

New York Meets Challenge of Gideon Case

By Louis J. Lefkowitz

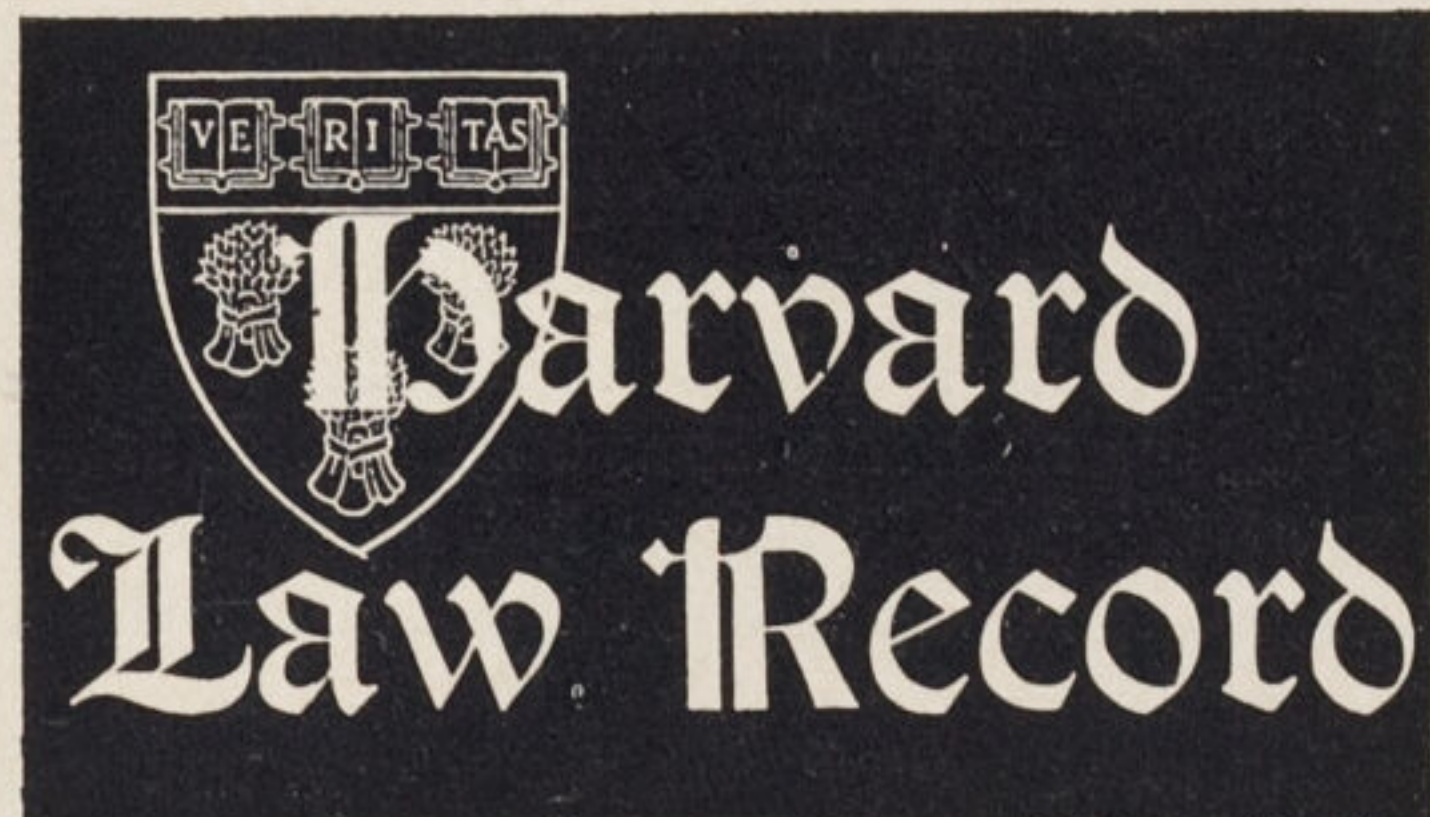
*Mr. Lefkowitz is Attorney General
of the State of New York.*

The Harvard Law RECORD has afforded me both an opportunity and a challenge to present for careful scrutiny what New York State has done within the past year to meet its obligations to the indigent.

This year our legislature passed, and Governor Rockefeller signed into law, a bill drafted in my Department which embodies our permissive, yet firm approach in this State to the responsibility to furnish legal representation in criminal proceedings to those persons accused of crime who cannot afford counsel. Cf. Chapter 878, Laws of 1965.

With the passage of this bill, provision for counsel for indigent defendants is now mandatory, blanketing all varieties of crime, both felonies and misdemeanors, and cover-

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America's Oldest Law School Newspaper

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FIFTEEN CENTS
NOV. 18, 1965

Toepfer to Leave HLS Post For Midwest Dean Spot

By Michael Lowenberg

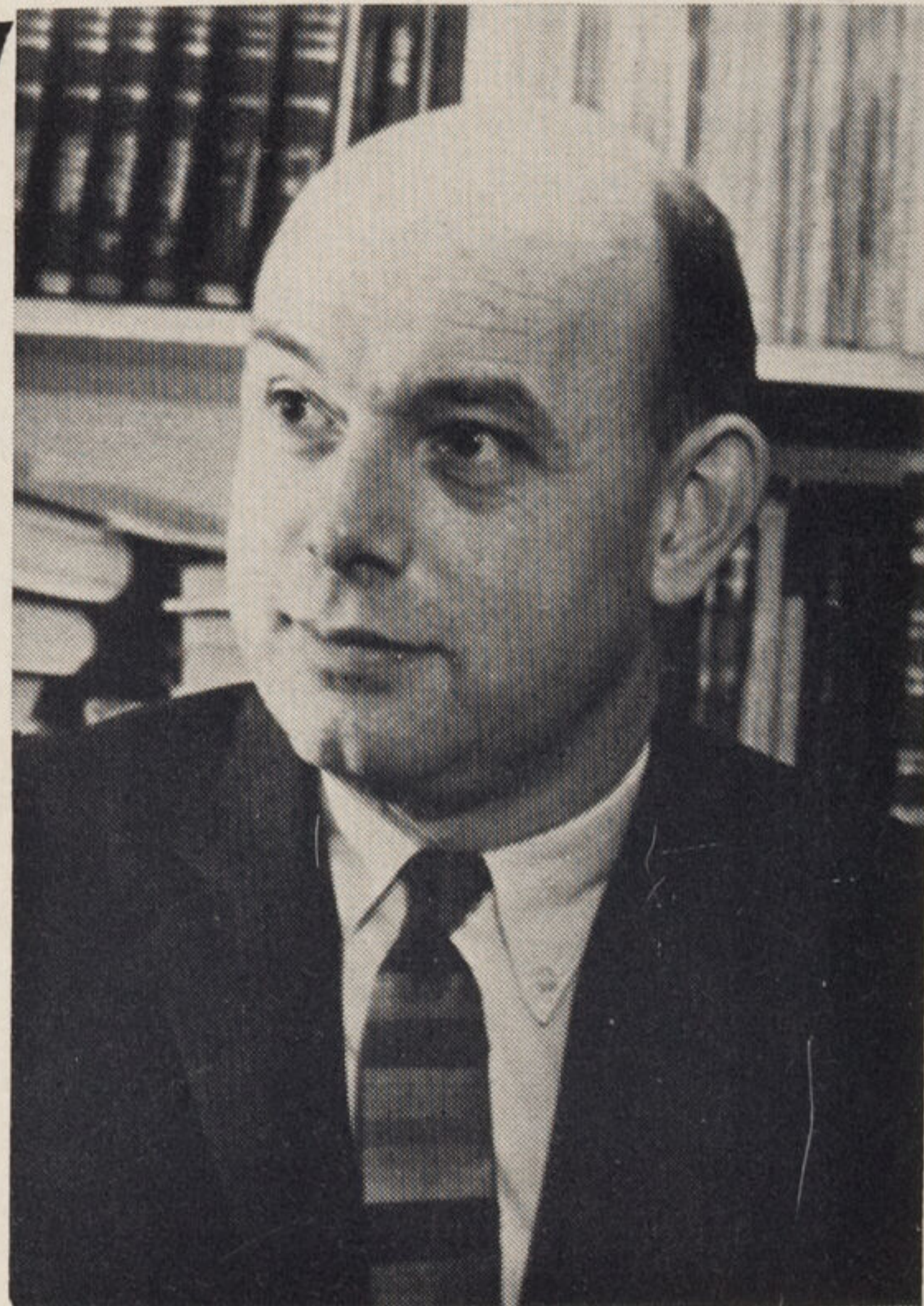
After 19 years at the Law School, Vice Dean Louis A. Toepfer will leave at the end of the academic year to assume the post of Dean and Professor of Law at the Franklin T. Backus School of Law at Western Reserve University in Cleveland.

Dean Toepfer's resignation follows closely the recently announced shifts of duties among the Law School's top administrative personnel as a result of the resignation of Secretary Russell H. Peck, which will also become effective in June (See RECORD, Oct. 15, 1965). Mr. Peck will become Clerk of the United States District Court in Massachusetts.

New appointments will have to be made to fill the administrative "gap" created by the departures of him and Mr. Peck, Dean Toepfer said. He feels that the Admissions program is a particularly "difficult and critical area" where new personnel are needed.

After receiving the LL.B. from Harvard, Dean Toepfer joined the administrative staff as Placement Director. He said that he intended to stay only for that year, but his plans changed. In 1948 he was appointed Assistant Dean, and in 1956 he became Secretary of the Law School. He has been Vice Dean since 1959, when he succeeded

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Dean Louis A. Toepfer

Dean Toepfer

(Continued from preceding page)

Professor Livingston Hall, who had held the post for 21 years.

"This is a kind of bitter-sweet event for me," Dean Toepfer said, "I like it very much and I will leave it with the wrench that comes from a parting like this. But I'm very excited about Western Reserve and its future. It stands on the threshold of growth and change."

Western Reserve is "a small school with a great promise," Dean Toepfer continued. He said that the whole University is caught up in a reorganization and there are "a great many exciting developments," including an expansion of the law faculty and a new building for the law school.

Although he will be both Dean and Professor of Law, Dean Toepfer does not yet know what courses he will be teaching in his new position. At present he is teaching a course in Admiralty which he describes as "the greatest course in the curriculum to teach. It's more fun than any other course," he added. "If people knew how much, they'd be fighting to inherit it."

Every spring, about six weeks before final examinations, the Toepfer and Bull Warren Ames clubs have traditionally convened for



"Do I perchance detect a subtle note of protest against Saturday morning classes?"

roast chicken and softball at Dean Toepfer's Applesauce Farm, in the town of Harvard, far out in the historic Massachusetts countryside. Applesauce Farm is now up for sale, Dean Toepfer said, but he, his wife and his five sons will not have to learn about urban living — Western Reserve will provide a new farm for them to live on.

Dean Toepfer's middle name is Adelbart, he revealed, and his new office at Western Reserve will be located on Adelbart Road — "so maybe it's been in the cards all the time."

Writing Program Underway

Applications for the Second Year Writing Program will be available at the Receptionist's desk in Langdell Hall starting November 29, and must be submitted to Professor Herwitz' secretary by December 10 at 2 p.m.

The participants for this year's program will be selected at random, but the applications submitted by members of Ames clubs which will compete in the semi-final rounds will be given low-priority.

Conscription Boss to Talk

Lieutenant General Lewis B. Hershey, Director of the U.S. Selective Service System, will speak at a Harvard Law School Forum on Friday, November 19, at 8:30 p.m., in the Lowell Lecture Hall at the corner of Oxford and Kirkland Streets.

As the head of the nation's draft administration since shortly after World War II, General Hershey has had the responsibility of meeting the greatly increasing manpower needs of the military services in the past few months.

The panel will include Rep. Donald J. Irwin, (D. — Conn.) a member of the House Armed Services Committee, and John Maher, a Regional Director of Students for a Democratic Society. Professor Philip E. Areeda will moderate.

Tickets for the program are \$1.00 and may be purchased at the Coop, the door, and at the Forum office at 23 Everett Street between 2 p.m. and 4 p.m. daily.

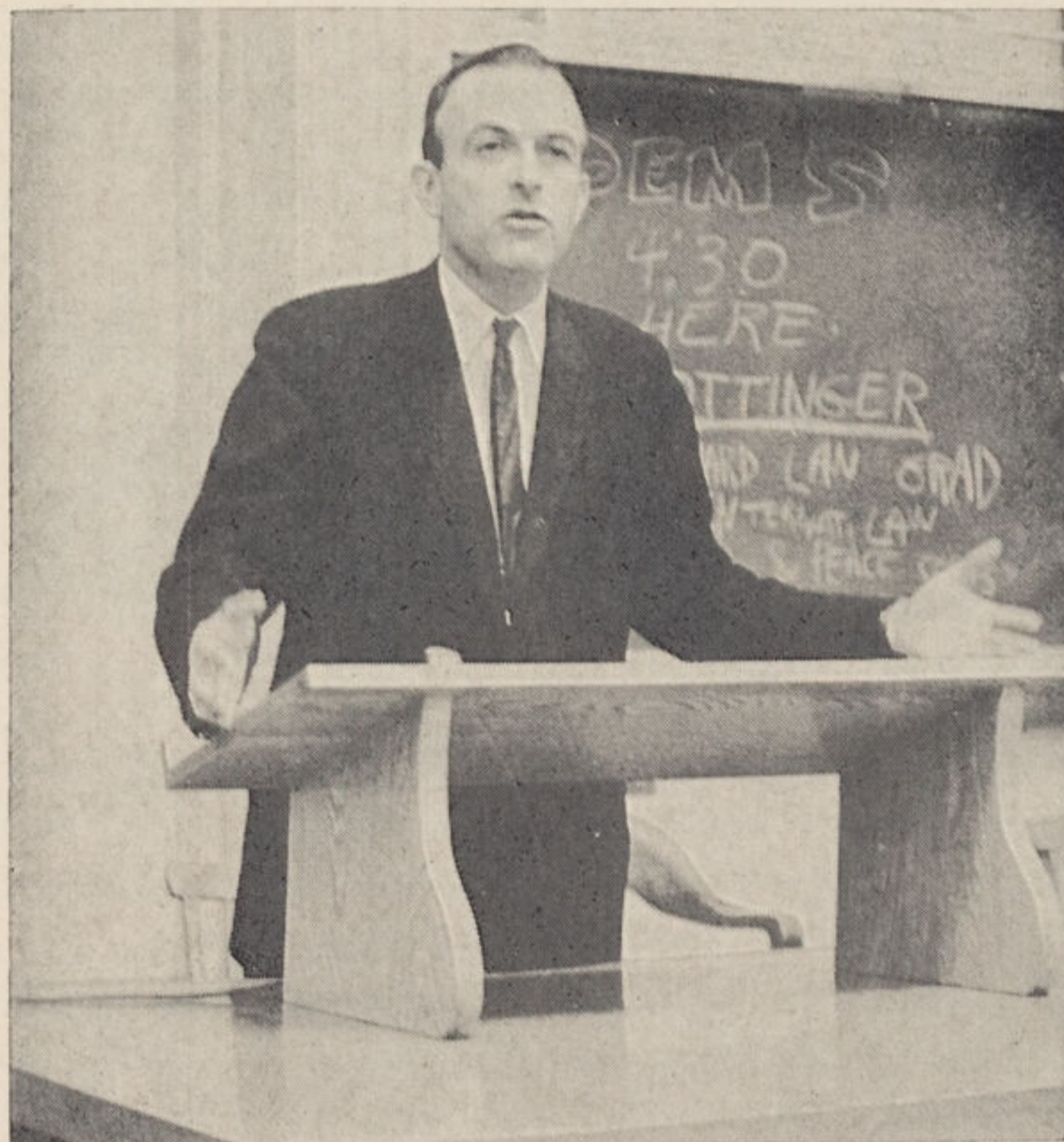
Worried third-year students who have been searching for loopholes in the draft law are urged to check their conclusions with Gen. Hershey during the question and answer period.

Ottinger Urges Popular - Level Foreign Aid

By Brian Sweeney

"We should not use our foreign aid to buy honeyed words from foreign military establishments," Congressman Richard L. Ottinger told a small gathering of Law Democrats on November 10.

Congressman Ottinger, who represents New York's silk-stockings Westchester County, maintained that because foreign



Rep. Richard L. Ottinger

governments are such "fleeting things, we should work directly with the people and try to encourage leadership on a very local level." Applying his experience as a founder of the Peace Corps, he called for a new approach to the foreign aid program.

"Everyone connected with foreign aid has a feeling of colossal frustration about it. They can't believe that it's doing any good. I am one of those who feel it is worthwhile, but that it needs a change of emphasis.

"We should work from the bottom up," he said, "and not hope that our foreign aid dollars will trickle down from the government to the people. We should let the people of a developing country help us to decide how our aid money is to be spent."

When the Peace Corps offered aid to a Peruvian mountain village, according to the

Congressman, the first thing they were asked to do was repair holes in the cemetery wall. It turned out that a well-built cemetery wall was a mark of status among the villages. After this task had been completed and the villagers' confidence in the Peace Corps established, more conventional tasks were easy.

Ottinger said that the success of the Peace Corps was largely due to the bad living conditions of the workers. Because they live the same as the people of the country, they gradually learn the most effective approaches to local problems.

"Many of our technical experts lack the patience to understand foreign customs. The disparity between *tiempo Norte Americano* and *tiempo Latin Americano* is frustrating, and our foreign aid people leave a country thinking that local businessmen are too inefficient ever to make progress."

In the question period, the Congressman said that "it might be a good idea if every young person could serve his country in some way, either in the Peace Corps or in the Army."

Richard L. Ottinger is a 1953 graduate of the Law School. In 1961 he left his Wall Street practice to become West Coast Director of the Peace Corps.

His disarming habit of doing the unexpected was demonstrated last November in the 25th Congressional District of New York. He is the first Democrat in several decades to be sent to Congress from one of the wealthiest counties in the country.

Ottinger practices an unpredictable brand of politics which was illustrated in a story he told to a few of the members. The story had to do with how he tangled with a local post of the Veterans of Foreign Wars last Spring — and came out on top.

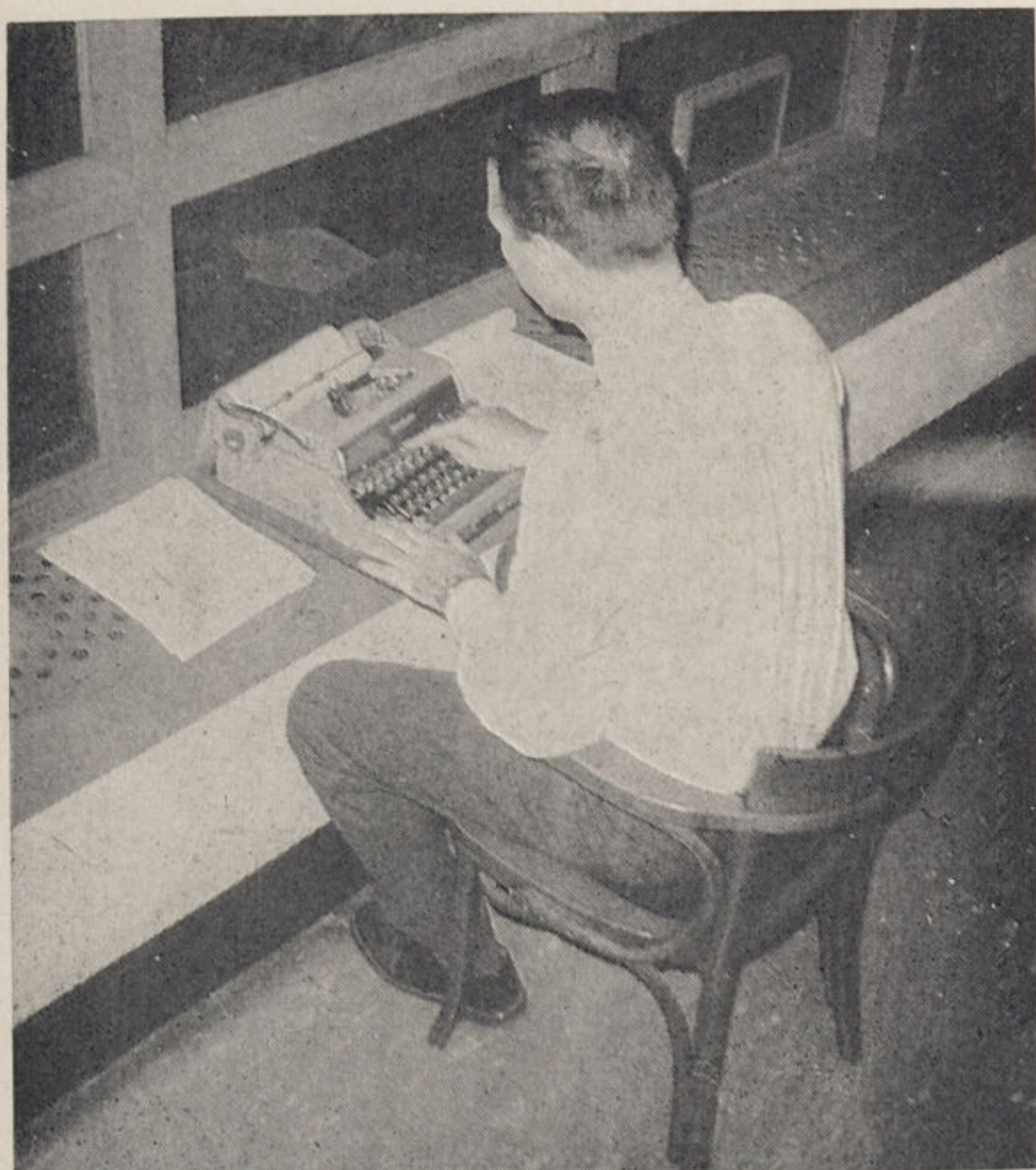
The trouble began when Congressman Ottinger voted against giving funds to the House Committee on Un-American Activities. One of a minority of about thirty Representatives, he explained that he was not opposed to investigation of alleged subversives but would leave the task to the

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Lights Out, Ames Halts; Many Take Breather

By Martin E. Robins

It was the night the inexorable obligation imposed by the Ames Competition's mechanical efficiency was totally defied; indeed it was the night, for most students, when legal studies were unexpectedly, and gladly shelved.



Typing Ames Brief In Corridor

The evening was Tuesday, November 9th, when this nation was struck by its greatest power failure.

The initial flickering of lights occurred at approximately 5:22 p.m. First the impulse was to curse the late-night grinds for overworking the power system. Then the 'incompetent' local power company became the target of growing annoyance.

As the startling news reports filtered in over a handy transistor, vague Armageddon-like images of regional paralysis began to form in the mind's eye.

Some were immediately undaunted; some were not. As one might expect, the Law School faculty maintained its presence of mind as it herded, grumbling and disbelieving into the Langdell corridors.

One professor is reported to have commanded the attention of all by tolling the

cities his transistor proclaimed had come to a standstill.

"Syracuse, Toronto, Buffalo, Rochester and yes, New York," he intoned. Then a dramatic pause. "Gentleman," he announced in all solemnity, "President Lemnitzer will address the nation in 30 minutes."

His efforts were received with deserving, and sophisticated appreciation.

Although the seemingly impregnable Ames competition was snafued, a good many first year students were too wary to rely on radio predictions of a six-hour blackout. The dormitories' corridor auxiliary lights were in operation and afforded the diligent and the "clutched" some weak illumination.

Others sized up the occasion's spirit more perceptively, by bunching the lamps so they could see their poker hands.

Those who had taken an early meal at Harkness took the darkness in stride, as the eating hall's emergency floodlights blazed. But chaos, of some sort, did develop when the library emptied quite suddenly and the dinner lines at Harkness queued "as far as the eye could see", one bat reported.

Although there were some who no doubt joined New York's Mayor-elect John V. Lindsay in contemplating the *res ipsa loquitur* aspects of the power companies' goof, most just enjoyed the breather.



Undeterred Student In Hallway

New Prof. Assists In Convict Rehabilitation

By Michael Lowenberg



Prof. Weinreb

Motivated by the conviction that "prisons have largely failed to rehabilitate," Assistant Professor Lloyd L. Weinreb has become involved in activities unique even among faculty members who characteristically do not confine their extracurricular legal interests to academic pursuits.

The Law School's new professor of criminal law is currently friend and adviser to about 60 men convicted of crimes in Massachusetts, more than half of whom are still in the Massachusetts Correctional Institution in Concord. Prof. Weinreb has also been encouraging the students in his Crime and Society seminar to make themselves available to recently released former convicts in order to help them adjust to the community.

He stressed that though a dinner invitation to an ex-convict may sound like a trivial approach to the problems of rehabilitation, when a person leaves prison "the first 60 days are the toughest," and many "small things" — a dinner invitation or a telephone number to call for advice — can help provide a much needed "sense of friendship and sense of community."

Prof. Weinreb received his LL.B. from Harvard in 1962. After serving as a law clerk to Chief Judge J. Edward

Lumbard of the United States Court of Appeals for the Second Circuit and to Supreme Court Justice John M. Harlan, he was employed as a special assistant in the Criminal Division of the Department of Justice and spent two months on the staff of the Warren Commission. Before coming to the Law School this year, Prof. Weinreb was a special Assistant United States Attorney in the District of Columbia.

Although Prof. Weinreb's interests are hardly restricted to the problems of corrections and rehabilitation, he believes that too little attention is generally given to this area of the criminal law process. "It makes very little sense to be concerned about the rights of an individual prior to conviction, and then largely to ignore his dignity as an individual after conviction."

Prof. Weinreb pointed out that recidivism statistics indicate that the corrections process is significant too because of its impact (or lack of impact) on crime. A large number of crimes are committed by former prisoners, and he believes that the prison experience in some cases actually serves to stimulate crime instead of to deter it. Convicts serving time for a "big score" often

Ottinger On Foreign Aid

(Continued from page 3)

House Judiciary Committee.

A few days before the vote, Ottinger had been invited to address a Loyalty Day parade on May 1. The V.F.W. Westchester Council, on learning of his heresy, rescinded the invitation.

Instead of apologizing, Ottinger, who served in the Air Force during the Korean War, wrote to the chairman of the county V.F.W.: "If your abrupt cancellation is intended to imply, as it would seem, that a Congressman disagreeing with your views about the committee is somehow unfit to parade at a Loyalty Day celebration, you dishonor the office, impugn the intelligence of the citizenry and demonstrate that discredited elements of the far right have seized control of V.F.W."

It turned out, however, that the trouble was only on the local level. The chairman of the National Americanism Committee of the V.F.W. delivered a stinging rebuke to the local chapter, and requested it to re-invite Mr. Ottinger or disaffiliate with the national organization.

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New Rulings and a Recognition of Need . . .

(Continued from page 1)

ing, most importantly, the time of initial arraignment through to final disposition.

In this respect the bill makes statutory what the courts are already requiring. The celebrated decision of the United States Supreme Court in *Gideon v. Wainwright*, 372 U. S. 335 (1963) rang with the principle that a defendant on trial for a serious crime, if he cannot afford a lawyer, is entitled to have one appointed to represent him. Although the holding in *Gideon* simply expressed what had been the law in New York State since 1881, there was an unmistakable air about the Supreme Court's opinion which presaged a change. Other decisions followed, making clearer the implications of *Gideon* for less serious crimes and for earlier and later stages than the trial.

Rights of Accused

Closely bearing on this line of cases is the emerging law concerning the rights of a person charged with a crime to be accompanied by counsel at a stage formerly deemed appropriate for incommunicado interrogation by the police.

In *Escobedo v. Illinois*, 378 U. S. 478 (1964) the United States Supreme Court held that the refusal of a request to consult with counsel during such interrogation prior to arraignment, coupled with a failure to warn accused of his right to remain silent, amounted to a denial of the right to counsel guaranteed by the Constitution.

These recent decisions of the Supreme Court of the United States which are evolving new standards of constitutional protection for persons accused of crime are reinforced and often anticipated by the high standards of our New York courts on the right to counsel.

The passage of our 1965 bill was surely aided by a recent ruling of our highest state court in what

has been dubbed the "Appleyard Decision" (*People v. Witek*, 15 N. Y. 2d 392, 259 N. Y. Supp. 2d 413), that even in the lower justices courts, a defendant must be notified of the availability of assigned counsel if he is unable to retain private legal representation. The court also reaffirmed that any waiver of counsel must be "intelligently and consciously" done.

The case arose out of the arrest



Attorney General Lefkowitz

of several teenagers for the petty theft of several dollars worth of apples. They were arraigned in the early morning hours in the home of a local justice of the peace, and they were not informed explicitly that counsel was available to them without expense, with the result that the court reversed their conviction.

We recognized that such a comprehensive obligation would overwhelm the existing voluntary institutions of regional bars. In less populous counties, the bar or its affiliated legal aid society would be inundated. Therefore, our problem was to establish for all regions of our state a means for coping with our new obligation that would

neither penalize the bar, nor circumvent the court's purpose.

New York State had become concerned with the problem of the indigent defendant well before the *Gideon* decision of the United States Supreme Court in 1963. We were aware that in New York City the proportion of indigency ran as high as 80% in some courts. And a survey taken in 1959 by the Association of the Bar of the City of New York in conjunction with the National Legal Aid and Defender Association revealed that in those counties of New York City where the Legal Aid Society was not yet operating, one-third of the assigned counsel had had no criminal law experience prior to their first assignment. But the fundamental fact that we apprehended at this early stage was the diversity of problems and the plurality of suggested solutions that existed within our entire State.

Few Rural Attorneys

In our rural areas we found a whole complex of problems: there were few attorneys, fewer still who practiced criminal law, and no sign that new and younger attorneys would soon appear on the scene to share the burdens of the older members of the bar; large, rural counties often had up to 75-80 justice of the peace courts scattered across the landscape, usually staffed by lay justices. Coupled with this diffusion of local courts (in some cases, they were as far as thirty miles from the nearest lawyer) was an apparent hostility to our program on the part of the justices of the peace and lower court judges. Either they felt they were not empowered to assign counsel—especially in cases involving only misdemeanors—or they refused to impose upon their legal colleagues the servitude of defending a drunk in the middle of the night.

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. . . Led to a Search for Diverse Solutions

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We found a recurrent insistence on the part of rural counties that their problems were qualitatively different from those of their urban brethren. Substantial apprehension existed that we might seek to impose some standardized, centralized master plan upon all our counties.

Urban Growth Problems

In our urban areas, the task of providing such representation had simply outgrown the capacity of the bar to meet it in a voluntary manner. Many such areas had experienced a sharp increase in population without any concomitant growth in the bar's population.

Meanwhile, we were coming to realize fully how excellent several of the existing systems were. One example that was well received in the Western sector of the State was that of Erie County. Here a system of voluntary, uncompensated counsel was proving more than adequate, once it had been put on an organized basis.

Old System Modified

Briefly, this system was a method of coordination and rotation grafted onto the traditional system of assignment of counsel. One administrator ran the program, and supervised an annual canvassing of the bar for volunteers and the distribution of names on a geographic basis to the judges of the county. Reimbursement of expenses was provided, and a special panel of the county's best criminal law practitioners stood ready to serve as consultants. Complementing this, was the idea of providing students from the local law school

to assist as research and investigative aides.

Other counties had their own variants. Nassau County had just adopted a plan whereby the county allocated funds to establish and maintain a public defender office, but vested control of this office in a private legal aid society, constituted as a membership corporation. This device was employed as a means to ensure the separation of politics from the practical administration of the office.

Tiny Wyoming County, with a population of only 35,000, had established a part-time public defender office.

Numerous other variations on these basic themes existed.

County Options

We took a prudent course, we believe, by specifying in our bill that each county shall select by December 1, 1965 one of several options for the provision of counsel on an organized basis.

Specifically, the alternatives open to the counties include: (a) the use of a public defender appointed by the County Board of Supervisors; (b) the use of a legal aid society, an independent agency supported by public and/or private funds; (c) the use of a voluntary plan of a bar association, providing for the rotation of assigned counsel and central coordination, to be approved by the Judicial Conference; or (d) any combination of these plans.

Our Department champions no particular system, and is concerned only with the effective implementation of whichever system the county feels is most compatible with its own situation.

A Pluralistic Approach

Thus, we have devised an approach that is essentially pluralistic; the latitude allowed is the crux of our system. Presently, we are at a juncture where we have erected the skeletal structure, but with deliberate restraint are allowing the individual counties to determine for themselves the particular configuration of the structure.

It is more than conceivable that some counties will experiment with several variations on a theme, before settling permanently on one.

Allows Experiments

We feel such experimentation is valuable and in the best interests of other counties as well. In several counties, to be sure, we have only sanctioned excellent and pre-existing systems, whose functioning we closely examined as models in drafting our bill.

All alternatives provide that

(Continued on page 16)

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The Loyal Opposition

The first casualty in any shooting war is often civil liberty. The suspension of habeas corpus rights during the Civil War and the confinement of Japanese-Americans during World War II are vivid illustrations that not even the United States, under such champions of liberty as Lincoln and Roosevelt, is immune from this doctrine.

The nation is again involved in a shooting war, this time in Vietnam, and once again civil liberty is threatened.

It is true that the actions of the Johnson Administration are not as blatant as suspending a constitutional right or imprisoning citizens without trial. But by its implication that those student organizations which oppose the war in Vietnam are Communist inspired, by its threats against members of Congress who question this aspect of our foreign policy, and by its promulgation of laws against symbolic displays of disagreement, the Administration endangers the basic constitutional guarantees that protect free speech and free assembly.

But the more lamentable aspect of the Johnson Administration's attitude against an open discussion about Vietnam is that the American people have been encouraged to equate dissent with disloyalty.

The propensity of Americans to silence those who disagree with the majority view under the guise of "patriotism" and "anti-Communism" is all too familiar in our history. The late Senator McCarthy needed only the Korean conflict to trigger his infamous witch-hunts. The recent activities in the New Jersey elections by certain Republicans, and particularly Richard M. Nixon, suggests that the present war could touch off another such era. Even Vice President Humphrey said recently that "the international Communist movement organized . . . and masterminded" the peace protests.

Whether the critics of the Administration's foreign policy are correct is not an issue. The questions are complex and often confusing.

Instead of accusing the dissenting minority of subversive motivations, the Administration should encourage the majority to recognize that those who disagree with LBJ are also loyal Americans.

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TONGUE 'N CHEEK

By Fenno

Last week I decided to interview the New York law firm of Gratz, Gratz, Gratz and Gratz, a typical Lower East Side firm of one partner, one associate, and two janitors.

The interviewer, a Mr. Gratz, smiled cryptically and asked me to sit down. "Now," he said, "your name is . . . er . . . Fenno?"

"Yes, sir," I replied truthfully.

"Is that your first, last, or middle name?"

"Yes, sir."

"You mean all your names are Fenno?"

"Yes sir. My full name is Fenno Fenno Fenno, but you can just call me Fenno for short."

"All right, all right. Mr. Fenno, can you please explain why you are wearing that mask across the upper part of your face?"

"Well, sir, you see my identity is supposed to be a secret, so whenever I leave the office I have to wear this mask."

He slowly pushed his chair away as though something were wrong. "I suppose," he said in a strangled voice, "you also have a white horse and a faithful Indian companion?"

"Oh, no sir! We do have an Indian on the staff, but he and I don't get along too well, since. . ."

"Never mind! Mr. Fenno, your resume says you have been in the army. Were any of your activities in the army of a legal nature?"

"No, sir. Most of them were illegal."

"I see. Mr. Fenno, why were you discharged after only two weeks?"

"Well, sir, it all started when I told the Sergeant one of his orders was *ultra vires*."

"I think I get the picture. Mr. Fenno, your grades aren't very high. Do you think you can practice law in New York with a sixty-nine?"

"Oh, yes sir! Besides, I have a keen ear for ambulance sirens."

"Okay, Mr. Fenno, do you have any questions about the firm?"

"Well, sir, do you take much time for coffee breaks?"

Letters to the Editor

1L Submits Correction of RECORD Udall Story

To the Editor:

John Spitzer's article of November 4th on Congressman Morris Udall's speech to the Harvard Law-Graduate Democratic Club contained a significant error in fact concerning Mr. Udall's proposals for reforming the seniority system in Congress.

Mr. Spitzer wrote that according to the Udall formula committee chairmanship "would be open to three members of highest seniority—the winner among the three being chosen by secret ballot by the rest of the committee members." This statement is incorrect upon two counts.

First, it implies that members of *both* political parties would choose the committee chairman from among the three members of highest seniority (who could be of either party). Actually, only members of the *majority* party would vote upon the chairman, who would be selected from among the three senior committee members of the *majority* party; the members of the minority party might similarly be chosen by the minority party caucus from among the three senior committee members of the minority party.

Second, the reported statement incorrectly restricts the vote for chairman to the members of that committee, whereas Congressman Udall's proposal calls for election of all committee chairmen by vote of the entire majority party caucus (with ranking minority members chosen by the minority party caucus). The principal rationale for

Congressman Udall's proposal is to make committee chairmen responsive to national rather than to local interests and pressures, and therefore caucus selection would appear to be a key element of his plan.

I believe that I am correctly recalling and construing the Congressman's remarks on this aspect of his plan, since they were made in response to a question which I raised from the floor.

Sincerely,

Herbert G. Johnson, 1L

'64 Missouri Bar Exam Results Sent by Grad

To the Editor:

The editorial on "Bar Examination Failures" in your issue dated October 28 would appear to accept the thesis that whatever bad happens to Massachusetts bar candidates must also happen *pari passu* to all others. Such is not the case in at least one state.

Of the four Law School graduates who took the Missouri bar examination for the first time, in 1964, all four were successful. While I have no information regarding the experience of Harvard Law School graduates in 1965, it is interesting to note that, in the same two years, approximately one-third of the law school graduates, of what is perhaps the best law school within the state, failed the examinations on their first attempts.

Very truly yours,

Roger P. Bernhardt, LL.B '64.

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Student Disputes Professor's Letter to the Editor

To the Editor:

I was very much disturbed by Prof. Weinreb's attack on Paul Branzburg's story of his night with the police in Roxbury. Prof. Weinreb seems to feel that for some reason a report of the impressions of a law student-reporter has no place in the RECORD.

Prof. Weinreb seems to fear that this story gives a distorted picture of the police in action. I believe there is very little danger that anyone will be so misled. The story is exactly what it purports to be: an account of the reporter's impressions of his experience.

The story was intended for the not entirely unsophisticated patrons of the RECORD. This audience consists largely of lawyers, law professors and law students. Such an audience is perfectly capable of understanding the necessary limitations of the report—that the officers involved may have been atypical or behaving atypically because of the presence of the reporter, or that the reporter may be an inexperienced observer of law enforcement. Such limitations are inherent in any report of this type and certainly do not destroy its value.

Prof. Weinreb seems to feel that Mr. Branzburg was unable to distinguish between "casual conversa-

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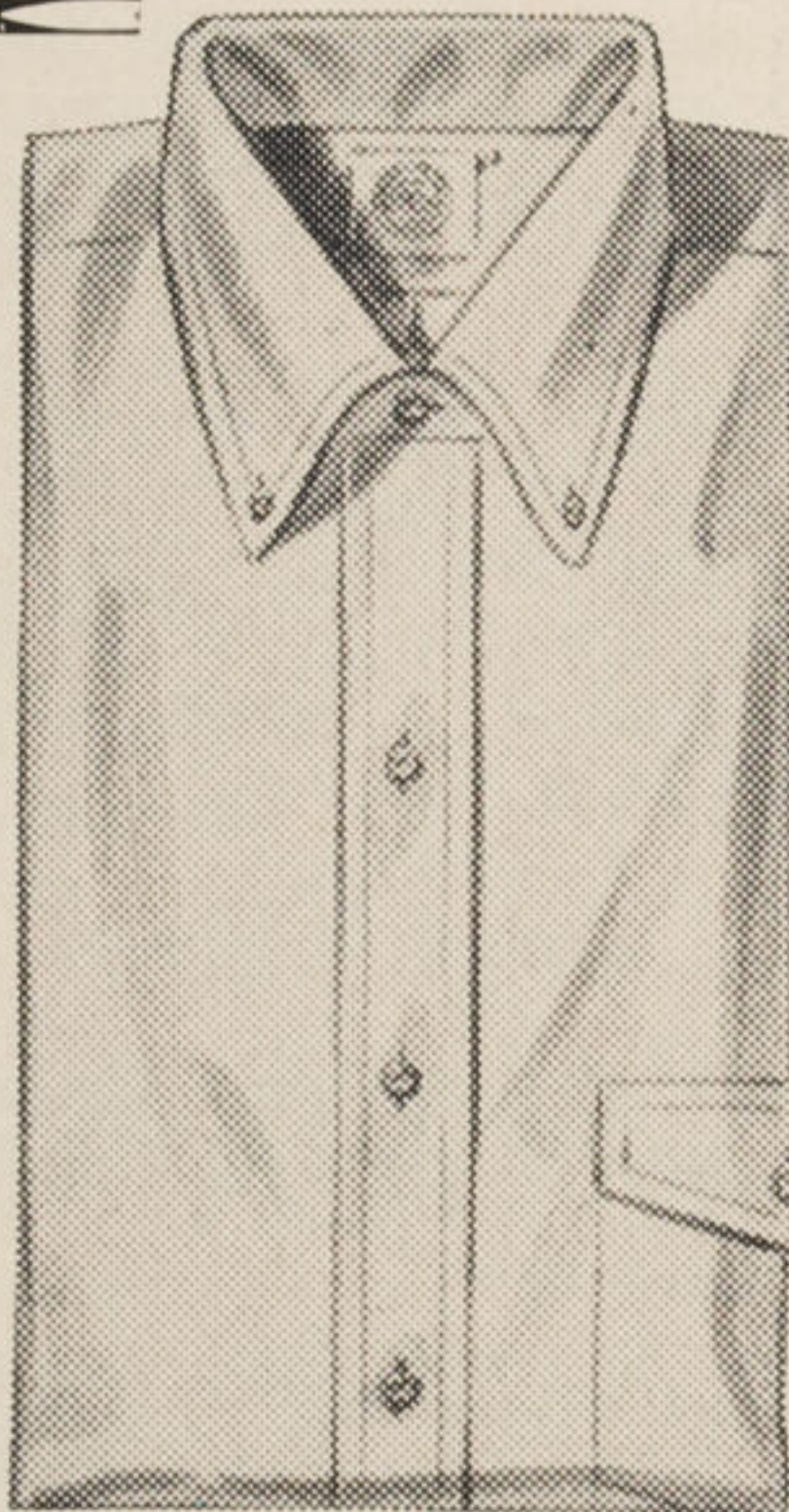
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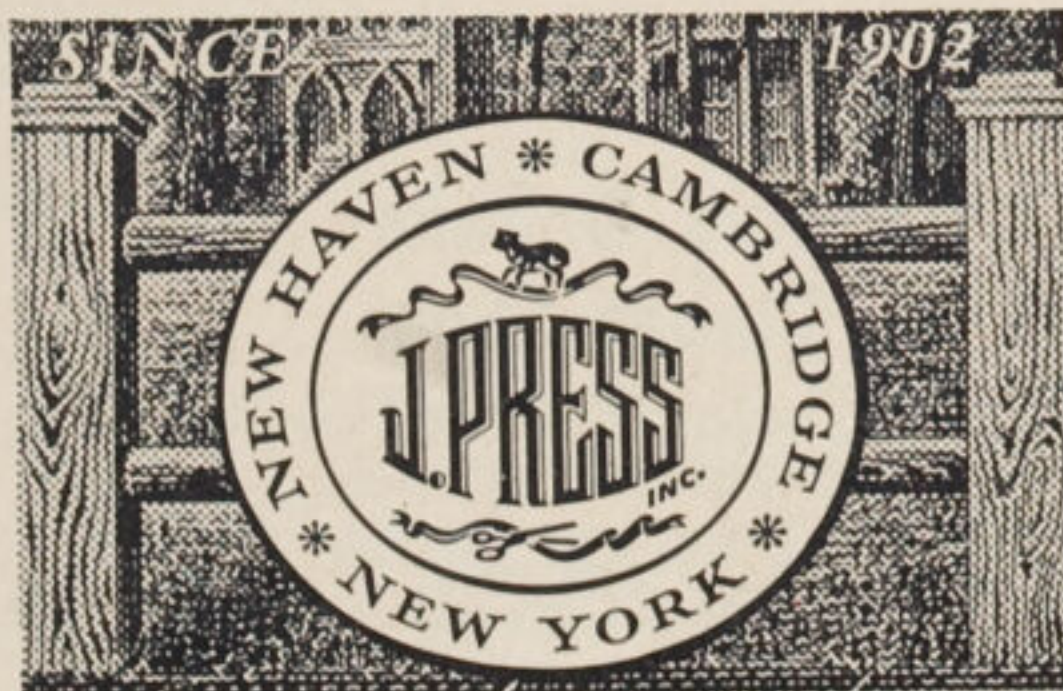
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LETTERS

(Continued from preceding page)

ion and badinage" and should have omitted such remarks from the story. These snatches of conversation contributed greatly to the picture that the officers were real people trying to do a hard job. After all, even law professors do not spend all their time discussing shifting fees and the Rule against Perpetuities.

Finally, Mr. Branzburg's article was a very welcome relief from the pervading atmosphere of theoretical law. It gave the readers a picture of some of the people and problems that rules of law are designed to meet. If Prof. Weinreb feels that this picture is inaccurate he should correct it by writing an article giving his impressions, supported by his experience. This would be more convincing than his mere personal attack on Mr. Branzburg.

In the meantime, may the RECORD continue a policy of printing articles more relevant and vital to the problems of the day than the usual reports of speeches and reviews of scholarly books.

Eric V. Mock, 3L

Graduate Student Assesses RECORD Feature Story

To the Editor:

In his story of Nov. 4th, Mr. Paul Branzburg paints a grossly unfair picture of the Boston Police Department, conveying, by the one-sided recounting of fragmentary utterances not placed in the context of their relevant facts, an impression that is misleading and inaccurate.

To take but one example: On the casual and probably jesting remarks of two men not directly concerned with vice control, he flatly asserts (p. 9) that the police tolerate prostitutes and "do nothing to close them up." He neglects to inform his readers that primary

(Continued on page 12)

Recent Book

Love, Life, Murder, and Paranoid Messiahs

Crime and the Mind. By Walter Bromberg. New York: Macmillan, 1965. Pp. 421.

By John Spitzer

Walter Bromberg analyzes the criminal as a tortured personality vainly attempting to find love by destruction, life by death and fame by extinction.

He is opposed to the classic conception of crime as being a premeditated and malicious act. This is the criminal viewed from society's standpoint and has little to do with a painfully human personality trying and failing to resolve conflicts which result in "an explosion of unbearable psychological tension"—the crime or murder itself.

Love - by - destruction

The psychiatrist, who served as a medical witness for the defense in the Ruby trial, asserts that Jack Ruby exhibited many elements of the love-by-destruction syndrome. Coming from a broken home, Ruby was never close to other boys and girls in his youth. As he grew up, he came to admire "the universe of force" as a means to make others grant him affection. The stocky, toughly-built man was known for his quick temper and frequently associated with gangsters where his ability to fight was properly recognized.

A Paranoid Messiah

After a series of 10 assault and battery convictions in Chicago, the paranoid elements of personality began to emerge. He desperately wanted to be liked, but his shady background and quick temper scared more than one friend away. Messianic tendencies developed in Dallas, where he wanted to help everybody but rarely did because of his narcissistic preoccupation with himself.

On the day of the shooting,

moods of "depression, anguish, fury, noble sentiments, righteousness, hopelessness succeeded each other." Bromberg testified at Ruby's trial that one of these strong emotions tripped off an electrical charge in Ruby's brain which plunged his movements into automatic behavior—a fugue state—with consciousness of behavior but without effective control. And hence the shooting by the would-be Messiah.

Ruby's Moods

The jury didn't buy it, but Bromberg's theory has received a good deal of support from Ruby's actions since the trial. In alternating moods of righteousness and despair, Ruby has three times tried to commit suicide. The psychiatrist says that murder and suicide are closely related (as evidenced by the fact that suicides go up when murders go down, and vice versa) and that Ruby's system is compulsively seeking affection through destruction.

An Eery Murder

In another fascinating section, Bromberg seeks to probe the eery motives of a seemingly normal Claude Girard who one foggy morning took his shotgun from the rack, went out on the road, stopped the first truck that came by, and calmly shot the driver.

The murderer made no attempt to flee and could not adequately account for the killing to the police. After Bromberg had made extensive psychiatric examinations and background studies, he reaches the conclusion that Girard had never really had any excitement in life and had sought a way out of his unbearable "emotional sterility" by a wanton murder. It was a painful example of the life-by-death syndrome.

Still another section is devoted to the analysis of murderers or

suicides who seek in death "final narcissistic perfection and unchallenged importance of the individual." These are usually extremely egocentric individuals whose whole world emanates from the desires of the ego. Such men are spurred on by an unconscious death wish to bridge the final gap to fame-by-extinction. Murder of another may be the symbolic murder of oneself.

These syndromes may also be applied to the less frustrated—or perhaps less daring—criminals. Alcoholics, sex perverts, and narcotics addicts are good examples of the love-by-destruction syndrome. The life-by-death syndrome may be seen in the mind of armed robbers or vicious persons seeking to compensate for a deep-seated inferiority complex. The fame-by-extinction syndrome is often manifested in the behavior of high-ranking corporate officials who commit business crimes in the belief that one's ego is the master of everything—a "God complex," if you will.

The terrifying thing about all this is how close the mind of the murderer parallels our own in the frustrations and achievements of everyday life. Bromberg at times even hints that criminals may be made of finer stuff than the rest of us: "Destruction, like love, touches the outer limits of human capacity. Its closest competitor in producing human satisfaction is the urge to create."

Learn From Crime

He thinks we have some things to learn from criminals. Rather than ignore and repress these fundamental elements of human nature, Bromberg urges that we accept criminal tendencies in ourselves and seek to sublimate them through tackle football, hot rod racing and less strenuous activities.

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LETTERS

(Continued from page 10)

responsibility for vice suppression lies not with the district "beat" personnel, but with the Vice and Narcotics Unit, a specialized detail operating from headquarters station. In point of fact, in 1964 539 persons were arrested for prostitution and commercial vice; in the first nine months of 1965, 472. The greater proportion of these occurred in Roxbury and the South End.

It seems obvious that nine hours spent with some five or six officers does not afford adequate basis for such conclusions, nor for casting the inference—which I think he clearly does—that the behavior of the men he observed exemplifies a standard of conduct accepted by their 2500 fellow officers and at least tolerated by the administration. From my observations over two months of fairly close association with administrators and line officers in various grades and stations, the picture he gives is un-

realistic and unwarranted. On balance, I have found the men to be honest, competent and sympathetic, sincerely dedicated to a terribly difficult . . . job . . .

To criticize the article is not to condone police impropriety; I condemn it, as would any responsible lawyer—or responsible police officer, including those in Boston. Their efforts to professionalize police practice—in which surely this law school should stand ready to help—are not aided by sensational reporting which ignores pertinent facts and throws selected quotations in a light most pejorative to the officers, omitting any positive aspects of their conduct . . . The story retards dialogue between police and gown, as it were, and I think does both sides an unfortunate disservice.

Sincerely yours,

Aiden R. Gough

Fellow in Law Teaching
Harvard Law School
Assoc. Professor of Law
Univ. of Santa Clara
On leave 1965-66

Editor's note: Mr. Gough has quoted Mr. Branzburg out of context so as to seriously misrepresent his summary of what Roxbury police said about prostitution.

In the same paragraph from which Mr. Gough quotes, it was said that "the commissioner will get a complaint about a particular center of prostitution, and then the police will have to crack down on that operator."

The writer was not talking about "police impropriety," but rather about policemen who were reluctant to enforce prostitution laws because they honestly believed that it "should be legalized, with provision for mandatory weekly health examinations."

Mr. Branzburg also recorded that he was told that the police enforce the law against prostitutes who set up their customers for robbery.

Inasmuch as Mr. Gough did not accompany Mr. Branzburg to Roxbury, we are mystified by Mr. Gough's charge that certain "pertinent facts" were ignored.

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Columnist Foils Star At Dramatic Trial

By C. Richard D' Amato

Before a capacity audience of ever-group-worked 1L's, last Wednesday's Model Trial jury handed in a verdict awarding a cool \$25,000 to Vicki Press, blonde, eligible columnist for the *Langdell Daily News*, for exposing national film

stimulated by an article by Miss Press herself only two weeks earlier, saying that "despite the great publicity campaign concerning Craig Bilder's ability as a daredevil, there is a rumor going the rounds that there is at least one scene in his most recent movie in which he did not appear."

On cross-examination, Miss Press admitted that her "rumor" was based solely on information given her by Lockwood Heath at the Blue Pelican nightclub after they had seen the movie together.

"Is it your usual practice to publish rumors in your column?" asked Mr. James P. Lynch, Jr., of Nutter, McClenen & Fish, attorney for the

Mr. Facher asked: "I assume you have seen yourself in *Midway*?"

"Many times," answered Bilder. "How many times?"

"At least a dozen. Probably more than that," smirked Bilder.

The case finally turned on whether an offer was in fact made by Artcraft, and if so, whether Miss Press had fulfilled the terms of the offer.

Mr. Lynch's persuasive summary was an important deciding factor, but it is probable that the jury was simply rewarding a *femme fatale* for her *coup d'etat*.

Criminal Mind

(Continued from page 11)

(Perhaps even a "vicious" attack on the materials of a casebook?)

In any event, the psychiatrist sees immediate need for some reforms in the presentation of crime and violence on television. Most programs now present violence for violence's sake which has the effect of stirring up aggressive emotions in the audience and sometimes inciting a criminal act.

Recognizing the futility of exhortations against crime "with words and sermons," Bromberg maintains that the "personal, dramatic nature" of the criminal act itself is the best means of educating a society. He asserts that criminal acts could be used this way if programs would de-emphasize sheer violence in favor of "probing the psychological depths of the character portrayed."

Ideally then, crime shows on television would become the 20th Century counterpart of Greek tragedy. After living through the anguished emotions of the humanized criminal for half an hour, a great number of people should be able to achieve the catharsis characteristic of classical tragedy.

Bromberg stresses that this approach is more effective than any number of depth interviews, Rorschach tests, and tranquillizer palls.



Attorney Lynch and Craig Bilder

star, Craig Bilder, as a phony tinnhorn.

The controversy in *Press v. Artcraft Pictures* centered around an advertisement appearing in the *News* stating that "Artcraft Pictures, Inc., will pay \$25,000 to anyone who can prove Craig Bilder is not the one who performed all the daring feats of heroic Jack Lawson in the magnificent production, *Son of the Midway*."

Miss Press sued for the bundle, submitting proof that Lockwood Heath, a stuntman, and not Craig Bilder, had done two of the feats.

Artcraft, in defense, contended that Heath did only one of the stunts, a tightrope scene, which was not daring because it was done by trick photography, and that the advertisement was not an offer but a publicity stunt.

The advertisement had been

defendant.

Hesitation — then a booming, self-righteous "Yes" from Vicki.

Lockwood Heath, a rather dull stuntman, nearly broke his neck tripping over the steps leading up to the witness stand. Rather slow at answering questions, Heath apparently irritated plaintiff's counsel, Mr. Jerome Facher, who finally asked: "You are Lockwood Heath?"

Craig Bilder, the famous star, caused a great commotion in the courtroom when he entered just before the court reconvened after recessing for dinner. Strolling in resplendent in a handsome blue blazer, dark glasses, and a snazzy ascot, Bilder's great personal attraction led some 1L's to hound him for autographs.

Regarding the disputed scene in which both Bilder and Heath claimed to have done the final take,

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"WE KNOW AN EASIER WAY TO MAKE
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Friends Speaker Slashes U. S. Viet Policy

By Frank R. Parker

"The consensus of the diplomatic community in Saigon is that if elections were held in all of Vietnam, Ho Chi Minh would win," related Russell Johnson, who has just returned to the United States from four years in Southeast Asia.

Mr. Johnson is the New England Peace Education Secretary of the American Friends Service Committee and was the first of a series of speakers to be sponsored this year by a new law school group, the Vietnam Study Committee. He spoke at the Study Committee's first meeting on Wednesday afternoon, Nov. 10, in the Wheeler Room of Holmes Hall.

Communist parties, which have "come to grips with the problems of the people of Southeast Asia" have "won the right" to leadership in Vietnam, he said.

American presence in South Vietnam, the speaker affirmed, has kept in power military dictatorships, such as that of Air Vice-Marshall Nguyen Cao Ky, which "couldn't last two days without American support." In addition, the influx of U.S. wealth has meant the "accentuation of corruption of many kinds."

"Although Vietnamese generally have no confidence in the American-supported Saigon regime," Mr. Johnson explained to his audience, "many elements, particularly Buddhist leaders and Roman Catholics, don't want us to leave." They continue to be hopeful that a progressive, non-Communist solution will evolve.

Mr. Johnson argued that this may have been possible when former President Ngo Dinh Diem was overthrown, that present American escalation has made a National Liberation Front (NLF) government the only other alternative. Contrary to American public opinion, the NLF includes non-Communists, he said. And it is not so invidious that a young Quaker community help organization, the American Volunteer Service, has been able to work unharmed in NLF-controlled areas.

The Quaker official pointed out "a very important parallel between what we're doing in Vietnam and the French action in Al-

geria." As our war continues, he ventured, revulsion within the army to our methods plus the alienation of American intellectuals may result in a change of policy.

Weinreb On Corrections

(Continued from page 5)

have the highest status among the other prisoners, he said.

According to Prof. Weinreb, Kant's Principle of Retribution is a theory often applied in this country, in practice if not in theory, to determine standards of punishment. Kant's right of retaliation holds that the evil a man does should be the measure of the punishment inflicted on him.

Although "there may be good reasons to punish and there may even be good reasons to send somebody to prison," Prof. Weinreb believes that Kant's view of justice "affords no reason to punish anybody."

One of the chief problems, he emphasized, is creating a sense of public responsibility for the correctional system. Prof. Weinreb added that the attitudes of most law students about the corrections process are "not terribly different from the views of the public generally: at best uninformed and probably misguided." He believes that the students have insufficient information about and exposure to the problems of the criminal law and corrections, and that the Law School should make more of this available.

Prof. Weinreb's seminar has visited the state prison at Concord and a hospital for the criminally insane in Bridgewater. In addition, the group has met with Mr. Joseph F. McCormack, chairman of the Massachusetts Parole Board.

The United States District Court in Boston recently appointed Prof. Weinreb as Reporter to assist in the re-codification of its rules.

Prof. Weinreb also teaches a section of Criminal Law and will give a third-year course in Criminal Practice and Procedure next semester. He is married and enjoys tennis, squash, and skiing. Mrs. Weinreb teaches French and French literature at Harvard.

Lefkowitz

(Continued from page 7)

counsel shall be compensated. This we consider the requisite of any intelligent system, both because its omission would place an inequitable burden on the smaller bar, and because we were apprehensive that a large-scale system of uncompensated counsel might jeopardize the quality of legal representation.

It would be sadly ironic if the Supreme Court's *Gideon* decision, motivated by a desire to bulwark our adversary system of justice and ensure the equality of the legal antagonists, should lead to any diminution of the quality of representation — by overtaxing the resources of the Bars. In determining the amount of compensation, we have been attentive to the guidelines laid down in the Federal Criminal Justice Act of 1964.

Complementing our bill, the legislature has also enacted a law permitting law students to engage

in specified, limited forms of legal assistance to the indigent in order to alleviate the load on the bar.

The argument that the failure to maintain minimum standards of due process through some program of legal assistance would prove costlier by far in retrials and other litigation than the expense of any organized system has proven itself effective in our many discussions with County Boards. Thus, once the courts determine that the rights of the defendant have been prejudiced, convictions may be upset, *habeas corpus* and *coram nobis* petitions sustained, and costly retrials required.

Yet this argument from practicality must not obscure the essential point; we cannot be reluctant or diffident in assuming this new obligation that the courts have handed us, if we are seriously committed to preserving the vitality of our adversary system of justice.

An adversary system of justice necessarily presupposes the equality of its antagonists. Only from

such an assumption does it dare to hope that justice will emerge from the clash of intelligent, fully committed partisans. And yet studies have shown that perhaps over one-half of those accused of crime either cannot afford counsel or waive it without recognizing the significance of their act. In these cases, we observe not an adversary system, but a lone individual confronting a highly efficient monolith.

The Supreme Court's *Gideon* decision strengthens the proper and adequate exercise of the defendant's rights and the attorney's function in the adversary system.

What I have tried to stress in this article is the ramifications we have had to consider in our process of responding to the Court's new edicts. My hope is that I have been able to illustrate why we in New York have declined to take a centralized, standardized approach in the form of one uniform system that all must adhere to, and why we consider such an approach essentially arbitrary.

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