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FIFTEEN CENTS

1L's Seek Change in Grading

By Richard Hoffman

For the second time in two years the Law School grading system has been weighed by students and found wanting. In a 27-page proposal planned for distribution this week, a group of 150 first-year students recommends that a "pass-fail" first year marking scheme be combined with periodic evaluation of student performance and communication of this assessment to the student by professors.

The proposal calls for a similar set-up for second and third-year grading, with possible variations such as a third category, labeled "distinction."

Among the objectives set by the proposal are:

- stressing "the importance of student development over three years rather than achievements or failures after one"

- encouragement of "cooperative work among first-year students and a decrease in the high level of tension"

- creation of "feedback which will provide substantially more information on our progress without the awesome penalties which now exist"

- breaking down "the monolithic quality of our education by encouraging individual and small-group research and writing"

The first-year students ask professors to give written assignments: either hour or take-home exams, and memoranda or short briefs. Recognizing the claims on faculty time, the report admits that professors might only be able to grade a fraction of this written work. Use of teaching fellows,

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Mike Lurey

Gannett House — where the revolution failed.

Law Review Revolt Fails

By Lawrence Gartner

An incipient revolt by second-year members of the Harvard Law Review aiming to democratize the legal periodical's structure was crushed two weeks ago at the Review's 16-hour-long election meeting.

Many 2Ls sought to make all third-year members of the Review editors; all would have equal rank. Currently, not all of the 2Ls are made editors, and those that aren't effectively end their Review careers at the end of second year.

Elected president of Volume 83 (1969-1970) at the meeting was Lewis D. Sargentich, who led his class academically last

year. Raymond Wheeler, Jr. was elected executive editor, and the new treasurer is Michael S. Helfer.

A vote on the proposed change in the Review's organization actually found the proponents of the change to be a bare 15-13 majority. But opponents resurrected a rule requiring that such changes must be approved by a two-thirds majority.

Some 3Ls on the Review also reportedly argued that there were several second-year members who were not capable of serving as editors.

The past president of the Re-
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First-Year Students Seek Grading Change

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2Ls, and 3Ls is suggested as an alternative.

To be sure, the proposal emphasizes that "primary reliance for evaluation would be placed on first-year students themselves." Under its plan, students would exchange papers for comments, hold discussion sessions with professors, and work on legal problems with other students in group projects.

With regard to exams as currently given, the authors of the proposal would have professors substitute a brief comment for the current letter grade, while noting in the margins arguments which were especially strong or weak. Exams would be returned to students as soon as possible.

"We are not convinced that exams need be marked by professors," the proposal contends. "We believe that in line with the de-emphasis of exams that we have suggested, a professor could far more profitably devote his time to his students than to their exam papers."

The report refers prospective employers to indices of legal skills such as samples of written work and participation in extracurricular activities as standards for hiring. "Convenience for employers should not determine the educational policies of the Law School," the proposal declares.

Employers who now ask for samples of students' written work believe that these more reliably indicate ability than grades, according to the proposal. Further, "the proposed system would stress that all Harvard graduates will make very competent lawyers," the proposal claims.

The plan's authors feel that an absence of grades won't lead firms to discriminate any more than they do now. "If anything, firms will be given better indicators of merit than they now receive, and firms which are interested in a student's merit will use them."

The present system, the proposal asserts, "is itself highly discriminatory. It is biased against the student whose background is such that he fails to adjust completely to law school in his first year."

With regard to fears of reintroduction of discrimination against minority groups with any abolition of grades, the proposal declares, "Students from minority groups in past years favored grades as a means of proving themselves and gaining recognition. But if such students now feel that grades are holding them back and in addition produce disastrous side effects, it is not for the school to say they are wrong . . ."

Membership on the Harvard Law Review might be chosen by

'Grades Create Few Winners, Many Losers'

a writing competition similar to that used at Yale, the report suggests.

"Grades create a status hierarchy with very few winners but many losers," the report asserts. "The current procedures are unjustifiable at a time when the school is attracting so many highly-motivated, well-qualified students."

"As the ones who stand to lose by this system we want to see it changed before we experience the unhappy effects of it; but we also recognize that the issues we raise deeply affect an educational process that is the central concern of a faculty devoting their lives to teaching law," the proposal says.

The proposal was prepared by a core group of first-year students, with representatives from all four sections. Upwards of 75 students in each section were contacted, and the paper states that "for the past month 150 first-year

students have been actively discussing the atmosphere created by the present grading system and proposals for change. We have found that our views coincide to a remarkable degree."

Apparently the student consideration finds a parallel in the faculty. A report by Dr. Alan Stone, visiting lecturer in psychiatry and psychoanalysis, has circulated among professors. The study is said to have raised many questions about the Law School's "quality of life" and may ease the way for acceptance of the first-year students' proposal.

In contrast to some published reports last week, Dean Derek Bok appears pleased that students have taken time to prepare a thorough study of an area in which they seek improvement. While unwilling to commit himself on the plan's merits, mainly because he is striving to remain open to discussion of all aspects of the question, the dean intends to form a panel of faculty members to consider the grading system with interested students.

Although he points to numerous other matters, such as the J.D. degree, the combined program with the business school, and placement (all of which should come before the faculty this semester) the dean didn't rule out faculty consideration of grading this term. He said that the time between the proposal's distribution and action of it by the faculty will depend on how discussions between professors and students progress.

Sentiment in the first-year class is asserted as favoring the proposal. In one section, out of 75 students sampled, 50 stated support of the plan, 10 opposed it and 15 were unsure.

The project has been solidly a first-year one. Authors of the proposal have relied on various Law Review articles which presented evidence of alienation caused by grading.

Melvin Belli Talks, Acts and Performs

By Larry Pressler

Melvin Belli, accompanied by a most attractive blonde companion, addressed the Harvard Law School Forum on February 14th. Tugging at his velvet-lined coat and his gold watch chain, Belli spoke on "The Law Revolution"—also the title of his latest book.

Belli's performance illustrated his own description of what a good trial lawyer should be: "the ingredients of a trial lawyer are imagination and initiative. You need a feeling for the plaintiff, the desire to do him some good, and to stick with him through thick and thin, the guts to do just that when everyone is criticizing you. And a little law will help."

Belli's speech was virtually void of any black-letter law. His ninety-minute performance for the three hundred students who had not left for the holiday weekend was filled with humorous anecdotes about insurance companies, juries, and past experiences. He told how he had received a \$150,000 verdict from a Chinese-oriented jury by repeatedly wishing them "Happy New Year" in fluent Chinese. Then he told how the opposing insurance company's lawyers were frantically calling their home office to "find out what the hell Belli is saying to the jury."

Belli, who has made a fortune and a national reputation by representing individuals against insurance companies in tort actions, said that he "usually genuflects to the East each morning—because it is the home of the wealthiest insurance companies."

He pointed out that a good young torts lawyer must learn not to gulp when he says "I seek \$150,000 in damages." "If you gulp or twinge," said Belli, "they will automatically cut the amount in half."

Although the rogue in Belli kept coming out, he



did say a number of things on the serious side in his wide-ranging, but often incoherent talk:

- "I think Ralph Nader has done a hell of a job with warranty.

- "In California we have some eighty people waiting for execution—I don't think any of them will be executed. I predict a Supreme Court ruling in the next few years completely outlawing capital punishment.

- "Trial-lawyer practice is clearly the brain-surgery of the law.

- "We must establish provisions for installment payments of tort judgments.

- "One acquires more objectivity as he moves further away from bankruptcy.

- "A guilty man is much more in need of a law-year than an innocent man.

- "We are a country that has gone to the moon, but we still don't know when to call a man insane.

- "Any established law firm is bound to have a number of insurance companies in its stables—a young man should remember that when he goes to work for them."

When asked what he thought of law school curricula, Belli replied, "we need to add some medicine to our curricula for those interested in torts. Who can judge the accuracy of an autopsy unless he has had anatomy? We come out of law school not equipped forensically."

Belli affectionately recalled his past friendship and visits with Dean Pound when he led Harvard Law School. Ending his speech by declaring that "we are now in the golden age of the law," Belli urged his audience to "go out and get with it."

Following his speech, at a cocktail party a jokester introduced himself to Belli as being with the Holy Grail Insurance Company, to which Belli replied, "You do have a fairly solvent handshake."



Photos by Mike Lurey

Portraits of Legal Ancients

By John York

The portrait of one of the two saints claimed by the legal profession hangs in Langdell South Middle: Sir Thomas More (1478-1535), who was executed by Henry VIII and canonized in 1935. In Langdell North Middle reposes the great Irish advocate John Philpot Curran (1750-1817). According to the late Dean Roscoe Pound's notes, "The portrait of Curran was in a house in Ireland at the time of burning of the houses of landlords and has a bullet hole in one corner, well repaired, however, and in the background only."

Often catching the meandering eye of a backbencher, the Law School's portrait collection of British and American lawyers and judges helps combat creeping Philistinism in the Langdell environs. Numbering over 175 oils, not counting other abundant prints and the Miró mural in Harkness Commons, the collection contains works by leading 17th, 18th, and 19th century Anglo-American portraitists. Sir Godfrey Kneller, Sir Joshua Reynolds, Robert Feke, Gilbert Stuart, Charles Willson Peale, and Chester Harding lead the roster of outstanding painters in the collection.

Although the Law School had long received portraits by bequest, gift, and commission, the process was greatly speeded up by Dean Pound. He was particularly intrigued with pictures of British legal luminaries (who comprise roughly half the present collection), and advised the first such purchase (a Kneller) in 1916.

Today there are no fewer than twelve Knellers, most of them in Langdell South Middle and Langdell North Middle. These two rooms are devoted exclusively to Englishmen and Irishmen, the former containing chancery judges (mostly garbed in their robes of black and gold) and the latter the British common-law judges and lawyers. Among the five Knellers in Langdell South Middle is his

Sir Godfrey
Kneller's
'Earl
Macclesfield'
produces
pompous
showmanship
from
formal
pose and
finery.



imposing portrait of Sir Thomas Parker, Earl of Macclesfield (1666-1732), peering down from its commanding position directly above the lecturer's podium.

Painting in the late 17th and early 18th centuries, Sir Godfrey Kneller manufactured, with the help of pupils and assistants, a series of handsome portraits (especially of monarchs and their prominent subjects). He is considered the arbiter of English portraiture. The Macclesfield rendering is especially illustrative of his approach: a standardized pose with classical backdrop and showy surroundings. Unemphatic faces set against forceful light and shadow (not the powerful tile floor) complete the formula. The overriding effect tends toward pomposity.

Today the portrait collection is probably worth several hundreds of thousands of dollars. According to Associate Librarian Philip A. Putnam, longtime cataloguer of the paintings, "Most of the British pictures were bought at a time when there were depressions in England, after the world wars, and families were selling their portraits. At these times such portraits were not much in vogue."

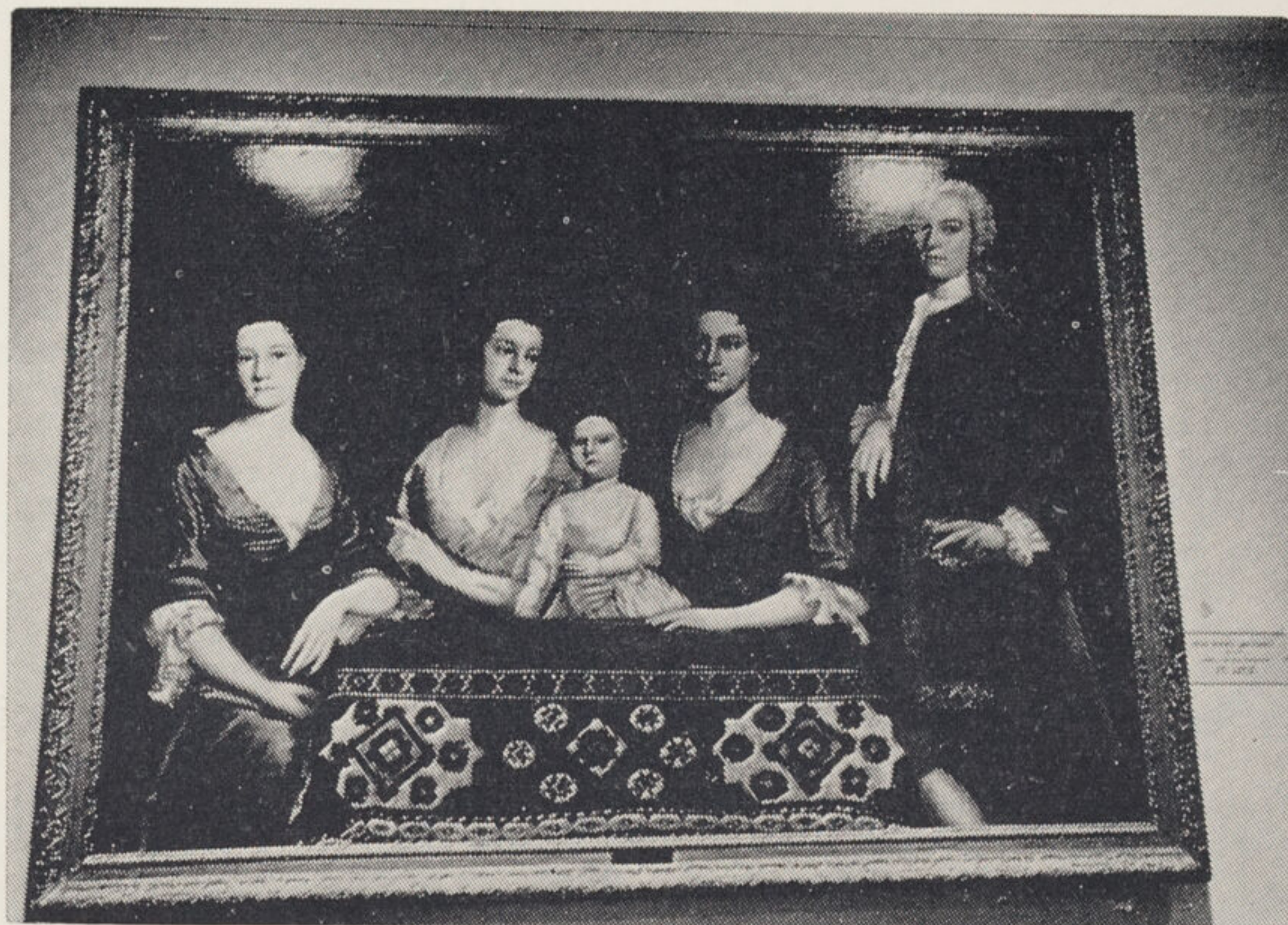
Dean Pound writes that in early times, "... I could not use Law School funds to buy pictures and had to beg the money from alumni, friends of the school, my own friends, and for two important portraits I felt we could not miss, had to borrow from my mother-in-law who, when she saw them later, called the loan a gift."

Not surprisingly, the former Dean's office in Langdell contains several outstanding paintings, one by the famed 18th century Englishman, Sir Joshua Reynolds. His work of William Murray, Earl of Mansfield (1705-1793) reveals Reynolds' predilection for giving his pictures an overall mellow tone, a generalized quality rather than stress of exact detail. Reynolds' representations of well-dressed aristocrats made him popular with the society of his time; the Mansfield portrait with its pale tints exudes a certain social elegance.

Also in the Dean's office is a miniature of Supreme Court Justice Samuel Chase (1741-1811) by the late 18th and early 19th century American portraitist Charles Willson Peale. Peale is probably most famous for his extremely realistic portrayals of George Washington, John Adams, James Madison, and other well-known men of his day. Unlike Reynolds, Peale seldom took short cuts to flattery.

Langdell North, Langdell South, the Langdell reading room, and the Langdell lobby are given over to Americans. The Langdell South classroom contains Supreme Court Justices. Included is Justice Joseph Story (1779-1845), painted by Gilbert Stuart, who was the supreme portrait specialist in late 18th and early 19th century America. Although

Decorate Walls of Law School



'Isaac Royall and
His Family' by
Robert Feke
was most recently
exhibited at the
Whitney Museum
of American Art
in New York.

It is
considered
the Law School's
best picture.

the Story picture is devoid of the imposing columns, sweeping draperies and expensive furniture which mark the "Federalist" style of his numerous mannered portraits of George Washington, the combination of fresh reality and richness are there. A ruddy-faced Story beams at one in the style which marked Stuart's incredible number of commissions (almost a thousand); small wonder that Stuart is said to have had a decisive influence upon the making of American likenesses.

In the center of Langdell South is the seated figure of Supreme Court Chief Justice Roger Brooke Taney (1777-1864) by the 19th century American Emmanuel Leutze. Better known for his *Washington Crossing the Delaware*, this proponent of the Düsseldorf school sought precise realism in his works. Taney appears as a wasted old man, every deep furrow in his thin face and each bulging vein of his gnarled hands brutally rendered.

Also opposed to the Reynolds-Stuart school of neoclassic suavity is the 19th century American painter Chester Harding. A onetime chairmaker and rival of Stuart, Harding always brought forth a little of the harshness of his subjects. Hanging in the library reading room is his rendering of Supreme Court Chief Justice John Marshall (1755-1835). The glowing red area directly behind the figure is almost sensuous (Harding's palette was more vivid than many), yet the overall effect is unpretentious and rather detailed.

In the center of Langdell North hangs a representation of United States Senator Rufus Choate (1799-1859), depicting his bulbous nose in profile. According to Mr. Putnam, the school's collection is glutted with thirty renderings of Choate. "Un-

fortunately," Mr. Putnam laments, "he was a grotesque man — more so even than Abraham Lincoln. We could do with many less pictures of Choate."

Langdell North abounds with paintings by the "lesser" American portraitists John Trumbull, John Vanderlyn, Robert Edge Pine, Matthew Harris Jovett, and John Wesley Jarvis.

Generally considered the Law School's "best" picture is the portrait of Isaac Royall (1719-1781) and his family by Robert Feke, an 18th century itinerant portraitist. (From Royall's legacy grew the Royall Professorship of Law, the origin of the Law School.) Frequently exhibited outside the School, the Royall picture is felt to be one of Feke's best and was the first he ever signed. Even so, the female figures are rather stiff (albeit charming). As Feke's portrait of Stephen Sewall (1704-1760), also hanging in the lobby, attests, Feke is good with faces but often renders the subject's body as wooden and distorted.

Of course, every collection has its lesser members, which are accorded "appropriate" treatment. For example, one ancient picture is in the new faculty library atop the new building chiefly because both the subject and the painter are unknown. (All that is identifiable is the mysterious rogue's position, indicated by the color of his garments.) Even better hidden from public view is an enormous rendering of President Rutherford B. Hayes (1822-1893), which is placed on a rarely-used stairway leading to a workroom over the Treasure Room in Langdell.

"Hayes is reputedly one of the few Harvard Law School graduates to ever ascend to the Presidency," remarks Mr. Putnam. "But, even so, no one cared for the picture and stuck it there."

Gideon's Trumpet Reviewed Anew:

By Krishna Mohan Sharma

Often the charisma enjoyed by a writer so captivates readers and scholars as to cause them uncritically to heap praise upon his writings. Anthony Lewis, the talented journalist and the author of *Gideon's Trumpet*, has been one such hero. Much publicized, the book has been widely acclaimed as "meticulous" and "discerning": a "superb narrative" of the landmark case, *Gideon v. Wainwright*, 372 U.S. 335 (1963). *Gideon* applied the Sixth Amendment guarantee of the right-to-counsel to state felony prosecutions (through the Fourteenth Amendment).

Notwithstanding other reviewers' praises extolling Lewis' research, his sharp "understanding of the United States Supreme Court and its deliberative process," and the soundness of his analysis and history, the book has the flavor of a fascinating novel.

During an interview in preparation for the book, Lewis stated to Bruce R. Jacob, the *Gideon* attor-

ney for Florida, that he needed a theme. Not being a novelist, Jacob straightforwardly believed that non-fiction writings do not require a theme: an author is supposed to report forthrightly and objectively.

It wasn't long before Jacob learned much to his chagrin, what Lewis' theme was. The main thread of Lewis' story, as it unfolds, is that, although *Gideon* was without counsel at his trial, he had an excellent lawyer at the Supreme Court level, while Florida was poorly represented. The theme was concisely expressed by a reviewer, Professor Charles Wright [42 Tex. L. Rev. 935, 938 (1964)]:

The basic premise of the *Gideon* case is that . . . *Gideon* was unfairly overmatched when he was pitted against an experienced prosecutor. It is richly ironic that there was a similar overmatch when *Gideon's* case reached the United States Supreme Court, but that there it was the state which was out of its class.

Conforming to his theme, Lewis lavishly praised Abe Fortas and his law firm, along with everyone connected with *Gideon's* side, while being ungracious toward Florida. In driving home this theme he portrays Jacob as an extremely young and inexperienced lawyer. Professor Yale Kamisar picked up the cue from Lewis and Wright but slanted the meaning of the word "class" in making an *ad hominem* attack against Jacob: Lewis said that in oral argument Jacob's lack of "'class' . . . told heavily" [78 Harv. L. Rev. 478, 480 (1964), citing the above passage].

This writer recently interviewed Jacob, currently in the graduate program of the Harvard Law School. Since *Gideon*, Jacob has obtained an LL.M. from the Northwestern University Law School. As an associate professor at the Emory University School of Law in Atlanta, he established a law student defender program: The Emory Legal Assistance for Inmates Program [see Gorham, "Comes Now: The Constitution," 26 Atlantian 38, 39 (1967)].

Jacob has successfully represented indigents in many cases, including *Rosa v. United States*, 397 F.2d 401 (5th Cir. 1968); *McKinney v. United States*, 403 F.2d 57 (5th Cir. 1968); and *White v. Blackwell*, 277 F.Supp. 211, 220 (N.D. Ga. 1967). In the

Lewis Correct on Florida's Jacob?

last of these opinions, Judge Frank A. Hooper expressed "sincere gratitude" to "Professor Bruce Jacob . . . for his untiring and effective efforts." Recently, the United States Supreme Court appointed him in one of the noteworthy cases of the October 1968 term: *Kaufman v. United States*, Case No. 53, argued November 19, 1968.

Reasonably, *Gideon's Trumpet* could not have anticipated the above accomplishments. But, even before *Gideon*, young Jacob already had a great deal of experience as a specialist in criminal appeals, representing the state in dozens of cases before the

Mr. Sharma is an S.J.D. candidate at the Law School.

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Several New Facts Now Disclosed

Florida appellate courts. On one day in September 1962, he had argued three of the four cases on the Florida Supreme Court docket.

The use of such relevant facts, doubtlessly available to Lewis, would have collided with his basic theme. To author Lewis, the Florida position seemed inconceivable. This bias permeates his book. Apparently, Lewis had an incomplete understanding of the role and function of the lawyer (here, counsel for the state) in the adversary system, even though he had been a Nieman Fellow at the Harvard Law School during the 1956-1957 academic year. Certainly, the Supreme Court was entitled to a thorough exposition of rival standpoints to enable it to reach the best possible solution.

Yale Kamisar's review [78 Harv. L. Rev. 478, 480 (1964)] was also somewhat one-sided:

Various disruptions — such as two weeks at National Guard camp in June, his marriage and honeymoon in September — prevented . . . any sustained work . . . until the fall of 1963 [sic], after he had left the attorney general's staff and entered private practice. . . . Thus, months after "the extraordinary process by which a large firm digests a legal problem" had gotten underway in Abe Fortas's firm . . . the lone lawyer for the state began his work in earnest, but only on nights and weekends, with only his wife providing clerical assistance. . . .

Kamisar's Review Scrutinized

A curious consistency possessed Florida officials. If they minimized a defendant's need for legal skills, they were almost as unconcerned about their own. They practiced what they preached.

This passage tends to eschew the truth. Certiorari was granted in *Gideon* in early June. Ordinarily, the record would have been printed and Fortas' brief filed by August. Jacob's brief, due thirty days after Fortas' brief, would



"Sure — it means more money, status, prestige . . . and stop calling me 'Doc.'"

have been completed by September. Jacob accepted a position beginning October 1962, thinking that by that time he would be finished with the brief. However, the office of the Supreme Court was late in printing the record, and Fortas' brief was not filed until November 21, 1962. The law firm authorized Jacob to work on *Gideon* during office hours, but he felt it improper to spend this time on outside work.

From October through mid-December, Jacob worked every weekend, from early morning until late evening, and he spent from 5 p.m. to midnight or later each weekday working on the case. On many nights the Jacobs worked until 4 a.m. or later. Though Jacob had only his wife for clerical assistance, her prior experience as personal secretary to the Secretary of State of Florida left little to be doubted about her competence. Moreover, during the previous March and April, Jacob had prepared and filed a type-

written brief in the Supreme Court in *Gideon* and had spent considerable time working on the case during the summer.

Kamisar overlooks that for many months prior to *Gideon* Jacob had been familiar with the right-to-counsel problem, having worked on a number of other cases in which the issue had been raised. His reply in *LaForge v. Wainwright*, 372 U.S. 774, exhaustively discussed the progeny of the *Betts v. Brady*, 316 U.S. 455 (1942), rule. Curiously, Kamisar contradicts himself for, while implying that Jacob labored under circumstances which made it impossible for him to do other than a miserable job on the brief, at another place he admits that "Jacob wrote a good, solid brief" (at 480).

Furthermore, Kamisar remarks: "[A]s another reviewer has . . . [said] Jacob was 'a boy . . . sent to do a man's work'" (at

(Continued on Page 14)

Grading Revisited

What's most encouraging about the first-year grading proposal is the probability that it will result in the Law School's facing up to demands that student work receive real evaluation. Small sections haven't produced significant increases in the amount of faculty attention given to advising students of their performance. And up to now, much talk of more written work and special projects has been just talk.

But the proposal has struck the exam system where it is weakest: once written, exams disappear, never to be seen again. All evaluation is concentrated in a magical letter. If the present system is retained intact, it will only be at the expense of the faculty's admitting that it refuses to provide students with any kind of meaningful evaluation of their work.

On other fronts, the proposal shows signs of promise. It points up the weaknesses of the Joint Student-Faculty Committee, whose work of just one year ago is now regarded as obsolete. The concerted effort which produced the first-year grade plan involved a large number of students, far more than took part in last year's process. The report is remarkably free of the bureaucratese which permeated the the joint committee's work.

The Law School administration seems anxious to overcome any early suspicions that the proposal will gather dust. True, there are many other subjects, such as the law-business degree program, the J.D.-LL.B. controversy and the problems of the placement office, which merit attention. The question of student participation in general remains to be resolved.

But we hope the Law School proves sufficiently adaptable to cope with the grading proposal regardless of other items crowding the agenda. If a large number of students care enough about something to spend many hours preparing a superior report, the Law School must be ready to move speedily toward a decision on implementation.

The course of student participation in decision-making at the Law School will be determined by the reception given the report on grading. All the schemes suggested for selecting representatives are useless unless the student body shows that it is concerned about what goes on here. Students of at least one of the classes have committed themselves to change. It remains to be seen whether the remainder of the student body and the entire faculty are equally concerned.

HARVARD LAW RECORD

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Fenno

"Fenno, you won't believe it, but I just walked past Hemenway Gym and everybody was there!" Bunky shouted down the hall as I hurriedly hustled his date (he'd taken my advice and gotten one) back into his room.

"Who's everybody?" I screeched back, as I snagged the latest issue of Casper the Friendly Ghost for her to pretend to be reading.

"Don Dunphy, Nat Fleisher, the Rock, Ali, Jimmy Cannon, Jersey Joe, Sugar Ray and even, Howard!" he gulped.

"But that's the fight mob, ain't it?" I asked Bunky querulously. "They don't have boxing at Harvard any more, do they?"

"Of course not, Fenno, but the Law School has an 'A' League! There's where the action is!"

"But what are all those guys doing here? I read about the trouble with the ref's, but everybody's calmed down a lot, haven't they? Where'd those guys read the inside story about it, anyway?"

"Not in The RECORD, that's for sure!"

"What's happening to the 'A' League, Bunky?"

"Oh, some of the guys bring cheering sections with them. They start yelling '3 seconds! 3 seconds!' when the ball's going up toward the basket! One guy was telling some players, 'Don't you yell at the refs. I'll take care of that!'"

"I suppose I should've practiced more back in grade school. Then I might've been able to play in the 'A' League."

"Maybe, Fenno. Anyway — somebody told me that Kenny Heitz of UCLA was planning to show up here next year. These guys are planning already, before they've even finished the playoffs," Bunky confided.

"But why all this commotion?" I persisted. But Bunky dodged the question, just like everyone else at the Law School.

"Everyone in the league thinks he's so good that the teams expect to win," Bunky explained. "But you and I know that only one team ends up on top."

"No, Bunky, that's not what the 1Ls want this Law School to be like. Harvard isn't supposed to downgrade its students. Everybody here is competent to do everything. So why shouldn't everybody win?" I argued decisively.

"Say that in the locker room," he retorted.

Letters to the Editor of the RECORD

Failure to Act 'Sickening'

To the Editor:

If Vietnam and Chicago had not given me such a strong stomach, the Law Review's failure to make any meaningful attempt to rectify its exclusion of Jonathan Lubell '54 (RECORD, 18 February) would have made me sick.

The intolerable smugness of Mr. Cooper's statement that "a similar affair is unlikely to recur" and that "there is absolutely nothing we could do" is better suited to 1953 than to a time which supposedly takes the First Amendment concept of an open society seriously and to which the exaction of any price for exercising the Privilege has become official anathema. See *Garrity* and *Spevack*. That smugness again demonstrates the peculiar shortsightedness about the potential significance of events with which the Law School Establishment seems infected.

With the growing polarization of opinion in this country and the incredible outbursts of raw hate between blacks and fringe-class whites, protesters and "patriots," radicals and threatened liberals and Wallace-ites the likelihood of a "similar affair" comes closer than Mr. Cooper admits. Such crusades against "deviants" from the mass norm of the moment who dare to put their faith where the Bill of Rights is are a permanent part of American public life, as Richard Hofstadter has shown in *The Paranoid Style in American Politics*. They may easily surface again.

And as any legal mind should know, the making of a precedent—even so small a one as a formal *mea culpa* to Lubell—creates a rallying-point about which institutions like the Review and the Law School may regroup to dilute the stigma, and force the decision, of refusing to cave in under the pressures such future crusades would entail.

That the Review's cloudy wall-petition to "do something about Lubell" got few signatures is no excuse for its lack of positive action, since anyone who has ever stage-managed petitions knows that they never succeed without a concerted face-to-face drive to fill them up. This result just demonstrates the inertia with which the issue was

approached—an inertia also apparent in the Review's "revolutionary" and thickly hedged statement on Vietnam, which materialized so far behind most peoples' private resolutions of the problem that it was irrelevant when it finally appeared.

It is true that the Review can "do what they want to do," on this or any other issue. But the price of doing nothing in cases like the instant one may be the sacrifice of those liberty-conferring corners of precedent which lawyers bear a unique responsibility to the larger community to preserve, and in which resistance like Lubell's and Mark Howe's may shelter when and if it is needed again.

Michael Henry Levin, 3L

Eliminating Grades Not the Answer

To the Editor:

As of the second week in February, there was considerable agitation in the first year class for doing away with grades entirely. It was being suggested that students would accumulate portfolios of from 50 to 100 pages of their best work and these would be shown to employers in lieu of grades.

But consider this hypo: an employer, Jones, comes to Harvard to consider 20 people for two positions. Not being able to tell much from short interviews, he seeks more information about their relative merits and is handed 1000-2000 pages of student writing. In addition, two and only two of the students have excellent letters of recommendation from Professor X whom Jones knows and trusts. How will Jones make his choice?

As it is now, a student can talk in class when called upon, never meet Professor X socially, and still get an A in X's course. Under the proposed scheme, it will not be enough to master the material in X's course. The student will feel compelled to make an indelible personal impression on X.

In a school with a student to faculty ratio of better than 20:1, not all will succeed in making that impression, and even those who do will worry about the sort of impression they have made.

(Continued on Page 10)

Law Notes

Wives who want to get back into the academic swing of things might check the catalogue of the Cambridge Center for Adult Education for a course. New registrations for the spring term are now being accepted through the mail. Registration (in person) for those classes which have not been filled begins March 3. The Center is located at 42 Brattle Street, and its phone is 547-6789.

* * *

Captain Joseph L. Delafield, III '65 has been awarded the Army Commendation Medal for meritorious service. Delafield was cited for duty with the First Army Staff Judge Advocate's office for the past two years.

* * *

Samuel E. Butler '54, a partner in Cravath, Swaine & Moore in New York, is one of 12 candidates nominated to run for places on the Board of Directors of the Associated Harvard Alumni, which represents all alumni of Harvard University. The six new directors will be elected by mail. Additional nominations may be made by petitions signed by 200 graduates qualified to vote.

* * *

Character and fitness requirements for admission to the bar were upheld as constitutional by the U.S. Court of Appeals for the Second Circuit. The Feb. 17 majority opinion was written by Judge Henry J. Friendly '27.

* * *

There were outcries of horror near the faculty office building as students went to their Friday class in the building and saw its walls with portraits of legal ancients. Many had apparently hoped they would be spared seeing the old classics in the building.

* * *

More J.D. news: Columbia Law School's faculty approved granting the J.D. at a January meeting. On February 18 Columbia University gave its stamp of approval. One last step, passage by Columbia's trustees, remains before it's official, but apparently the '69 grads can look forward to getting their J.D.'s. We've advised that the Harvard Law faculty will be able to consider the matter very soon. Both the Joint Student-Faculty Committee and the Brown Committee will be forwarding their recommendations to the entire faculty, for its action in mid-March.

Letters . . .

(Continued from Page 9)

The resulting anxieties will be terrible to undergo and sickening to behold. Imagine the corruption of student-faculty relations if students competed for jobs solely on a personal recommendation system. It boggles the mind.

Grades do test for something employers prize, if only compulsiveness or devotion to the law. Their existence is not the problem. The problem is the part they play in law school life. A partial solution is to hush up more about grades.

The Administration could help by not giving the top 60 names to the Law Review, Board of Student Advisors, and Legal Aid, and by letting these groups recruit for themselves. Without the Administration insuring the connection each year, it is doubtful that membership in these groups would remain a highly visible necessary and sufficient condition for possession of an exceptional grade average. People with high grade averages would feel freer not to join and their place would be filled by those more interested in the actual work of the organization. The quality of these groups would improve. With no prospect of an official pat on the head for only some of us, everyone might relax a bit.

The proposal of the last paragraph can be supported regardless of one's view of the grading system. It is something which the administration and faculty can do now without fear that they may be lowering the standards of the law school. It can be supported by students who want to make it big for they will still have their transcripts. It should be favored by those who want a more humane law school.

Richard Parker, 1L

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African Policy Clarification

To the Editor:

In his report (RECORD, Feb. 8) of the International Law Club forum where African foreign policy was discussed, Mr. Lurey seems to suggest that I agree that "there is little contact between African and Arab nations." I certainly do not agree, and I regret to have given, if at all, a different impression to any of my other listeners.

The suggestion that I referred to Nyenene as the "military" leader of Tanzania simply embarrasses me.

D. M. K. Bishota

Ames Gives Best Training

To the Editor:

I read with some dismay your recent editorial (Dec. 5, 1968) noting the decline of the Ames upper level competition. As one who participated in Ames, and as one who has judged at least half a dozen cases, I am sorry to read of its decline in popularity.

Law students can get no better training for the kind of work they will do in a law firm than that provided by the Ames competition. It provides the adversary context for the development of the important skills of legal writing and oral advocacy, with the aim of convincing a neutral party of the rightness of one's cause. Ames is what law practice is all about.

Having talked with first year students over the past couple of years, I suspect perhaps one reason second year Ames has declined is that first year Ames arguments were not rewarding. First year judges must take the case as seriously as the counsel. I have heard several reports of first year judges who were poorly prepared and did not really challenge the counsel.

A "tough" judge is no tougher than a real judge or a real senior partner. Ames clubs should pay more attention to the appointment of judges, and the judges must do more than read a summary of the case and glance over the briefs.

In short, the best way to interest a first year student in the qualifying round next fall is to make this spring argument in this year a truly professional experience.

John W. Delaney '67

Deputy Asst. Attorney General
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New York Firms Aid Community Law Offices But Their Commitment Has Limitations

By Howard Sweet
and Ronald Kadden

"It is the firm's policy to encourage participation in legal activities of a community service nature."

To many students uncertain about a Wall Street career, these are soothing words. Such a statement in a firm's resumé may mean the difference between a student interviewing or not; it may determine which job is accepted.

But what are the opportunities for community service? What sort of commitment have the firms made and what are the effects of participation on new associates?

In New York there are currently approximately 15 community service programs in which law firms participate; about 5 of these are non-specialized neighborhood law offices. In attempting to assess the level of participation of firms in these programs, two factors must be pointed out. First, both Wall Street interest and the number of programs are on the increase. Second, many firms participate in more than one program. However, considering the total manpower of New York firms, participation at this point is not great.

The Community Law Office (CLO), one of the newer legal aid programs, serves as an example. The East Harlem Volunteers, working on a released time principle, each have office hours one afternoon per month, and are expected to follow through on the cases which come into the office while they are on duty.

Under the released time principle, a firm's associate is regarded as fulfilling his firm's time commitment during his CLO time. This is in keeping with one of the declared principles of CLO: it is an attempt "to incorporate the increasingly signif-

Furthermore it seems likely, although no survey has been taken, that billable time is to some extent donated by the volunteers themselves. "Most of the donated time gets absorbed by associates doing more work, although that was not the intention of the firm. These guys are simply trying to make it with the firm." Another volunteer indicated, "I spend anywhere from five to twenty hours a week on CLO work. This is in addition to 8 to 10 hours a day of firm time. Since CLO involves court ap-



Howard Sweet

East Cambridge's CLAO: akin to New York's Community Law Offices.

pearances during the day, firm work has to get done at night."

At this point, the relatively low level of participation is probably due to low interest in or knowledge about the various programs. In one large firm which has only two CLO volunteers (although several have expressed an interest in other programs), the problem seems to be that "when guys are finished for the day here, they want to go home and relax."

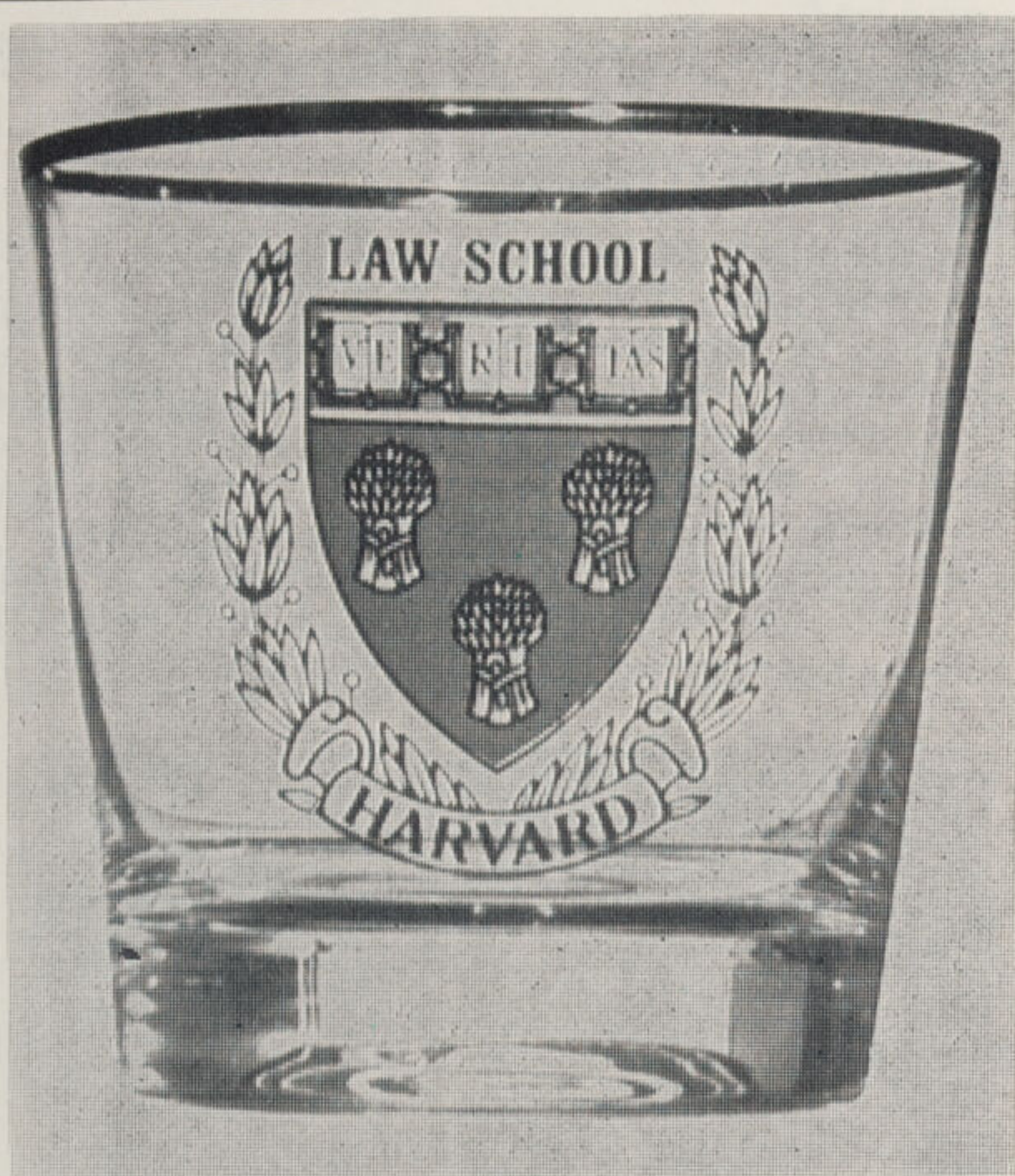
The crucial question, as interest in these programs on the part of associates continues to increase, is how great a commitment of resources firms will be willing to make. One associate of a medium-sized firm explained the problem this way: "Say you have an underwriting to do. Ideally you should put in 400 hours into it. Outside pressures, to which CLO contributes, may reduce it to 300. If these outside pressures become great enough to diminish the quality of a substantial part of firm work, then we'd either have to hire additional associates, or turn away clients."

(Continued on Page 12)

40 Firms Provide Total of 76 Volunteers

icant legal problems of the poor into the everyday practice of private firms."

Even this relatively demanding program does not require a great commitment of resources on the part of most law firms. The 40 participating firms contribute 76 volunteers. Although one firm has 10 volunteers, the majority have only one or two. As one CLO volunteer pointed out, "If your firm has even 40 men in it, each one putting out 600 billable hours a year, a release of say 400 billable hours is just a drop in the bucket—less than 1.0%."



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Firms' Participation: A Critical Level?

(Continued from Page 11)

This "critical level" of CLO participation obviously depends upon the resources and the work load of the particular firm. For most firms this level has not yet been reached. The question of what will be done when it is attained remains open. One associate states, "There's certainly room for more participation, but I don't think the partners would be very happy if all the associates wanted to do it."

Some firms which have refused to participate in the CLO program pleaded that they have already reached the saturation point. The assertion is that they are overburdened with fee-generating work or that they are already involved in legal service programs. As to the first assertion, which is often raised by small firms, some CLO officials reply, "Why not hire more associates?" They also point out that, although some firms are substantially committed to other programs, "many of them do only

Community Service: Therapy for Associates

a criminal appeal case once in a blue moon."

One method of approaching the problem is to ask why firms participate in CLO at all. The answers of CLO volunteers indicate, not surprisingly, a mixture of altruism and self-interest, and reveal the individual attitudes of the volunteers themselves toward the practice of law in New York. An associate of a large firm feels that the impetus has come largely from associates and from students in interviews who express the feeling that law practice should include an opportunity for community service. Increasingly, he feels, firms are beginning to agree with them.

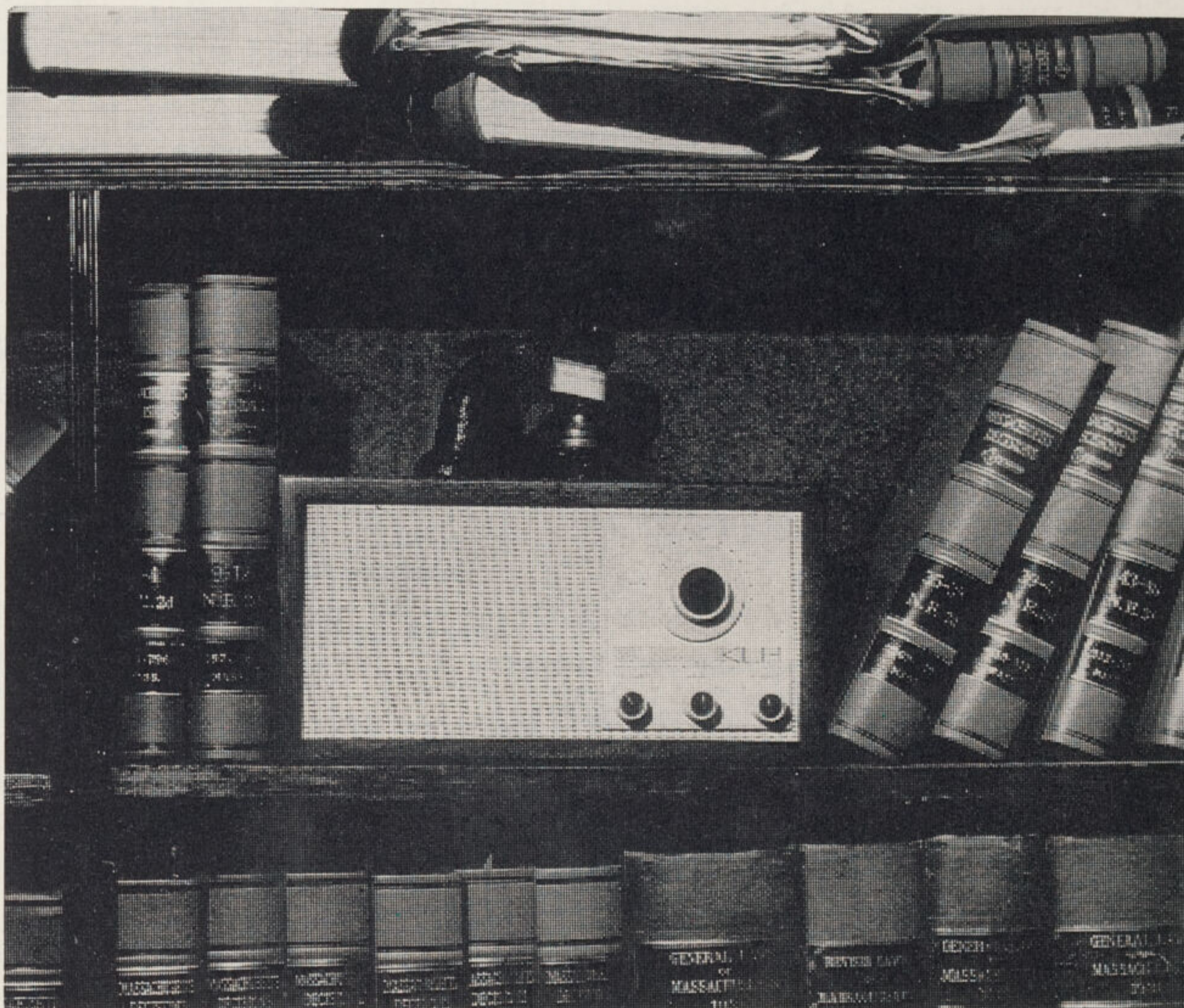
Other CLOs tended to stress the undesirable aspects of private practice and to view community service as a corrective: valuable to the firm as a means of keeping the associate happy. An associate of a large midtown firm indicated that one of the main reasons he joined CLO was for the opportunity for contact with clients.

Another CLO volunteer expressed the matter more graphically: "Wall Street practice is a deadening experience. Most of my friends in CLO are dissatisfied with their jobs and are inching out of Wall Street. CLO keeps up your interest in the law and keeps you from walking off your job. In this sense I suppose it's valuable to the firms."

Others put the self-interest of law firms on broader terms: "What happens in the ghetto affects everyone; it affects the entire climate in which business is transacted in New York. There's a feeling that everyone is pitching in to help and that law firms shouldn't stay on the sidelines."

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(Continued from Page 7)

480). Kamisar quotes Wright [42 Tex. L. Rev. 935, 938 (1964)] out of context, thereby obfuscating the meaning the latter had conveyed. Wright said: "One gets the impression that this young lawyer [Jacob] is both able and earnest. . . ." (*Id.* at 938.) He then continued the remark (which Kamisar quoted), here given in full:

[B]ut the fact remains that a boy was sent to do a man's work. Probably it made no difference in the *Gideon* case. The result seems so clear that it is doubtful whether Daniel Webster himself could have stemmed the tide.

Both Lewis and some of the reviewers who stand with him are obviously so opinionated that it is difficult for them to transcend their viewpoint concerning right-to-counsel. Lewis' stature should not have carried readers to accept his colorful license as a factual account of *Gideon*. To the touted meticulousness of *Gideon's Trumpet* must be interposed a caveat that it is actually a popularized version of a celebrated case.

Student Bar Speaker Switch

To the Editor:

I read with interest the article on the Student Bar Association in the February 6 issue of THE RECORD. The only comment I wish to make is really a correction; the fault was probably due to some confusion from too many names. The article states that the two speakers from the National Lawyers Guild were Charles Gary and William Kunstler. Actually, the two speakers from the Guild who have spoken at the school were Dennis James, Executive Secretary, and Gerald Lefcourt, attorney for the Brooklyn Black Panthers and Abbie Hoffman. Mr. Gary and Mr. Kunstler are definitely welcome here any time, but so far they have not come to Harvard this year.

David N. Rockwell
President

Harvard Student Bar Association

(Continued from Page 1)
view, Richard M. Cooper, 3L, refused to comment on the elections.

Named as articles and book review editors were the following: Scott T. FitzGibbon, James F. Hinchman, Peter M. Kreindler, and J. Lawrence Schultz.

The new note editors are Bart-

ley C. Deamer, James R. Gordley, and John H. Korn. Kenneth A. Cohen, Eugene Z. Dubose, Jr., and John T. Shinkle are the new case editors.

Elected as the Supreme Court note and note editors were Richard D. Parker and Thomas D. Rowe, Jr.

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Carey 1-S Draft Case Seen as Significant

By R.W.S. Schmidt

James Carey, a second-year Yale law student whose draft case was argued late last month in the Hartford Federal Court, has notified The RECORD that his petition was successful (RECORD, Feb. 18). *James Carey v. Local Board No. 2, Hartford, Connecticut*, Civil No. 12,966, U.S.D.C., D., Conn., filed February 13, 1969.

Judge M. Joseph Blumenfeld ordered "that the defendant Selective Service Local Board No. 2 classify the plaintiff James Carey I-S as of February 13, 1969." It is not known whether the government will appeal the mandamus decision.

The defendant moved to dismiss on the grounds that the suit wasn't proper for mandamus. Judge Blumenfeld held to the contrary: that the relief was affirmative in nature.

He also stated, overruling the draftboard's argument, that there was a clear statutory duty on the part of defendant: "the fact that a statute may require administrative or judicial construction in order to determine what duties it creates does not mean that mandamus is not proper to compel the officer to perform that duty, once it is determined. . . . The fact that the duty involved becomes clear only after a construction of the statute does not preclude relief. . . ."

The defendant draft board suggested that regardless of whether a mandamus was proper, jurisdiction is denied the courts under the Selective Service Act. But

Blumenfeld held that although there "appears to be a rather clear command barring preinduction judicial review, the statute must be read in light of its most recent interpretation by the Supreme Court." [*Oestereich v. Selective Service Local Board No. 11*, — U.S. —, 37 U.S.L.W. 4053 (1968)].

In *Oestereich* the court held that the act "will not bar preinduction judicial review of the classification or processing of a registrant where the registrant can show (1) a clear statutory grant of a deferment; (2) involving no discretion on the part of

the local board; and (3) that the board's action in denying the deferment contravened the express statutory command."

Judge Blumenfeld interprets relevant portions of the act relating to I-S deferments as follows: "It provides for an absolute right to a I-S deferment for students called for induction during an academic year with four specific exceptions: (1) those who have had undergraduate II-S deferments since July 1, 1967 (§ 6(h)(I)); (2) and (3) those who had a II-S or a I-S deferment

(Continued on Page 16)

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I-S Deferment Deemed an Absolute Right

(Continued from Page 15)

between 1948-1951 (§ 6(i)(2)); and (4) those who have had a I-S under the 1951 Act (§ 6(i)(2))."

In presenting his discussion of the merits of the arguments, Judge Blumenfeld cited a U.S. House of Representatives report which "specifically noted the 'strong conviction' of the House conferees that 'those students presently accepted for or actively participating in graduate studies, be permitted to continue these studies with a deferred status until they achieve or fail to achieve the degree which would normally mark the completion of their present level of training.'" The I-S apparently was a compromise.

The defendant argued that [the local board], in obeying a mandamus of the court, would have to disobey a Presidential regulation. "That Congress did not yield to the President the power to carve exceptions to the right of a student to a I-S in addition to those it had provided is illustrated by applying the maxim of statutory construction, *expressio unius est exclusio alterius*. Perhaps the exceptions are not expressed in

gifted prose, but they certainly are not obscure." Given this interpretation and reading of relevant statutes and memoranda, the suggestion was dismissed.

A sidelight, to be sure, is Carey's good fortune. It is seldom a student finds his name in legal lights even before he departs his institution. Three of his fellow Yale law students were not as

fortunate, however (RECORD, Feb. 18). Blumenfeld refused to grant a mandamus against Selective Service Director L. Hershey, and declined to issue an order staying inductions across the country — holding instead that the proper action lies against individual local boards.

Meanwhile, the Kennedy draft bill is before Congress.

Committee on Grades Appointed

Called into special session Wednesday evening, despite inclement weather, the faculty discussed the grade reform report filed by a group of first year students. In a telephone conversation Dean Derek C. Bok stated that "the purpose of the meeting was to inform the faculty, and gain a sense of its members."

Dean Bok said, "A committee was appointed to look into the various problems and to consider the matters involved." Appointed were: professors R. Keeton, chairman, A. Sacks, A. Cox, C. Byse, B. Kaplan, L. Weinreb and C. Nesson.

Asked whether students will participate in the deliberations the Dean replied: "The Committee will talk and work with students in various ways." At the outset at least, students will not be members; the selection process takes weeks.

Dean Bok said, "We are interested in getting started as early as possible. It depends on how long it will take the seven members to think the matter through."

R. W. S. Schmidt

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