



Harvard Law Record

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FIFTEEN CENTS

Lawyers, Media Scrutinized

Bar Not Blameless

Dean Erwin N. Griswold and Associate Dean A. James Casner have indicated that lawyers cannot be considered entirely blameless for events surrounding the slaying of President Kennedy and his alleged assassin Lee H. Oswald.

They made brief statements to their classes when Law School activities resumed last Tuesday and later elaborated on their views.

"The general lawlessness involved in any

(Continued on page 14)

Letter Hits Oswald 'Trial'

By Stewart D. Davis

The trial of Lee H. Oswald by news media was strongly condemned in a letter signed by seven Harvard Law School professors which appeared in the *New York Times* Sunday.

The letter said, "... From Friday, Nov. 22, through Sunday the shocking manner in which our processes of criminal justice are

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Federal Rights Board Urged

By Myer J. Sankary

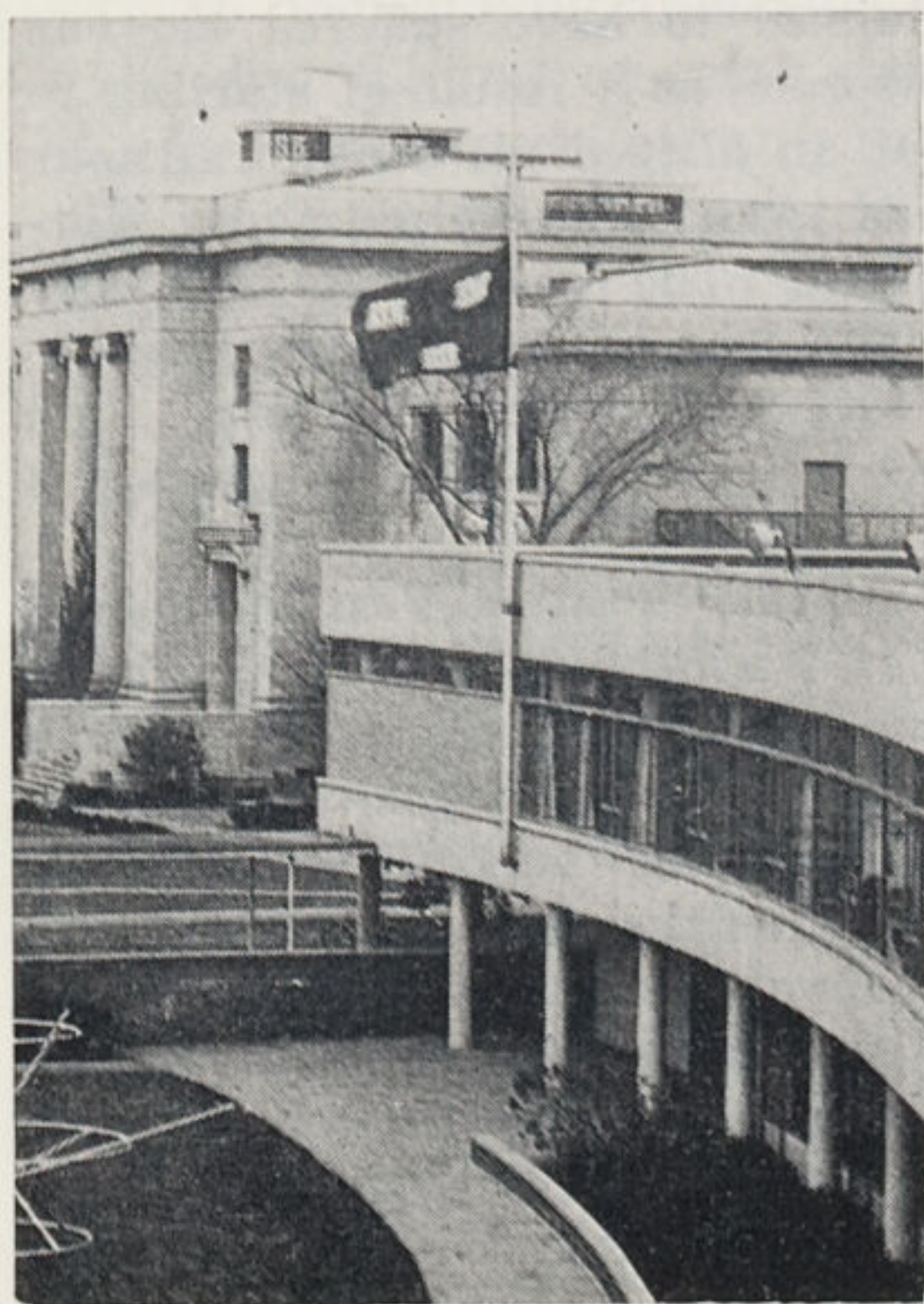
Visiting Professor Vern Countryman has advocated more extensive use of national governmental powers to end job discrimination against Negroes.

Dean of the School of Law at the University of New Mexico, Prof. Countryman condemned "discrimination on the basis of race, color, national origin or creed as an intolerable practice and a mockery of our national aspirations."

He made the statements in a paper, entitled "The Constitution and Job Discrimination," delivered at a conference on "Discrimination and the Law" sponsored by the University of Chicago Law School and the Anti-Defamation League of B'nai B'rith in Chicago, November 22.

Prof. Countryman called for federal legislation which would provide due process and would establish laws for equal

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Harvard Mourns Kennedy

Not Everyone Was Listening

Throughout the nation last week, public officials, ministers and newspaper editors were exhorting Americans to respect and preserve the society of laws that had made the President's assassination so shocking and unbelievable, and to challenge those who spread the hatred and suspicion that make such general lawlessness more possible. But it was clear that not everyone was listening.

In Dallas, the Methodist minister who charged Dallas citizens with indifference to intolerance was kept under close police guard after a flood of angry threats. Police were forced to keep a 24-hour guard around the grave of Lee H. Oswald to prevent its desecration. And Jack Ruby received scores of letters praising him as a national hero.

In Chicago, a widespread letter campaign continued against Negro poet Langston Hughes and his Christmas song-play "Black-Nativity." Hughes was attacked in an anonymous article as a "Communist sympathizer" and his work was labelled "anti-Christian." In the state of Washington, the American Civil Liberties Union was called a "Communist front" organization. And in New York, a small newspaper ad warned of the hidden dangers in water poisoned by fluoridation.

"What is the lawyer supposed to do about all this?" some one asked us sarcastically. "Stand up and shout 'Obey the law'?" He had forgotten that it was an act of courage for 53 lawyers to say just that in Birmingham this September.

As the technicians of our system, lawyers have the continuing duty not only to encourage respect for the law, but also to see that the law deserves respect. They must check abuses by law enforcement agencies and members of the Bar itself. As men of public affairs, they should require arguments germane to the issues, and demand proof of charges, rather than innuendo. Silence in the face of those who wilfully obscure the issues is complicity.

We can probably never protect our society from the occasional deeds of a psychopath. But we should not need the shock of those deeds to make us realize that keeping society healthy is a job requiring constant attention. We must make more people listen.

Harvard Law Record

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TONGUE 'N CHEEK

By Fenno

"A Child's Garden of Versus"

Old Woman v. Helvering. Taxpayer had taken an unusually large deduction under the category of dependants. The Commissioner reduced Taxpayer's deductions under this category but allowed her an operating loss carryover because of a miscarriage she suffered during the taxable year. Commissioner also allowed deductions for such repairs to her rental property as "brushing down" the outside of the house, installation of Neolite flooring, the purchase of two rather large shoelaces, the repairing of two fallen archways inside the house, and a large amount for fumigating.

Humpty's Executor v. King's Men. Deceased had had an eggshell skull. One day he fell off a wall. While he lay in a critical condition, defendants came by on their horses. They testified that they "tried to put the old boy on his feet again." But in the process one of the horses stepped upon Deceased, causing instant death and making a horrible mess. The jury awarded damages to the plaintiff, but upon appeal the court decided that the trial judge had been too hard boiled in keeping out defendant's evidence.

Hitchcock v. Birds Eye, Ear, Nose and Throat Pies, Inc. Plaintiff claimed to have suffered nervous disorder as a result of starting to eat an alleged pie containing four and twenty Blackbirds and a Nut-hatch. The court felt that this claim was too preposterous to believe, and denied recovery. Said the court: "This is too preposterous to believe."

Mother Goose v. Vest Publishing Co. Plaintiff promised to write a book for the defendant, and to "totally abstain from the use of intoxicating liquors" during the period of the writing. Plaintiff sues for payment under the contract. She admitted at the trial below that she had taken "one or two" during the writing. The trial court proof-read the book and decided it was 90 proof.

Judge Explains Crowded Dockets

By Michael Hampden

An insufficient number of judges and trial counsel — and not the jury system itself — are two of the main causes of congested dockets in the state courts, a Massachusetts judge has said.

Superior Court Chief Justice G. Joseph Tauro made the charge at a Blackstone Club luncheon here on November 20.

Himself a trial lawyer for thirty years, Judge Tauro deplored dilatory tactics in the handling of trials. "Some lawyers use the courts for discovery purposes; then when they find out what their cases are about, they settle. These lawyers should be a little more solicitous. And this is a national, not just a local problem," he said.

In a recent statement at Boston College Law School, Judge Tauro expressed his confidence in the jury system for both criminal and civil cases, but warned that abuses of this kind are providing ammunition for attacks on the institution itself. He said Chief Justice Charles S. Desmond of New York, Massachusetts Supreme Court Justice Paul C. Reardon, and Dean Erwin N. Griswold have urged serious reconsideration of the use of juries in civil actions.

Dean Griswold, in his annual report to Harvard President Pusey (RECORD, Sept. 26, 1963) questioned the "special capacity" of "twelve persons brought in from the street . . . to decide controversies."

Judge Tauro argued that lawyers in informal exchanges among themselves are better equipped to settle initial differences than are twelve laymen, and that only "important" cases where there has been a "clear failure" to settle should be allowed to reach a jury. At his Boston College Law School appearance, for example, he criticized lawyers who allow cases involving a comparatively small amount to be tried at the public expense of \$700 or \$800 a day.

"In Boston," the Chief Justice warned, "advising a client to litigate rather than to settle means advising him to wait three years until trial."

Judge Tauro reported that in his court, the number of criminal cases has increased 50 percent in the last two years. These cases

are guaranteed speedy trials by the Sixth Amendment; thus civil actions must be delayed accordingly, the Judge pointed out.

There are 41 Massachusetts Superior Court judges, who share two clerks and two secretaries. New Jersey, with comparable area and population, has 100 Superior Court judges, each with a clerk and secretary.

Judge Tauro explained that an increase in judges involves political and economic factors which are not encountered by businesses seeking to add to their personnel. The system has been too inflexible to catch up with the work load, he said.

The Judge suggested that hard schedules

POST-GRAD TRIAL COURSE?

To help fill the need for more competent trial lawyers, Superior Court Chief Justice G. Joseph Tauro said he would be "most receptive" to a postgraduate course in trial practice if the Law School were to initiate one. He envisioned an intensive one-year program in which students would follow up their observations of actual trials by classroom analysis, using tapes and movies of the trial when it could be arranged.

The Chief Justice doubted the instructive value of "mock trials." He analogized his plan to the internship training of medical students and the "post-mortem" movies of games used by football coaches.

and long hours partly account for the shortage of competent trial counsel today. "But the opportunities are limitless; your best clients become other lawyers who hire you to do their courtroom work," he said.

Asked if the establishment of administrative boards to handle automobile tort cases would relieve the backlog, Judge Tauro expressed little confidence in any "panacea." He remarked that the Massachusetts system of auditors for motor tort cases is wasteful when a decision is indiscriminately contested, since the trial court then takes the case *de novo*.

He indicated that the auditor system in the Superior Courts is now undergoing an exhaustive study which may lead to major revisions.

Oswald 'Trial'

(Continued from page 1)

often administered was exhibited to ourselves and to the world. Of course, there was a legitimate concern of the public to know promptly that investigations had been completed and a single suspect apprehended, and that responsible authorities had sufficient evidence to justify his arraignment and indictment.

"But surely this could have been satisfied without turning the process of investigation and accusation into what can only be described as a public spectacle . . ."

The letter went on to point out the irony that "the very publicity which had already made it virtually impossible for Oswald to be tried and convicted by a jury meeting existing constitutional standards of impartiality should, in the end, have made such trial unnecessary."

Thereafter the letter criticized "our general obsession that everybody has a right immediately to know and see everything" and "the notion that police, prosecutors, attorneys, reporters and cameramen should have an unlimited right to conduct *ex parte* public trials in the press and on television."

The letter, signed by Profs. Paul M. Bator, Richard R. Baxter, Charles Fried, Robert A. Girard, Henry M. Hart, Jr., Louis L. Jaffe, and James Vorenberg, concluded, "As long as we adhere to that notion, and as long as our legislation and courts are unwilling to protect the processes of justice, we must recognize that the lamentable behavior of the Dallas law enforcement agencies and of the communications media reflect a flaw in ourselves as a society."

Prof. Bator, who instituted the letter, told the RECORD of the major problems in this area: 1) lack of clear standards on release of evidence for police and prosecutors, 2) news media without a sense of restraint, and 3) the inability of the courts and legislatures to safeguard the judicial process from undesirable publicity.

Both Prof. Bator and Prof. Fried pointed out that in Britain a rule preventing reckless disclosure of evidence by police and press is rigidly followed and enforced by the courts through their power to hold violators in contempt.

Prof. Fried noted that one reason the

English rule works there is the prompt administration of justice, while in America the press fears an indefinite wait for news.

Prof. Fried also noted that a factor in the Dallas situation, and throughout America, is the general custom of the police cooperation with the press. The Dallas police chief had little precedent to back him up in resisting the protestations of the news media.

Prof. Vorenberg called the action of the Dallas police "outrageous". He said it is hard to put the blame on the television reporters when the police invite or permit cameramen into the police station.

Stressing that in America, where there are no clear rules on disclosing evidence, the primary burden rests on the police, Prof. Vorenberg stated there is a need for clear rules as to the kind of pre-trial disclosure by counsel on both sides of the case, and rules as to what media may publish. He said there is some pressure in the legal profession for such ground rules.

Visiting Prof. Zelman Cowen of Australia stated that the notions of contempt in this area are more clearly articulated and defined in the English and Australian systems.

The rule, simply stated, holds that comment which tends to prejudice a fair trial is punishable as contempt of court. Prof. Cowen added that a definite body of case law defines "contempt."

He stated that a great part of what appeared on television as to Oswald's character and associates would have been contempt under the British and Australian rules. "After what was said about Oswald," he said, "it is hard to imagine any jury not being hopelessly prejudiced."

In Britain and Australia the media would have been restrained from purveying further such information about Oswald, Prof. Cowen said. He added that proceedings would have been instituted to fine or jail both the police and the media purveyors of the information.

Tax Planning Seminar

Dean Erwin N. Griswold will preside over a tax forum this Saturday, Dec. 7, at John Hancock Hall, Boston. The forum topic is "Tax Planning Under Current and Prospective Legislation." The program includes a morning session at 9:15 a.m. and an afternoon session at 2:00 p.m.

Panel Lauds New Drug Addict Law

By Neil L. Chayet*

A new Massachusetts law dealing with the treatment and rehabilitation of drug addicts was hailed by a panel of experts in the field of narcotics and alcoholism at the Medico-Legal Seminar here on Tuesday, November 26.

The law, which was drafted by Professor William J. Curran, Lecturer in Legal Medicine at Harvard Law School and Director of the Boston University Law-Medicine Institute, is the first comprehensive approach to coordinating governmental efforts to combat one of the major sources of crime in the Commonwealth and throughout the country.

The new law was praised by John Traynor, Regional Director of the Federal Bureau of Narcotics, Alfred Murphy, Senior Food & Drug Inspector of the Massachusetts Division of Food & Drugs, and Miss Hilma Unterberger, Alcoholism Coordinator of the Massachusetts Division of Alcoholism.

The law, which was signed by Governor Peabody on October 17, and which will go into effect in January, sets up a state-supported Drug Addiction Rehabilitation Center under a new Administrative Board composed of the Commissioners of Public Health, Mental Health and Correction. According to Miss Unterberger, this is the first time that these three departments, which are so intimately involved in the subject of drug addiction, have actually been coordinated in their efforts to deal with addiction.

The essence of the law is the flexibility in treatment and rehabilitation of addicts who come to the Center by way of civil commitment, the criminal courts, parole and probation authorities, or on a voluntary basis.

Involuntary commitments to the Rehabilitation Center are for a period of two years and, under certain conditions, this may be extended to three years. However, and most significantly, there is no fixed time for confined hospitalization. According to the judgment of the Director of the Rehabilitation Center, the patient may be placed on day care, night care, or outpatient follow-up treatment and supervision at any time during the commitment period.

**Mr. Chayet, LL.B. '63, is a former President of the RECORD.*



Professor William J. Curran

The Act provides for a required follow-up program for all patients released during the two or three year period of treatment, rehabilitation and supervision. Specially trained personnel will be attached to the Center to conduct this mandatory follow-up.

The Act is also heavily oriented in the direction of research, providing that the Administrator of the drug addiction program shall "plan, stimulate, support, and develop educational and research programs on the causes of drug addiction, and on the treatment and rehabilitation of drug addicts."

An important provision of the law allows in certain cases the commitment to the Center for treatment and rehabilitation instead of a prison sentence. Where a person has no previous criminal record, he may be sent to the Center before trial, with the criminal charges being placed on file until the completion of his program of rehabilitation. If he has a criminal record but has not been convicted of two or more felonies, he must await conviction by the court but, after conviction, he may be sent to the Center.

The law is careful to provide that the court shall not entertain a request for the commitment of a defendant on a criminal charge if the defendant is charged with possessing

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Drug Panel

(Continued from page 5)

drugs in a quantity so much greater than he himself would use that he appears to be involved in drug peddling.

In addition to his comments on the new law, Mr. Traynor disclosed that Federal narcotics agents are facing severe problems in obtaining warrants and gaining convictions because of insistence by Federal judges that the names of informants be revealed. This policy has led to several murders of informants and has been responsible for a sharp drop in the amount of information received from such formerly lucrative sources, he said. Previously all that was necessary was testimony by a Federal agent that the informant was known to the agent and was a reliable source of information. Mr. Murphy stated that actual naming of informants is still not generally required by Massachusetts judges in state courts.

The panel estimated that there are about 60,000 addicts presently in the United States, with the heaviest concentrations occurring in New York, Southern California and Chicago. Over 60% of this number are members of minority groups and the majority are men, where earlier in this century the majority of addicts were women.

The "British System" came under attack by Mr. Traynor. This "system", which in reality is a lack of a system, provides for the dispensing of narcotics to virtually anyone who needs them, after proper registration by the addict. Thus the criminal element is allegedly discouraged. Mr. Traynor suggested however, that narcotic addiction is a contagious disease, and this system if practiced in the United States would give rise to a major increase in the number of addicts through

Pre-Law Conference

Boston College Law School is holding its seventh annual institute for pre-law advisors, law school admissions officials and pre-legal upperclassmen at its Chestnut Hill campus on Saturday. Two visiting professors, Robert E. Mathews and Vern Countryman, will address the assembly on ethical problems which face the legal profession.

mass recruitment of youngsters and others. He stated that a solution may be reached through better legislation and enforcement of stricter laws against narcotics peddlers.

Fewer Dine on Contract

The number of students eating on contract at the Harkness Commons cafeteria has declined slightly this year. But Steward Warren is not worried.

"Contract does not haul its own weight, financially speaking," he said. And a considerable increase in the volume of students eating dinner, which is the most profitable meal for the cafeteria, has more than offset the decline.

Mr. Thompson speculated that the increasing percentage of married students attending the law school was the chief reason for the decline in the number of students on contract. The loss this year was not significant, he added, — only 27 students, leaving 430 on contract. He thought the new housing facilities for married students would also have their effect, but it was still too early to tell how much.

The overall volume in the Harkness cafeteria has increased almost 25% in the last four years. The volume for this year is down a little; but so far the cafeteria is ahead of last year, financially, Mr. Thompson said.

It is unusual, he commented, that the noticeable drop in volume has occurred in the breakfasts, while the volume for lunches is about the same as last year, and there has been a considerable increase in volume for dinners.

Mr. Thompson was unable to suggest why fewer students are eating breakfast at the cafeteria and many more are eating dinner there; but he said he was not very displeased with the situation, since practically no profit is made on the breakfasts. "If we had to lose any volume at all," he said "then breakfast was the place to lose it."

Urban Studies Paper

Law students interested in writing a thesis for the Joint Center for Urban Studies of MIT and Harvard under two doctoral research fellowships for 1964-65 should see Mr. Joseph E. Leininger in the ILS Building.

Transactions Turnout Shoots Up

Commercial Transactions is no longer a required course, but almost 70% of the second and third year classes are currently enrolled in it. There are 701 students as compared to only 428 last year.

The Professors teaching the course had a variety of explanations for this sudden popularity. Prof. Robert Braucher said that when several second year courses became electives last year it was thought that the course would remain popular, while others such as Trusts, would suffer. Many calculations were thrown off when Trusts required two sections instead of the one planned, but Commercial Transactions had a light turn-out.

Prof. Braucher said that omitting the course was "just plain wrong for any student preparing to practice general law in the United States." Commenting on the unusually large number of third year students (about 254 as compared to last year's 178,) he suggested that last year many experimented, but decided that the course was really necessary, resulting in this year's rush.

Prof. Vern Countryman believed that the wide coverage of the course, and its "unparalleled opportunity to come to grips with a comprehensive statute" were prime causes for the course's popularity.

Prof. Charles Fried basically agreed with this analysis, but thought that as this year is the first in which the course has been fully elective for both second and third year students, the figures were not really comparable. He indicated that an estimate of this year as unusual was premature.

Prof. Arthur E. Sutherland stressed that the material of the course is of growing importance. In 1945 there was some \$5 billion of consumer credit outstanding, while today there is some \$66 billion. Prof. Sutherland explained that the course was intended to explore this system of credit, built on what is in effect a vast bookkeeping system made up of banks and other financing institutions.

The new edition of the Braucher and Sutherland case book which is in preparation, he said, would continue to focus on the problem areas of the system. It will, however, place greater reliance on text material. While the various codes will be left in one book, the text will be integrated with the cases in another.

The amount of case material will be decreased.

Those who think of such law as dull and plodding should realize that this area has produced several of Harvard's great figures, such as Zechariah Chafee and Samuel Williston, he said. He added that the great Oliver Wendell Holmes taught Bills and Notes when he was a teacher at Harvard Law School.

Ames Semi-Finalist Winners

Griswold Equity and Marshall Equity clubs were the winners of the semi-final round of the Ames Competition, defeating the Scott Club and the Bevins Club respectively. The winning clubs will meet next spring in the final round of the Competition.

Originally scheduled for Monday, Nov. 25, the Griswold Equity — Scott Club argument was delayed until Tuesday because of the assassination of the President.

The verdict in the Marshall Equity — Bevins Club argument was a split decision. Hon. James B. Craven, Jr., Chief Judge, Western District of North Carolina, dissented from the majority opinion.

James D. Lorenz and Joseph A. Wheelock, Jr. argued Griswold Equity's case. Their colleagues on the brief were: John H. Betz, Ann Dudley Cronkhite, Harrison C. Dunning, Robert C. Embry, Jr., and Paul B. Galvani.

For Scott Club were oralists, Henry C. Miner, III and Lewis E. Striebeck, Jr., and Ronald F. Daitz, Phillip H. Ginsberg, Myles Hannan, Joshua H. Lane, Brinton P. Roberts, and Scott R. Schoenfeld.

Oralists for the winning Marshall Equity Club were Arthur J. Lombard and J. Laurent Scharff. Counsel on the brief were: Thomas B. Arnold, John R. Bailey, James R. Hopkins, Jack L. Lawing, Alan H. MacPherson, and Jerrold I. W. Mitchell.

Bevins Club oralists were Curtis M. Caton and John F. Olson. On the brief were: Neil D. Anderson, James F. Childs, Jr., Martin R. Ganzglass, Thomas R. Lamia, George H. Link, and H. Woodruff Turner.

Writing Plans Announced

More details were announced this week on the experimental writing program planned for second year students.

Beginning the week after mid year exams, 24 students will work on independent research and analysis leading to publication of a 3000-word Comment in an intramural journal.

Comments will deal with topics suggested by faculty members, the four third year Law Review members who will be the program's editors and the participants themselves. Emphasis will be placed on topics relating to second year courses, but may be on specific cases, groups of cases, recent books or problems of practice.

The six week program will be divided into three phases. Participants will spend two weeks preparing a series of informal memos on several topics, which will be used to determine the best topics for Comments. The second two weeks will be devoted to research and writing a first draft. The final two weeks will be utilized for intensive editing in conjunction with one of the Law Review men. Each comment will be read by a faculty member before publication.

The program is expected to require roughly the same amount of time as the second year Ames Competition.

The participants will be selected by lot, without reference to grades, from those who submit their applications before December 14. Forms, including additional details, are available at the Receptionist's desk in Langdell Hall.

The four editors are Owen M. Fiss, John L. McCausland, Albert S. Pergam and G. Joseph Vining. Sponsoring the program are Professors David R. Herwitz, Frank E. A. Sander, and James Vorenberg.

Securities Analyst to Speak

Mr. Leon Levy, a partner in the investment banking firm of Oppenheimer & Co., will address the Bull and Bear Club next Wednesday, Dec. 11th, at 1:45 p.m. in the Harkness Meeting Room on "Market Cycles and Psychology".

Mr. Levy is the partner in charge of research for Oppenheimer Co. and an expert on the "psychological analysis" of the securities market.

'43 Lawyer Makes \$33,000

The average graduate from the Class of 1943 makes \$33,000 a year, a recent polling of the contingent showed.

From this small war year class — 282 graduates — 206 questionnaires revealed the fact that 155 of those answering (just over 75%) are in full time law practice, and a majority of these are in the country's large metropolitan areas.

Income figures, which tended to be higher in relation to the size of the man's firm and the population of the community it serves, put half of the class above \$29,000. In firms of 50 or more the median income of the '43 man was \$45,000; in firms of 10 to 50 the median was \$34,000; in firms of less than 10 it was \$21,000; and of men practicing alone the median was only \$17,000.

The poll showed that 13% of the class makes over \$50,000 a year.

More Taking Trial Practice

A sharp increase in enrollment for the third year course in trial practice has caused the Law School to schedule two additional sections this year.

About 250 students have selected the course, compared with about 180 last year. Lewis H. Weinstein and Jerome P. Facher, both lecturers in law, have each agreed to teach a second section this spring.

A large section of not more than 60 will be taught by Professors Richard H. Field and Robert E. Keeton and will be held Monday afternoon. Six others will be limited to not more than 30.

Because of the additions and changes in schedule, students have been requested to re-register their section selections by next Monday. Forms are available at the Receptionist's desk in Langdell Hall.

Barristers' Ball Saturday

The Harvard Law Wives will hold their annual Christmas dance, the Barristers' Ball, this Saturday, Dec. 7, at 8 p.m. in Harkness Commons. Tickets, at \$2.00 per couple, may be obtained at the door.

Federal Rights Board

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protection, a view which challenges the decision of the Supreme Court in the *Civil Rights Cases* of 1883. According to the *Civil Rights Cases*, he said, "Congress may legislate only against state action denying due process of law or the equal protection of the laws." Thus the decision has prohibited affirmative legislation by Congress in areas where the state has failed to act.

"What is needed is a federal statute creating an administrative agency with enforcement powers similar to those of the NLRB, with power to act on its own initiative, and with power to grant interim relief," Prof. Countryman urged.

According to Prof. Countryman, discrimination on the basis of race or color should not be permitted by federal or state action, by "state inaction" or, in some situations by private action. He maintained that failure of a state to provide a remedy for job discrimination against Negroes, is itself a denial of equal protection of the law protected by the Fourteenth Amendment.

"It seems to me," he said, "that a federal prohibition against racial discrimination in employment should reach Mrs. Murphy's boarding house." He contended that "the continuation of such practices more than 100 years after the Emancipation Proclamation seems to me a national disgrace whose elimination cannot longer await the general enlightenment of all parts of the nation. The full powers of government should be brought to bear against such discriminatory practices."

His conclusions, he admitted, are in part based upon his belief that "the individual rights involved . . . heavily outweigh any argument for continual obeisance to 'states rights'—particularly as the argument emanates from states dedicated to the denial of individual rights on the grounds of race."

In fashioning appropriate legislation, Professor Countryman suggested that several provisions of the Constitution be invoked to provide a broad source of federal power. He maintained that Congress should legislate generally against discriminatory employment practices by anyone. "The question of the constitutionality of any particular applica-

tion can then be left to be determined in the course of the law's administration," he said.

In addition to authorization from the commerce clause and the due process and equal protection clauses of the Fourteenth Amendment, Prof. Countryman would recommend that the due process clause of the Fifth Amendment be specifically denominated. The purpose, he reasoned, would be to insure that the legislation would apply to action characterized as federal action subject to the due process clause of that Amendment. In addition, since the Amendment is not by its terms limited to a restraint on governmental action, the due process clause of the Fifth could be applied to private action, thus giving extensive power to prohibit discrimination in areas now untouched by legislation.

Difficulties which may arise under the due process clauses can be dealt with by using the Thirteenth Amendment, which outlaws "slavery" and "involuntary servitude," and carries its own authorization to Congress "to enforce this article by appropriate legislation," and is not limited to state action, Prof. Countryman said. He cited the dissenting opinion of the first Justice Harlan in the *Civil Rights Cases* which suggested that direct and primary legislation may be authorized by the Thirteenth Amendment to eradicate not only the institution of slavery but also its "badges and incidents." Though the Court later held that the Thirteenth Amendment did not authorize a federal statute which would penalize private action designed to discriminate, Prof. Countryman contended that new federal legislation should nevertheless invoke the Thirteenth "so that the way will be open to ask the Supreme Court to reconsider the question."

Another argument was offered by Prof. Countryman to reach private discrimination. Since legislative authority is conferred upon Congress by Section 5 of the Fourteenth Amendment to enforce all provisions of the article, Congress may have authority to legislate with regard to Section 1 which provides that, "All persons born or naturalized in the United States . . . are citizens." "It seems to me," he said, . . . "that any federal statute should define the right to be free from racial discrimination in employment as an ingredient of the national citizenship conferred by the Fourteenth Amendment."

Recent Case

Lost Sleep in Bedroom Uncovered

**SANDBANKS HOTEL LTD.
v.
WALLMAN AND ANOTHER**

*Before LORD JUSTICE ORMEROD,
LORD JUSTICE UPJOHN, and LORD
JUSTICE PEARSON.*

The COURT dismissed this appeal by Mr. Murray Wallman, of Elgin Mansions, Elgin Avenue, W.9. against the judgment of His Honour Judge Armstrong, at Poole County Court, on June 27, 1962, by which he awarded the Sandbanks Hotel Ltd., Sandbanks, Bournemouth, £52 10s. damages for breach of contract in respect of accommodation which Mr. Wallman had but had refused to accept.

Mr. Norman Oster appeared for the appellant; Mr. N. R. Blaker for the respondents.

JUDGMENT

LORD JUSTICE ORMEROD said that he had very considerable sympathy with the appellant. He had booked a double room for himself and his wife and a single room for his son for five days at five guineas per person per day, over the Christmas period, 1961. He had not previously seen the room in question but on arrival at the hotel — described as "three-star" — with his wife and son he had at once expressed himself dissatisfied with it. He had, in fact, subsequently found better accommodation at a smaller charge at the Palace Hotel, also, presum-

ably, in Bournemouth.

The only point of the appeal was whether the room offered was in compliance with the contract as being a double room. It was 15 ft. long and 8 ft. 6 in. wide, and his Lordship was bound to say that that was not very wide for a room described as a double room. The bed was 4 ft. wide, which seemed small for a double bed, although the appellant had admitted below that it could be described as such.

The real objection, it seemed to his Lordship, was that the only way the bed could be put in the room for the door to be openable was right up against the wall, so that if anyone wanted to get out of it for any purpose during the night he or she would have to climb either over the other occupant or over the end of the bed. However, the fact that one could not walk round the bed had not been urged strongly as the greatest fault of the room, and in any event there had been no finding by the judge that that prevented it from being described as a double room. The judge had formed the impression also that it was small for a double room but he had said that he had little or no experience of the standard required and had to pay attention to the evidence that some 30 couples had used it for varying periods during the preceding 12 months without complaint. He had come to the conclusion that it had

been all that was required of the contract.

For his Lordship's part, he was not prepared to decide, as a matter of law, that a double bed was not a double bed unless one could walk all round it. That being so, the judge's finding had been one of fact, with which the Court could not interfere.

If the Sandbanks Hotel held itself out, as apparently it did by its brochure, as a hotel of high standards where luxurious accommodation was offered, it was a strange way of implementing that offer if a room such as this was offered. However, that was a matter of business, and if the hotel took the view that they were acting honourably that was their business and not the Court's. He would dismiss the appeal.

LORD JUSTICE UPJOHN, agreeing, said that the appellant also had his sympathies. He was surprised that the respondents liked to advertise in this way the smallness of the accommodation which they offered to prospective customers. Prospective customers might be warned that although the largest double room at this hotel was twice this size, this was not the smallest of them.

LORD JUSTICE PEARSON agreed.

From the Law Report of the Court of Appeal, The London Times, submitted to the RECORD by a student of the common law.

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Law Review Base Too Narrow?

Last spring, the RECORD compared the method of selection of membership on the Harvard Law Review with the method used by the Yale Law Journal. We found that at Yale, the staff is initially chosen on the basis of grades. However, a competition open to the top one-third of the second-year class plus transfers is subsequently held, based on writing of draft Notes. In addition, membership may be offered to any student who presents a draft of preeminent quality during his second year. In contrast, Harvard chooses its staff solely on the basis of grades. In a commentary, we said that Yale's method seemed fairer to students than Harvard's. However, we went further and proposed selection based entirely on an open competition, free from any basis on grades. The following are excerpts from letters received in response to this suggestion.

To the Editor:

* * *

The appropriateness of the criteria employed for the selection of the members of the Review must needs be assessed in the light of the purposes which their membership is presently designed to, and ideally ought to, serve. . . . It should suffice to point up that keenness of legal aptitude is the most important quality required for the proper discharge of these duties. Consequently, the selection of members according to academic success would appear to be the most effective means for attaining the desired goal.

However, such a view of the matter is far too confined in its perspective. The opportunity to contribute to a variety of other journals since leaving the Law School has brought home to me in no uncertain terms the considerable educational value to be derived from the preparation of legal articles for publication. And along with this has come a steadily growing awareness that the present

parochial concept of the Law Review is as unsound as it is outmoded.

It is a well-known fact that the caliber of the student body at the Harvard Law School has been rising substantially and steadily in recent years. This rise has resulted in a continuous narrowing of the chasm which hitherto separated the top scholars from their less well-endowed brethren. The primary source of distinction is fast becoming quickness of thought rather than depth of understanding.

One might reasonably infer from the continuing stress which leading firms place on Law Review membership in their hiring practices that the full impact of the aforementioned development in class "depth" has not yet been appreciated by the older alumni. But an equally plausible inference to be drawn is that these employers are fully aware of the extra educational advantages which stem from membership on the Review.

It is surely within the bounds of reasonable expectation to anticipate comparable awareness on the part of the Law School both of the considerable learning value to be derived from affiliation with the Review, and of the continuously increasing percentage of students with sufficient aptitude and ability to satisfy at least a majority of that journal's needs. And if awareness of these phenomena is reasonably to be implied, then surely so should the desire and intention to integrate the activities of the Law Review far more closely with the academic curriculum than has been the case until now.

Unless remarkable and unheralded changes have occurred during the past three years, the considerable range of educational (not to speak of social and economic) benefits attributable to membership on the Review have been made available to but a mere handful of the students. The rest have all too often been deprived not only of the experience of review-type activity,

but also of contact with a substantial element of the faculty. I submit that this is not a healthy state of affairs, nor does it materially enhance the Law School's position as a leading force in the field of legal education. To restore some of the lost momentum, prompt and effective remedy is surely of the essence.

* * *

It should be stressed at the outset that any remedy must be of such a nature as to assure that the high level of scholarship associated with the Harvard Law Review as a leading legal publication cannot and will not be impaired. But it should be emphasized with equal vigor that any remedy must also be of such a nature as to assure that the Harvard Law Review reflects to a far, far greater degree the active participation of the ever-increasing portion of the student body capable of meaningful contributions to the maintenance of that journal's high standards.

An approach which might well achieve these twin purposes would involve the creation of an intramural law review, whose activities might well be integrated to a significant extent with the Law School's academic curriculum. While the establishment of such an additional journal would appear to be the very antithesis of the desideratum that the student base of the Law Review be broadened, any fears on this score should promptly be dismissed. For these two publications could complement one another rather than compete, and thereby provide not only the invaluable training inherent in review-type activity but also the pages of an established journal as an outlet for the most meritorious products of such activity. The notes, comments and shorter articles of the Review could in this way reflect at one and the same time the excellence-in-depth of the student body and the Law School's sustained concern with the most intensive

(Continued on page 13)

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Grades Good for Law Review Selection

(Continued from page 11)

utilization of all the educational facilities at its disposal.

Whether this or some other solution—such as your suggestion of entirely open competition—would best alleviate what this writer believes to be a serious problem is, in his opinion, far less important than whether active thought is hereafter devoted to this matter by those who are ultimately responsible for the Law School's direction and development. A thorough airing of the various views held as to the proper purpose and membership requirements of the Law Review cannot but prove of substantial assistance to those persons in the full and proper exercise of their academic leadership.

Herbert J. Korbel, LL.B. '60

To the Editor:

* * *

There seems to me to be a logical fallacy in the jump from the state-

ment that grades are not the sole basis for evaluating ability to the conclusion that grades form no part of the basis for evaluation, or from the statement, which you imply, that competition should include matters other than grades to the conclusion, also implied, that grades are not the result of a valid kind of competition.

As human understanding increases and civilization broadens its horizons to include new values, there exists an unfortunate tendency not only to add additional criteria but to eliminate the time tested and proven traditional criteria. The two are not the same and their logical bases are not identical. To add an additional criterion requires two things—a determination of the validity and value

of what is being added and a consideration of the balance of the overall composite after it has been added. The elimination of an old criterion requires a determination either that it is invalid at present or that, in combination with newer factors, it presents a total picture which is invalid. Neither of these latter things has been shown, suggested or even hinted at.

May I respectfully suggest that, despite human error on the part of the faculty, grades are at least one of several valid and valuable indices of ability and accomplishment, and I should be in no hurry to see this standard discarded, either with respect to Law Review staff selection or with respect to graduation or honors.

Barry Golomb, LL.B. '51

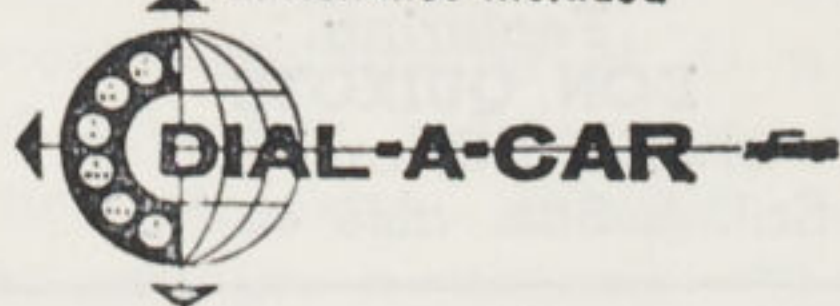
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Deans' Reaction

(Continued from page 1)

situation where people try to take law into their own hands, no matter how emotionally they may be involved, is never a sensible way to solve disputes," Dean Casner said. "Maybe the legal profession

has not brought home to the people the vital importance of having wrongs settled by judicial proceedings."

Agreeing with Chief Justice Earl Warren's statement in the Capitol rotunda that in some areas of America people have been urged to disregard the law, Dean Casner said "Any time it is clear that what you are doing is unlaw-

ful, you cannot justify your illegal means without undermining social stability."

Dean Griswold directed his remarks more toward the police treatment of the Oswald case. He said the weekend showed some of the best and some of the worst aspects of the American system.

Some of the worst were exhibited by lawyers or by people for whom lawyers are essentially responsible, he said. Specifically he criticized the Dallas police for "trying the case in the newspapers" so that Oswald probably could never have received a fair trial anywhere in the land.

He also criticized the police for scheduling their activities for the convenience of the press and not recognizing their duties to assure a fair trial and full protection to the defendant. Lawyers, he said, should lead the way in making police departments aware of these responsibilities.



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Letters to the Editor

Holtzman Hits Hoover

(Continued from page 16)

proximately thirty persons held in jail for their participation in the demonstration on August 8th and 9th. I myself talked to persons from Americus before leaving for Washington. I was thus not uninformed.

Elizabeth Holtzman, 2L

On Religious Freedom

To the Editor:

At a recent Harvard Law School Forum, both Professors Paul Freund and Mark Howe indicated that the first two clauses of the first amendment reinforce each other to protect freedom of religion. More explicitly, they said that the non-establishment clause serves to extend the free exercise clause by eliminating the danger of coercion inherent in an establishment of religion.

As one who has been trained in political philosophy, it seems to me that these two clauses, whatever strength they may add to each other, were drawn for two entirely different and distinct purposes.

The first clause, "Congress shall make no law respecting an establishment of religion . . ." is designed to protect the democratic aspects of our system of government. The additional words, "or prohibiting the free exercise thereof . . ." are the primary, if not the sole, source of the guarantee of freedom of conscience.

To explain the first clause it is necessary to enlist certain political assumptions. Democracy is a system of majority rule. But even more significantly it is a system of minority acquiescence in what the majority chooses to rule at any given moment. The work-

ableness of a democratic system rests ultimately on the willingness of minorities who have been outvoted not to resort to illegal means to achieve their ends and thus to destroy that public order without which there can be no rational decision-making by great masses of people.

The rule of absolute government neutrality with respect to religion is a rule designed to keep the religious issue out of politics so that the minority will never be outvoted on this issue, and thus never tempted to channel its emotional reaction toward disrupting public order.

The founding fathers were much closer to the Thirty Years War than we are today. They knew of the divisive and disruptive nature of religious controversies when carried into matters governing public policy. They realized that to allow even the slightest appearance of favor toward any religious denomination by government would be to invite acts against the orderly processes of government by those who felt outraged by inferred slights to their own creeds.

Mr. Howe has indicated publicly that he thinks the school prayer cases are trivial matters. In an absolute sense, he is certainly right. But the fact that these admittedly trivial issues can give rise to such outbursts of sentiment by aroused members of the public as we witness today is only additional evidence that any religious question is too volatile to be injected into

the politics of our national or state governments.

It was the belief of the framers of the Constitution that democracy, as a system of self-government, could not endure the division of the people over issues which are in themselves insoluble by purely rational means. The role of religion in our society is such an issue. Therefore, the first clause of the first amendment has been correctly interpreted by the Supreme Court as an absolute prohibition upon government initiation of that subject of controversy which in the history of the West has produced nothing save disorder, unhappiness and even bloodshed.

Harvard Hollenberg, 2L

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Letters to the Editor

Holtzman Answers Hoover Allegations

To the Editor:

In his letter of November 14, 1963, J. Edgar Hoover devotes several paragraphs to a discussion of a press conference which I held in Washington on August 12, 1963 and an interview which I had with two FBI agents a few days later in Albany, Georgia. Because there appears to be a serious misunderstanding of the facts, I feel compelled to reply.

1. Mr. Hoover states that at a press conference in Washington I displayed "three shirts" which were allegedly "stained with blood of victims of police brutality in Albany, Georgia." *In fact*, the four shirts which I showed to the press belonged to persons beaten in demonstrations in Americus, Georgia, not Albany.

2. Mr. Hoover adds that I was interviewed by FBI agents "relative to an allegation in a civil rights matter which proved to be totally unfounded." *In fact*, I was interviewed by FBI agents about

events occurring in Americus, Georgia on August 9, 1963 which I had mentioned at the press conference. Testimony given under oath before a three-judge Federal District Court in Americus on November 1st and 2nd, 1963 substantiates the allegations of police brutality in Americus on August 8th and 9th. In addition, fourteen affidavits filed in the same hearing fully confirm my statements. Furthermore, in a speech before the United States Senate this fall, Senator Harrison Williams of New Jersey described the clubbings administered by the police to teen-agers engaged in peaceful protest in Americus on August 8th and 9th. *Congressional Record*, p. 17115-17116 (Sept. 25, 1963).

3. Mr. Hoover contends that I "was not even aware of the identity of these alleged victims of police brutality." *In fact*, the blood soaked shirts were taken from the Americus jails by Mr. C. B. King, the attorney for whom I worked last summer. As he listed the names of the persons next to a description of the shirts, I was told the names of the owners of the shirts. When the FBI agents came to see me nearly a week later, I could not sort out in my memory the names of the particular individuals owning these four shirts from the names of the great number of persons beaten on August 8th and 9th in Americus. However, I told the agents that Mr. King had a list of these four specific names. These names were given to the FBI agents by Mr.

King and myself several days later.

4. Mr. Hoover writes that I had "absolutely no first-hand knowledge of the incident to furnish his agents." *In fact*, I related to the FBI agents the contents of a telephone call which I received from the Americus jail on August 9, 1963. During the course of the phone conversation, Donald Harris, arrested for inciting to insurrection, told me that he had been beaten by the police on the streets the night before. The Sheriff of Sumter County (Americus), who was standing next to Mr. Harris, agreed with his allegation.

I was not an eye-witness to the events occurring in Americus on August 8th and 9th, nor have I at any time indicated that I was. However, before going to Washington, I received a thorough account of the events from Mr. King who had spoken with numerous residents of Americus as well as ap-

(Continued on page 15)

Job Survey

What kind of job candidate is a law firm looking for? The RECORD has surveyed the views and opinions of firms across the country in search for an answer to this question. Read the RECORD next week for the answer.

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