices who talked to them, Woodward said, was that they felt the public does not understand the pressures of the court's work.

Some of the older justices also felt that even presidents and senators don't understand the qualifications that are going to be needed by court replacements, Armstrong said.

The authors said the cooperation of justices required the omniscient tone and lack of footnotes in the book, which are its most controversial aspects.

"We would love to have annotated this, but then we couldn't have done it."

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"Traditionalists who believe the court needs secrecy to command respect for its decisions can read in "Guide to the Supreme Court" about past news leaks. Running accounts of the court's deliberations in the famous Dred Scott decision on black rights, for example, were printed in 1857 by a New York newspaper that must have had a source on the court itself."

Typical of the book's blunt tone is, "It was not just (Burger's) intellectual inadequacies or his inability to write coherent opinions that bothered (Justice Lewis F.) Powell. There was something overbearing and offensive about the Chief's style."

There are countless such remarks, and the image of every justice is tarnished to some extent. Yet the writing much of the time is less sensational than sententious. "Watergate" Woodward, who with Armstrong was guaranteed more than a million dollars in their publishing contracts for what became an immediate best-seller, himself described their account as "a boring book in many ways."

"The Brethren's" backbone is its description of the not-so-fraternal secret debates on the court's biggest cases from 1969-1976.

We are told, for instance, that the court seven years ago almost adopted the principles of the Equal Rights Amendment, which would have eliminated the amendment's tortuous path through the state legislatures. By contrast, the Congressional Quarterly guide does not mention any court maneuvering on the matter.
personal diaries of Justice William J. Brennan and interviews with “several justices, more than 170 former law clerks, and several dozen former employees of the court.”

The authors have been severely criticized in some quarters on the grounds of magnifying their sourcing. Yes, they could have been more specific about just how many justices and how many law clerks they used, and possibly which information came from what kind of source.

And there is a self-serving, aggrandizing tendency when the authors say, “In virtually every instance, we had at least one, usually two and often three or four reliable sources in the chambers of each justice for each of the seven years we have covered.”

But I wonder whether the harshest critics of “The Brethren,” in implying that there is no real achievement here, aren’t one-uppers in the style of British humorist Stephen Potter.

Potter, that perceptive and funny man who chronicled endeavors in Gamesmanship and One-upmanship, once advised book reviewers this way: “Show that it is really you yourself who should have written the book (even “Rhododendron Hunting in the Andes”) ... and since you hadn’t, you are glad someone has, although obviously it might have been done better.”

My own informal and extremely scientific poll of three former Supreme Court law clerks show each quibbles to some degree with certain techniques or conclusions in “The Brethren,” with most of the critics focusing on the authors’ omniscience.

Yet Woodward and Armstrong on the whole, done a remarkable penetrating the nation’s most important secret institution, and in illuminating the subject for a wide audience Andrew K. Karp covers the fo courts in Connecticut for Courant.