

# HARVARD LAW RECORD

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FIFTEEN CENTS

## Crime in Streets Hits Harvard

By Richard Hoffman

Three Hastings Hall residents got a close view of "crime in the streets" last Friday night, when six local ruffians jumped out of a white Corvair on Massachusetts Avenue behind Hemenway Gym and attacked the law students.

James S. Bryan, Henry Chatham and Frank Martin, all 1L, were walking back to the Hastings fifth entry at about 11:45 p.m. when they saw the car, which was careening as it might if the driver were drunk, pull up near them.

Two teenagers got out, one brandishing a knife, and both threatened the three students. Martin fled to summon the police. As he left, the two locals went after Chatham, who was walking at the time about 20 feet ahead of Bryan.

Chatham figured he could handle the two, but realized he was in trouble when he noticed the knife and reinforcements emerging from the car. He was pushed to the ground and was mauled all over the face. He will require a nose operation. Bryan suffered lesser injuries to the face.

Released from the infirmary Monday, Chatham joined Bryan and Martin at police headquarters yesterday in an effort to identify possible suspects. Police have located a car which fits the description given by the victims, with Massachusetts license plate Y96-196.

The attack wasn't an unprecedented one. The three law students pointed out that another resident of their entry was jumped by eight hooligans in December when accompanied by a friend walking from Harkness to Hastings. Another student living in the same entryway says he was set upon when leaving a mixer at Harkness in the fall.

Friday's incident spurred William L. Bruce, secretary of the Law School, to inform authorities of the school's concern. Last fall, a Harvard undergraduate was beaten up outside the Waldorf cafeteria in Harvard Square.



John Harris

Intramural basketball gets new refs after controversy erupts. Story, p. 5.

## Law School Girls Feel Rejected

By Kevin Kane

Judy Gilbert, a 2L who interviewed firms in New York, Los Angeles, and San Francisco, sees several causes for the reluctance of law firms to hire women. In her opinion, a lack of experience or bad experiences with women lawyers, fear that clients will not accept women (especially in business matters), expectations that a woman will marry, have children and then quit, and the traditional view that a woman is too emotional for legal work and "belongs in the home" are major causes.

As more and more women seek

a legal education, the problem of women lawyers being unable to find as challenging and rewarding jobs as men becomes greater.

Miss Gilbert noted contradictions in the behavior of firms, however. For example, although one objection is that women are too emotional, firms that hire women generally give them work in criminal law, divorce, estates, and other areas which are more likely to touch upon human emotions. On the other hand, women generally aren't accepted in the more unemotional, business areas of practice.

(Continued on Page 3)

# Nader's 'Raiders' Plan Greater Invasion

By Ronald Patterson

Nader's Raiders are preparing to descend on Washington in greater numbers this year. The Raiders are a group of law students who, under the direction of Ralph Nader '58, the consumer crusader, investigated the workings of the Federal Trade Commission last summer.

Last year's Raiders included Bob Fellmeth, 2L, Will Taft, 3L, and Andrew Egendorf, 1L. They hope that increased numbers of students will be able to investigate this summer and produce even more spectacular results.

In a 185-page report released early this year, the investigating law students were extremely critical of the FTC. The report charged that "alcoholism, spectac-

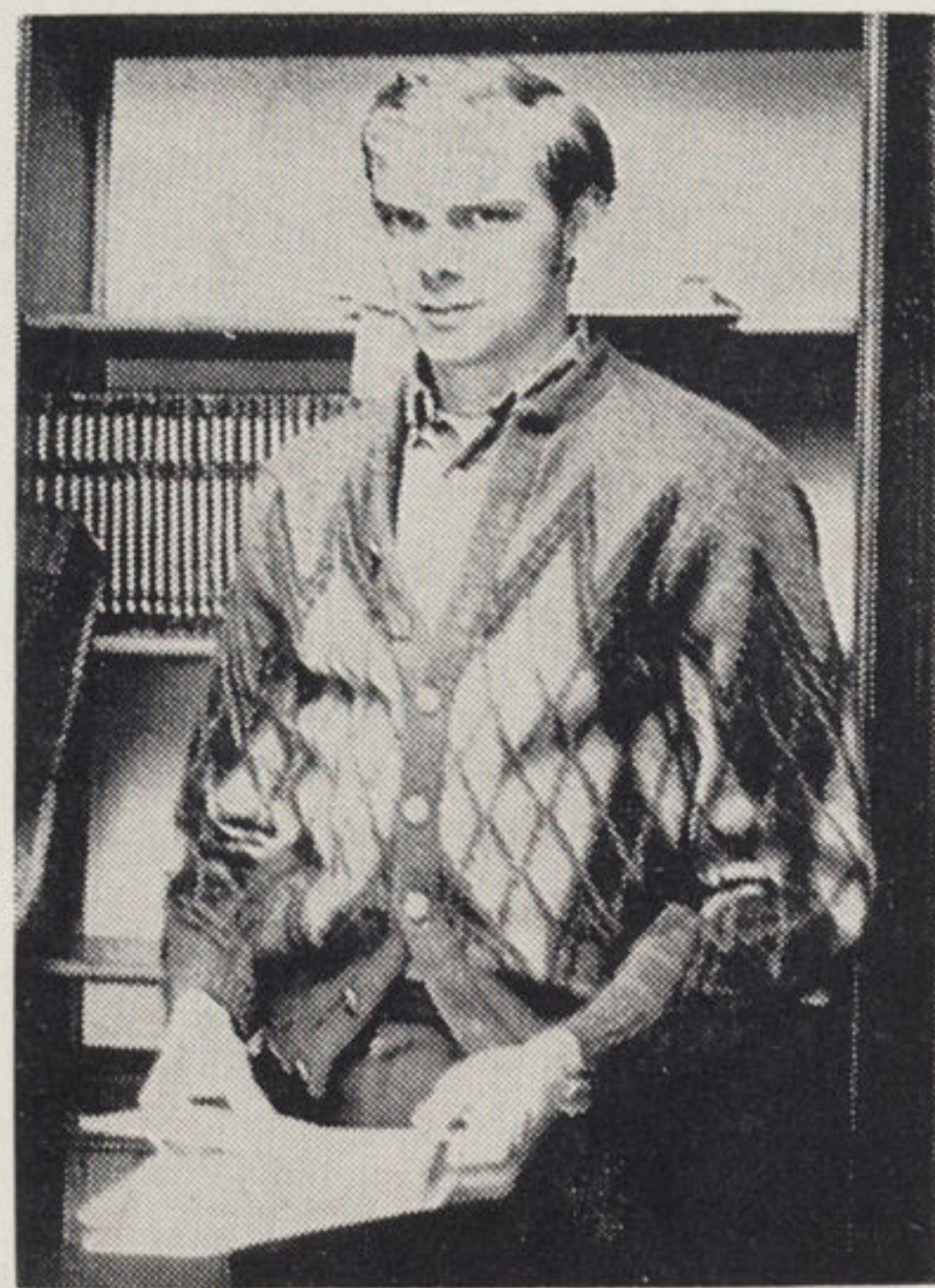
and persistently deceptive" claims by manufacturers of products from analgesics to toothpastes.

The full report will soon be published by Dial Press.

Fellmeth described next summer's work as, "investigating corruption, incompetence, and a failure of Congress to provide the legal mandate to deal with the problems."

Citing problems which will be encountered by the investigators, he said, "the atmosphere in Washington is one of pervasive and almost total boredom. There is a dearth of this kind of investigative activity. And yet it is undoubtedly the most efficient and effective way of accomplishing change. Specifically, it involves prodding the already powerful forces in the Federal Government into the solution of problems which have long been within their potential jurisdiction."

This summer, the researchers are planning a greatly expanded program which will examine not only the FTC but will move into the area of environmental prob-



Howard Sweet

## Robert Fellmeth

lems as well. To this end the group has applied to ten foundations for financial support of the proposed project.

Applications are now available at the Civil-Rights, Civil-Liberties Committee Office for Harvard Law students who are interested in working as investigators this summer. At least ten positions are open.

## FTC: \$27,000 Welfare Cases?

ular lassitude and office absenteeism, incompetence by the most modest standards and lack of commitment to their regulatory missions is rampant at all staff levels."

The report further found that the "FTC is a witness to a phenomenon of government that can, at best, be described as sinecures, at worst, as \$27,000-a-year welfare cases."

One of the results of the decline of the FTC has been the downward spiral of deceptive practice complaints. The total number of cases declined from an average of 129 in 1963 and 1964 to 27 for the first months of 1968. The report blamed FTC Chairman Paul Rand Dixon for the current plethora of unchecked abuses, which include "blatantly

## Air Force Boosts J.D. Status

The U. S. Air Force has recently changed the J.D. rating to give it preference over the LL.B. degree, but there's no wage difference.

Judge advocates, up to several months ago, held an "N" rating, equivalent to a master's degree plus thirty hours. Now, under the new ruling, LL.B.'s remain at the same level. Those Judge Advocates who hold the J.D. will be coded as "P" rating, corresponding to the doctorate level.

In a call to the Defense Department, The RECORD was informed by a colonel there that, "We think

the J.D. ought to enjoy the same status and be on the same professional footing as those who hold M.D.'s or degrees in dentistry."

Asked whether this discriminated against the LL.B., the answer was, "No. There is very little to the rating difference except professional prestige. But because there is a rather widespread movement for law schools to award the J.D., we believe eventually nearly all judge advocates will enjoy the same rating. We hope that more and more will do so. The difference is prestige only, not promotion or pay; yet, it is a question of status."

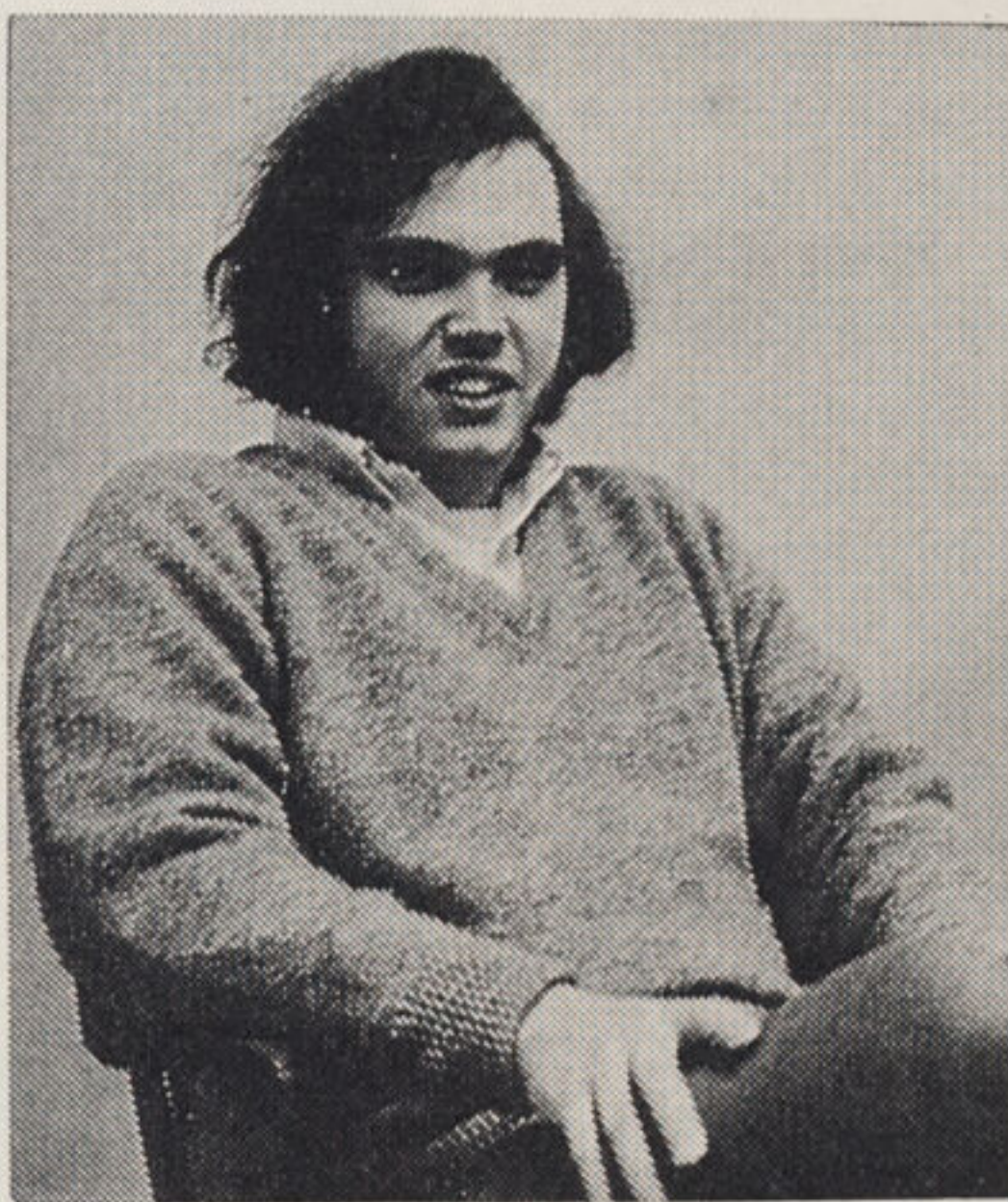
# Student Bar Association Becomes Radical

By Ronald Kadden

The Student Bar Association, thought dead by many, has been reincarnated. The new SBA, run by a group of 1L's headed by David Rockwell, is radical in outlook—despite the fact that it remains affiliated with the American Bar Association. Its purpose, according to Rockwell, is "to present views other than moderate or liberal" and to stimulate discussion among radicals, liberals, moderates, and conservatives.

One such stimulus is the Student Bar Association Newsletter. In addition to announcements of the organization's activities, the Newsletter contains editorials on such subjects as ROTC on campus and student participation in decision-making at the Law School. The Newsletter has also supported the J.D. and a fund-raising drive started by a group of Harvard teaching fellows to raise money for a black farmer's co-operative in Mississippi.

Activities planned by the group are designed to encourage discussion. For example, several proposed debates are under con-



David Walsh

David Rockwell

sideration. One remote possibility would pit Paul Krassner, editor of *The Realist*, and Strom Thurmond or J. Edgar Hoover. Another proposal would match a member of the American Bar Association with a member of the National Lawyers Guild, a radical group composed of approximately 1000 lawyers and 200 law students.

The association has already had two speakers from the Lawyers Guild: Charles Gary, who has

represented Eldridge Cleaver, and William Kunstler, attorney for Rap Brown.

In addition to speakers, the group sponsors films. Last Tuesday, two films produced by the Newsreel were shown: "Columbia Revolt" and "139-X." The latter deals with the controversy over Eldridge Cleaver's planned course at Berkeley. A film festival is being planned which will include American and foreign classics.

Despite its radical emphasis, the bar association hasn't abandoned its traditional functions. If interest is sufficient, there will be court and prison tours. In addition, the group is sponsoring a speaker from the California Bar Review Course and is planning to establish, within the structure of the existing association, an affiliate of the New York bar association.

In order to promote dialogue, the Student Bar Association is seeking to add members of every ideological bent to its current membership of about 120 first year students and an indeterminate number of members from last year.

## Girls Charge Firms With Discrimination

(Continued from Page 1)

Geography also has something to do with the problem. Miss Gilbert feels that San Francisco firms, with an old industrial and financial practice, are the least open to women lawyers. New York and Los Angeles with more growth and a greater need for good lawyers, regardless of sex, present better opportunities. With the draft, teaching, and clerkships syphoning off more men, and with law schools increasing their admission quotas of women, she feels that the situation is improving. Her advice to women: "ease in gradually and let them see you're competent."

Another 2L thinks that Boston is possibly the worst city with regard to discrimination against

women. She feels that most interviewers are polite but not particularly interested. When asked in one interview if she planned to have a family, she answered, "Yes, eventually." The response was, "Well, we're interested in serious lawyers."

Washington is a city which one female 2L thinks is relatively free of discrimination. However, her experience with other cities was not so fortunate. She said that one San Francisco firm when asked if it had any women associates replied, "Of course not." Another firm informed her that "We already took our one woman."

Grades, in her opinion, are a much less important factor since

many firms do not take women seriously. She asserts that men with lower grades received offers from firms that did not even invite her back for further interviews. Her experience was that many firms regard hiring women as simply "adding to their furniture."

One person who has received a number of these complaints in writing is Miss Eleanor Appel, Placement Office Director. Miss Appel feels it is quite clear that women's salaries do not go up as fast as men's. However, in her opinion, firms are usually not reluctant to hire women. Rather, they tend to hire women with the expectation that they will not stay on; the difficulty then is advancement.

# Legislation Journal Wins National Notice

By Ronald Patterson

The *Harvard Journal on Legislation* is beginning its sixth year of publication, having grown from a sub-group of the Legislative Research Bureau into what its current editor-in-chief, Tom Gallagher, 3L, terms "a full scale law review operation."

The journal was founded six years ago as a part of the Legislative Research Bureau, and was almost solely devoted to printing and reviewing legislative proposals drafted by the bureau. At its inception, the journal was the only recognized group of its kind besides the three established honoraries. It has now become an entity in itself, although still closely associated with the Legislative Research Bureau. Many bureau members are also on the journal staff, which now numbers 25.

Expansion of the journal has been paralleled by increased student interest. Gallagher states, "As the journal has expanded to a full quarterly, the manpower needs have increased accordingly." One of the reasons interest has increased, he contends: "We give the author recognition. That, I think, means something to people."

During the past six years the scope of the publication has increased markedly. The first year, the journal published only once; the number has gradually been increased to four issues per year. Gallagher assessed the success of the journal, noting, "You can make a judgment of when you have the 'critical mass' for a law review. When you have it,

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## Journal on Legislation Used as Text at Cal

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you start to get outside unsolicited articles, and that has now happened." We still publish an occasional third year paper, but it's not a question of relying on that entirely."

Along with the improved quality, the journal has gained a reputation. At the University of California, for example, the third issue of 1968 is being used as a text in governmental studies. But Editor Gallagher says, "The journal is far more well known outside the law school community than within it." To help rectify this situation, the organization launched a recruiting campaign earlier this year. The purpose was "to get writers for the journal, and not just people who are interested in drafting legislation, so the journal doesn't have to rely on bureau people drifting over."

In accord with the campaign, 1Ls were allowed to join the journal for the first time this year. Under the supervision of third year students, each of the 1Ls will write a note prelim., sketching possible note topics. The journal also has increased



Michael Lurey

### Legislation Journal editors plan next issue.

its demands on the staff. Each member writes a note or comment each year, and the 3Ls also act as supervisors for new members.

The expansion of the journal has precipitated a re-evaluation of its relationship with the Legislative Research Bureau. At present, the editor-in-chief is elected by the membership of the bureau. Gallagher says, "There is a very definite split in the work. We're really two different organizations in the same office. The result of the evaluation of the present situation could be that afterward we will be closer, or it could lead to two different organizations."

Nothing better exemplifies the new scope of the journal than its January issue, devoted to electoral reform and government. The lead contribution is authored by Senator Birch Bayh (D., Ind.) and deals with his proposed plan for direct election of the President. Following the same line is Richard P. Claude's "Summary of Trends for Court and Congressional Action for a Nationalized Vote Process."

Other subjects include an examination of the effect of the New Jersey campaign fund reporting law; *Williams v. Rhodes*, the Wallace case in Ohio; and a behind-the-scenes look at the Massachusetts Legislature.

Observing the progress of the journal in general, Gallagher notes, "The title of the *Journal on Legislation* is pretty broad. We'll handle anything that would have to do with legislation or any problem that a legislator may have. We're trying to broaden out. For example, the next issue will deal with urban problems."

# Referees Quit in Hoop Controversy

By Richard Hoffman

There was more than the usual amount of shouting at the officials during an A League basketball game before Christmas, and although the league is still in action and Hemenway Gym still stands, there are two new officials in the A League.

The new referees, who work only A League games, were hired on recommendation of Harvard University intramural director Floyd Wilson, formerly Harvard's varsity basketball coach. They have officiated at Harvard freshman games, according to Dan McAuliffe, 3L, basketball commissioner at the Law School.

Both officials who worked the controversial game had intended to resign because of reserve commitments, according to one of the refs who quit. The RECORD was unable to locate his colleague, who may have entered the armed forces already.

Nevertheless, at least one player threatened to refuse to play if new officials weren't hired by the league, which operates under the Dorm Council's aegis. The former ref still on campus, who's a first year student in the Law School, says he would have continued to officiate if he didn't plan to enter the reserves shortly. It's not clear how his colleague felt on the matter.

The contest was between The Brothers and The Grovinators. It

was close all the way and a bare three points separated the teams at the close. No more fouls than usual were called, according to the one official interviewed.

The Brothers trailed most of the game, but were reducing the margin towards the end. Three members of their team made strong complaints to the officials after the game was over. "As of that evening, it was an intolerable situation," says the referee.

Apparently it was intolerable enough for the Law School to

## New Lecturer

Philip B. Heymann, who served from 1967 to 1969 as Executive Assistant to Undersecretary of State Nicholas DeB. Katzenbach, has been appointed Lecturer on Law at the Law School, effective July 1.

Born in 1932, Heymann received the A.B. summa cum laude from Yale in 1954. He spent 1954-55 at the University of Paris as a Fulbright Scholar, and from 1955 to 1957 he served with the U. S. Air Force. In 1960, he received the LL.B. degree magna cum laude from Harvard, where he was case editor of the *Harvard Law Review*.

He was Law Clerk to Justice Harlan of the U. S. Supreme Court in 1960; from 1960 to 1965 he served in the office of the Solicitor General.

come up with an extra \$200 to supplement the usual official's pay. Dean Derek Bok notes, however, that the Law School already picks up a large part of the bill for basketball, including the expense of using Hemenway.

Complaints about Law School intramural basketball officiating are frequent, as are grievances against most sports officials everywhere. But both departed referees have had experience—one during his four years at Bates and the other in intramurals at Ohio State over two years. So far, all has been quiet in the A League since play resumed after Christmas. The Brothers and The Grovinators meet again in two weeks.

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# New Course on Legal Services to Start Next Fall

Students interested in the problem of providing legal services for the poor will be able to take a new course next fall — Issues in the Provision of Legal Services — which will study that problem. Enrollees will be able to work on a variety of fieldwork projects with experienced law practitioners who will affiliate half-time with the Community Legal Assistance Office while pursuing an LL.M. degree.

The new course will inquire into the economic conditions of various client-publics and the bar, the current needs for legal services, the various forms that legal services should take, the variety of ethical issues confronting legal services programs, the problem of allocating scarce legal aid resources, and the possibilities for expanding the lawyer supply through redefining the practice of law or licensing subprofessionals.

Recently, the Council on Legal Education for Professional Responsibility awarded the Law School a \$175,000 grant to finance a graduate fellowship program for prospective teachers in clinical-legal education. Up to five fellows per year for the next three years, who are committed to leave practice for law teaching, will be awarded very liberal one-year stipends to begin July 1.

In addition to their half-time regular course schedule they will supervise students at CLAO in highly specialized endeavors, such as forming community develop-

ment corporations, conducting an investigation of various commercial practices on behalf of consumers, and handling complex federal court litigation.

## Legal Services Aided By \$175,000 Grant

The faculty is interested in examining intensively through this program every possibility for fieldwork as part of the curriculum. In order to deal with this question there will be a new second-semester seminar, Issues in Clinical Education, for graduate students and selected third-year students interested in teaching. Both the new course and seminar will be taught jointly by Professor Frank I. Michelman and Mr.

John M. Ferren. A requirement for the course will be participation in CLAO, Legal Aid, Voluntary Defenders, or similar legal services offices.

The success of the program may depend in large part on the Law School's ability to attract experienced practitioners to the school as Fellows. The Law School has urged students and alumni to bring the program to the attention of lawyers who may be interested in a teaching career centered around clinical work. Applications for Fellowships can be obtained from the Chairman, Committee on the Legal Services Program, Harvard Law School, Cambridge, Mass. 02138. The deadline for applications is April 1.

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# Rumblings at Justice

Even though we're as disposed as the next observer to give Mr. Nixon's regime a chance to prove its worth, it's not too early to react to the returns from a department in which we as aspiring members of the bar have particular interest: Justice, to be precise. What's happened thus far is less than encouraging.

First, Mr. Mitchell's forays into constitutional law have resulted in his urging that "activists" ("whoever they are," as Professor Weinreb might put it) be prevented from demonstrating, and that bail be denied to those thought likely to commit "more crimes." Whether such official courses of conduct are constitutional or not (and we refer readers to arguments by Professor Anthony Amsterdam of the University of Pennsylvania Law School in his letter to *The New York Times* printed January 28, 1969), both suggestions of the new Attorney-General seem opposed to prevailing enlightened legal thought.

Second, the conduct of both Mr. Nixon and Mr. Mitchell with regard to the withdrawal of Mr. Johnson's "midnight judge" nominations needs further explanation. Neither the nominees themselves nor the practice of last-minute appointments need be praised in order to ask whether the new administration has gone back on its word. Mr. Clark says it has. His fine record as attorney-general makes us wonder just who was acting out of "misunderstanding." Political deals deserve condemnation, but not by those who now find such agreements uncomfortable.

Third, the appointment of a man who's still breaking loose from a segregated club to head the civil rights division is a bit unsettling: almost as troubling as the naming of a worthy courtroom opponent of the antitrust division to lead that section. Mr. Mitchell's own background in bonds, campaign managing, and Wall Street promises little sympathy for the down-and-outer whom recent court decisions have sought to aid, but we'd be more inclined to ignore his past if he had refrained from populating his chicken coop with foxes.

## HARVARD LAW RECORD

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## Fenno

I dreamed I saw Justice Musmanno last night. As he strode into my room, I remember asking him why he decided to pay me a visit.

He said that since his death last Columbus Day, he had been disturbed about what's happened to the law. Nobody on the bench or at bar seems to enjoy the legal process any more, he commented. Dissents are never outraged or outrageous these days, while concurring opinions don't make authors of majority opinions squirm the way they once did.

"The concurrer always made the majority tell itself that it didn't mean to go anywhere near where he says it went," I replied.

I told the judge that I never believed in Yale's map supporting Leif Ericson as discoverer of the New World, because those guys in New Haven can't know anything about property if they don't read Casner & Leach.

He asked what had happened to Harvard since the days when Professor Frankfurter put his career on the line in support of Sacco and Vanzetti. Only able to think of The Boston Five, I described CLAO and the Voluntary Defenders to him.

"They say Sacco may have been guilty now, don't they?" he queried, and I reported that some recent studies did make such a claim.

"And everybody doesn't seem so sure about the Nuremburg trials any more either, right?" Although I hadn't done the assignment in Jurisprudence yet, I said that Vietnam made us question lots of concepts, including patriotism, and the late justice looked pained.

"But Mr. Justice," I added quickly, "that doesn't really matter so much. The real difference is in the Pennsylvania Reports. They're dullsville. And most of the courts nowadays write as if they don't even enjoy the facts of a case. Everybody's pushing his own solemn theory of law. And about the last judicial humor I've seen was Judge Moore's dissent in *U.S. v. Darnell*, 316 F.2d 813 (2d Cir., 1963).

"You know, Mr. Justice," I mused, "nobody ever knew which way you'd come down on a given case, but it was always worth waiting to find out."

## Letters to the Editor of the RECORD

### Michelman Invites Discussion of Report

To the Editor:

The preliminary report of the Committee on the University and the City ("Wilson Committee"), of which I am a member, has been widely distributed so that interested members of the University and the affected communities may join in discussion, criticism, and improvement of the committee's present views and recommendations as reflected in the preliminary report.

I should very much appreciate opportunities to meet with small-to-medium size groups of students (e.g., Ames Clubs or other organizations) — preferably over lunch but some evenings may be possible — to discuss the report, respond to questions about its contents and history, hear criticisms and alternative views about its descriptions and proposals, and so forth. Since I don't particularly care to spend time merely describing the contents of a document available to be read, I do ask that as many as possible of those attending such meetings — and in any

event several of those in attendance — will undertake to have read and considered the report in advance.

The Law School has received about 70 copies of the Report in addition to those mailed to faculty members. I understand that each student organization has been given a copy. About 12 have been placed on reserve in the library, and I have some in my office for loan purposes. If we seem to need more, we'll get them.

Frank I. Michelman  
Professor of Law

### The Real World Isn't Widgets and Ames

To the Editor:

That the pages of the RECORD are open to all viewpoints was again exemplified in your edition of November 21, 1968. On page 5, you quoted H. Thomas Austern, Esq., with respect to the importance of "command of the facts"; on page 6 you began an interview wherein neither the interviewer nor the interviewee had, or seemed to

(Continued on Page 10)



*"I was really lucky breaking my ankle the first day — now I'm caught up in Contracts."*

## Law Notes

Mr. Walter Reiser remains available in Langdell 22, which is on the basement floor, for those needing advice on Selective Service problems.

\* \* \*

Bay Area Review sample outlines on the following subjects for preparation for the California bar exam can now be seen at the library reserve desk: federal gift and estate taxation, conflicts, real property, contracts, community property, criminal law, wills, trusts, equity and torts.

\* \* \*

Kenneth E. Roberts, 3L, has been elected president of the Harvard Law School Forum for the spring semester. Other newly elected officers are Henry P. Baer, 1L, programming vice president; Steven T. Whelan, 1L, administrative vice president; and Larry L. Pressler, 1L, promotional vice president. David G. Walsh, 2L, remains as treasurer and John C. Lovett, 2L, was re-elected secretary. James Roe and Marc Glass, both 2Ls, were elected directors.

\* \* \*

A member of one of the Law School's less revolutionary societies, The Blanks, has shown us the group's latest newsletter, prepared and distributed as always by Fred H. Eppenberger '68. Having received a letter from Dean Bok thanking Mr. Eppenberger for his contribution to the Sesquicentennial Fund, a gift which the dean believed to be the first such donation from the class of '68, Mr. Eppenberger's slated reply to the dean provides some idea of The Blanks' general philosophy, more at any rate than the group's picture in the last year's yearbook, which mystified many unacquainted with less academically-oriented organizations at the Law School: "I thought I might mention to him, the dean, that he should know all our faces, if not our names, since we spent a year on the back bench of his Ec.Reg. class. I also thought I might tell him how sorry I was to hear that some of his students are taking their legal education seriously."

\* \* \*

Tomorrow is the deadline for applications for the summer intern program of the Institute of Politics of the John F. Kennedy School of Government. The 20 student jobs in the public sector each pay \$1,000 and last ten weeks. The forms can be picked up from Miss Hochreither at the Institute of Politics, 78 Mt. Auburn St. Move on it.

# Letters to the Editor of the RECORD

(Continued from Page 9)

care about, the facts. Indeed, the facts were treated with cavalier disregard.

I am not writing to contest Mr. Sherman's opinions, e.g., that one does not enter the military out of choice — I did — or that "until President Johnson's decision to limit bombing of North Vietnam, one had to have serious reservations about being in the military". Rather, I am writing to correct certain egregious misstatements of fact.

Due process rights in the military are not limited to general courts-martial. Commanders are not in control of courts-martial machinery. The courts-martial reports contain numerous reversals of convictions based upon the attempts by a few misguided commanders to exercise such control. Although commanders do appoint counsel, each accused has the right to request any legal officer on active duty as his lawyer, and denial of such a request is closely scrutinized and abuse of the discretion to grant such a request is one of the clearest grounds for a reversal of a conviction; an accused can always obtain his own civilian counsel. Members of a court-martial are subject to challenges for cause and each accused has one peremptory challenge. The opportunity for a fair and impartial trial is enhanced by numerous powers and rights given to a defense counsel which, to the best of my knowledge, are not given by civilian courts to court-appointed defense counsel.

Boldly stating that one leaves "the real world" on entering the service may well manifest a fear of leaving the world of widgets and the jurisdiction of Ames. However, there should be no mistaking the reality of the service — its needs, its members' rights and needs, and the need of the society which it serves — or the unreality of criticism based on ignoring or misstating the facts.

David I. Faust '64  
Captain, USAF (Res)

## Pentagon Replies To Letter

To the Editor:

I would like to correct one part of P. David Park's letter (RECORD, Dec. 5) regarding the serving of an enlisted man as defense counsel before courts-martial. While it is true that an en-

listed man even with legal training, would not *normally* be detailed to serve as defense counsel, an accused (military defendant) may expressly request any member of the U. S. Army to represent him at a general or special court-martial. If such member is reasonably available, he will be detailed to so serve regardless of whether he is an officer or enlisted man.

On another point, the general opportunities of a lawyer not in the Judge Advocate General's Corps to use his legal training in the Army, I have noted that this varies greatly. While some enlisted men and officers not members of JAG, but with legal qualifications, are detailed to JAG offices or given other legal assignments, many more have no opportunity to use their legal backgrounds. This is generally not due to any culpable failure on the part of the Army in making use of their legal qualifications, but to the simple fact that there are more soldiers with legal education in the service than legal openings available.

Finally, members of the law school facing active service are advised that if they have been rejected by JAG, they may apply again after induction or enlistment in the Army, provided they have been admitted to practice. In fact, chances of getting into JAG are improved if the applicant is already in

the Army. Qualified soldiers may write directly to:

Career Management Office  
Office of The Judge Advocate General  
Department of the Army  
Washington, D. C. 20310

R. Arnold Handler, '64  
Cpt, JAGC  
Legal Assistance Division  
Office of The Judge  
Advocate General  
The Pentagon

## Describes Rules On Draftee Counsel

Mr. Park replies:

Since writing my Dec. 5 letter about recent changes in military law, I have learned some additional facts which may interest your readers.

A draftee who is a member of the bar may serve as defense counsel before a general or special court martial. See *Uniform Code of Military Justice* article 27(b). He must be selected by the defendant and must be reasonably available from his other military duties. UCMJ article 38(b). If you make yourself known to your post judge advocate, you may fall heir to some of this work, not frequently, but often enough to remind you that you're a lawyer.

This will not help law students who will not be members of the bar before being drafted.

(See Mr. Sherman's reply  
to the above letters, p. 14)

put off plastics for one more year.

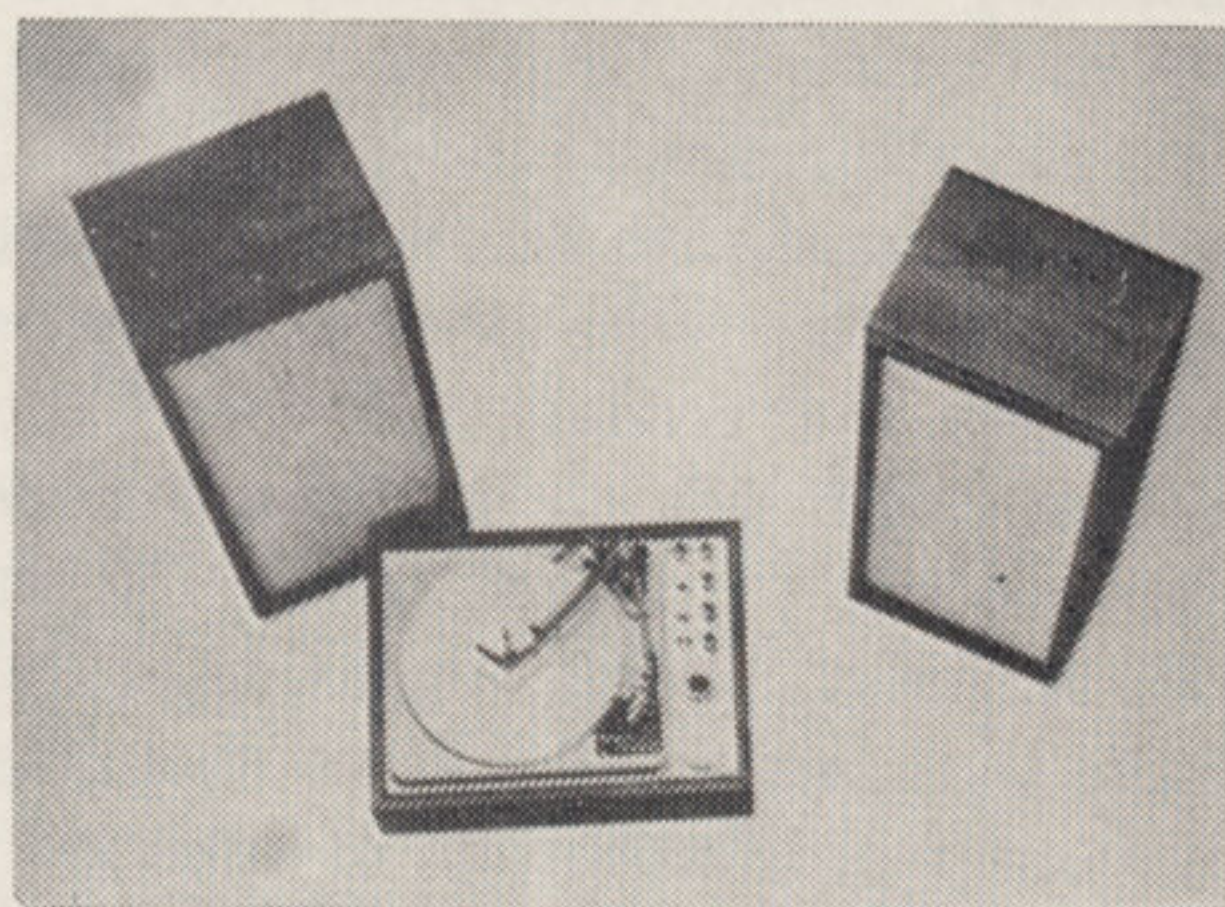
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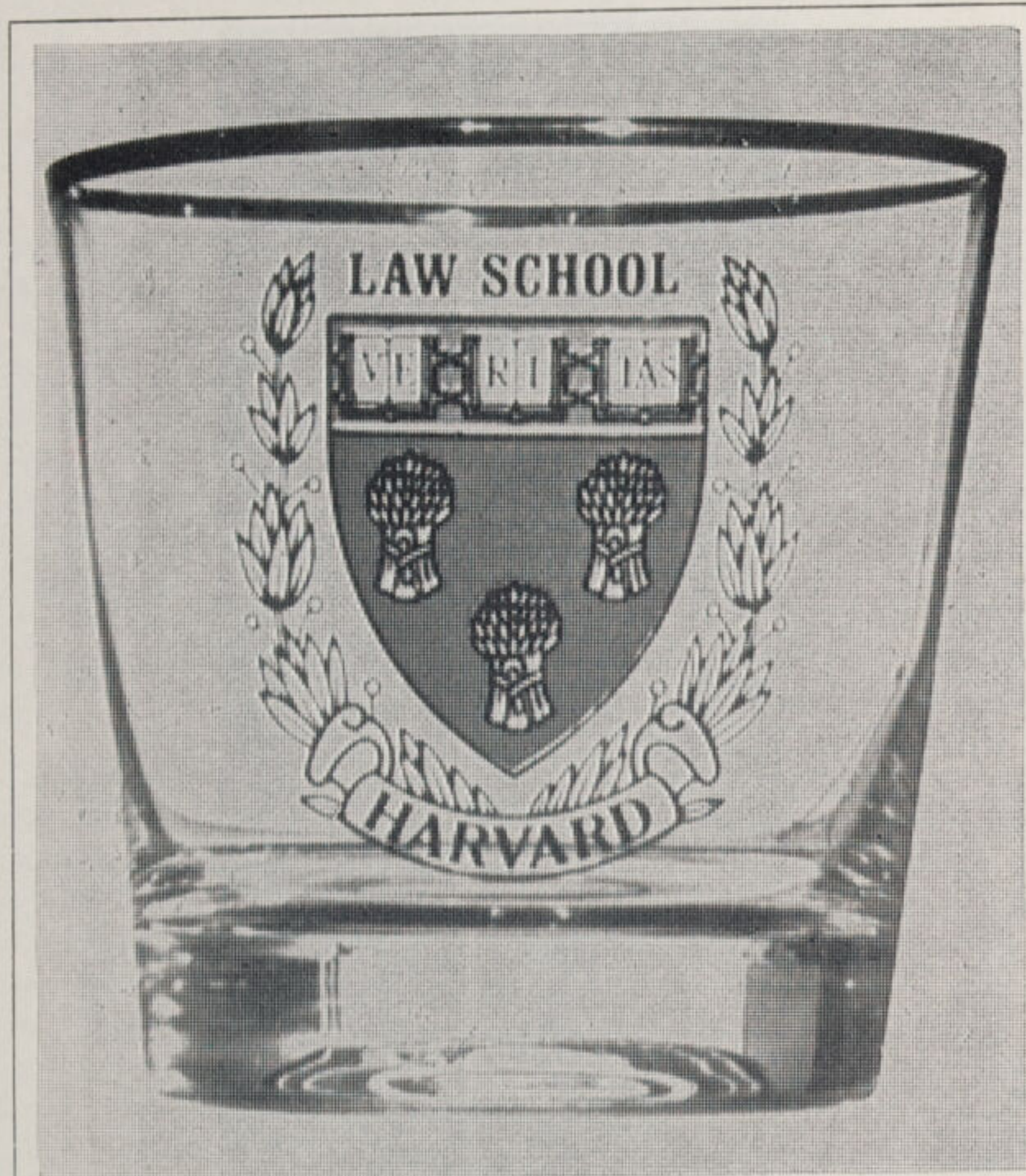
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# Law Review Editorial Hits Vietnam Conflict

By Larry Pressler

The January issue of the *Harvard Law Review* includes an editorial describing the Vietnam war "immoral" and calls for the "withdrawal of American troops." Forty-four members of the *Review* (representing two-thirds of its membership) joined in the statement which concludes, "We conclude that continuation of military presence in Vietnam is unjustified and that further imposition of the burdens of war is immoral. The first priority of the new administration must be the withdrawal of American troops."

Perhaps more interesting than the brief, 18-line statement itself is a one and one-half page "explanation" that follows. It says in part, "This statement is the product of several months of discussion,

## Review Takes Its First Foreign Affairs Stand

three meetings open to the full membership, the work of a drafting committee, and a secret ballot of all the editors."

It continues, "Others (members) opposed to the statement are concerned that readers might be offended by it. Proponents understand that many readers will disagree with this statement itself and with the decision to publish it here. However, they express the hope that readers will respect the depth of conviction which has led to this novel step. . . . the statement is not intended to ascribe blame to any public officials . . . some opponents of the statement argue that individual editors should not unwillingly be put in the position of taking a public stand on a political question simply because they are editors of the *Review*. For this reason the statement is not signed."

In the past *Review* editorials and statements have ranged from a 1904 statement advocating the adoption of the J.D. to a 1967 comment on Tom Atkins' election to the Boston City Council. This is the first time the *Review* has adopted a statement on foreign affairs.

## Recent Book

# Lawyer Auchincloss Considers 'World of Profit'

By Judy Carmack York

*A World of Profit*, by Louis Auchincloss, Houghton Mifflin Company, \$5.98.

Louis Auchincloss's newest novel is *The Red and The Black* waged on Wall Street and Long Island. In it, the retreating troops are Flushing Bay society, while the victor is a 1960's profiteer.

As in most of Auchincloss's books, resolved on the same front, a real storyteller's ability comes through in *A World of Profit*.

Jay Livingston, protagonist and real estate professional, decided at 17 to enter the world of profit. That year, while in prep school, he cribbed a magazine story, thus winning the literary prize and the desired editorship of his school's paper.

Soon Levermore — his name before he decided to switch it to Livingston — entered Columbia and was off and running. Often as the uninvited guest at parties of Long Island acquaintances, he was politely not asked to stay for dinner. He didn't forget when this occurred at Smalleross Manor.

For 100 years Long Island had come to the Smallerosses who ruled with reserve from their six-pillared manor which faced Flushing Bay. Eben Smalleross, a lawyer and family patriarch, had set as his task the "designing of an ark for civilization in the floods threatened by the 20th century," erecting it through his dreamed post as a Supreme Court Justice. However, he was an Al Smith man, and his ark sank in 1928.

His daughter Elly, who calls her social secretary when she's not calling her analyst, is beautifully miserable in her uptown apartment, visited rarely by her husband. Martin Smalleross, her brother and a Columbia classmate of Livingston's, languidly experiments with business, with caution his main concern, and 32-year old Sophie Smalleross dwells in Smalleross Manor and the family's vanishing heritage.

Livingston wants to buy the manor, raze it, and develop a potential real estate fortune on the spot by erecting a veterans' apartment building out of lowgrade materials. At Columbia, Jay discovered "the joy of what he could do with human beings" and now began

to extend his power over each of the Smallerosses, especially the beautiful Elly.

Much of what Auchincloss is attempting to say about Livingston is developed through the comments of the Smallerosses. Eben, who felt that he could be another Justice Cardozo if his cards had fallen differently, knew that a person like Livingston could control his own fate. With the exception of Sophie, the other family members admire and fear his knowhow in contracting and his ability to develop a sophisticated, high-cost art magazine at the same time. To Sophie, he is simply the Attila of the 1960's.

The clearest picture of the book's theme comes through observation of Livingston, a man who can be snubbed but never crushed. He tells Sophie, "In my walk of life a man has got to shed his antecedents if he wants to get ahead." And to another character he speculates that "the world is divided into two sorts, the men who get things done and those who obstruct them." Auchincloss portrays his protagonist as the man who gets things done, anxious to solve insolvable problems, and to control his own destiny.

Auchincloss tracks Jay through his world with understatement. The author

is a practicing Manhattan attorney, New York bred, aristocracy born. He's able to describe new money versus old line with finesse. The style is polished and literate; no-nonsense prose. Only the dialogue tickles the reader's credibility.

Best known for his *Rector of Justin* and *The Embezzler*, Auchincloss has been most successful to date in his *Tales of Manhattan*, (RECORD, April 25, 1968) small tapestries of old families, those who crash them, and the interworkings of law and business in the city. *A World of Profit* is a spinoff from *Tales*.

One wonders if the reader can completely choose and champion either side in the conflict between new and old in *Profit*. Neither side offers a clear-cut appeal, and although they are fascinating, all battles are Pyrrhic. But Auchincloss shows his preference, subtly.

"What you want to be in this world is what counts," Jay says. "And a man, a real man can be anything he really wants." For although Livingston's finances are reversed at the book's close, the author has convinced the reader that Jay can make it back into the world of profit.

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# Sherman Clarifies Military Justice Procedures

Mr. Sherman replies:

Mr. Park's comments on the Military Justice Act of 1968 are informative but need some clarification. While the new act makes some useful changes in court martial procedures, the reforms, unfortunately, are not nearly as far-reaching as he has indicated. For example, Mr. Park states that "the new law goes far toward eliminating command influence at many points in the court martial system." The act provides that performance as a member of a court martial cannot be considered in the preparation of efficiency reports, thus removing the opportunity for a commander to influence counsel or members of the court by his power to rate them, but it does not eliminate the possibility of other indirect forms of command influence.

So long as the counsel and court members are picked by the commander and serve under him, there will be a built-in risk that command and military considerations, instead of the facts, will influence the outcome of a court martial.

Mr. Park also states that "lawyers will be used in most special courts martial" under the new act. The act provides that the accused shall be afforded the opportunity to be represented at trial by a military lawyer unless a lawyer cannot be provided on account of "physical conditions or military exigencies" and that a lawyer must be provided when a bad conduct discharge can be adjudged (this will not affect Army special courts which cannot adjudge a bad conduct discharge).

It is too early to tell whether these provisions will result in the use of lawyers in most special courts. If the Army and Navy (the Air Force now provides lawyers in special courts) rely on the exceptions to avoid using lawyers, it is possible that many special courts will still be lawyerless. It is hoped, of course, that the services will move to enlarge their JAG corps so that lawyers can be provided in all special courts.

The indignant letter from Cpt. Faust is a good example of the communications gap which surrounds any discussion of military justice. Criticisms of military justice, like mine, seem to prompt defensive responses from the military like Cpt. Faust's, which generate more heat than light. Several of his comments require comment. He states that "due process rights in the

military are not limited to general courts-martial." Many substantial due process rights are. For example, only in general court martial is there a right to a lawyer defense counsel (except as now altered by the new act—see above), a verbatim transcript, a judge who is a lawyer, and an appeal other than review by a JAG office (except where a special court adjudges a bad conduct discharge). He incorrectly states: "Commanders are not in control of courts-martial machinery."

When the Uniform Code of Military Justice was being drafted in the late 1940's (Professor Morgan of Harvard Law School was the Chief Drafter), it was proposed that an independent judiciary be established (as in the British military) which would not be under the control of the commander. This proposal was rejected, and commanders retained the power to decide whether to prosecute, to select the members of the court, both counsel and the law officer or president (similar to a civilian judge), and to review the verdict and sentence. The fact that commanders control court martial machinery (often exercised through their Staff Judge Advocate), and therefore are sorely tempted to use that power to enforce their notions of discipline, has made "command influence" the principal problem in the enforcement of the Code for the last 18 years.

Cpt. Faust's remarks about the right to request lawyer counsel also need qualification. He speaks from experience in the Air Force which, unlike the Army and Navy, provides lawyers in special courts martial. Because the Air Force has a much higher ratio of military lawyers to servicemen, it has been able to accommodate the wishes of many accuseds for a particular military lawyer (since the Air Force accounts for less than 5% of the military courts martial, it is a minor part of the military justice picture). The practice in the Army and Navy is different. The Army testified before a Senate Subcommittee in 1966 that "requests for appointment of legally qualified counsel at a special court martial are rarely granted in the Army because these counsel are in fact not often reasonably available from their required duties," and requests for particular counsel are often denied for the same reason.

The principal thrust of Cpt. Faust's letter is that military justice provides

just as good an opportunity for a fair and impartial trial as a civilian court. It is difficult to demonstrate to JAG officers, most of whom have not practiced law outside the military, why this is not true.

If they had had the simple experience of impanelling a jury from a courtroom full of citizens chosen at random from the community, they might notice the difference in a court martial made up of officers handpicked by a commander where only 2/3 (rather than a unanimous) vote of the court is required to convict. If they had watched the usual independent defense attorney in a civilian criminal trial they might notice the difference in a court martial in which every participant (the counsel, judge and members of the court) were picked by the commander and work under him.

If they had worked through a record of trial in preparing an appeal to an independent appeals court, they might notice the difference where the only appeal from a special court martial conviction is review by a JAG officer who has no verbatim transcript to go by. If they had arranged bail for a client and watched new hope return, they might notice a difference when an accused serviceman has to await trial in a stockade without possibility of bail. The "disciplinary" philosophy is still very apparent in the court martial system, and we are still far from being able to equate court martial justice with that offered in civilian courts.

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# Wheels Moving for Law-Business Degree

By R.W.S. Schmidt

Discussions concerning joint law-business degrees are proceeding carefully, yet with all possible speed, according to Professor Robert Merry of the Harvard University Graduate School of Business Administration. The RECORD learned that the proposal is currently before the steering committee of the M.B.A. program. This group, officially the Policies and Operations Committee of the M.B.A. Program, will consider the matter over the next two months.

The proposal, and the committee's recommendation, will be forwarded, probably this spring, to the M.B.A. faculty, of which Professor Merry is vice-chairman, as well as chairman of the M.B.A. Program. Next, the Co-ordinating Committee of the business school will pass on the matter, with the business school faculty waiting to follow suit. Finally, the Harvard Corporation will take official action. This all assumes, of course, that the proposal has found its way to similar approval at the Law School.

While the procedure appears complex, many of the steps are closer to formal actions than to forums for debate. Hopefully, an informal decision will be made by the end of the academic year.

Professors Malcolm Salter, of the business school, and Detlev Vagts, of the Law School, have formed a joint committee which has prepared the current proposal. Essentially, the plan calls for full-time study at the Law or business school in the first year, with the second year being spent at whichever school wasn't chosen for the first year. There will be combined enrollment in the last two years. Each of the schools "will give a little bit in courses required, but the program will meet such standards as those of the New York bar," notes Professor Merry.

The RECORD queried Professor Merry as to the possibility for students currently at the Law School to work for the joint de-

gree. "There's very little chance, say 0.2 or 0.3 probability, of its being implemented for the 1969-70 year." Interested 2Ls and 3Ls can get occasional courses through registration, but probably they will have to spend two years at the business school to get an M.B.A.

Current 1Ls apparently have three options.

(1) Apply for admission to the business school this spring. If admitted, wait for the announcement as to whether or not the program will go into effect for the 1970-71 academic year (a strong possibility). If affirmative, enroll as a regular first year business school student in 1969-70. When the program goes into operation in 1970-71, return as a law student for two years under

the "combined third and fourth years."

(2) A second option for 1Ls is to cross-register heavily in second-year M.B.A. courses while at the Law School during 1969-70. If and when the joint degree is in effect beginning in 1970-71, a full year would be devoted to first year M.B.A. courses. Finally, the fourth year would be via cross-registration again. Such an option presents content and course scheduling problems, and can be undertaken only via special arrangement with the business school.

(3) Finally, 1Ls can simply cross-register during their second and third years, hoping to make special arrangements with the business school after gaining their LL.B. degree.

## Republicans Elect Officers

The Harvard Law and Graduate Republican Club, at its annual election and organizational meeting held before Christmas vacation, elected a new executive board.

Officers elected at the meeting were: president, Bruce Ackerman, 2L; vice president, Michael Mertz, 2L; secretary, Edward Yorio, 1L; treasurer, Michael Coppack, 1L. New directors will be: David Burns, 1L; Paul Knag, 2L; Kathleen Lestition, 1MAT; Charles Lynch, 2L; Dennis Nolan, 2L.

This year the club is making its views known to the Law School community via a newsletter, the Republican View, with distribution at approximately 500 copies. The club also plans an enlarged speaker program. The club has a membership of approximately 125.

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