

HARVARD LAW RECORD

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FIFTEEN CENTS

Organized Petition Effort Fails

By Kevin Kane

Of 82 petitions received from 1Ls for membership on the Joint Student-Faculty Committee, a block of 40 petitions represented an organized effort to obtain signatures by radical students. However, the two students chosen, James S. Bryan and David M. Corwin, weren't among this group.

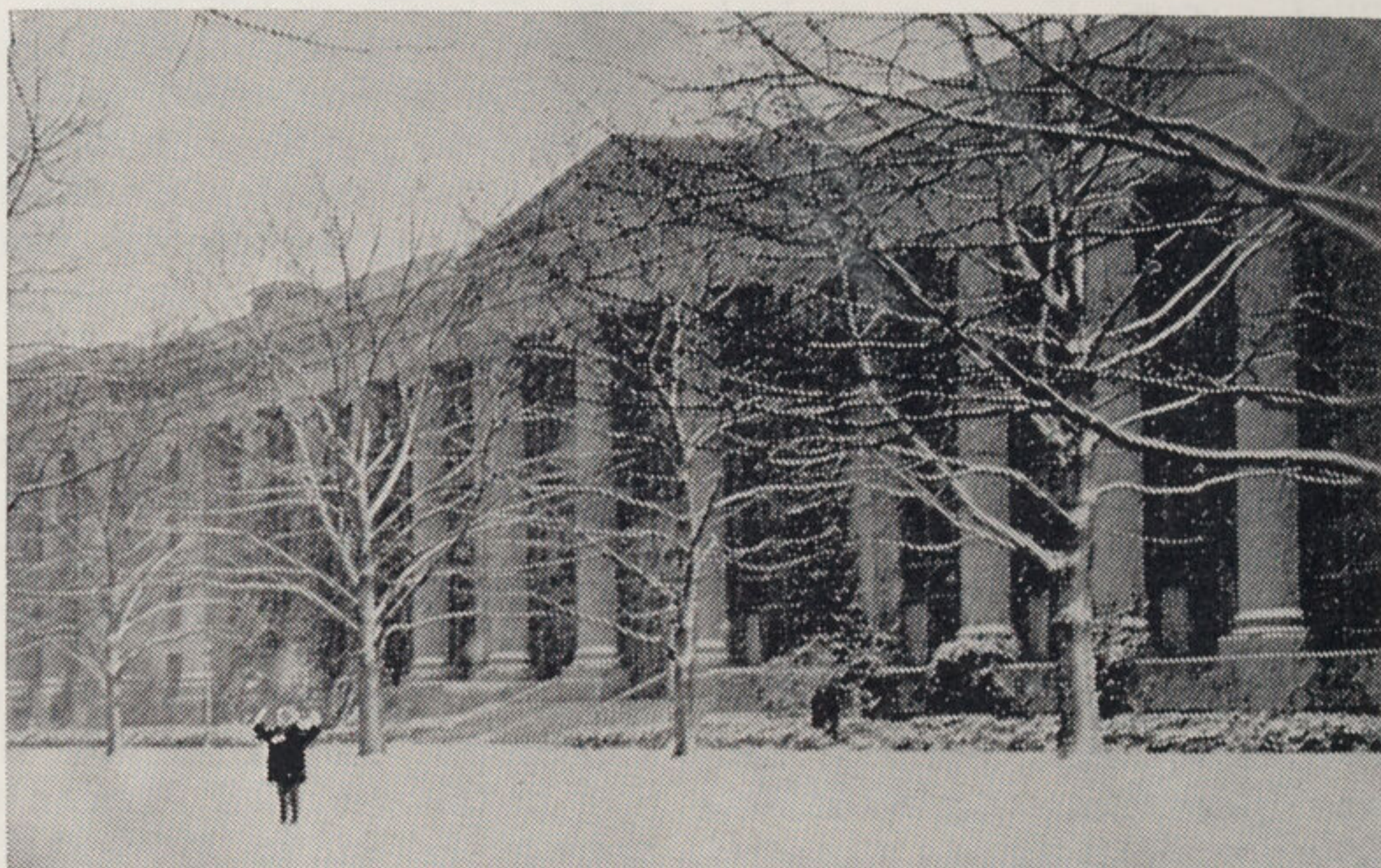
Of course, every petitioner sought the 20 signatures required to nominate him for membership. However, the 40 block petitions were apparently posted, some without the candidates' names, and signed collectively by 49 students.

Professor David L. Shapiro, committee chairman, related that 10 students signed 40 times, 25 signed 39 times, 4 signed 38 times, and others signed in smaller numbers. He explained that, while this was not a violation of the rules, "some students felt this practice violated the spirit of the petition process."

Also, these 40 petitions contained a unique condition that the endorsed person, if selected for the committee, would "resign and withdraw from membership" if the committee didn't, "within 21 days from the selection of the above named person," submit to the student body a referendum on "alternative proposals for restructuring the committee system of administration of the Law School."

Robert D. O'Connell, 1L, explained the group's motivation. He feels that the petition process doesn't produce students who are either representative of the stu-

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Michael Lurey

Langdell Hall before brunt of last week's snow storm hit the Law School. Snow disrupted classes, delayed this issue of The RECORD.

Plan for Student Voice Offered

At least three students would be placed on each of at least 11 faculty committees by petition (and by lot, if necessary), if a proposal made last week by the Joint Student-Faculty Committee is implemented.

The tentative scheme for selecting student members of the various panels would begin with a week during which interested students would sign up for particular committees, listing their priority of choice. Each would then receive a petition.

If more students sign up than there are spaces on the committees, selection will be made by lot. Most of the panels will add three student members but some will include six.

Committees slated to take student members include: administrative board, admissions committee, appointments committee, committee on criminal law, committee on financial aid, committee on the first year, continuing committee on legal education, library committee, committee on the placement office, committee on relations with the university, and the committee on whether to award an LL.B. or a J.D. degree.

The proposal doesn't intend to make the students selected constitute "an exclusive means of communication" between students and faculty. Nor does the scheme intend to replace students currently working on the placement, relations with the university and financial aid committees.

'African Nations Strive for Neutral Policy'

By Michael Lurey

The question before the house was how African nations determine foreign policy, and when, if ever, there would be a unified Africa. In the opinion of two graduate students at Harvard, the emphasis should be on "if ever".

Speaking to an informal meeting of the International Law Club on February 4 were Mr. Hillery NG'weno, from Kenya, a student at the Center for International Affairs, and Mr. D.M.K. Bishota, from Tanzania, in the LL.M. program at the Law School. Bishota is a former legal adviser in the foreign affairs department of his government, NG'weno a former journalist.

A major determinant of African foreign policy, not unlike other nations, is how each nation views its own self-interest. African nations have worked hard to maintain a neutral posture in international politics, and both men agree those efforts have failed. NG'weno thinks that as a practical matter few international situations permit neutrality, forcing nations to choose between East and West. Most have chosen West and the reason has been economic in most cases. As a practical matter there are only two economic options open to the emerging African nation: capitalism and socialism. They have chosen cap-

italism, in NG'weno's view, simply because "it works."

The strong influence of self-interest in determining foreign policy within the African continent is demonstrated by Kenya's attitude toward refugees and 'freedom-fighters' from South Africa. Kenya's announced position is that such refugees should be returned to the South, "so that they may be closer to the action." In fact, NG'weno admits that Kenya is far more concerned with the effect these people could have on Kenya's own dissidents, and sends them home in the interest of self-preservation.

Bishota agrees that the majority of nations are Western leaning, but he places the reasons elsewhere. In his opinion the major factor has been "poverty". African nations are indeed poor, and while poverty is not absolutely controlling, it is "damn annoying." And Bishota's view has, in the past, led African nations to seek aid in the West. But in the case of Tanzania, a more recently emerged nation, it had a reverse effect.

Tanzania, one of Africa's outspokenly Eastern leaning nations, supports North Vietnam and Red China. But this is not because of ideology, argues Bishota, pointing out that Tanzania's economy is capitalistic. It rather stems from a desire to appear "independent" in the world community. Yet in the event of controversy in Europe, Tanzania would support Britain. And this points up the other major determinative of African foreign policy: its colonial past. Though political ties have been terminated, old habits remain.

On the Biafran War, neither man had a solution to offer. However, NG'weno blames Africa's inability to handle African problems on the recent growth of eastern leaning nations such as Tanzania. The Organization for African Unity has a Liberation



Michael Lurey

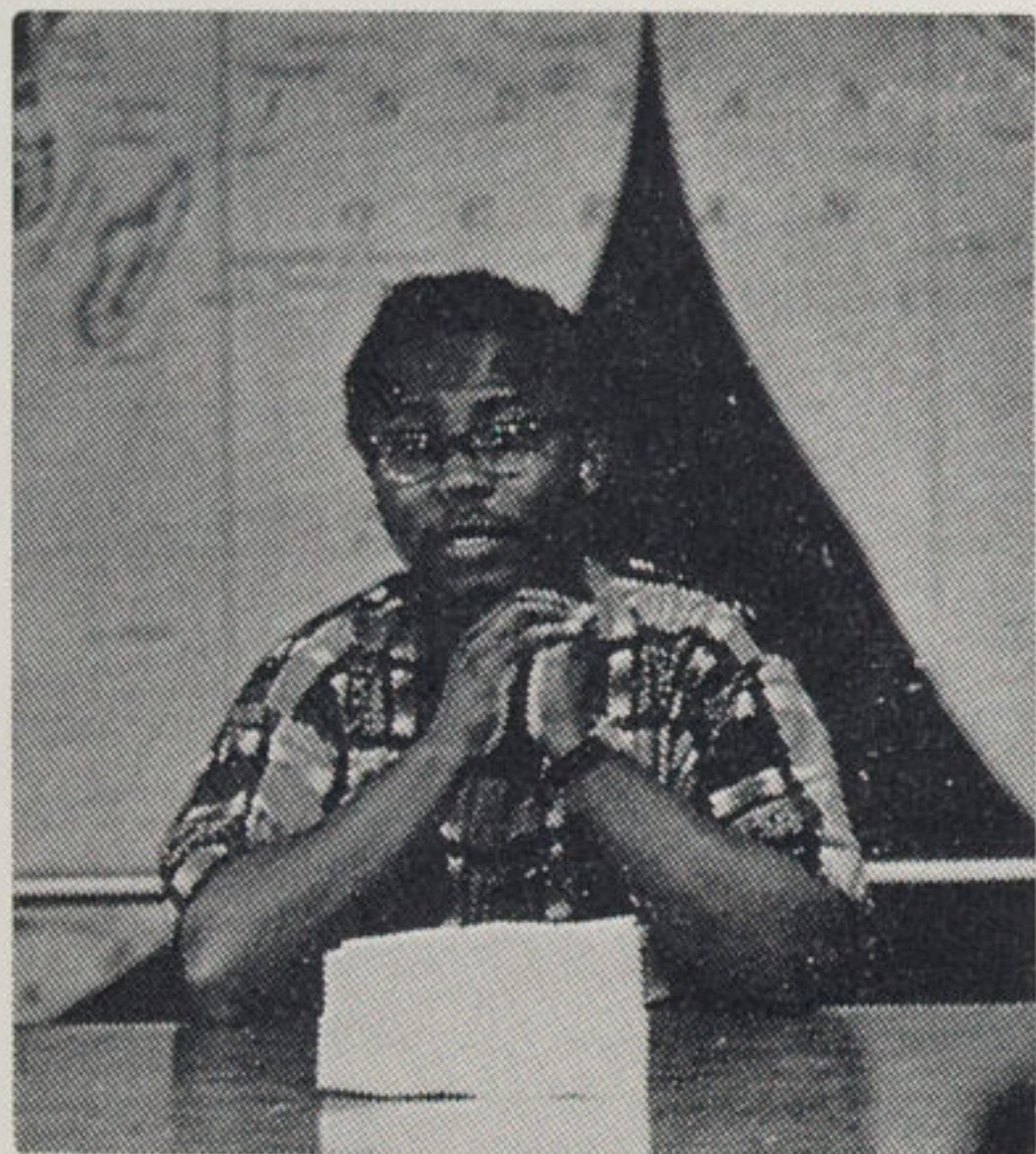
Hillery NG'weno

Committee designed to handle "home" problems, but the Committee has been crippled by the debate spurred by the new dissidents. Thus, while the nations continue to pay £5000 yearly membership dues, the Committee remains deathly silent, and the resolution of such matters has been left to "foreigners."

The fact the African nations continue regularly to pay dues points out another of the quirks of African foreign policy: great importance is placed on form for form's sake. Bishota referred for example to African nations' demands that the United Nations Security Council be enlarged. The Council was in fact enlarged from nine members to fifteen. Africa's being given representation satisfied African leaders despite their recognizing that the Council continues to be controlled by the big five powers' veto power, or as Bishota admits, by the Russian and American veto.

On the question of the Arab-Israeli war, Bishota thinks that the best course of action would have been for Tanzania to issue a rather detached position paper since, as both men agree, there is little contact between African and Arab nations. Moreover, Bishota recognizes neither side was

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Michael Lurey

D. M. K. Bishota

A Sudden Blossoming

Five Draft Cases to Watch With Care

By R. W. S. Schmidt

Law students now have at least five cases to watch with care as they approach their own battles with local draft boards across the country. At stake are classifications for 1-S (student) status.

In late January, Federal District Judge Jack Roberts of the Western District of Texas ruled that a student's 1-S deferment was "a plain unequivocal right given to him by statute." Though the decision has given rise to hopes for many, it isn't known whether courts in other parts of the country will follow the ruling.

In a sudden blossoming of cases in Connecticut, the issue has expanded. Federal Judge M. Joseph Blumenfeld, whose court sits in Hartford, must hand down decisions in three separate cases in the near future.

Toward the end of January, three 2Ls at Yale Law School instituted a suit against Selective Service Director Lewis B. Hershey, asserting their right to 1-S deferments. In a new development a week ago their attorney, Prof. John Griffiths of Yale Law School, moved for an injunction

Yale Students File Suit Against Hershey

staying reclassifications across the country. The issues of the case are pending. Griffiths has published a pamphlet entitled *The Draft Law*, available from Yale at 50 cents.

Several days later James Carey, 2L, of Yale Law School, requested and received a temporary restraining order from Judge Blumenfeld. Carey was classified 1-A previously, and was ordered to report for induction on February 3. The order stayed the induction.

In a telephone interview with Carey last Saturday, The RECORD learned the following details of the case: "After filing our complaint, the government moved for dismissal on the grounds of lack of jurisdiction. Argument was heard on the 4th; we have no decision yet."

The government claimed lack of jurisdiction because the 1967 Military Selective Service Act does not allow for pre-induction judicial review of classifications, according to Carey. Review is available only after there is a refusal of induction.

Asked how he intended to defeat the jurisdiction argument, the law student cited the Oestreich case, decided by the Supreme Court in late 1968. In this situation, a student had been punitively reclassified 1-A, though he had a "right" to a 4-D classification. The Court decided the jurisdiction issue, stating that where there is a clear conflict between a classificant's rights and the denial of same, then pre-induction review is available.

Carey notes, "We hope to apply the jurisdictional issue of review in my case. The point is, we have to establish a 'clear conflict.'"

The case is additionally novel in that it names Hartford Local Draft Board 2, rather than Hershey. If all goes well, Judge Blumenfeld will approve Carey's request for a mandamus, ordering the board to classify him 1-S. Asked what he felt the outcome would be, the cautious reply was only, "I think Judge Blumenfeld will go the same way in the two cases. I hope we'll know this week."

In a further case just last week, Judge Blumenfeld issued a temporary restraining order against another local draft board for John F. DeCristofore, a graduate student at Niagara University. This suit named the local draft board as well as President Richard M. Nixon.

Though the issues are somewhat different in each of the cases, it is likely that Judge Blumenfeld will wait to give all three decisions at once.

The orders may be renewed for additional 10-day periods, until Judge Blumenfeld is ready to

Draft Board Temporarily Restrained

hand down his decisions. In any event, February's answers should go a long way in establishing country-wide trends in the 1-S deferment field.

Joint Degree Details Being Ironed Out

Details are being ironed out as discussions continue on the joint LL.B.-M.B.A. program. In a RECORD interview with Professor Detlev F. Vagts, it was learned that "it is somewhat difficult deciding how we should split the student's life between the two schools." In any event, "the last two years will be rugged for the student; the workload will be harder than at either school separately."

As noted in the Feb. 6 RECORD article, the LL.B.-M.B.A. proposal is under consideration at the business school. Professor Robert Merry of the business school stated that the Law School is ahead in discussions because "apparently it was geared for discussions earlier than we were." Prof. Vagts adds that perhaps there is "less affirmative pressure" at the business school at the present time than on the Langdell grounds.

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Reports of Bull & Bear Death Exaggerated

By Joseph Rafalowicz

Contrary to rumor, reports of the death of the Bull & Bear Club, as Mark Twain would put it, have been greatly exaggerated. Though the club got off to a slow start earlier this year, both the speaker's program and the investment contest are now in full swing.

Jim Rodner, 2L and treasurer of the club, said that "the purpose of the Bull & Bear Club is to

Club's Purpose To Teach Market Functions

teach law students how the stock market functions, and to allow them to learn the rules and mechanics of buying and selling on the stock market without actually risking any of their own money."

This aim is encouraged through an annual investment contest open to all law students. Each contestant is "given" \$100,000 to invest or to hold as he wishes. Those with the largest cash balances at the end of the year are awarded cash prizes by the club.

"The stock market is an aggressive outlet for many successful professional people, such as lawyers and doctors," Rodner continued. "By using the Bull & Bear

investment contest we hope to give future lawyers a chance to learn how to play the market before actually investing any of their own money."

Al Stevens, 3L and president of the Bull & Bear, runs the contest almost singlehandedly. The contestants send him postcards which represent their buy and sell orders on any stock that is regularly listed in the Wall Street Journal. Mr. Stevens periodically sends the contestants summaries of their stock portfolios to let them know how they are doing in the contest.

Currently, there are 35 students involved in the contest, which closes April 30. Last year, because of the declining market situation, the winner wound up with a negative hypothetical cash balance. This year, apparently, events are shaping up differently. The present front-runner, Leonard Stolk, a Dutch graduate student in the international tax program, has a cash balance of nearly \$150,000.

Stolk has published on the subject of Canadian mining and oil operations in a leading European financial newspaper, and has used this knowledge in the investment contest. He made his market "killings" in such stocks as Northgate, a Canadian mining company trading on the Toronto Stock Ex-

change, and in Asamera, a company with oil interests trading on the American Stock Exchange. Additional profits have been made in such investments as Ling-Temco-Vaught warrants.

The speaker program is the second area of interest for club members. Recently, Frederick Moss, president of the Boston Stock Exchange, spoke on the purpose and function of stock exchanges and, in particular, on the future of such regional exchanges as the one in Boston.

Earlier in the year the Bull & Bear presented Mr. Kenneth Spiewak, publisher of a technical opinion newsletter for Sheinman, Hochstin & Trotta in New York. Spiewak defended the technical

Grad Student Is Ahead In Contest

analysis point of view of the stock market as the most systematic way to approach stock investments. He explained how to read and interpret those charts on which technical analysts like himself base their market opinions.

Rodner is inclined to agree with Spiewak. "There is no substitute for good information in the stock market," he said. "Good ideas and good research are always absolute necessities in dealing in any market place situation."

Future speakers for the Bull & Bear Club include a securities expert from New York who will speak on the problems involved in registering a stock on an exchange. He will be followed by a commodities market analyst who will explain how that market works and its investment opportunities.

Joint Degree Details Discussed

(Continued from Page 3)

At the Law School, the proposal will be reviewed by the Continuing Committee on Legal Education, and then the faculty. Meanwhile, student interest is high. At a meeting Wednesday, interested 1Ls and 2Ls were given further information on how they might involve themselves in the joint degree program.

First year students who are intending to enroll at the business school next year must: (1) com-

plete an application for admission, (2) register for the April administration of the "business boards," according to Dean R. Nohl, who heads admissions to the business school. 2Ls should do the same if they elect to go across the River.

Second year students have several options (1Ls might wait to do this as 2Ls): First, they may cross-register for a total of

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Survey Discloses 1L Dissatisfaction With Ames

By Robert Patterson

Dissatisfaction with judging in the Fall Ames competition is clearly disclosed by results of a questionnaire returned by first year Ames competitors. The opinion survey, given to all 1L participants by the Board of Student Advisers, is part of a general review of the first year competition.

Of the 175 questionnaires returned, 18% rated their judges poor and another 18% classified them as only adequate. The judge's criticism was rated the least valuable aspect of the competition. This could be attributed to the fact that almost half the 1Ls felt that only one judge, or

in many cases none of the judges, had read their brief thoroughly.

In response to this criticism the board has announced that an attempt is being made to get a faculty member or a practicing lawyer to serve as chief justice for every spring case. This innovation in the competition coincides with the preferences expressed by 1Ls in the survey. Board member Donald Harrison, 2L, hopes this will provide better feedback for the competitors and will also serve as an incentive for associate judges to become more familiar with their cases.

The board has also authorized a committee of four to examine the entire Ames competition.

Dave Saylor, 2L, committee member, said the group would examine all aspects of Ames including alternatives. He said this had been done in the past but not on so broad a scale. The committee hopes to submit a report to the board about the middle of March. Jerry Stubbs, David Shackow, and Bill Alsup, all 2Ls, are the other committee members.

First year students also indicated dissatisfaction with the assistance they received from advisers on the techniques of brief writing and oral argument. Harrison commented, "Individual advisers are aware of this situation and are working to alleviate it in their advising during the spring rounds."

Africans . . .

(Continued from Page 2)

wholly in the right. Yet, Tanzania strongly supported the Arab position and the reason shows the interesting role of happenstance in deciding foreign policy. The military leader of Tanzania has been a close friend of Nasser's and decided to help out "his old friend."

A final determinant of African foreign policy is the role played by the military. In too many African nations the only established, organized power is the army. And once in power, though they may leave center stage, they continue to influence the country's leadership. Since the military's interests are against any drive for African unity, NG'weno feels this, together with Africa's inability to handle its own problems, could prove fatal to a restructuring of the continent.

The meeting of the International Law Club was the second in a series of Graduate Forums. The forums are intended to give members of the club the chance to share in both the experience and views of foreign students, while also sharing in coffee, tea and donuts. The first such informal meeting, held last January, considered Student Disturbances in Europe.

Model Dorm Room Planned

A bedroom and common room in Ames Hall will be renovated to serve as model rooms as a first step in improving living conditions in the new dormitories.

But although improvements such as carpets and venetian blinds have been recommended and are "economically justifiable," Dean Derek Bok ruled out any construction work to increase the size of the rooms even though, he says, "dormitory rooms are admittedly small."

"Any reallocation of space would not justify the increased rentals," the Dean said. Dormitory room rents are to be raised for next year.

Ames 116 is the room to be renovated and, when it is completed,

students are invited to inspect it and make comments, preferably in writing, either to Secretary William L. Bruce or to the Dormitory Council. After the renovation is completed, the room will be left open for inspection from 9 a.m. to 5 p.m. for any student, whether a dormitory resident or not.

Officers of the Dormitory Council, members of an architectural firm that has been hired, Secretary Bruce, and Dean Bok inspected the dormitories before Christmas break to see how they could be improved. The architects have already submitted plans, recommendations, and cost figures.

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Legal Aid Deplores Its Expulsion in '53 Of Student Who Took 5th Amendment

The Law School's Legal Aid Bureau resolved last week to make amends to Jonathan W. Lubell '54, who was forced to resign from the organization in 1953 after he invoked the Fifth Amendment during a Congressional investigation of the link between Communism and education.

The bureau both deplored the treatment accorded Lubell and changed its constitution and by-laws to prevent any similar episodes in the future.

At the same time, the Harvard Law Review, which refused to admit Lubell in 1953 although his grades qualified him for membership, has declined to follow the Legal Aid Bureau's action.

"A similar affair is unlikely to occur in the foreseeable future," Review president Richard M. Cooper said. "It was shameful and regrettable, but there is absolutely nothing we could do," he concluded.

The Legal Aid Bureau voted by a large margin last week to amend its rules so that "neither the exercise of any of the rights protected by the U.S. Constitution nor any public response to such exercise" could result in severance of any member from the organization.

Lubell and his twin brother, David, both 2Ls at the time, refused to reply to queries about alleged Communist activities when they had studied at Cornell and at the Law School. The Senate Internal Security Subcommittee, which conducted the hearings, was headed by Sen. William Jenner (R-Ind.), a close associate of the late Sen. Joseph R. McCarthy (R-Wis.) in the latter's subversive-hunting escapades.

The Lubells had also served on the staff of The RECORD, from which they resigned under staff and alumni pressure. Both had been elected editors, but instead of announcing their election, The

Editorial: 16 Years Later

As readers of this page will recognize, the role of The RECORD in the general ostracism of Messrs. Lubell in 1953 was not a proud one. Although the newspaper apparently summoned sufficient courage by autumn of 1953 to praise President Pusey's defense of Professor Mark DeWolfe Howe's espousal of civil disobedience, it seems that The RECORD was unable to withstand the pressures which resulted in its disowning the Lubells.

Needless to say, all this rings strange in the ears of the present editors, for a decade and a half later the tune of the times is different. Instead of being satisfied with saying that we'd have behaved differently from our predecessors had we been confronted with the decisions they faced, we'd rather hope that we and our successors can be counted on to cope with equally momentous questions with greater strength of character than was shown in 1953.

RECORD of April 2, 1953, editorialized:

"We believe everyone is entitled to the full expression of his views, consonant with the necessity for maintaining a well-ordered society. But we believe that opposition to these committees' methods must suspend at the doors to the hearing room, though one should not face contempt, ridicule or suspicion for voicing objections before or after answering as the law requires. We cannot be consistent with this position and retain the Lubells."

In 1953, the Law School faculty refused to expel the Lubell brothers. In a statement printed in The RECORD of April 9, 1953, then-Dean Erwin N. Griswold said: "If these young men are expelled from the Law School, the experience is likely to confirm them in the attitudes which were manifest in their testimony. If they continue their studies here, we shall have grounds for hope that their viewpoint may change for the better."

Actually, the dean's position appears in retrospect as, at the least, a moderate one. According to a memorandum distributed to the Legal Aid Bureau membership by the current secretary, Jeffrey S. Berlin, 3L, "It is per-

fectly clear now that what the Bureau did to Lubell was part of the general hysteria of the times. I don't think what was done would have been right even if there had been a real threat to the Bureau. And it is not perfectly apparent that there was such a threat. Neither Dean Griswold nor the faculty perceived a threat requiring their intervention."

A different view was expressed this week by Legal Aid president Barry Metzger, 3L, who said some members "felt there was a rational basis for the 1953 decision. They didn't want to second-guess our predecessors."

Professor Andrew L. Kaufman was president of the Law Review at the time Jonathan Lubell was refused membership in 1953. "We didn't want to discuss the issues because of the effect it might have on Lubell," Kaufman said this week. He added that whatever the Review did now was "its own business. They ought to do what they want to do."

A petition posted at the Review earlier this year which sought names to those interested "in doing something about Lubell" got only three or four signatures, according to a current Review member.

Joint Degree Ironed Out

(Continued from Page 4)

two business school second-year courses over the 1968-9 period, attend business school the third year, and cross-register for four courses the fourth year. (This may present some scheduling problems, however, since some courses may be offered often, and others only once or twice over the period the student is eligible.) Secondly, it might be possible, if a 2L is taking a heavy load of certain law courses this year, for him to overlap and cross-register sufficiently the fourth year to come under the joint program.

One method of maintaining minimum requirements for admission to the bar might be to offer such combined courses as Business Policy under a law professor, as part of the law school curriculum. An additional question is raised as to how much leeway a student will have in selecting courses. As Prof. Vagts suggests, "it will be a crowded program. A student won't be able to take all he wants." Certain LL.B.-M.B.A. "majors" may be proposed.

The problem now is how 1Ls and 2Ls can be "phased in" to the proposed joint program. It will take some fast footwork by the students themselves in checking-out their own programs, applying, and chancing approval of the proposal during their leave of absence from the Law School next year. But here, certainly, the affirmative pressure has more than begun.

— R.W.S. Schmidt

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A-6	KLM	7/28- 8/28	JFK/GLA/AMS/GLA/JFK	\$275
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An Argument for Pass-Fail

By Ronald Berenbeim

The first year class is debating a question with the sort of fervor which has, in the past, been reserved only for such important questions as restitution and reliance. The issue is whether students at Harvard Law School ought to be graded solely on the basis of pass or fail.

Unquestionably, there can be found in this movement the same sort of self-seeking and personal egotism which pervades much of what goes on at the law school. Those who preface their argument with the contention that "the nation's best minds," who have already performed with such luster as undergraduates, should not be subjected to the debilitating experience of a B-, deserve the present system with all of its consequent evils.

A visit to Harkness Commons hardly invites a favorable comparison to the Agora. What the law school has is not the "best minds" but a group of people who have succeeded at the system, and succeeded very well indeed.

Within that group can be found some who feel that the process which has brought them to Harvard, the letter grade examination system, will provide an easy means of distinguishing them from the chaff which comprises the remainder of the class; and, naturally, if this system should fail to produce such a result they are honestly ready to abide by its judgment of their competence.

There are also those among the first year class who remember the untimely death of Horatio Alger and have no

recollection of his subsequent resurrection. They are skeptical about whether success or competence can be quantitatively measured. The best among them have this skepticism not because we are all of us "among the best minds," but because this system is vicious and brutal; regardless of the kind of people who are made to abide by it.

It subjects students, particularly those in the first year to the worst sort of competition; all of them are taking exactly the same subjects, and there is the illusory belief among them that a direct comparison on the basis of grades is an accurate one. As the year grinds on, the pressure to get good grades becomes considerable.

What sort of a place is it that warns students in its introductory materials to keep their notebooks securely hidden in their lockers? What favorable consequences can ensue from unbearable pressure?

Here is the crux of the matter: the grade reform group wants the pass-fail system because it will make Harvard a better place. Forget about the pompous and self-seeking argument that the "best minds" should not be made to undergo the stress of a B-, and ignore those who claim that the recruiters attach overwhelming importance to the meaningless distinction between a B and a B+ (Here, if anything, there seems to be evidence to the contrary).

The important fact is that a large number of students at Harvard Law School accept this mentality regardless

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Fenno

"Hey, Fenno, doesn't the quality of life around here get you down?" complained Bunky, as I tried to brush the snow off the tube before Johnny came on.

"Aren't you fed up with all the competition, the grade-grubbing, the insulation from relevance and the world?" he went on, as I set up the card table for the nightly gin action.

"Actually I've found that if you play basketball in all five leagues you don't have to worry about that," I snapped earnestly, waiting for the card cravers to arrive.

Corporate Tool

"Be serious, Fenno. Don't you feel you're being trained to become a corporate tool of the military-industrial complex?"

"Bunky," I replied, "you sound like you need a date."

"Fenno, this place is all wrong. You been in the new faculty office building? It's just like Milbank Tweed!"

"Yep, you're right," I agreed. "But I think our secretaries are even tougher than Milbank's."

No Contact

"But Fenno, we never get to see the profs out of class. Sections are so huge; there's no faculty-student contact," he persisted.

"Gee, my study group had lunch with a few profs at Charlie's Kitchen last week before the Bruins game came on," I told him.

"How'd you do that, Fenno? Those profs usually stick to themselves over in that staff dining room, don't they?"

"Well, they don't serve beer over at the staff dining room. And the Little Penthouse at Charlie's is sort of class, I suppose."

Football Cards

"Do the profs know you personally, Fenno?" Bunky inquired.

"They all say hello ever since I sold them all football point cards at Louie Loss' big party back in the fall."

"What about the inhumanity of the mixers at Harkness?" Bunky continued. "How can you as a person tolerate those things?"

"You pay to go there, don't you?" I asked him. "But you get a better selection if you study at the BU library," I advised. "Now that's what I mean by sheer 'quality of life' . . .

HARVARD LAW RECORD

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Letters to the Editor of the RECORD

Student Power Not the Answer

To the Editor:

Again I see erupting in your pages the rash of student discontent, this time under the label of "Participatory democracy" in the letter from Messrs. Kahn & Lesser (RECORD, Dec. 5).

Toynbee says democracy is the political expression of humanitarianism. Its impact on the institution of education was disastrous at the turn of the century in Great Britain when Lord Northcliffe fathered the yellow press to pour trash and not treasure into the channels of literate communication dredged out by compulsory, free, public instruction. Humanitarianism is heady wine; in the Toynbean phrase, it breaks old bottles. Democracy is rough on existing institutions and invariably requires them to change.

It reformed elementary and secondary education in the United States in the guise of John Dewey's philosophy. With the *Brown* decision it marshalled its force in a second thrust of change

and we are desperately seeking a new accommodation of our grade school system to the massive, interracial tides of a democratic environment. In higher education our undergraduate schools have explosively proliferated under democracy's goad, forcing a crisis of quality which must be met and mastered if we are to survive. Hyman Rickover has documented this formidable problem.

Now, it appears, comes the turn of the professional graduate school, more particularly, the law school, and the vector of attack is the student who wants to hire the faculty and form the curriculum. The law school has already made one adjustment to democracy's intimations when Messrs. Ames and Langdell created the case system of instruction. This reform made the student so dynamic and fundamental a part of the instructional system that sixty years have passed in productive peace. The law school as an institution reacted promptly and profoundly to the force of democracy and thus became our major reservoir of political leadership.

(Continued on Page 10)

Law Notes

Gary Bellow '60 has been named 1968's outstanding legal services lawyer. Currently at the University of Southern California Law Center, Bellow was former deputy director of the California Rural Legal Assistance program.

* * *

Consumer crusader Ralph Nader '58 is on the track of some more industrial cover-up. In the February 10 issue of *The Nation* he discusses why the facts don't disclose the true extent of occupational death and injury in this country.

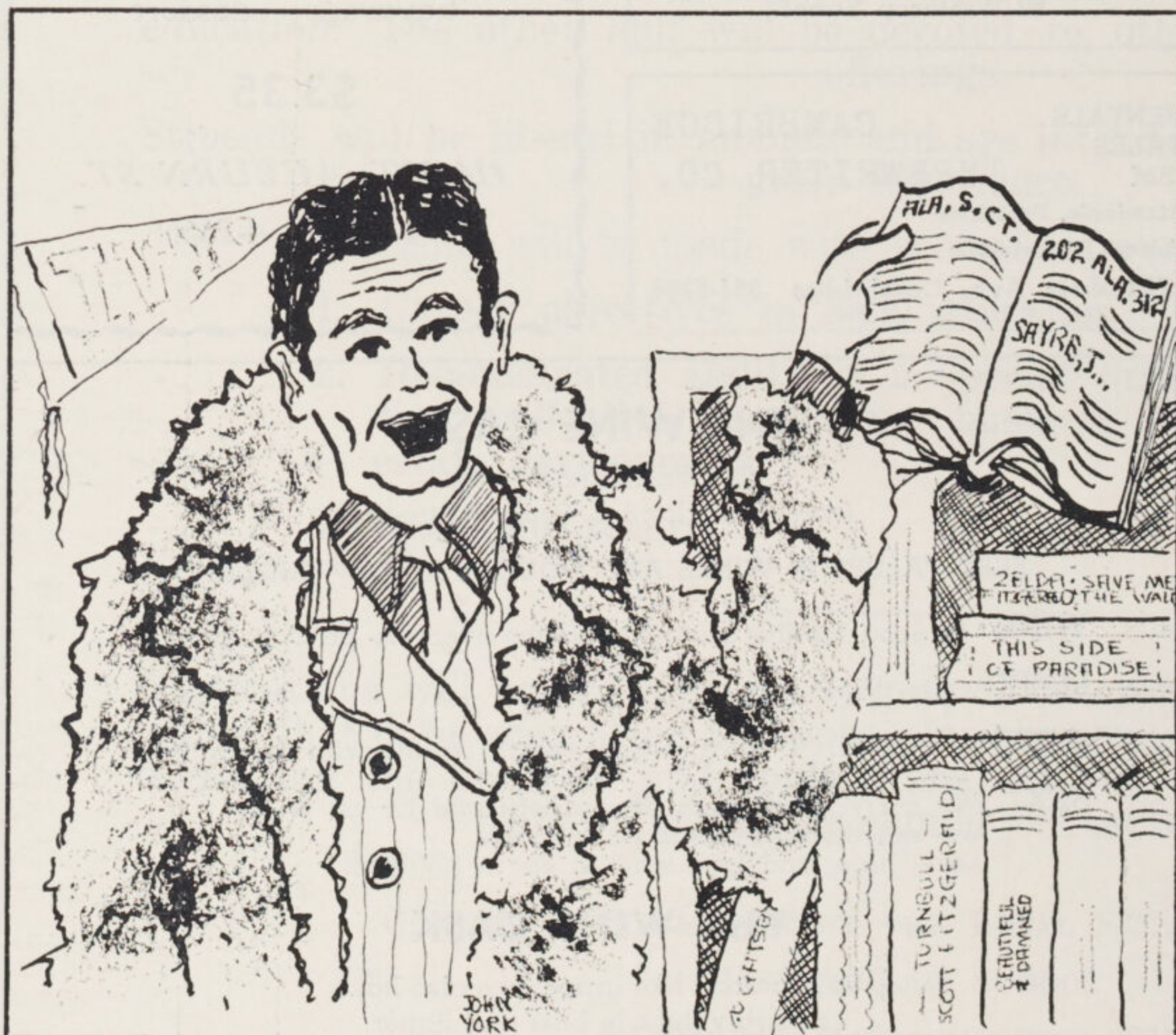
Perhaps you had no idea what industry does to its workers. Then consider this quote from Mr. Nader: "... all the urban riots in this country during the past three years have led to about 260 dead; each working day brings death to fifty-five workers, disabling injury to 8,500 and lesser injury to 27,200. Every year, 14,000 to 15,000 workers die, more than half a million are disabled by occupational diseases, more than two million are disabled by occupational accidents, and more than seven million are injured. And even these figures understate the situation, because death from prolonged exposure to toxic chemicals or particular matter — asbestos, beryllium, carbon monoxide, coal dust, cotton dust, cancer-causing chemicals, dyes, pesticides, radiation, etc. — is rarely recorded."

* * *

The battle for places on the Harvard University Board of Overseers is shaping up again. In the running for the five open positions are the following Law School alumni: F. Stanton Deland, Jr. '40, a partner in Sherburne, Powers & Needham in Boston; Caspar W. Weinberger '41, director of finance of the State of California; and Eli Goldston '49, president of Eastern Gas and Fuel Associates in Boston. These gentlemen will have to compete with, among others, John Brademas, congressman from Indiana; writer Norman Mailer, and Henry R. Norr, a student in the Harvard Graduate School of Education. The ballot will be by mail.

* * *

According to the "Wire taps" column in the Feb. 9 *Boston Globe*, former Law School Dean Erwin Griswold is a leading choice for a Supreme Court appointment. He may possibly be the successor to Chief Justice Earl Warren.



Bet you didn't know F. Scott Fitzgerald's father-in-law wrote 202 Ala. 312? Bet you didn't care.

Letters to the Editor of the RECORD

(Continued from Page 9)

However, plainly the time is at hand for further change. I am sure that the direction of survival is not "student power" or "participatory democracy." My speculation is that Mr. Nader is right; we need the successors of Langdell and Ames to refocus the law school lens.

In the first half of the century the critical problem of our society was the establishment of its affluence. Bills and notes, corporations, property, trusts and taxation were the legal levers of change and hence were the proper and relevant materials to use when training students in legal analysis. In the second half our problem is to learn to use our affluence. Urban renewal, the poverty program, basic research, civil rights and the protection of the consumer's interest and of the force of the consumer market now concern us. The needed legal dynamic is the development of new and unabrasive interfaces to adjust the conflicts between labor and management, the citizen and the public employee, the disadvantaged and the middle class, the industrial state and the consumer.

Once these are made the primary materials of legal analysis in the law school a second successful adjustment of legal education to democracy will emerge, and the law student will again be so beguiled by professionalism he will have neither time to waste nor inclination to dabble in student-faculty committees and "participatory democracy."

William Q. Keenan '49

More on Military Law

To the Editor:

We should be very glad for the exchange of viewpoints on military law which has grown out of the Sherman interview of Nov. 21. The military-civilian communication gap to which Mr. Sherman refers (Feb. 6) is immense, as evidenced in a small way by the undercurrent of mutual intolerance and snobbery which has run through the exchange from its beginning. We cannot afford this gap any longer. I offer the following thoughts toward the gap's further narrowing.

The last paragraph of Captain Faust's letter (Feb. 6) contains the germ of an idea which deserves close consideration. We cannot too often remind ourselves of the extent to which the military forces are, inevitably, by

their very nature, a society distinct in many respects from the larger civilian society. Military society has its own assumptions, values, and goals, which often little resemble their civilian counterparts. Civilian criticisms tend to ignore this, and in consequence are likely to be dismissed by the military mind as irrelevant.

The problem of command influence on courts martial presents most of these issues clearly. I am sorry that I cannot discuss in detail this complex and fascinating subject, but a couple of very general, conclusory observations may be worthwhile. First, the individual is important in military society, but not at all in the same way as in civilian society. The collective mission of the military force comes first: if it were not so, you simply would not have a military force. Second, like it or not, it is not to be expected that civilian concepts of justice can be carried over to military society intact; or vice versa.

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Another Vote For the J.D.

To the Editor:

I just finished reading an article by Larry Pressler regarding the J.D.-LL.B. matter in the January 30, 1969 issue of the Harvard Law Record.

My partner, Robert H. Goldman, Class of 1943, and I concur in every category raised by the article. As a matter of fact, . . . the Washington College of Law which is part of American University in Washington, D. C. adopted the resolution on October 15, 1968, not only granting the J.D. but granting it retroactively as well.

(Continued on Page 14)

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Forum Now Begins Time of Experiment

By Richard Hoffman

Melvin Belli starred as the Harvard Law School Forum's first attraction of the new term. The presence of the famous San Francisco trial lawyer, however, was only the beginning of what must be regarded as a time of experiment for the Forum, which has long served as the Law School's chief provider of big-name speakers.

One incident last fall pointed up all the Forum's problems. The group had scheduled a talk by Rev. Jesse Jackson of the Southern Christian Leadership Conference. One Forum executive had labored enthusiastically to arrange the evening. Nevertheless, the Forum admittedly found it easier to get Rev. Jackson to appear than other well-known public figures, who apparently have spurned Forum invitations with some regularity: perhaps because the Forum doesn't pay honorariums or fees — only expenses.

All was planned, Rev. Jackson had agreed to come, and posters were up when the Forum learned that the Civil Rights-Civil Liberties Research Committee had arranged for Ralph Nader '58 the same evening. The Forum fretted all the more because it had tried in vain to bring Nader to Cambridge.

As a result, the Jackson speech turned out to be less than a financial windfall for the Forum, while the group's officers were also unable to reach any conclusions about what kind of speakers to seek. Other pitfalls last term included a last-minute cancellation by the president of Panama, and continued problems with obtaining speakers.

William Stephens, 3L, then the Forum's president, saw the Jackson talk as a chance to learn just what kinds of speakers will draw Law School audiences. "Harvard Law people don't seem to want to hear highly intellectual discussions on Friday nights any more," he says.

According to Stephens, members of the Nixon administration won't speak publicly at a setting such as that provided by the Forum, while departing principals in the Johnson government also have refrained from accepting invitations. Conservative speakers steer clear of groups with the name "Harvard" attached, while radicals feel that there are better places than the Law School to rally a following. Finally, many desirable speakers desire to be paid.

It may be that a change in the Forum's image is required. Programs are infrequent. To remedy this problem, the group plans to run numerous "miniforums," such as one prior to elections last November, in which Professors Ohlin and Bator explained why they were voting for Humphrey and Nixon, respectively. These evenings, while not drawing the crowds who have packed Lowell Lecture Hall for major Forum programs in recent years, have been praised by most who have attended.

Recent Book

Defender of 'Fanny Hill' Writes About His Trials

By Lawrence Gartner

The End of Obscenity: The Trials of Lady Chatterley, Tropic of Cancer & Fanny Hill; by Charles Rembar; Random House; \$8.95; 528 pages.

Defending allegedly obscene books is like practicing gynecology: to the layman it sounds exciting, but once you get into your work, it's just a matter of professional competence.

Charles Rembar is the lawyer who, by defending several well-known erotic novels, has been a powerful force in bringing about broader protection of the First Amendment. In *The End of Obscenity* Rembar not only shows his professional competence as a lawyer, using a new theory of the First Amendment, but he shows a unique competence for writing about his legal experiences. In the traditionally murky writing of the legal profession, Rembar's prose stands out like a beacon.

Less than a decade ago, *Lady Chatterley's Lover*, *The Tropic of Cancer*, and *Fanny Hill* were books which, if they were to be read at all, had to be begged, borrowed, or smuggled into the country. In the states, sales were banned. The books were generally held to be pornographic.

In 1957, the Supreme Court attempted to sum up the law of obscenity in the *Roth* cases. The generally accepted legal thought saw the following rule in the *Roth* cases: a book was not protected by the First Amendment if, to the average person applying contemporary community standards, the dominant theme of the material taken as a whole appeals to the prurient interest.

Under this reading of the *Roth* cases, many believed it was fairly clear that books such as *Lady Chatterley's Lover*, *The Tropic of Cancer*, and *Fanny Hill* could be banned by obscenity statutes. Rembar thought differently, however.

When Rembar began defending these books, few legal scholars saw any chance for success. But his theory was based on a different reading of the *Roth* opinions, and especially that of Mr. Justice Brennan. In defending Grove Press' edition of *Lady Chatterley's Lover*, Rembar tested his theory before the courts: that in Brennan's

opinion there was the implication that a book was protected by the First Amendment if it had some redeeming social quality, no matter how much it might appeal to the prurient interest or be patently offensive. The *Fanny Hill* case later went to the Supreme Court which affirmed Rembar's theory.

The End of Obscenity is an excellent book for the law student in that it demonstrates the ability of a lawyer to devise a new legal theory and to successfully argue it in the courts. The path of three books through the tangled web of the law presents a good picture of trial and appellate work as well.

But don't go out and read *The End of Obscenity* just because it might give you helpful hints of advocacy. Read it because it is one of the few really enjoyable and interesting books about the law that you will have a chance to read. Rembar is as capable a writer as he is a lawyer: clear, readable, and witty. Interspaced between the traditional stretches of testimony and explanations of court room tactics typically found in lawyer's memoirs are Rembar's side comments on the law, obscenity, and other matters, such as the following on erotic books and minors:

"During the time when the *Fanny Hill* case was on appeal, a woman in New York City sent her

daughter to buy a copy. It was a deliberate, knowing act. Evidently convinced that the book would corrupt morals, and that something must be done, she was gathering evidence for a prosecution. There is no reason to suppose that the girl, without having read the book, was in the eyes of her mother already corrupted, so that the lady felt there was nothing to lose. We must therefore assume that she was willing, *pro bono publico*, to lay the moral fiber of her daughter on the altar of clean literature. Such resolute exclusion of ordinary parental feeling in the face of a higher imperative had probably not been seen since Abraham led Isaac into the land of Moriah. In the case of Isaac, the Lord stayed Abraham's sword. Nothing stayed the bookseller, however; he sold the girl the book. The mother then complained to the district attorney, who proceeded under a statute specifically prohibiting sales to minors."

Indeed, some of Rembar's best writing is in the footnotes. It is clear that he survived any law review experience he might have had.

The End of Obscenity is an enjoyable and witty account of one lawyer's excursions into the law of obscenity. Go out and read it. It might even make you want to be a lawyer again.

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Dean Bok's Statement Calls for Students To Decide Whether to Work on Committees

In the weeks following the Christmas vacation, two faculty meetings were devoted exclusively to the question of student participation in the work of the faculty committees, where new programs and proposals affecting the school are formulated and developed. Although the work of these committees lends itself in varying ways to student participation (see my statement in the RECORD on October 31, 1968), most committees, including those involved in matters of curriculum and educational policy, expressed a desire to enlist the help of students either as members or as counterpart committees working in tandem on matters of joint concern.

Other committees have reserved judgment while expressing interest in discussing the question of participation with representatives of the student body. Some committees, such as those involved in reviewing the financial aid program and in developing a joint degree program with the Business School, have already recruited students who are currently working with them.

An effort must now be made to determine whether the student body favors participation on committees and, if so, how students shall be chosen to engage in this work. The student body should play a major role in resolving these questions. To this end, the Joint

Student-Faculty Committee has been working for several weeks to formulate a method of selection which can serve as a focus for student discussion or a target for criticism as the case may be. This proposal should be made available for comment momentarily.

Student participation on faculty committees should not preclude the development of suggestions by other students or the use of other methods of obtaining student opinion, such as open meetings, surveys, and the like. Such methods will continue to be used while the proposal for committee participation is being discussed by the student body.

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Letters . . .

(Continued from Page 10)

If you took a survey of alumni, especially those who travel and have European friends, you would find that the J.D. is most necessary when conducting business there.

I urge you to continue to be militant in this matter and not to allow procrastinations to encumber your cause with attrition and ultimate defeat.

James T. Curtis '51

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Students Study Faculty Panels

(Continued from Page 1)

dent body or interested in administrative reform.

His group's objective in collectively signing petitions was to reject the system, since the signers regard it as a ridiculous means of student representation. In O'Connell's opinion, the joint committee doesn't reflect student opinion and it doesn't really care about reform.

He points to the fact that, after the open meeting in December, committee members asked faculty members if they wanted students on their committees. Rather than



Howard Sweet

Prof. Shapiro selects names of 1L Joint Student-Faculty Committee members.

soliciting faculty opinion, he feels that the committee should be more concerned with pushing student interest in committee reform.

At present, O'Connell and "about thirty" 1Ls are conducting a study of the committee system at the Law School. One student has been assigned to each committee to report on its responsibilities, its impact on student interests, and its degree of student representation.

O'Connell hopes that these reports will provide the information necessary for intelligent proposals for reform.

He has also requested Dean Derek C. Bok to make available for student examination the minutes of past faculty meetings and to permit five to ten students to attend the next meeting as observers. Dean Bok has apparently reserved this request for consideration by the Faculty Committee.

In a letter to The RECORD dated February 10, Dean Bok explained that two faculty meetings considered the question of student participation and that the Joint Student-Faculty Committee is formulating a method of selection for student discussion and criticism. "This proposal should be available for comment momentarily," the letter stated.

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Inn Votes Shift In Admission

Lincoln's Inn Society voted last week to change its membership selection procedure to admit 80% of the group's new members by lot. The remaining 20% will be chosen by any method specified by the group's board of governors.

The measure was narrowly approved at a membership meeting of Lincoln's Inn. A resolution which called for all members to be chosen by lot was voted down.

Discussion on the change was unusually spirited, considering the Inn's genial torpidity. But a vote was called as departing throngs threatened to diminish attendance below quorum level.

Once again, members overwhelmingly rejected admission of women to Inn membership.

Peter Monroe, 2L, was elected president of the Inn. Chosen to be vice president and secretary was Larry Pressler, 1L. Steve Haberfield, 2L, will become treasurer.

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First Year Students Discuss Pass-Fail System

(Continued from Page 8)

of how much truth there may be in it. If someone thinks his life has been ruined because he got a B-, then the system has had its effect, regardless of whether or not the recruiters attach any importance to that fact.

Proponents of the present system are not without their arguments. Abolition of the grading system would create far more pernicious discrimination; race, religion, and all the other old bugbears might be dragged into the strenuous business of finding warm bodies for the nation's law factories.

Does anyone honestly think that a firm would practice discrimination for lack of a transcript? Come now, gentlemen, does an interviewer become anti-black or anti-Semitic because he has no record of a man's grades? Such recruiters should be banned from the campus anyway; that would cer-

tainly be a good way of eliminating that fear.

The question then arises, what about the honoraries? There is no reason why they could not be converted from honoraries to voluntaries, with members selected on the basis of tryouts. To be sure it would be a difficult task to judge a large number of law review entries; but if the Law Review was not an honorary, there might be a manageable number of people competing.

It is not being unnecessarily idealistic to say that a system where a man can go to a recruiter with evidence of meaningful activities which he has engaged in out of honest interest, and not to compensate for a low grade average, a system where an interviewer may look at evidence of written work, rather than a transcript, has much to recommend it.

In the final analysis, the Harvard

Law community must confront the fact that both the law school and the profession may be losing their appeal to the brightest undergraduates. Many of those who would have chosen law school ten years ago have been greatly influenced by tales of a place where notebooks and study outlines are not safe. They are turning to other graduate schools, or, in some cases, to another, smaller law school.

Whatever the truth of these myths about Harvard, they are accepted as true by many students in the Law School, and by a large proportion of those who might have come but chose to stay away. The pass-fail debate is, therefore, discussing a question of the greatest importance. To a significant extent, it will affect the environment of the law school. Should a pass-fail system be approved, it may well attract a far greater number of intelligent, imaginative undergraduates to the school and the profession.

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