



Mike Lurey

Prof. Detlev Vagts fields student queries fired at him during last week's 'study-in.'

Harvard Sit-in Stirs Students

By Richard Hoffman

"We are worried," said Professor Louis Loss, who was addressing about 200 law students while he stood atop a table in the state-report section of the law library last Wednesday at about midnight. "For the first time I've heard colleagues I love and respect say, 'Why am I here?'"

IT probably wouldn't make him feel better but Professor Loss isn't the only worried soul to be seen around Harvard Law School these past two weeks. With first-year students watching time run out on reforms by exam week, upperclass law students realizing that the 1Ls aren't the only ones under pressure, and faculty members wondering what happened to the alleged "golden age of Harvard Law School," it's been two meeting-packed weeks of argument, demands, colloquia, strike and confrontation.

And at the law library "study-in" where Professor Loss (and about twenty others) spoke, one could see that law students had grown more concerned about the Law School after a week of observing Harvard Yard goings-on. Indeed, a suggestion that the study-in discuss the eight demands of the Harvard College strikers was hooted down in favor of a free-flowing give-and-take session on grading, evaluation and alienation at Harvard Law.

True, the limits of disruption and dissent were considered in a crowded Ames Courtroom on Friday afternoon, April 11, the same day that the Law



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School was faced with a strike of classes in sympathy with the much more effective walkout by Harvard undergraduates. And almost 500 people spent the next afternoon discussing anything and everything about the events following and including the seizure of University Hall in the Yard by members of Students for a Democratic Society and other radicals.

Theorists and practitioners at the Law School had to make up their minds about the propriety of the police raid early on Thursday, April 10, which ended the University Hall sit-in but not the ferment which fired up almost everyone at the University. Multitudes converged on Harvard Stadium last Monday, April 14, to decide whether to maintain the University-wide strike (it was extended for three additional days).

When their reconnaissance agent passed the word to the Harvard Voluntary Defenders leadership that the bust had begun, members of the group were heading for the Third District courthouse in East Cambridge while paddywagons which said "Watertown Police" on the side were still loading in Harvard Yard. It was a long day for the defenders who gathered information about those arrested so as to arrange for them to be represented. It was a lot longer for the kids in the cells.

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Study-in Boosts Communication

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On the night of the library study-in, at about 1:30 a.m., Robert O'Connell, 1L, who's led the campaign for revamped decision-making at the law school, outlined his impressions of the two faculty meetings he had attended in three days. On Sunday, April 13, about twenty students "who had shown a good deal of interest in the problems" were



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Prof. Countryman, Cox and Fried plus an SDS member discuss the issues at a Law School-sponsored colloquium. Richard L. Brodsky was the moderator.

invited by the school administration to the meeting to contribute thoughts for a resolution concerning the sit-in, the bust, the strike and the decision-making process.

A resolution was duly passed at 1:30 a.m. Monday after about six hours of discussion. The faculty resolved that it was "deeply concerned about the events of the past few days and . . . determined to join with the rest of the university community in the effort to redress the harm" and prevent its repetition.

The professors went on to oppose efforts to disrupt the University and to favor consultation with student and faculty representatives should a need for police intervention again arise. A call for University-wide decision-making was also made.

In outlining the growth of faculty power over the years in American universities and speculating on the subsequent moves by students to gain a share in running institutions, Professor Clark Byse recalled at a colloquium on the Saturday after the bust that he had asked Professor Emeritus Austin Wakeman Scott, who had knowledge of Harvard decision-making for half a century, how often the University Council, which represents all parts of Harvard, had met. "A couple of times to consider unimportant issues," Scott recalled.

O'Connell, having attended one faculty meeting, was not about to sit back in an easy chair and light up a fine Havana. Two days later, on Tuesday, April 15, he again sought admission and had a harder time. He wasn't needed to provide ideas for a resolution this time. In fact, he wanted to talk about student participation. Others sought entry too: grade reform was their bag.

Eventually O'Connell and another 1L, Jon Asher, representing "The Trouble With Grades" reform group, were ushered in, heard out, and sent away. When he got up to talk about it at the study-in last week, O'Connell charged he'd been had. The faculty feared a sit-in at the Tuesday meeting if students weren't allowed to participate to some extent, O'Connell contended. Then after the silently observing students departed, the faculty claimed its resolution was a faculty-student writ.

So students were summoned and then dispatched without ever uttering a word. But after O'Connell and Asher spoke their minds at the Tuesday meeting, a format for student participation was drawn up by the faculty.

For the last three meetings this year, six students or more, selected by the dean from the students meeting with faculty committees or having a particular interest in problems under discussion, will attend faculty gatherings and participate in discussion. Fourteen second-class participants will be selected from anyone interested enough to sign up and they may "also contribute to the discussion if sufficient time is available for this purpose.

Dean Derek Bok and the faculty will probably be pleased to learn that O'Connell and his fellow advocates of student participation in Law School decision-making feel that progress has been made with the plan adopted for this year. The professors proved they could move.

Next year, however, the rhythm may shift, for the would-be student participants haven't given up on gaining voting power at the meetings. Now that the Law School faculty has shown its willingness to open the door to at least 20 silent students, the students no longer suspect total faculty opposition to their presence. Their fired-up expectations are not about to cool off.

"Several proposals to 'restructure' Harvard have been put forward as issues of the strike. Although they may seem an appropriate response to the SDS and Afro demands, in fact they are totally antithetical to those demands. Tactically, such 'student power' or 'restructuring' demands play directly into the hands of the Corporation and those so-called student leaders who are out to establish themselves and save the Corporation from the growing threat of a successful strike on the Eight Demands." — "Student Power is a Trap," handout written by three Harvard-Radcliffe SDS members, distributed at 1st Stadium rally.

After College Students' Sit-in

You could tell there were almost 10,000 people at Harvard Stadium on the Monday after the bust because it's impossible to fit more than 43,000 or so in even when the extra stands are set up. The place looked at least one-third filled.

The sun beat down upon the remarkable session and when word got out after the meeting was two hours old that there were 10-cent Cokes available under the stands, it was surprising there wasn't a panic.

But history teaching fellow Lance Buhl ran a well-organized meeting. There were three mikes with marshals guarding them. Proposals had to be put in writing. Speakers were given a time limit and cut off as strictly as if the late Chief Justice Charles Evans Hughes were watching the clock.

Buhl's savvy knew when to let the crowd have its way: every so often the chair was overruled and a speaker got an extra minute to wrap up his sentiments. A helicopter circling the stadium produced a peculiarly sinister feeling among those in the stands. Had it shown the slightest sign of military ownership, one had a feeling that anti-aircraft guns might have sprouted from Section 18.

The SDS announced early that it was not presenting a proposal, but not until the "proposal" (the eight demands) had been read. Members of the Association of Afro-American and African Students sat together at the top of Section 20: three Afro members spoke at the start of the rally and their demands were immediately incorporated into everyone else's proposal.

One student ended his plea calling for termination of the strike with the rationale: "I want to get back to my physics." A moderate suggested that everyone who was shocked by the police bust but didn't agree with SDS' demands wear a green armband.

The assembly finally voted by an ever-so-slim margin to continue the strike for three more days.

"I couldn't teach if I thought the educational process was bad even if all the students were for it. We have to work out a process so it'll seem like decent and humane education to me and I can still feel I can teach. . . . I'd vote no now on pass-fail but after tonight I appreciate the problems. But it's not a matter of votes to me and I can't see it solved in a day." — Professor Paul M. Bator at the study-in.

The Law School's problems can't be solved in a day, even in one when about 40 professors and upwards of 500 students meet in small groups (called "colloquia" by the cognoscenti) as they did on Saturday, April 12. The session in which Dean Bok and Associate Dean Sacks took part seemed a bit like a press conference because students took advantage of the deans' presence to throw questions out.

Listeners in Langdell South were treated to a history of faculty power in America, delivered by Professor Clark Byse. Others heard Professors Loss and Dershowitz engage in repartee regarding the alleged criminality of Harvard University in summoning the police.

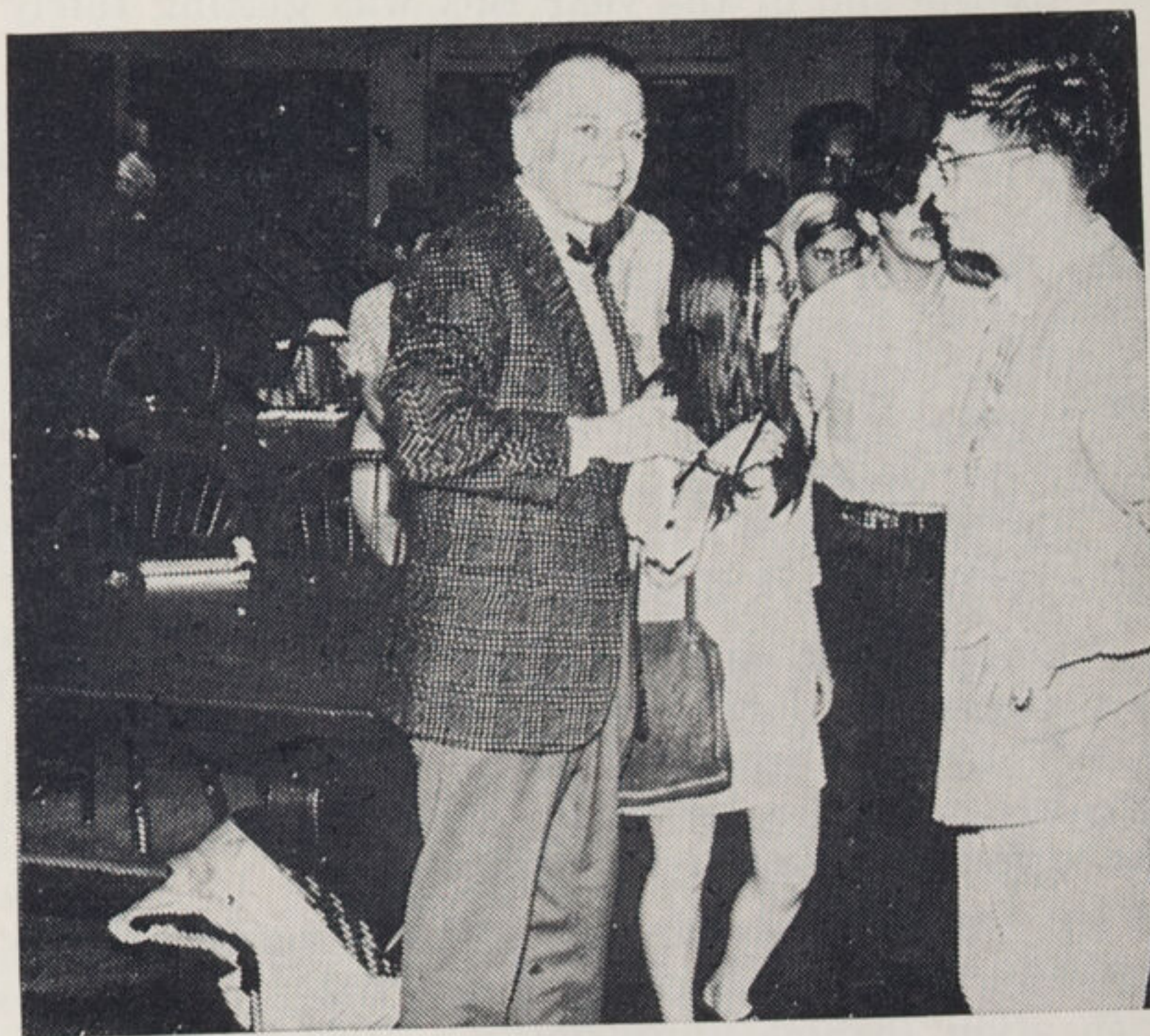
After Professor Dershowitz recommended a civil suit against Harvard for initiating what it assertedly knew would be injurious events, Professor Loss commented that although he didn't teach criminal law and Professor Dershowitz did, the latter's view wasn't "the criminal law I learned." A student who remembered that there are hardly any cases in the mimeographed criminal process materials dating before the current decade muttered, "He's damn right it's not."

At the Ames Courtroom session on the limits of dissent and disruption, Professor Vern Countryman decried the use of force by both students sitting-in at University Hall and the administration in calling the cops. But he allowed the use of force for one purpose: recalling a New Mexico ranch-hand who was setting about to train a mule, Countryman noted that first the man hit the mule hard on the head with a hammer.

Asked by a woman why he was training the mule by striking him, the ranch-hand answered, "First I've got to get him to pay attention."

After the session ended, moderator Richard L. Brodsky, 1L, learned that some of the other organizers of the colloquium didn't approve of his ignoring one panelist: a representative of the Memorial Church Group, an entity which stopped short of endorsing SDS's position.

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Prof. Louis Loss spoke at the student 'study-in.'

Michelman's Interest in Property

By Larry Pressler

Frank Isaac Michelman brings a variety of responses from students, friends and critics. Some examples:

"I remember him as a shy, withdrawn fellow in class. I am amazed to hear that he is now teaching law," says one of Michelman's former classmates who is now a Minneapolis attorney.

Boston City Councillor Tom Atkins, 3L, is glowing in his praise: "I have never introduced any major municipal legislation in City Council without talking to Frank. More than any other single person, Frank Michelman's advice and criticisms have helped me understand and meet my responsibilities as a city councillor."

One of his rare student critics: "He's O.K., but he works a little too hard and deliberately at appearing 'in' with students."

One of his colleagues on the faculty: "Frank could, through the years, become one of Harvard Law School's all-time great teachers."

And finally, his wife: "Frank is a very suburban type. He gets more exercise mowing the lawn than from anything else!"

The above quotations all reflect on the life of Professor Frank Michelman, Yale '57 (history); Harvard Law '60 and most currently, teacher of property, local government and related subjects at the Law School.

Professor Michelman tells how he got interested in property: while a student here, he thought he wanted to practice labor law. In his second year he took Derek Bok's first course in labor law.

"By the end of the year Bok was getting fairly good. It inspired me to write my third year paper on labor law, which I did," Michelman recalls.

After graduation, he joined the midtown Manhattan law firm of Kaye, Scholer, Fierman, Hays & Handler with the intention of practicing labor law. During his first year an opportunity to clerk for Supreme Court Justice William Brennan developed. Following his clerkship he stayed in Washington with the Justice Department until former Dean Erwin N. Griswold suggested that he come up to Harvard and talk about a teaching position.

"I came up to interview and I remember saying a dozen times during the day's talks: I'd love to teach anything *except* property. A few weeks later, Dean Griswold called and, 'We'd be delighted to have you come and teach property.'!"

Michelman accepted and has been teaching property for the past six years. His article, "Just Compensation", which appeared in a 1967 issue of the Harvard Law Review, deals with the compensation a property owner should receive when some gov-

ernmental activity affects the price of the property.

The article has come to be standard reading for first year students in both property and torts. How did Michelman come to write it? "I was teaching property. I wanted to write something. It was inspired in part by a conversation with Charlie Fried and by a Yale Law Journal article on 'Police Power and Economic Regulation'."

He is now in the process of finishing work on his first book. Its topic is local government and he hopes it will be ready for his course in that subject by next fall.

Professor Michelman is very interested in Boston city government. He has a close informal relationship with Tom Atkins, for whom he campaigned in 1967. Atkins cites a long list of topics on which he has consulted Michelman — including



Professor Frank Michelman

government structure, urban renewal, housing and municipal finance.

Michelman is also currently a member of the Mayor's Home Rule Commission and is chairman of the decentralization subcommittee. He does very little consulting aside from these local activities. "I once had a consultant relationship with HUD, but I've since decided to concentrate on the local scene," he says.

Michelman lives far away from the urban problems he so diligently studies. The Michelman home is a comfortable two-garage house in Lexington which is occupied by a cat, a dog and three children — aged 3, 5 1/2 and 8. He met his wife Ellen at a wedding and they both humorously recall that they had to cancel their honeymoon because of the Harvard Law Review.

Was Not His First Labor of Love

"We were married between my first and second years at Harvard Law. About the same time I was notified that I had been selected to be on the Law Review and that I had to be back in Cambridge to work on it three days after the wedding!" he recalls.

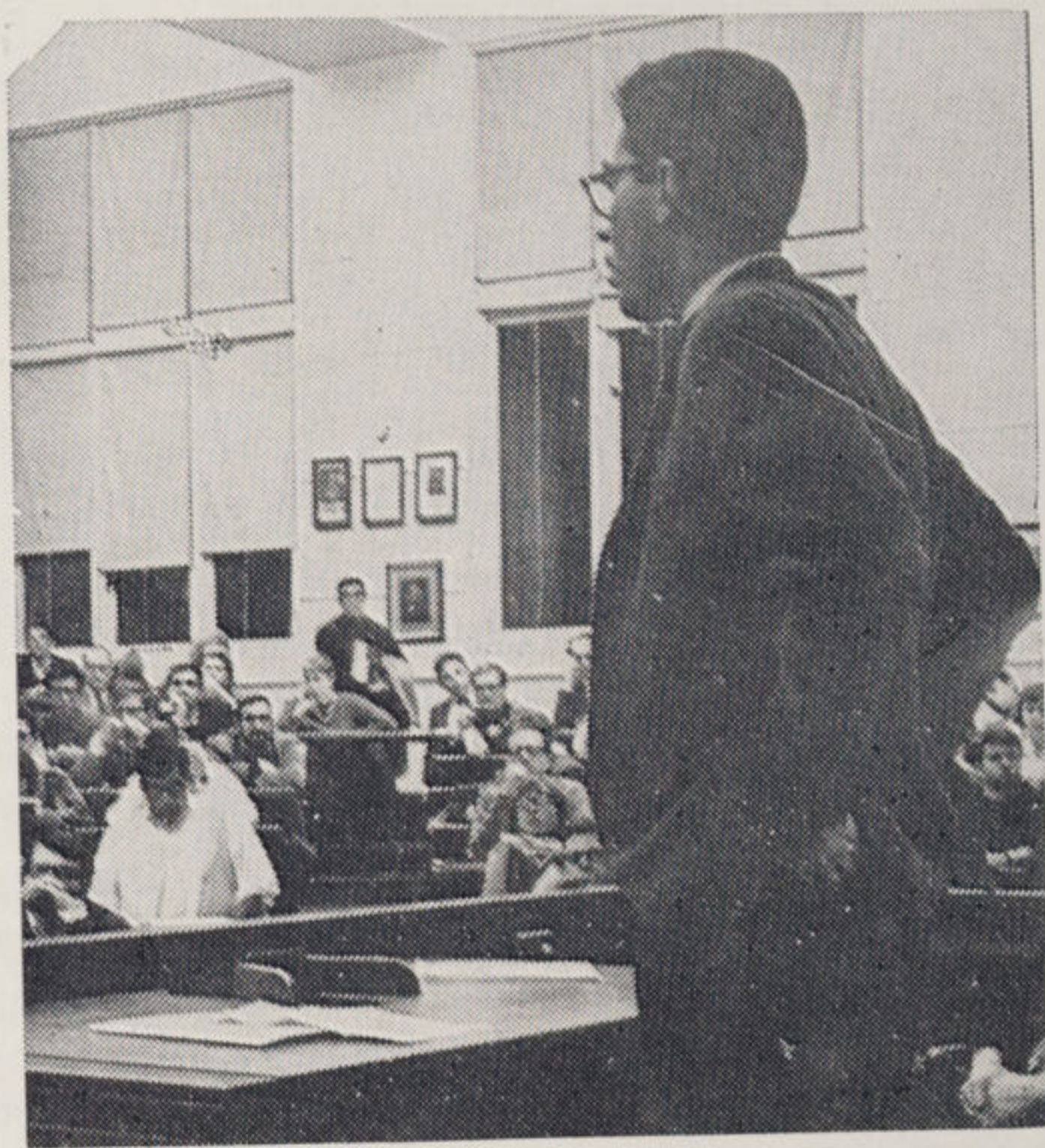
Besides caring for her three children, Mrs. Michelman is active in the Lexington Civil Rights Committee and is currently working with the housing subcommittee in finding black families adequate housing. "We only have about fifty black families in Lexington," she says, "but they experience great problems in getting housing, particularly if they wish to rent."

Professor Michelman's classroom style is pretty much a roadmap approach. He is going in a certain direction with an ultimate point, but if a student injects a comment or question that is a little off the track, he has an uncanny ability to pull it into context and use it to build towards his objective. He runs his classes on mainly a volunteer basis and rarely gets upset with an unprepared student.

He seems to enjoy extensive contact with students and last winter conducted a number of out-of-class informal discussions on Professor James Wilson's committee's report: "The University and the City."

He has remained relatively neutral in the current grade reform and strike controversies. After the yard bust he led his property class in an hour-long discussion of the legal issues of trespass and the possible extension of the corporation personality to university students for legal purposes.

He recalls his law school days: "During my first



Prof. Michelman engages in scholarly repartee with class.

year, I guess I was tired and haggard just like first year students today. But we didn't have controversies like this back in those days! The only controversy I can remember occurred when a professor thought the Law Review was incorrect on some point. Things were different in those days!"

Michelman seems to be very much a happy man who thoroughly enjoys what he is doing. When asked what he would most like to be doing ten years hence, his answer was quick, "I hope I'm still a professor at Harvard."

Leading Tax Expert Returns to Law School

Stanley S. Surrey, a leading authority on tax laws who was Assistant Secretary of the Treasury for Tax Policy under Presidents Kennedy and Johnson, has rejoined the Law School as the Jeremiah Smith Jr. Professor of Law. Surrey held the Smith Professorship before he joined the Treasury in 1961.

At the Law School during the 1950's, Professor Surrey was head of the International Program in Taxation, which annually trained about 20 foreign tax officers. He was interested especially in the effect of tax laws on the growth of underdeveloped coun-

tries. He also served on the American Tax Mission to Japan in 1949 and 1950, and drafted the Excise Act of Puerto Rico as consultant to the Secretary of the Treasury of Puerto Rico.

He left the Law School to be Assistant Secretary of the Treasury in 1961. Earlier, he had served as Tax Legislative Counsel of the Treasury Department, and as special counsel to the King subcommittee of the House of Representatives, which studied internal revenue laws in 1951-52. He was chief reporter of the income tax project of the American Law Institute.

A native of New York, Prof. Surrey received the B.S. degree magna cum laude from City College of New York in 1929, and the LL.B. degree from Columbia in 1932. After practicing law in New York, he entered the government as a lawyer in 1933, serving in the National Recovery Administration, in the National Labor Relations Board, and then in the Treasury. During World War II, he was an officer in the U.S. Naval Reserve. He taught law at the University of California at Berkeley from 1947 until 1950, when he joined the Harvard Law faculty.

Shouldn't Harvard Law School

Chris Walker, who's been on The RECORD staff for the past three years, argues herein that one hundred years has been a sufficiently lengthy trial period for our current method of teaching law. He concludes that it's time for a change and explains how this might be accomplished.

Recent debate on reform has strained my faith in the judgment of both faculty and students.

The problems of legal education today have nothing directly to do with the length of the LLB program, the title of the degree, the grading system, student participation in faculty decision-making, or many other currently fashionable issues.

The problem is no less than that of the curriculum. One hundred years old, it suffers from serious inadequacies of both form and content.

Law teaching today is the direct result of a profound change in educational philosophy one hundred years ago. Since knowledge of the past is necessary to understand the present, here is a little history.

Before 1870, the faculty of the law school was chosen only from those who had acquired a reputation at the bar. Law was learned from treatises, and lectures supplemented the book learning with practical information.

In 1870, when Christopher Columbus Langdell was chosen Dean, he immediately divorced legal education from practice. "Proper scientific instruction" became the goal; this was the idea that legal principles could be deduced from common-sense axioms, in the manner of Euclidian geometry. Although this view of jurisprudence has been long discredited, the "case method" Langdell invented

to convey this philosophy of law has remained with us. In effect, the structure remains without the foundation.

Langdell's original casebook appeared in 1871, but it did not resemble the present variety. It contained precise summaries of the law covered, and was indexed for easy reference. In later years the index and summaries of law were dropped on the grounds that they made things too easy for the student, despite the fact that the most prestigious members of the faculty, including James Barr Ames, wrote "easy to learn from" casebooks.

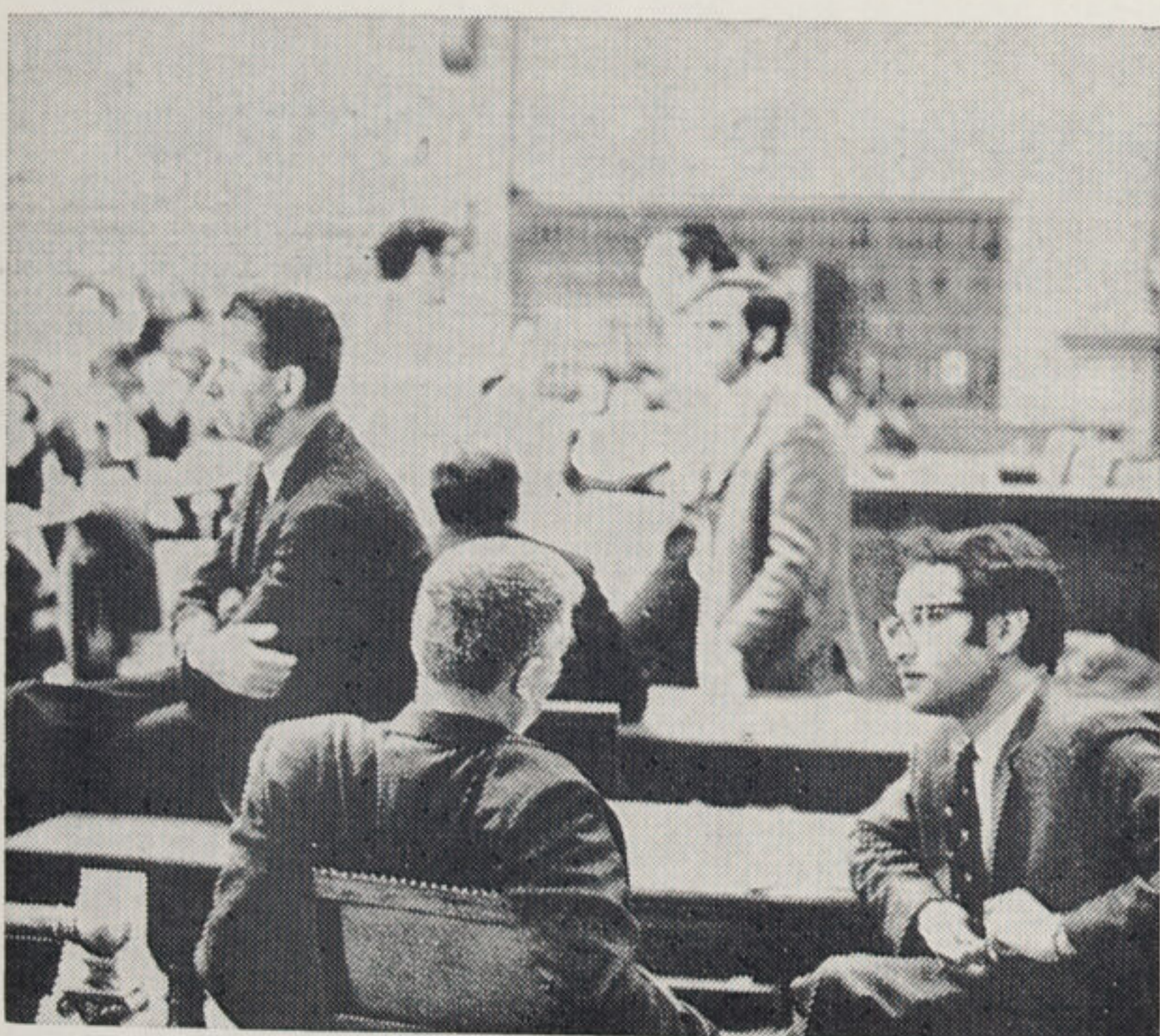
Close to one hundred years later, the "case method" as it has evolved seems as anachronistic as lectures plus treatises must have seemed to Langdell. Given the complexities of the modern world, it is neither an efficient nor effective way of teaching the skills needed by a lawyer today.

The art of reading a case can be learned quickly. After this point, the busywork of distilling a legal maxim from a judge's opinion simply outweighs any benefits. Opinions, after all, were not designed to serve as teaching instruments. Using them is the lazy man's way to teach, because the judge has already done most of the work; but to the student who must sift the wheat from the chaff, it is too often just plain boring. Anyone who doubts that this is true need simply note how lively classes elsewhere at Harvard seem compared with those at the law school. A heavy hand at editing and the copious addition of text cannot rescue what is a bankrupt technique. The case method as used here does not *teach* law; it throws a sheaf of opinions at a student, and asks him to make the best of it. Is it any wonder that more and more students skip class and rely on hornbooks to get them through the exams?

Many people do not realize that a different "case method" is being used currently at two other professional schools at Harvard.

At the Business School, a case consists of a long, unorganized business situation, upon which the student is expected to make recommendations based on an analysis he organizes himself. These cases are often twenty to thirty pages long and contain extensive background information. A student is exposed to some 800 of these cases in the course of the two years of the program. Most important, there is immediate feedback from class discussion of the case, and numerous short papers, which are returned with long comments.

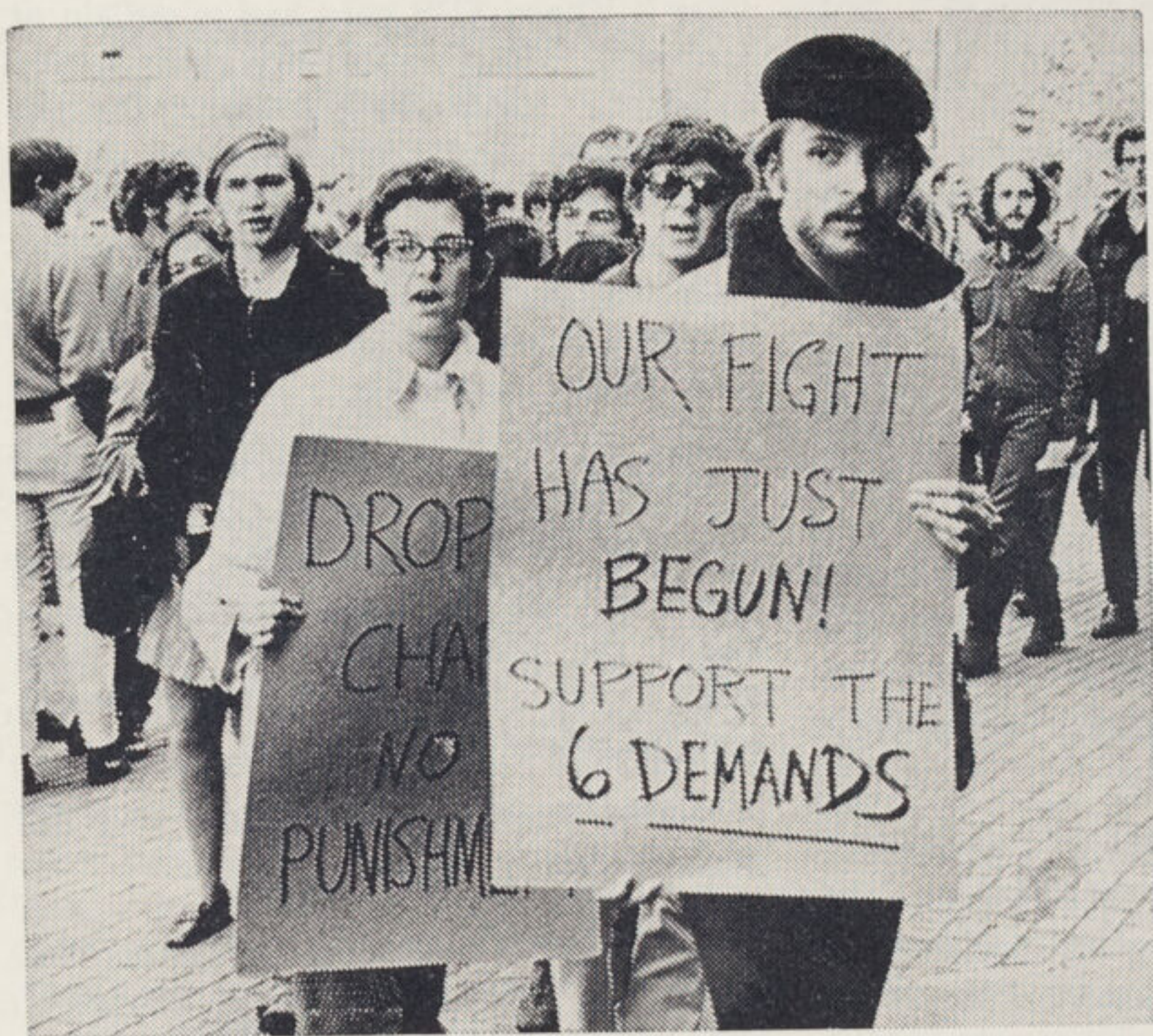
At the Medical School, the term "clinical studies" carries the same connotation of exposing the student to real-life situations under the stimulus of immediate feedback. Most of the final two years of the four year program are spent in wards. Although medical administrators would have every



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Profs. Countryman, Cox and Fried before the Law School colloquium began.

Reconsider the Case Method?



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Picket shows support for student demands.

right to expect that a student pick up practical skills during internship and residency, the whole trend of modern medical education has been toward anticipating this experience during the undergraduate years.

The approaches outlined above have the additional advantage of making classroom work and examinations complementary. The law school is the only professional school at Harvard where final exam skills are not taught in the classroom on a day to day basis. Either exams or classes must be changed; grades based on techniques that the student has not been prepared for must always appear unacceptably arbitrary to him.

In short, in this impatient and increasingly performance-evaluated world, roundabout teaching methods will no longer suffice if they exist only to "make you think like a lawyer" or teach "intensive critical analysis." These shopworn rubrics are in fact excuses, for law schools have never been able to define very well just what these phrases mean, let alone how to teach by them.

Then there is the question of content. As pointed out above, American law schools have been biased against teaching practical skills ever since the great schism of 1870. Martin Mayer reports in his book *The Lawyers* that when a prominent patent lawyer (now a judge) wanted to give a course in his very practical field at Colombia a few years back, he was shunted off to that university's School of General Studies, and law students received no credit for the course. UCLA's Murray Schwartz has been quoted as saying that "with a few exceptions, people are law professors because they tried practice and didn't like it. You can't expect them to orient their teaching toward the practice of law."

There is no question that this is the dominant attitude, but there is doubt how appropriate a continuation of this policy may be. The four critical skills of a lawyer are those of litigation, negotiation, drafting, and counseling. Our present system of instruction prepares a student only minimally for the first. Any practicing lawyer will comment that the most important qualities for anyone considered for a partnership are the abilities to deal with facts and personalities. The law school does not even try to prepare a student in these areas of unquestioned importance.

The President of the American Association of Law Professors (of all people) has stated that "tomorrow's law graduate must be ready to immediately take his place as a practitioner." While he doubtless does not mean that the present, highly "rights" and "theory" oriented approach should be discarded wholesale, there is growing acceptance of the wisdom of some sort of reconciliation of the hundred year old schism between practitioner and professor.

What is the best way to accommodate the law school to the needs of the modern world, without sacrificing its function as a critic of societal institutions? It involves two steps. We must change the way law is being taught, and we must change some of the teachers.

First, the law school must develop a "case library" of real-life, unstructured situations of the type a lawyer is likely to encounter in practice, and to use these cases as a basis for class discussion. Through this the student will receive training in the types of judgments he will have to exercise in the outside world. Because the case will be written in chronologically ordered subparts, the student will repeatedly have the opportunity to test his judgment against that of the principals in the case, as the situation unfolds. Since legal issues arise in every conceivable context, the case library will deal with many different types of situations, ranging from corporate reorganizations to divorce proceedings. The question most often asked, however, will be "what does your client *do*" — not, "what are the legal issues that have to be considered." The stress will be on synthesis, not analysis. The point of view taken will be that of the top level in the decision-making hierarchy, not that of a memo-writer.

Since the situations will be unstructured, the student will be forced to evaluate personalities and facts, which cannot be done with appellate opinions. As for learning "the law", the student can always go to hornbooks, just as he does at present.

Second, to implement this change, lawyers must be recruited to serve as co-instructors in some courses. This practice has started but needs to be

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Sound and Fury

Never has there been more pressure for reform at the Law School, yet what reforms have been effected this year? We are advised to consider last year, when the grading system was revised with much less ado. And in the end, we are asked to justify all the sound and fury.

The past two weeks have swept the Law School into the tumult of the Yard but have left us to resolve this school's peculiar problems. Nevertheless, the Law School could not remain aloof from the University's crisis even if that course were desirable. There were law students in University Hall and others participated in the proceedings at the courthouse. Much of the ROTC brigade consists of law students.

As law students, we are constantly expected to make decisions in the name of "policy." We also become acquainted, albeit less directly, with questions of tactics. While anyone's tactics should be condemned when faulty, it is vital to confront the underlying policy judgments.

In so doing, we are compelled to regard with distrust any attempt to impose a group's values by force on the rest of us. Whatever the issue, and we are of several opinions on the various demands and answers bruited about this week and last, force, except for such occasions as the mule of Professor Countryman's tale, is an unsatisfactory response. The fact that the sit-ins initiated the use of force shifts much of the responsibility for the events that followed onto their shoulders.

This in no way diminishes the need for reform at the Law School. There's enough wrong with the grading and examination system to justify student demands for some action. The main stumbling block now appears to be the difficulty of devising a system that will fulfill some of the needs satisfied by grades.

If it served no other purpose, the interim report of the Keeton Committee investigating the grading system forced the Law School to realize that a summary statement, however well-intentioned, will not be accepted by law students as a substitute for some well-reasoned explanations, in turn followed by a good deal of discussion.

The faculty and administration cannot take refuge in the plea that there isn't enough time to consider every problem that's brought to the fore. The students have done their homework. The faculty must recognize that if an issue stirs large numbers of students, the time for action is now.

HARVARD LAW RECORD

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Fenno

"Fenno, it isn't over yet! Didya hear? Those SDS cats had a mill-in at University Hall again; my study group called off its weekly meeting for the third time! And Casner has me up the tree with this Rule in Shelley's Case stuff! It's never come this late in the year before," Bunky screeched as I painted a red fist on Part 87 of the Com Trans materials.

"Bunky, law school hasn't prepared us for this. Never had a trespass case like this. Why, I met a law professor down at the East Cambridge courthouse the morning of the bust who wasn't sure what it meant to be booked and processed!" I rejoined.

"Sure, Fenno, but the ones who did know didn't show up.

"Why haven't you signed up to help represent these people, Fenno? Don't you want to help the student cause? Aren't you dissatisfied with Harvard and the Law School?" Bunky shouted.

"Those jerks at that 'study-in' woke me up when I was sleeping in one of those nice Root Room green easy chairs. And they wanted to make me pay for those 'free' coffee and donuts. You know the Law School only bought one box of donuts," I complained.

"Why don't we think about ways in which the Law School could play a more significant role in settling these problems, Fenno? Got any ideas?"

"Why didn't President Pusey bring an action of replevin against SDS for University Hall?"

"I bet he would've sued in detinue except that Harvard probably couldn't find eleven guys who would swear in Harvard's wager of laws," Bunky added.

"Somebody told me that Dean Bok was asked to locate a copy of the Riot Act so somebody could read it aloud at University Hall."

"Fenno, maybe we might as well realize that Harvard has given up. Didn't that fellow Marbury on the Corporation say that ROTC would be only an extracurricular activity?" Bunky queried.

"Somehow I remember his name being on the losing side (eventually) of some old Con Law case," I chimed back.

"Fenno, the way I hear some guys talking, we might be getting some cases to rank with Professor Dawson's old DLI favorite."

Letters to the Editor of The RECORD

Gideon Prosecutor Responds

To the Editor:

Since I am the focus of the correspondence in the last issue of The RECORD regarding *Gideon*, it may be appropriate to explain how this came about. The author of the piece which inspired the replies of Mr. Lewis and Professor Kamisar, Mr. Krishna M. Sharma, a fellow graduate student, is writing an S.J.D. thesis on some aspects of the rights of the accused. This naturally led to a discussion of the *Gideon* case and Gideon's Trumpet. He quoted some of my recollections and comments in a long footnote to his thesis and asked if I objected to his publishing it in The RECORD. I had no desire to see the *Gideon* case and my role in it dredged up again at this late date; however, the "footnote" was factually accurate and I did not think I should withhold consent to its publication.

Plainly, *Gideon's Trumpet* does have the overall theme Mr. Lewis ascribes to it in his letter to The RECORD. However, in 1963, he told me that he had found a theme which he needed for his

book: the irony that at trial all the forces of the state had been arrayed against an unrepresented Clarence Gideon, while before the Supreme Court he had one of the finest lawyers and law firms in the country and others helping him; the State, on the other hand, had been represented by a single lawyer working under numerous handicaps.

Mr. Lewis did send me a small portion of the book before publication and I was able to advise him of some inaccuracies in these. However, I had expected to see all parts of the book pertaining to me and the Florida Attorney General's office. Mr. Lewis did not send them to me (perhaps because of deadline problems). As a result, some parts which created misleading impressions went uncorrected.

The extent to which Mr. Lewis' book disappointed my expectations or the extent to which Professor Kamisar's reviewing of it accentuated that disappointment are not matters of sufficient significance to claim extended attention from the reader now. However, since *Gideon* has achieved this new notice, I should like to reiterate a point made in passing in Professor

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Law Notes

The Reardon Report on Standards Relating to Fair Trial-Free Press will be examined at a symposium at B.U. Law School on Law Day, May 1. Judge Paul Reardon will be the opening speaker. Many judges, editors and lawyers will participate. Students are welcome to attend.

William A. Stoeve, 3L, and James Foster, 2L, will argue in the Philip C. Jessup International Law Moot Court Competition at the annual meeting of the American Society of International Law in Washington, D.C. They will argue both sides of a question concerning the right in international law of one state to build an artificial island on the continental shelf of another. The argument will take place from April 23 to 26.

The two were selected for the competition on the basis of victories over teams from Columbia, N.Y.U., University of Connecticut, and Boston College. In the regional competition, Foster tied for best oralist.

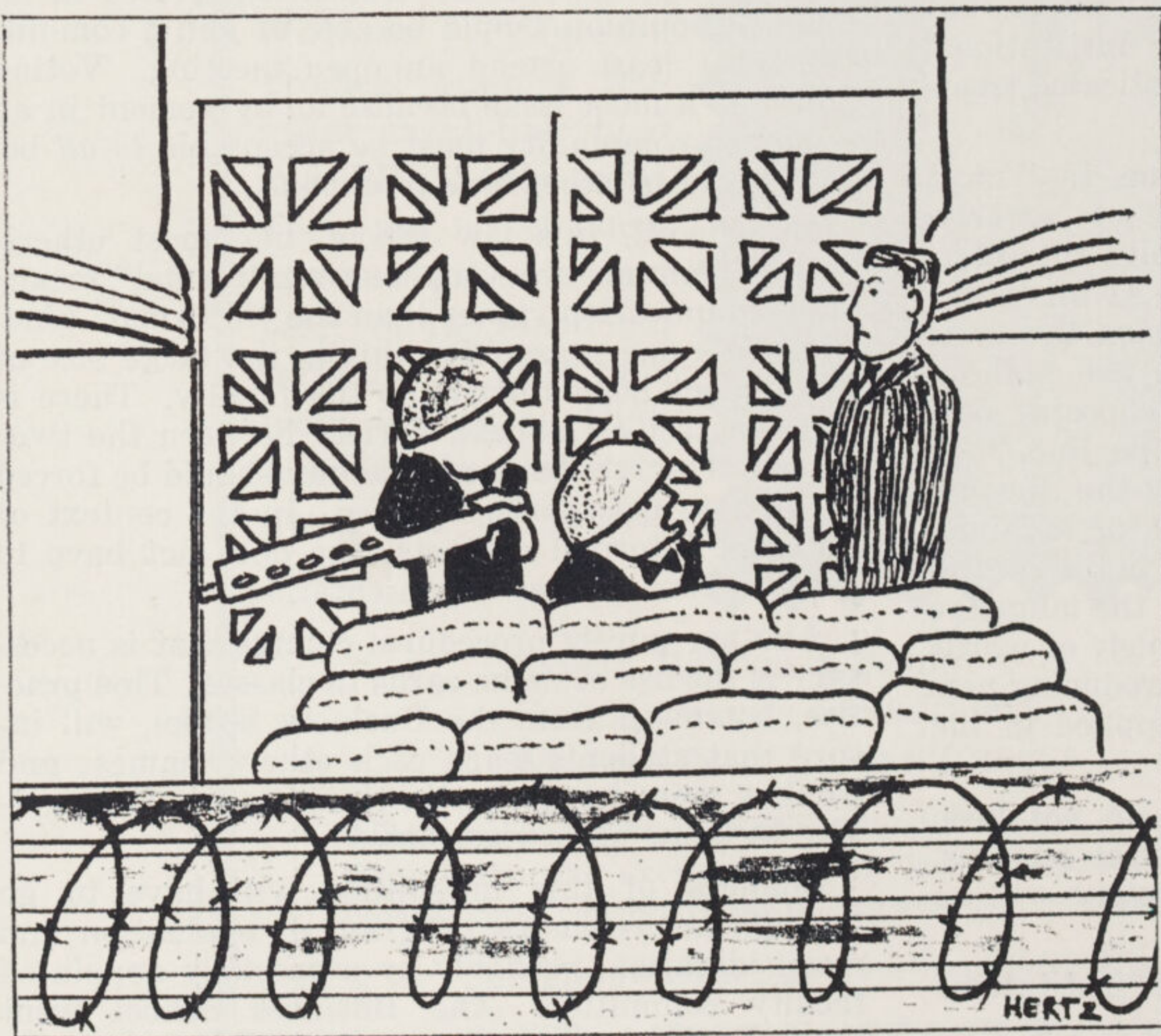
Tae Kwon Do Club (Korean Karate for you beginners) meets every Thursday at 3 p.m. for an hour and a half. Dongpil Kim (262-5421), blackbelt, instructs the small group at the Indoor Athletic Building on Holyoke Street. The second meeting is on the 24th. Details: Julian Fowles (876-2205) or R. Schmidt (868-3209). Beginners especially welcome.

Professor John P. Dawson is a member of an advisory committee which considered applications for the 1969 American Bar (Association's) Foundation's research fellowships in legal history.

Rhody McCoy, administrator of the Brownsville-Ocean Hill school district in New York, will speak at 7:30 p.m. tomorrow in Langdell South Middle.

No announcement as to applications for admission to the Harvard Business School will be made until the HLS faculty makes its decision. The faculty may decide on the J.D.-M.B.A. program at its meeting on April 29, allowing the HBS to take further action on applications.

Vaclav Mostecky resigned his position as Assistant Librarian for Public Service at the Law Library. His first duty in October 1958 was to plan and supervise the transfer of the foreign



"Here's the stuff that they sent up from Columbia, Dean. The way it's been around here lately, we figured you'd want to set it up."

Case Method: '100 Years Is Long Enough'

(Continued from Page 7)

extended. Further, more joint appointments between the law school and other departments of the university should be made. As a final step, it would be desirable to have on the faculty some judges, lawyers or governmental administrators who are either retired or on a leave of absence or sabbatical. These persons will not only add a touch of practical wisdom to the classroom experience, but serve as an initial source of nonstructured cases for the case library.

Such a revolutionary change in the techniques of law school education will only come after a thorough re-evaluation of the role of law in today's society. Is law to be a social instrument, or merely a service? How can law cease to be the handmaiden of Establishment interests — big labor, big business, big government? Should lawyers be trained as if they are to be specialists, or "generalists", whatever that may mean? If a generalist is what we want, what does he do in a world of specialists, legal as well as non-legal?

My answer to these important questions — and it is, in my opinion, the only way to prevent legal education from slipping either into narrow parochialism or superficial dilettantism — is that we must concentrate on developing *general decision* skills, not merely *analytical* skills, as at present. The traditional techniques of legal analysis are satisfactory when one assumes that a problem may be solved entirely through a closed system, but when one starts to introduce other institutional frameworks, some sort of more sophisticated treatment is necessary.

For example, many of the problems that most interest this generation — the cycle of poverty, penal reform, urban planning — involve the interaction of several diverse disciplines. At this stage some sort of system analysis or decision theory is called for. These techniques, which are nothing more than the quantitative study of choosing best alternatives, have such a broad scope that they can be immensely useful in clarifying the decision processes that we as lawyers, judges, or administrators are going to be forced to make in the future. The law school has to decide whether the language of discourse will continue to consist solely of words or whether it will take the step of introducing new concepts that are not going to be applied in the profession at large for years.

One thing is certain: if lawyers do not keep abreast of the terminology of the social sciences, then the crucial decisions in our society will be made in the future by non-lawyers.

How will some traditional law school institutions fare under the New Order?

The honoraries, having already lost their mystique, will come to exist on a competitive basis (like

the Crimson). The silliness of assuming that exam performance predicts ability (or motivation) to undertake significant research has been long unrecognized but apparently is a concept whose "time has come."

Grades as they stand now serve no purpose except to antagonize because of their misuse by employers and lack of teaching value; however, my crystal ball predicts continuation of grading, but only in the context of far more extensive and immediate feedback of other kinds than presently exists.

Extracurricular activities will continue to increase their attractiveness in proportion to the sterility of the classroom. If clinical skills are taught in the classroom, I expect that student of the future will spend less time in such activities as CLAO.

Student-faculty co-operation in policy-making will become a formal practice, but it is doubtful if the procedure will change patterns of action rapidly. No amount of student pressure or organization can compensate for inadequate leadership from the administration, which must always be the medium through which change is effected.

In fact, one of the misemphasized foci of current student protest has been the process of selection of student representatives, and the amount of voting power given them. In my opinion elections are unnecessary because any student interested in influencing opinion should be able to join a committee or at least attend an open meeting. Voting power is a moot issue because an agreement in an academic community must be acceptable *to all* before it can be acceptable *to anyone*.

In general, this law school, like most others, suffers from an over-emphasis on "formal" means of communication rather than the "informal" kind. Doubtless one reason for this is the large size of the student body relative to the faculty. There is little contact of a social variety between the two; for a starter, students and faculty should be forced at least to eat meals together. In the context of frequent informal contacts, one does not have to worry about proper representation.

Another purely procedural change that is necessary is the use of name cards in classes. This practice, borrowed from the Business School, will insure that students learn each others' names; and what is more important in the long run than getting to know one's classmates?

Changes of this magnitude will have to go through an extensive program of evaluation and reconsideration, probably by a specially appointed faculty committee. The Business School went through such a metamorphosis in 1960 with the Anthony Report. Now it is our time. One hundred years is long enough.

Letters to the Editor of The RECORD

(Continued from Page 9)

Kamisar's letter. It became obvious, during the argument, how deeply the Court was committed to the overthrow of *Betts v. Brady* and its progeny. Never in the eighteen cases which I had previously argued in the Florida Supreme Court and other appellate courts had I encountered anything like the zeal and emotion that emerged in the questioning. Anger seemed to characterize my most relentless questioner. A constant rain of hostile questions came from most of the justices. Concessions made in a spirit of candor that I thought to be the State's duty

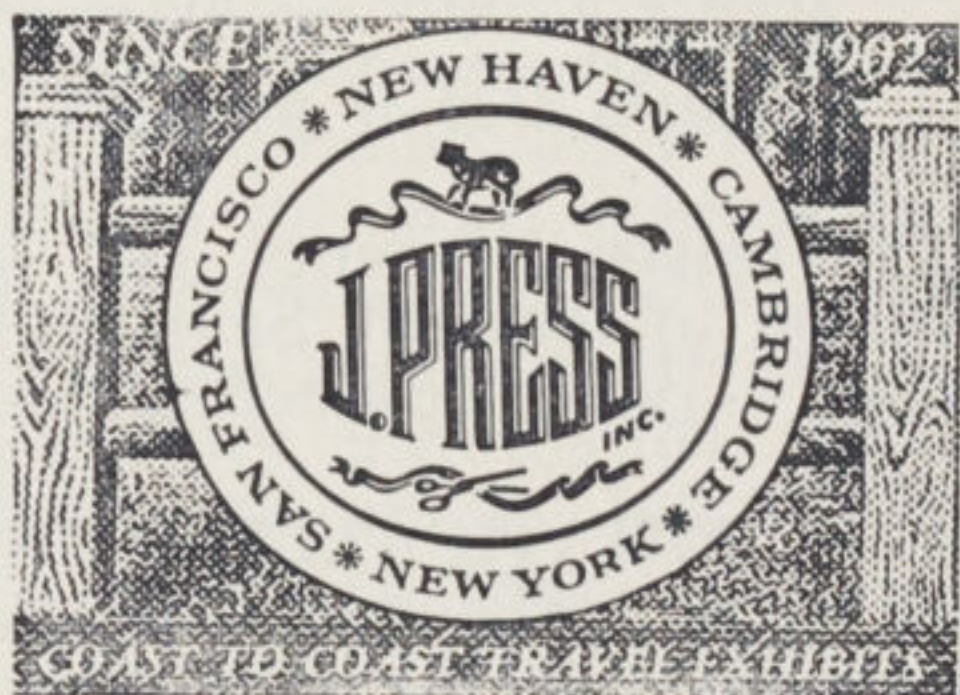
seemed only to excite fresh attack. Florida's position was obviously hopeless; my ten months of work devoted to the case were of little avail. I do not minimize the brilliance of Mr. Fortas' advocacy, but even he, despite his great experience and savoir-faire, might have had problems if our roles had been reversed and the inquisitors on the other side of the bench had been arrayed against him.

I now think that one of my concessions in argument may have gone too far. Mr. Justice Stewart asked whether Gideon should be allowed to represent another (without a fee, pre-

sumably) and I answered affirmatively. Mr. Justice Black then pointed out that the bar association might object. Thinking that, as a practical matter, he was right, I characterized my first answer as "stupid." But just two months ago, in *Johnson v. Avery*, 37 U.S.L.W. 4128 (U.S. Feb. 25, 1969), the Supreme Court ruled that Tennessee prison officials could not forbid a "jailhouse lawyer" from giving legal help to a fellow inmate preparing a habeas corpus petition, in view of the fact that the latter needed such assistance to gain access to the courts.

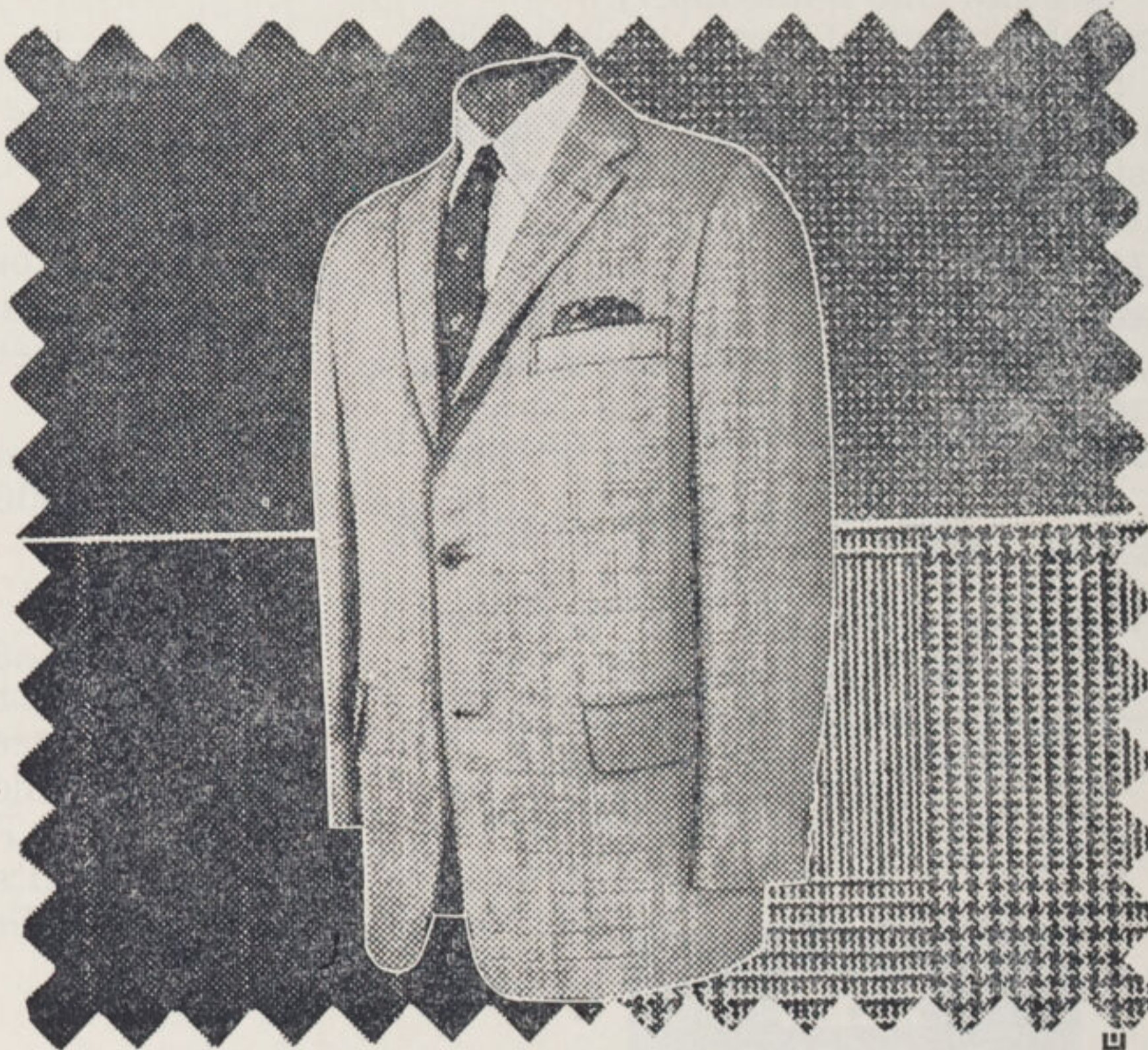
Bruce R. Jacob

(Mr. Sharma will reply to all letters regarding his article in next week's RECORD.)



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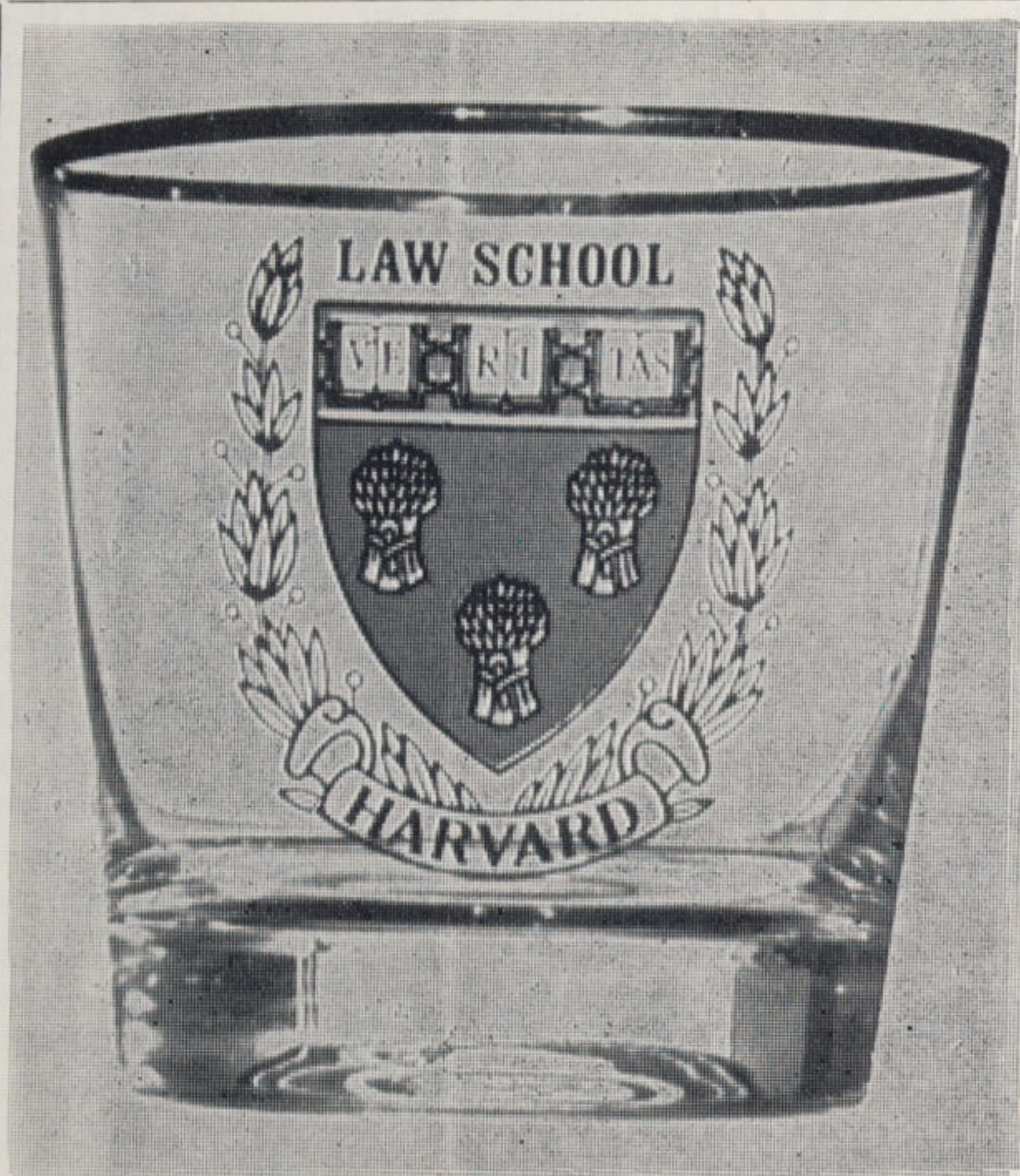
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Law School Has Study-in After College Sit-in

(Continued from Page 3)

When Brodsky emerged, Mark Stern, 3L, allegedly lunged at him in anger. Brodsky's response left Stern in need of five stitches, it's asserted.

"We're trying to get them up and out as fast as we can," Bernard Bradley, who is one of the men in charge of the Massachusetts Defenders Committee told a court attendant at about 7 a.m. the morning of the bust. But since nobody could be brought up or get out until the court secretaries typed up a lot of papers, Professor Charles Nesson took a trip down to the cell blocks. Finding broken arms and many wounds wherever he looked, he was able to get the police to move the injured to a hospital. This was about two hours after they entered the paddywagons.

It's been a long two weeks for the Harvard Voluntary Defenders. Attorney John Flym, who won the Sisson case expanding the limits of conscientious objection to the draft, agreed to represent many of the arrested sit-ins. But Voluntary Defenders Ed Dauber and Alan Hoffman, 3L, took down the necessary information and Defenders president Michael Smith, 2L, led a crew of interviewers and researchers. Mark Evans, a graduate student and attorney, was scheduled to argue the cases in court.

That night, the Defenders assembled for their annual banquet and heard U.S. Attorney Robert M. Morgenthau of the Southern District of New York address them. All the Defenders who'd been at the courthouse beginning at 6 a.m. were there, along with Bradley, who still looked chipper in a stylish double-breasted blue suit, with a matching shirt and tie.

Morgenthau spoke on white-collar crime but it seemed awfully distant to the defenders, both Harvard Voluntary and Massachusetts Public, who'd spent the day in and around the courthouse. Everybody looked like they'd been practicing criminal law since *Cain v. Abel*.

"I'm not interested so much in being a great lawyer; I want to be a good person when I leave here."
— Victor Stone, 1L, at the study-in.

"Our concerns haven't been addressed to whether grades are an incentive or not. Our assumption is that this system doesn't work. We have to figure out how to make the system more creative. . . . We have to have a new system to interact with each other here." — Buddy Berkson, 1L, at the study-in.

And as a few students tried to rouse a standing ovation for Berkson, others waited to hear Dean Sacks tell them that he was listening. And Dean

(Continued on Page 16)

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Recent Book

Former Cop Sees Cynicism as Police Problem

By Lawrence Gartner

Behind the Shield: The Police in Urban Society: Arthur Neiderhoffer; Doubleday Anchor; \$1.45; 263 pages.

A central figure in the current uproar over increased crime and lack of safety in the streets is the policeman. Whether a simplistic slogan or a complex plan to professionalize entire police forces, almost everyone's solution to the crime problem includes some method to increase the ability of the policeman to combat crime.

Even ignoring the argument that the root causes of crime are societal and that increased efficiency in crime solving and prevention are treatments of the disease rather than a cure, those who see the solution to the crime problem centered in the police still ignore one simple fact: that there is no real evidence how different changes in police personnel or police methods affect their efficiency in fighting crime. Although requiring four years of college for every policeman might make for a more erudite police force, will they be better policemen?

The amount of scholarly study about the policeman, about what factors affect his performance, and about how he could be made more efficient, is minimal. That is why books such as Arthur Neiderhoffer's *Behind the Shield* are valuable ones. Neiderhoffer, an ex-New York City policeman, studied for and received a Ph.D. in sociology after retirement. His book gives us a sociological profile of the big city policeman.

For Neiderhoffer the basic police problem is not money, or lack of equipment, but rather the police system itself. The training of a policeman, his first contact with the more experienced members of the force, his contact with the public, and his self-image all help to breed cynicism into the police system. As he states in the introduction to the book: "For many reasons the police are particularly vulnerable to cynicism. When they succumb, they lose faith in people, society, and eventually in themselves. In their Hobbesian view the world becomes a jungle

in which crime, corruption, and brutality are normal features of the terrain."

Because the policeman is bound to become cynical, he ends up performing his job in the easiest way possible, looking forward all the time to retirement. The cynicism excuses inefficiency, petty graft, bigotry, and many of the other things wrong with today's police. And these problems will remain as long as the system breeds cynicism.

But while Neiderhoffer's thesis of cynicism and how it develops is a major part of the book (there is an extensive appendix dealing with his statistical study of police cynicism) he also deals with a number of other related topics.

The process of becoming a policeman, from recruitment tests to the police academy, is described. There is also an extensive section on the policeman on his job. A further topic of Neiderhoffer is the tension between those elements of the police force who are more highly educated and try to professionalize the department and the lower-

class rank and file police who resent the professionals.

Finally, *Behind the Shield* has a chapter where Neiderhoffer analyzes the question whether police authoritarianism is a product of the type of men drawn to the police or rather a product of the system itself. He concludes that, "... police authoritarianism does not come into the force along with the recruits, but rather is inculcated in the men through strenuous socialization."

Anyone interested in the problems of crime by improving the police should read *Behind the Shield*. Not only will he be exposed to an authoritative description of the police system, but he may come to the conclusion that it is the police system itself which needs changing rather than the amount of money which is spent on it.

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Stocks Road to Wealth, Says Alum

The way to riches on Wall Street is not via the law firms there but through the Street's financial sector, commodity-futures specialist Paul F. Glenn '55 advised members of the Bull and Bear Club April 15.

"Assuming that our object is to acquire wealth," Glenn counseled, "the technique is ownership — in commodities rather than stocks — certainly not through legal fees, where it passes through your hands on its way to the Internal Revenue Service."

A co-founder of Bull and Bear in 1952, Glenn knew nothing about commodities futures until he heard a representative from Merrill Lynch give a talk similar to the one he was giving. "In futures one purchases an executory contract with delivery of the specified commodity — be it cotton, coffee, cocoa, or pork bellies — in eleven to twelve months. Unlike stocks and bonds where margin requirements are high, futures only demand 10% of the contract value in cash."

The availability of this tremendous leverage coming from a possible 90% debt-financed investment makes futures preferable to stocks for speculation. As a result of this leverage, if the commodity price rises 10%, for example, one has doubled his money.

"Of course," Glenn chuckled, "if it goes down 10%, then back you go to the practice of law." For this danger he recommends two guidelines: (1) actually practice the old-but-never-followed principle of cutting your losses short but letting your profits run, and

(2) diversify your portfolio by including different commodities.

Hit by a bull when investing in 1954's bearish market, Glenn has been considered one of Wall Street's most successful commodities-futures traders since. He is now a specialist in that area, associated with Hornblower & Weeks-Hemphill, Noyes. And he has never practiced law.

Why, then, the Law School, one might ask? Glenn strongly believes that legal training is still the best one can obtain for the business world in general — even as compared to what is offered at the Business School. And the Princetonian is himself certainly a self-fulfilled prophecy.

Possible speakers for the Bull and Bear 1969-70 season include the Tisch brothers of Loew's Theatres and James Ling of Ling-Temco-Vaught.

Law Notes

(Continued from Page 9)

and international law collection and to organize it in the new International Legal Studies wing of the Law School. Numerous books and indices have borne his authorship. On April 1 he became Professor of Law and Librarian of the Law School at the State University of New York at Buffalo.

* * *

The Harvard Law School Association, the School's alumni organization, will hold its annual meetings here this weekend.

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Law School Study-in Promotes Communication

(Continued from Page 13)

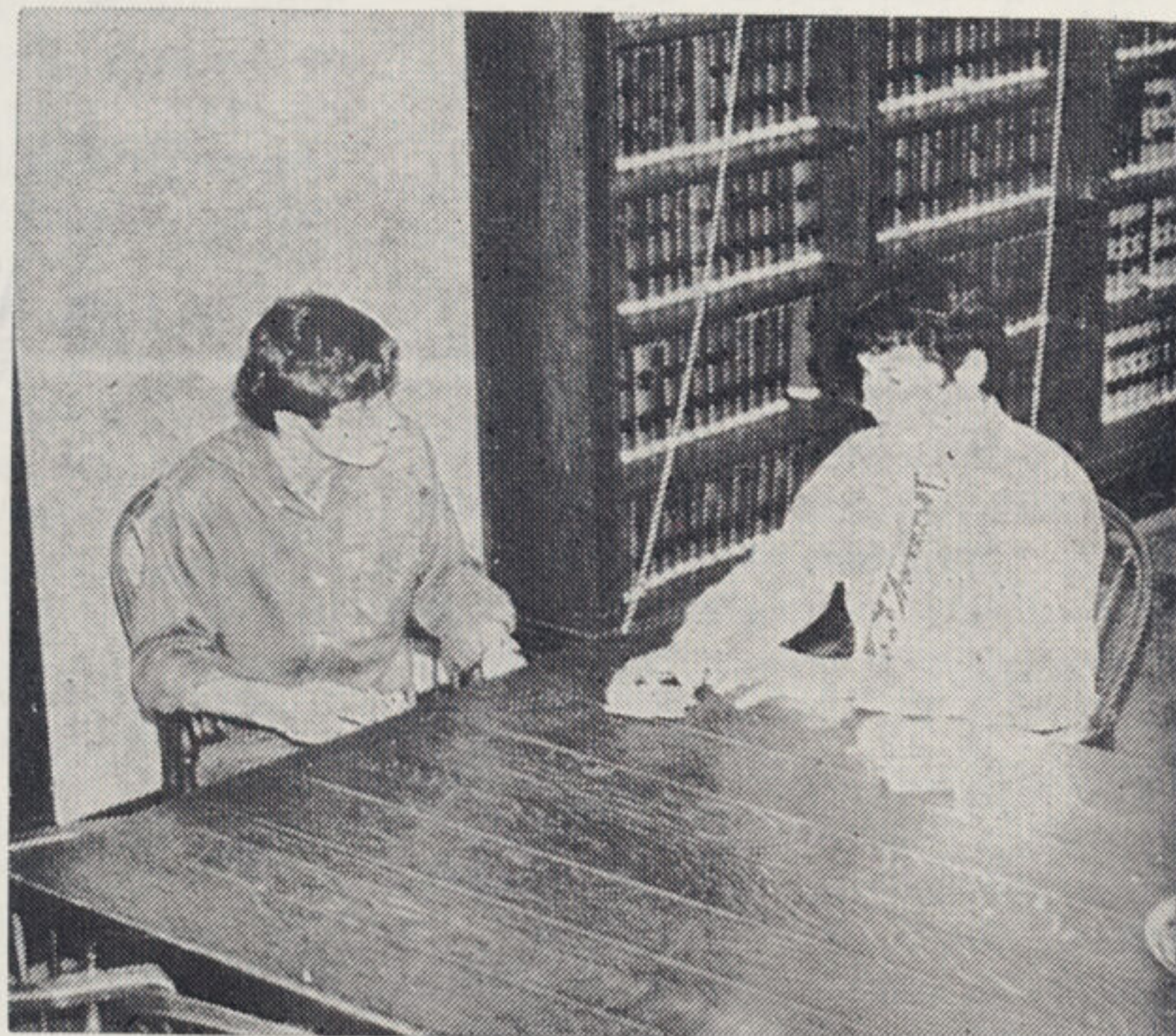
Bok emphasized that he and the faculty are really concerned.

And Secretary William L. Bruce felt that the Law School has solved the problem of grading to the extent that his office will send out only a list of the courses you took, if that's what you ask them to do. "It's a bad position to say that the bottom 10% of our class is better than top 10% at other law schools — but we do," he added, answering a question about employers who set grade cutoffs for job applicants.

"Fundamental to the misunderstanding," said Bruce Kahn, 1L, "is one point of Mr. Loss'. He used the word 'us' and in the minds of the faculty at this law school, us defines the political community and it means faculty. Until we redefine the political community, the problem of understanding what they say to us and what we say to them will continue."

The study-in was the first event of the week beginning with the sit-in at University Hall that could be called a success. Communication was in the air, and especially when differences were brought out in the open did one feel that the Law School was finally reacting in its own way to resolve its own problems as well as those thrust upon it.

Concluded Professor James Vorenberg: "I think that the country as a whole has a lot to lose if the people who came out of this school didn't have the qualities of toughness, analytic capability and imagination that are so important here." At the study-in, these qualities began to show up.



Mike Lurey

Not all of the study-ins studied-in.

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