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TWENTY CENTS

Rumored Cheating Unsupported, Exam Advantage Denied

By Susan Gillette

Unable to substantiate rumors and hearsay reports of cheating on the January Securities Regulation exam, the Administrative Board of the Law School has refused to yield to student pressure to issue grades of pass or fail, instead of letter grades, in the course.

Louis Loss, the Securities Regulation professor, and Assistant Dean Stephen M. Bernardi, secretary to the Administrative Board, indicated early this week that they doubt the truth of reports made to Bernardi that one or more students left the examination room to read an opinion cited as the source of the exam before answering Loss's questions.

On Tuesday the Administrative Board released a statement indicating that it will not issue pass/fail grades or take other action designed to neutralize any advantage students might have gained by cheating unless the reports of cheating can be confirmed.

The Board's position means that students have until Feb. 22, the deadline for submission of fall semester grades by professors, to provide the Board with the information required to substantiate cheating charges.

So far, no student who witnessed cheating has talked with Bernardi. He has been contacted by two students from the Securities Regulation class who say they know

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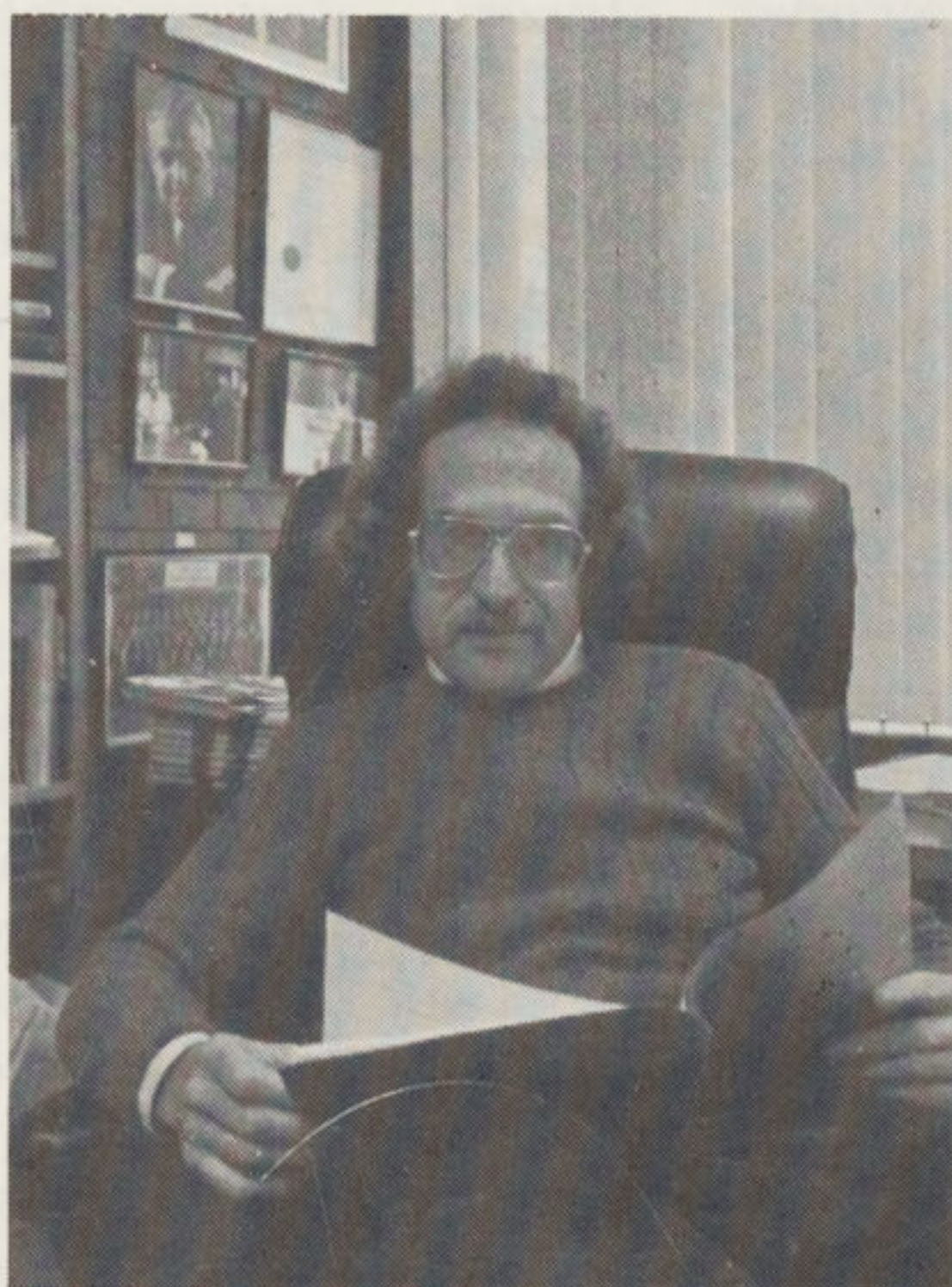
Suit Against Cravath Clears Major Hurdle

By Terry Keeney

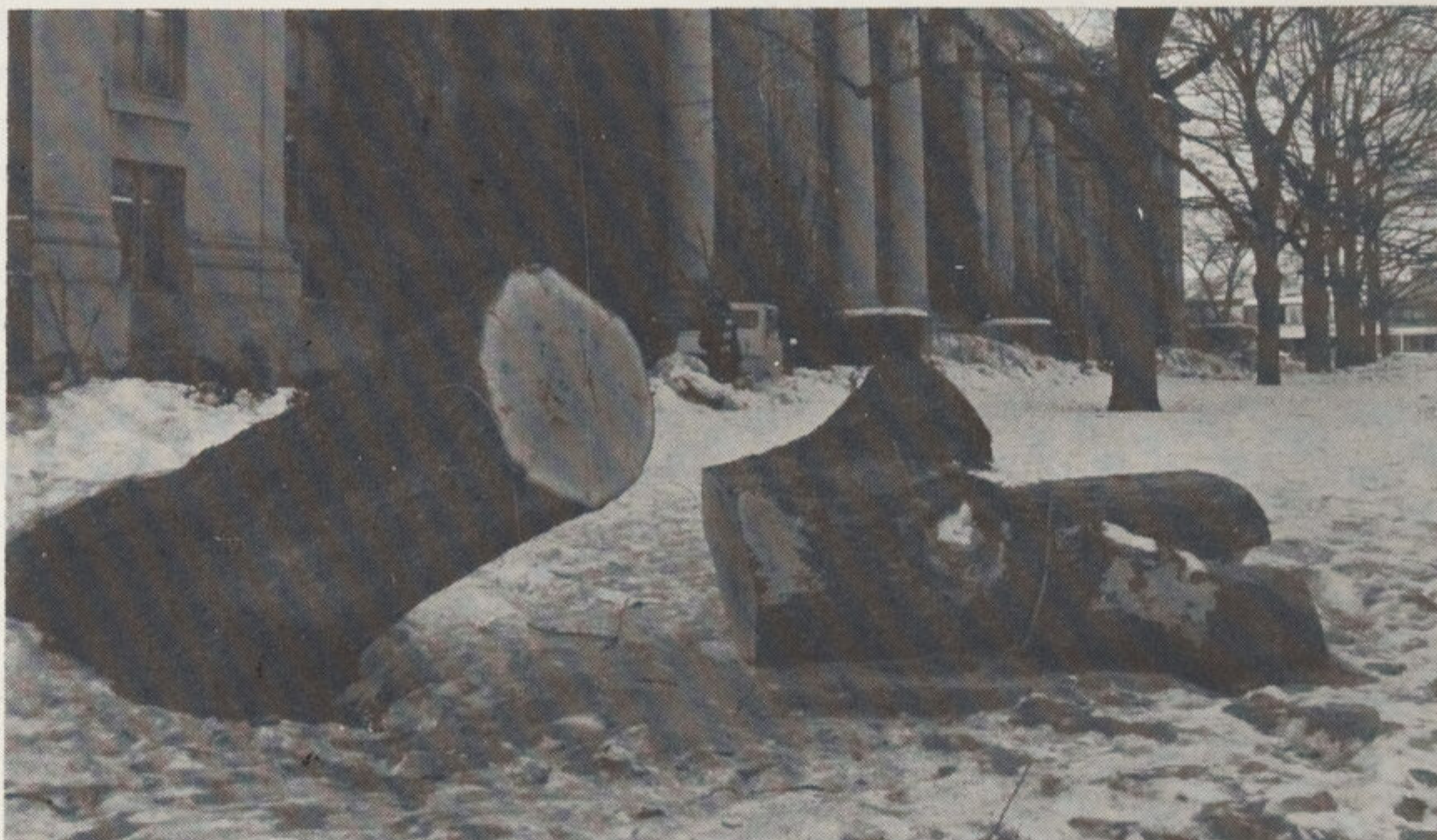
A Federal District Court judge in the Southern District of New York has denied a motion by Cravath, Swaine & Moore to dismiss a suit against the New York law firm by a former associate alleging that he was denied the opportunity to become a partner because of his religion and national origin.

U.S. District Judge Lee P. Gagliardi, in denying the motion to dismiss January 12, noted that the plaintiff John A. Lucido had stated a cause of action against his former employer and rejected Cravath's arguments that law partnerships are not covered by Title VII of the Civil Rights Act.

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The Dershowitz takes on Wall Street.



Victim to the round of snow storms during the exam period, the legendary "slanting tree" in the southwest corner of the yard fronting Langdell Hall is now fuel for Cambridge fireplaces. The tree, bent by a rare hurricane in its infancy, bit the tundra on January 8.

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Lawlessness at Highest Levels Catalogued

Ed. Note: Ralph Nader's Corporate Accountability Research Group has concluded that between January 1, 1971, and August 9, 1974, members of the federal executive branch violated the law in some 897 instances. The results of this one-and-one-half year study were based solely on judicial determinations of official illegality. The CARG employed an objective test to avoid any semblance of subjective judgment: it inspected the Federal Reporter to ascertain the incidences in which a federal agency or agency official had been held to have acted in a manner which ran afoul of the law. As related in the as yet unpublished report, the Nixon years were selected "because there had been substantial evidence that his Administration possessed an unusually insensitive attitude toward law and the legal process."

The report, authored by Betty Jean Hall, Alan Schwartz, and Mark Green, in asking whether White House insensitivity to law spread to the rest of the Executive Branch, broke down the prodigious number of cases into the following categories: Executive v. Congress, where the Executive branch was held to have overstepped its lawful authority in an effort to undermine Congressional policies; Disclosure/Participation, where the federal government avoided either public scrutiny of or public participation in its own internal processes; Civil Rights/Civil Liberties, where the government impinged upon the basic human rights of its citizens; Due Process, where citizens were denied the rudimentary elements of fair play and fair procedures; Bureaucratic Ineptitude, where government bureaucracy demonstrated the illogic, arbitrariness and red tape which has become its emblem;

Benefits Denied are cases of gross insensitivity by government toward deserved recipients of social service benefits; and the massive docket of Tax, NLRB, and Government Contract cases.

In what follows, the analysis of the Nader group is briefly summarized and its proposals to remedy government lawlessness are spelled out. Although the profusion of cases cited in the report's enormous index is virtually ignored in the excerpted version, a comprehensive listing and the report itself can be obtained at a cost of \$2.95 from the Corporate Accountability Research Group in Washington, D.C.

"Taken altogether, the sheer volume of these cases is a grim commentary on those who govern us. When accumulated, they weave a pattern of misconduct so widespread as not to be accidental"

In the past four years, America has endured such events as the IT&T-Dita Beard controversy, Watergate and all its attendant crimes, the Agnew resignation, the Nixon resignation, hundreds of convictions of local officials secured by Chicago, Baltimore, New Jersey and New York prosecutors, revelations of massive FBI and CIA illegalities, indictments of and misdeeds by members of Congress, and the current investigation of South Korean "gifts" to members of Congress.

These events have all produced spectacular headlines and have usually involved criminal offenses. There is another kind of official illegality which is less notorious, but just as systemic and systematic. It involves not a single malignant episode such as Watergate but a widespread pattern of misbehavior; it involves not criminal

offenses but the civil violations of agency rules and Congressional statutes. We refer to illegality by the hundreds of agencies and thousands of officials of the executive branch of the federal government. This illegality, in a sense, is the civil docket of Watergate.

The importance of this study, in our view, derives from the particular importance of law and courts in America. In other societies, great questions of policy and equity are usually decided either by ballots — former Prime Minister Edward Heath's confrontation with the trade unions in 1974 brought an En-

glish government down, not into court — or by bullets, as recent violence in South American countries has demonstrated. In the United States, on the other hand, as de Tocqueville saw a century and a half ago, "social problems become translated into legal problems." So the dilemmas of segregated education (*Brown v. Board of Education*), disproportional representation (*Baker v. Carr*), and, in effect, the Nixon presidency (*U.S. v. Nixon*) were ultimately resolved by a deliberative legal process, not the political process.

... In all, there were 897 instances between January 1, 1971, and August 9, 1974, when a Federal Court of Appeals found that an executive agency had acted unlawfully, or about one case a day.

Any individual violation, taken alone, might not seem momentous and many, under our conservative criteria, will appear insignificant. A particular case may seem only to reflect the dereliction of a low-level federal employee in a relatively small matter, lacking any in-

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HARVARD LAW RECORD

Class Participation Workshop Upcoming

By Randy Phillips

Fear and trembling. After inflicting it on students for more than a century, Harvard Law School is now exploring ways to help students cope with it in the classroom.

The new service, an experimental "class participation workshop," was heralded last week by a short blurb in the *HLS Adviser*. Open this semester to a pilot group of about eight students, the workshop "will focus on psychological blocks to class participation and strategies for dealing with the problem," the *Adviser* stated.

HLS vocational counselor Mark Byers said the workshop represents his first attempt to adapt to the law school setting a similar program he offered during his five years as counselor at the Business School. "I'm feeling my way here," Byers said. "If it works, then we'll try to meet the need on a broader basis next year."

"Behind the inhibitions that stifle or hamper speaking out in class lies a psychological bind probably familiar to many professional students," Byers said.

On the one hand, the new students want to do well, to graduate, to "be a professional." Yet the large classes, the insistence on objectifying all experience, the pressure inherent in the Socratic-case method, and the fear of public embarrassment produce "an ambivalence about participating in this form of education."

"But it's not just fear and anxiety. It's resentment at one's dependency on the system for positive feedback. If you're in conflict with the system and yet you want to deal with it, you've got a problem," he continued. **"If you don't participate, you pay a price in lost self-esteem."**

Byers' projected approach is to combine mutual psychological support with goals-clarification and instruction in simple techniques for overcoming public-speaking phobia. "It's reassuring just to know there are other people

with the same problem. The ethos here is so competitive it's often difficult to let other people know you're afraid."

Clarifying one's reasons for entering law school in the first place is important, he stressed, because "people lose courage to participate when they lose sight of their goals." The insecure student readily construes the ego-bruising give and take of the case method as personal hostility.

Among the hardest hit may be "people who graduated with majors in small, cozy academic departments, people who've been accustomed to a close relationship with the professor," Byers said.

Byers likened professional school to a "rite of passage." Recent college graduates, treasuring their hard-won sense of adulthood, find they "have to check their personality at the door with the expectation that you'll get it back when you finish. . . . You have to start all

over again. You're told you don't know anything. There's a resultant loss of confidence in yourself until you can become reoriented to the field."

"I think this is common to professional education regardless of the field," said Byers, himself nearing the end of eight long years toward his Ph.D. in counseling psychology, which he expects to receive in May.

Practical techniques for dealing with classroom *in terrorem* include simple relaxation exercises, bargains with oneself or deals with fellow students. "If you speak, I'll speak; if you make a comment, I'll make a supportive comment," Byers illustrated.

The pilot program begins Jan. 31 and will continue eight weeks. Students wanting to be in the group or to receive individual counseling can call Byers at 495-2967.

HLS Professors Forget D.C., Commend Carter on Choices

By Madison King

In the heady, albeit homespun, days following the inauguration of President Jimmy Carter, reactions to his cabinet appointments and prospects for his new administration were guardedly optimistic among the Harvard Law School faculty who assisted the Georgian in his successful quest for the White House.

"By and large, I think his cabinet appointments show a great deal of promise with one major exception," said Professor Bernard Wolfman, who added that he thought the appointments of Cyrus Vance to State, Joseph Califano to HEW, Patricia Harris to HUD, Michael Blumenthal to Treasury and Ray Marshall to Labor were all "very good."

"The appointment that I have nothing positive to say about and am very disappointed in is

that of Griffin Bell. I think Bell's background does not show excellence nor does it show my promise for direction and indeed, his performance in the past, both as judge and lawyer, suggests a lack of any sense of purpose and relative mediocrity if his official opinions are the measure," Wolfman added.

In summarizing his prospects for the new administration, Wolfman said he doesn't look for anything "startling or dramatic" but rather "careful thought and planning, homework done and good liaison with Congress."

In the area of specific policy initiatives Wolfman said he expects substantial efforts to reduce unemployment, long range tax reform and simplification, a reasonable measure of income redistribution, and additional programs aimed at curbing the rate of inflation and

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"Merit" Not Enough in Review Editorships

By Rob Leflar

Five student legal publications with an aggregate of more than 400 student members will in the next six weeks or so elect their editors-in-chief for 1977-78. Some organizations, notably the *Harvard Law Review*, in the past have proclaimed adherence to "purely meritocratic" criteria as the standard by which new editors-in-chief are chosen. (RECORD, Feb. 27, 1976.) The *Journal on Legislation* and *CR-CL*, by contrast, have encouraged explicit debates about the candidates' political philosophies. Within the *Law Review* there is presently a movement to bring politics into the election process.

The "pure meritocracy" conception, it seems to me, is narrow and borders on the politically irresponsible. Members of the law reviews have a right to hold their editors-in-chief accountable for the political directions their publications are to take and the way in which working relationships within the organization are to be structured. Given the editor-in-chief's considerable discretion in setting those directions and structures under prevailing internal procedures, candidates for the position should be subjected to the scrutiny of the membership regarding their political philosophy and plans for the publication as well as their editorial and scholarly abilities.

Certainly meritocratic criteria are useful in assessing the capabilities of candidates to perform some functions of the office. The quality of a candidate's previous writing and editing work constitutes a rough yardstick of his or her likely competence to perform such tasks as the final editing of articles, the evaluation of material submitted by outside authors,

and the editorial direction of staff editors' approaches to reworking material accepted for publication.

However, in assessing candidates' capacities to perform other critical functions of the editor-in-chief, such meritocratic considerations are largely irrelevant. The delicate job of ensuring the dedicated effort from and personal harmony among the members of the organization without which journal work is neither productive nor enjoyable; the task of dealing with faculty members in their various moods; and the responsibility, of importance not only to the publication's prospects but also to the career prospects of staff members,

topics to be dealt with by student writers and chooses among topics treated by outside authors. The acceptance of some topics and rejection of others, of course, involves fundamental political choices about what problems are important in our society. (2) In the decision whether to accept material for publication the editor-in-chief, together with certain officers, may weigh the material's political content. Whether done explicitly or subconsciously, this exercise of political predilection will be a factor in every journal's makeup. (3) The editor-in-chief, sometimes with the advice of

"Members of the law reviews have a right to hold their editors-in-chief accountable for the political directions their publications are to take"

of selecting the publication's new officers — each of these duties requires personal qualities of a sort not discernible from examination of a candidate's work files. Indeed, in most election meetings candidates' personalities are foci for (often quite scathing) discussion. This fact itself gives the lie to the shibboleth of "purely meritocratic" selection standards.

Political considerations, however, should take their place beside such functional considerations as demonstrated work skills and personal qualities as subjects for election-day debate. The fact that an editor-in-chief will inevitably exercise considerable control over the political tone of the publication's contents and of the organization's structure and working style imposes upon the membership the responsibility of political choice in their selection of a leader.

The editor-in-chief exercises substantive political control over the journal's content in the following ways, among others. (1) He or she selects, with the advice of certain officers, the

members of the editorial board, solicits material from eminent figures with whom he or she tends to be in political agreement. *Law Review* Supreme Court Forewords and the Forewords to *Journal on Legislation* Congress Issues, for example, partake of this characteristic. (4) Finally, the editor-in-chief, in exercising editorial direction, often steers writers and editors toward arguments consonant with his or her political philosophy. The *Law Review's* annual Developments Issue is often a particularly significant example of this phenomenon. I understand a controversy has been raging within the *Law Review* between the President and certain progressive elements of the staff with respect to the ideological content of the upcoming Developments Issue treating § 1983.

At the risk of taking our work too seriously, I would assert that all five student publications exercise significant academic and prac-

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* Rob Leflar is serving as president of the *Harvard Journal on Legislation* and the Harvard Legislative Research Bureau. The positions expressed herein are his own, not those of the *Journal* or the HLRB.

No Action Planned On Students' Allegations of Exam "Unfairness"

(Continued from Page 1)

someone who knows people who said they left the examination room, read the opinion cited by Loss, and returned to complete the test.

Both students, as well as other members of the class, urged Bernardi to adjust all course grades to avoid rewarding cheaters if offending individuals could not be identified.

Neither of Bernardi's "informants" was willing to name a student who could identify the cheaters. One informant did agree to ask his source if he would be willing to speak with Bernardi, but Bernardi was not contacted by the source.

Loss scoffs at the speculations concerning cheating. He said Tuesday that the time element involved in answering his exam would have made the reported cheating unprofitable, if not impossible. Students had 90 minutes to write answers to seven questions. The examination was given in two rooms in Austin Hall. The cited opinion is over 10 pages long. It discusses some questions Loss did not ask and does not discuss several questions he raised.

Loss said that he is in the process of grading the exams and does not believe he will be able to determine the identities of cheaters — if they exist — from their answers. Loss reported great variance in the answers, "as always," and suggested that the answers from the cited opinion weren't necessarily correct, in his opinion.

Suggestions that the cheating

reports might be a hoax are bolstered by the recent history of grading in the Securities Regulation course and generalized complaints about the content of this year's examination.

Last year students in Loss's course were given the option of taking their letter grade or a "pass" after Loss and the Administrative Board learned that part of the class had studied an objective test on file in the library which was the source of many questions on the 1976 exam. Loss removed the old test from the library before the entire class had an opportunity to review it.

This year many students in Securities Regulation have complained that the content of the examination did not reflect the content and emphasis of the course, as taught by Loss. The RECORD contacted several members of the class who confirmed the general opinion that the test was unfair. But none of the class members interviewed claimed to have witnessed cheating.

One student who talked with the RECORD told a story similar to that told by Bernardi's informants. That student would not identify the person who told of hearing admissions of cheating and expressed confidence that the student who heard the admissions would keep silent to protect friends.

Bernardi said that the Administrative Board will not take any action based upon claims that the examination was unfair. "That is between the students and their professor," he said.

Despite his suspicions that the cheating stories are a hoax, Bernardi had indicated a willingness to investigate cheating allegations, if further assistance is provided by students, because of the seriousness of the claims made to him. Grades in the course cannot be adjusted without "more specific evidence of improprieties," according to the Administrative Board's statement.

1L Legal Methods Retained; Honors Proposal Passed

By Barry A. Miller

The Law School faculty voted at its January 19 meeting to continue the present Legal Methods system until next year. Teaching fellows will continue to conduct separate Legal Methods classes for two or three of the four first-year sections.

The present "experimental" section, conducted by Professor Charles Fried, will be continued next year. At the discretion of Dean Albert M. Sacks, an additional section may use the experimental method. Under the experimental method implemented by Fried, the teaching fellows and BSA advisors of the regular Legal Methods program were replaced by paid third-year students, who acted as instructors. The material taught in the small sections was designed to be related to the material taught by Fried in his large section Contracts class.

The faculty vote to continue present policies for next year was not a general endorsement of the Legal Methods program. A thorough review of the program is presently being conducted by a faculty-student committee, chaired by Professor Gary Bellow. That committee, according to Bellow, has serious doubts about the entire program. Its interim report is expected in mid-March, although the committee will not make a final report until next year.

Professor Lloyd L. Weinreb suggested that expanding the number of "experimental" sections to two would mean that for the first time in many years, there would be no experienced teaching fellows to participate in the program, if teaching fellows are to be used at all, in the year 1978-1979. Accordingly, he feared that the expansion of the experimental program would automatically lead to the end of the teaching fellow program, without

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Law Firm Partnerships: Does Title VII Apply?

(Continued from Page 1)

Gagliardi's decision may pave the way for the suit, originally filed in December 1975, to reach the discovery stage if Cravath chooses to make no interlocutory appeal.

The suit by Lucido alleges two counts of discrimination against Cravath. Count I charges Cravath with violating Title VII of the Civil Rights Act of 1964 for allegedly denying him the opportunity to become a partner in the firm because he is a Catholic of Italian heritage. It alleges that the chance to become a partner is an "employment opportunity" for the purposes of Title VII. Count II alleges a breach of the employment contract because the opportunity to become a partner was part of his original employment contract.

Lucido is represented by the firm Karpatkin, Pollet and Le Moulton and by Alan M. Dershowitz, Harvard law professor. Cravath has retained the New York firm of Paul, Weiss, Rifkind, Wharton & Garrison.

In its motion to dismiss, Cravath argued that in Count I Lucido lacked subject-matter jurisdiction because Title VII did not apply to partnerships and that Lucido had failed to state a claim on which relief could be granted. Cravath also argued that interference in law partnership selection would violate the law firm's First Amendment right of association.

In the oral arguments on the motion to dismiss, Morris B. Abram of Paul, Weiss argued that partnerships in general are not covered by Title VII and that invitations to partnerships in particular are not covered by the Title. While Title VII may have protected Lucido from discrimination while an associate or employee of the law partnership, he would not be covered on invitation and admission into the partnership.

Abram, commenting on the case after Gagliardi's decision, said, "The only point we were trying to

make was that admission to partnership was another matter and that allegations relating to employment and those relating to partnership had been joined in a potpourri of pleading."

Abram argued that the court should have separated allegations of discrimination relating to the employment period of Lucido's associate status from those involving allegations of discrimination in the decision to invite Lucido to partnership.

"There is a penumbral area here which the court was not prepared to say Title VII does or does not cover," Abram said.

Abram argued that the opportunity for partnership is not an employment opportunity, but a partnership is a collection of self-employed persons. He told the Court, "But the change from associate to a partner, in short, is not a promotion; it is not an employment opportunity; it is not a term, condition or privilege of employment; for all such efforts to make it such flounder (sic) on the logical fact that a partner is not an employee, therefore is not promoted."

Dershowitz, who argued on behalf of Lucido against Cravath's motion to dismiss, strongly disagreed with Abram's argument that law partnerships are not covered by Title VII.

"I was absolutely outraged that a major law firm would take the position that in partnership decisions they are entitled to discriminate," Dershowitz said. "And it was my commitment to see that that view of the law did not prevail."

He noted that law partnerships are big business. "Cravath, Swaine & Moore is very successful at its business," Dershowitz said. Because law firms are a business, many firms have abandoned their partnership status in favor of incorporation.

Dershowitz sees this case as an important step toward alleviating discrimination by major law firms against minorities and women. In the oral argument on the motion to

dismiss, Dershowitz told the court, "It is a widely accepted fact, as the amicus brief points out, that firms like Cravath, Swaine & Moore have a long history of discrimination. They know how to do it. They have done it for generations."

In the amicus brief filed by the Catholic League for Religious and Civil Rights, a survey of the 20 largest law firms in New York City (including Cravath) revealed that of 912 partners listed in the Martindale-Hubbell Law Directory only 15 partners have Italian surnames. In addition, the survey noted that only 62 of the 912 partners had graduated from Catholic law schools. These 20 firms listed 298 partners from Harvard, 169 from Columbia, 120 from Yale and 50 from the University of Virginia.

Lucido, who was reluctant to comment on the specifics of the case, stated that the suit is an important piece of litigation. "Implicit in that was my thought that there are some lessons to be learned," he said.

Lucido was hired by Cravath in July, 1965, after graduating from the University of Notre Dame Law School and worked in the firm's litigation department. He contends that part of his employment contract was the fair and equal opportunity to become a partner after seven years as junior associate. He contends that because he is a Catholic Italian-American he was denied that equal opportunity.

Among the discriminatory acts alleged by Lucido are assignment to less desirable cases, unequal application of firm policies and being held to higher standards of work than those attorneys favored by Cravath partners. The complaint also alleges that Cravath unlawfully retaliated against Lucido for charging the firm with discrimination by suspending and later discharging Lucido.

Lucido, who is now practicing in

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Nader's Group Tallies Watergate 'Civil Docket'

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volvement by President Nixon, or even any high-level presidential appointee. Still, every case in this study reflects the review of some policy-maker, as well as the Justice Department, that the government should defend the action in controversy. These cases, of course, involve a small percentage of the millions of decisions made by the federal government in this three and a half year period. But given the substantial expense and judicial hurdles to be overcome when a citizen sues the government of the United States, it is safe to assume that each case represents hundreds of other illegalities which went either undetected or unchallenged. Taken altogether, the sheer volume of these cases is a grim commentary on those who govern us. When accumulated, they weave a pattern of misconduct so widespread as not to be accidental.

... The evidence amassed in this study, as well as other published examples of government lawlessness, points irrepressibly to the conclusion that all too frequently we simply cannot trust our government officials. This judgement clearly applies to Richard Nixon's Administration, though not because he personally directed or knew of most or even many of the illegalities involved in these 897 cases; he didn't. But as a fish rots from the head down, so do institutions get their cues from their leaders. And the Nixon White House — by its legal judgment, the executive appointments it made, the lack of mechanisms to insure departmental compliance with the law, and the example it established by the impoundment, Howard Phillips who was appointed to head the OEO without the approval of the Senate and Archibald Cox cases, to name just three — did not re-

flect fidelity to law as its highest obligation.

More broadly, this study indicates that a president, his aides and his appointees may at times be profiles in courage, but they may also be arrogant and corrupt, feeling above the law because they made it. "L'état, c'est moi," King Louis XIV said. This conclusion, however, should lead neither to despair nor to simplistic sloganeering that big-government-is-bad, but rather to a healthy skepticism by a participating public. If vigilance is the price of liberty, or if, as Brandeis thought, "the greatest menace to freedom is an inert people," then alert citizens and groups should be encouraged to bring lawsuits aimed at keeping government within the law. The range of illegal federal actions documented by this study supports the need for and importance of such citizen vigilance.

Unfortunately, a variety of administrative and judicial hurdles still operate to discourage citizen participation in agency and court proceedings. Corporate institutions, which have the information, money, lobbying resources, and political entrée to stand up for their interests, are not similarly disadvantaged. To take one measure only, of the 897 cases . . . 400, or 45% were brought by business corporations; 40 cases, or 4.5% were brought by public interest plaintiffs. To ensure that citizens can actively monitor their elected and bureaucratic officials, a series of re-

forms to facilitate access to courts and agencies are needed.

Attorneys Fees: The Supreme Court has observed that "[i]f successful plaintiffs were routinely forced to bear their own attorneys' fees, few aggrieved parties would be in a position to advance the public interest by invoking the injunctive powers of the Federal courts." *Newman v. Piggie Park Enterprises, Inc.* . . . Consequently, Congress has passed more than 50 statutory provisions permitting the award of attorneys' fees to successful litigants who, acting as "private attorneys general," vindicate Congressional policy by forcing compliance with the law. The passage of the 1976 Civil Rights Attorneys' Fees Award Act is the most recent example of this salutary development. But what of government inaction or negligence in areas not covered by these specific statutes? Too often citizen plaintiffs challenging agency action have a small individual economic stake in the outcome, although agency conformity with the law is a generalized interest affecting thousands of others. Legislation should compensate citizens generally for their actions as "private attorneys general" in all cases in which they prevail against the federal government. . . .

Public Participation in Agency Proceedings: There can be little doubt that public participation in agency proceedings is a valuable and necessary component in policy formulation. As now Chief Justice Burger commented when a Court of Appeals judge, ". . . experience demonstrates consumers are generally among the best indicators of public interest." *United Church of Christ v. FCC.* . . . But the high costs of agency participation often work to exclude citizen participation. Reimbursement for participation costs is needed to guarantee the right to participation in agency proceedings for those who otherwise cannot afford it. This proposition is by no means novel. Under

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Profs on Jimmy

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rebuilding urban areas into decent living and working environments.

"It is my sense that Carter believes in those types of programs, and for the most part his cabinet appointees share those views," Wolfman said.

Winding down from a whirlwind weekend in Washington where he attended numerous inaugural functions, Professor Abram Chayes said there was a "good mood and good feeling" in the Capital and in his opinion the Carter cabinet is "well-balanced, competent and capable of carrying out the general liberal-moderate approach to American political problems."



Professor Abram Chayes on the Bomb, other topics.

Asked about the appointment of Griffin Bell to head the Justice Department Chayes said, "I suppose if you'd ask me who I would appoint as Attorney General it wouldn't be Griffin Bell, but I think every person has a right to choose his own lawyer."

Chayes, who served on President Carter's foreign policy task force last year, said he looks forward to a new SALT II negotiating effort aimed at putting the Vladivostok Accord in treaty form and a clear commitment to disarmament and nuclear non-proliferation agreements.

According to Chayes, the basic
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Italian-American Charges Law Firm With Prejudice

(Continued from Page 6)

a small law firm in Summit, New Jersey, noted that the life of an associate attorney in a New York law firm is subject to arbitrary treatment in work and in partnership selection.

"I don't see why there ought to be tolerated the kind of arbitrary treatment of employees, even though they happen to be associate lawyers," Lucido said.

Because associates are so dependent upon the firm to provide favorable recommendations to secure employment after leaving the firm, they are reluctant to com-

clude internal memoranda, deposition of partners and other employees, and various statistics and data on the firm's partnership practices.

"The courts have shown that you don't need a smoking gun to prove discrimination," Dershowitz said.

He noted that in recent years major law firms have discriminated less in hiring new associates. But discriminatory practices are still common in the partner-selection process, partly because many law firms view their partnerships as exclusive clubs, Dershowitz said.

"I don't see why there ought to be tolerated the kind of arbitrary treatment of employees, even though they happen to be associate lawyers"

plain about discrimination or arbitrary treatment.

"Regardless of how unfairly an associate may be treated, the chance of registering a complaint may be slight because of the need to find another job," he said.

Lucido's suit seeks his reinstatement as a partner at Cravath or damages commensurate with the salary of a partner in similar circumstances. To demonstrate discrimination Dershowitz noted that Lucido must prove that, except for his Italian-Catholic background, he would be a partner today. Possible avenues of discovery in-

"The situation in law firms has improved at the associate level," he said. "In decisions as to who is to be made partner in the United States today, racial, ethnic and sexual background is taken into account."

Throughout the suit, Cravath has vehemently denied all allegations of discriminatory practice. In oral argument on the motion to dismiss, Abram noted that Lucido's allegations, if true, would be "morally indefensible and self-defeating."

"Our client adheres to a policy of non-discrimination. I'd like to make that very clear," Abram said.



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Innkeeper — JOSEPH ESKENAS

CARG Report Urges Citizens' Challenges To Executive Acts

(Continued from Page 7)

the Federal Trade Improvements Act, \$500,000 annually is to be allocated to the FTC to reimburse citizen participants in FTC proceedings. That approach should be applied throughout the government.

Consumer Protection Agency: Relatedly, we endorse the creation of a Consumer Protection Agency to represent the interests of consumers before federal agencies. For the evidence is overwhelming that these institutions need such an outside stimulus to remind them of their obligations to consumers, to their statutes, and to the law generally. A Consumer Protection Agency can help reform the government from within the government. . . . The institutionalization of a process by which citizens' interests are considered integral to

arriving at the "public interest" will yield more informed and better reasoned agency decisions. . . . The result of a CPA will be fewer decisions that need to be challenged and overturned in court — thereby avoiding the unnecessary expenditure of plaintiff, governmental and judicial resources.

Standing to Sue: In all the cases discussed [in this report], a citizen or group was able to pierce the federal government's self-generated shield of immunity. Recently, however, the Executive has successfully used the defense of "standing" to prevent the courts from looking into other claims of government illegality, let alone setting them aside. . . . The standing defense applies only in rare and exceptional cases where the plaintiff is completely unaffected by the challenged action. This occurs

rarely with government illegality since citizens generally are injured when the government breaks the law. Recent Supreme Court decisions, however, have converted the once obscure standing technicality into a shield for government illegality. . . . Senator Kennedy has introduced legislation granting citizens standing to sue for judicial termination or prevention of government illegality. S.3296, the Administrative Procedure Review Act of 1976, would have prevented continued abuse of the standing defense by the government and would have made other beneficial changes designed to enable courts to efficiently decide the merits of cases challenging government illegality.

Veterans Administration: It does not seem likely, given such abuses [political appointments, inefficiency, delayed payments, and inadequate payments] that only

(Continued on Page 13)

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Hats in the Ring

This week's *Backbencher* proposes that editors-in-chief of Harvard's law reviews be chosen on the basis of their management abilities and political views, as well as by the traditional meritocratic criteria. Leflar, the author, points out that maintaining harmony in an office and motivating staff are as important functions of the editor's post as editing itself. His suggestion that candidates describe their plans for exercise of authority would give staffers the chance to choose a benevolent despot or a majoritarian.

Choosing an editor on the basis of his or her political views is more problematic. Candidates might air their views either in a general fashion, or by presenting to their "electorates" laundry lists of stances on particular issues. Dangers lie in either procedure.

For example, confession of mere general political philosophy would indeed foster open discussion of a factor which may presently be considered only privately. However, such an open air policy, disclosure of general political philosophies, may or may not be the key to accurate prediction of editorial practice in day-to-day production. Instead of bluntly propagandizing, it is likely that editors will exert their influences subtly, in the performance of specific, mundane duties. For instance, the editor, in deciding on article topics and in the ongoing editing of those articles, is expressing value judgments about which issues he considers most important to the legal community. Does political outlook yield an invariable clue to conduct in these contexts?

On the other hand, if editors were to be elected on the basis of their stands on particular issues, there is a serious risk of fragmenting or polarizing the staff. Just as we have seen voters support "one issue" candidates because of shared views on busing or abortion, candidates for editor might attempt to garner support on equally narrow grounds.

We believe that the "blind purchase" hazard Leflar deplores should be avoided at all costs. But "campaign" procedures should be adopted with care. Each journal should consider just how deeply its political probe will cut, and how such explicit political dissection will affect the balance of the publication's presentation.

HARVARD LAW RECORD

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Fenno

Fenno, as usual, was strolling outside Langdell Hall down the path of least resistance. He was trying not to think of ski week-ends and his painfully wrenched ankle, when a scurrying 3L tripped over him. "Ouch," Fenno explained.

"I'm sorry. I was rushing to an appointment with my ad agency."

"Oh?" Fenno remarked. "I see you've read *Consumers Union v. American Bar Assn.*"

"Yes, those Virginia judges have done it again. Now that lawyers are charging higher rates in the wake of *Goldfarb*, the state is going to let them brazen it to the world."

Fenno considered whether he could sell the eager 3L an interest in his 'Virginia is for lawyers' T-shirt franchise, but merely remarked, "This decision is certainly opportune for all you pettifoggers about to be loosed on the world."

"Just in the nick of time," the 3L admitted. "I was afraid I would be forced to use more subtle methods to promote myself. In fact, I had an appointment to have 'Harvard Law '77' tattooed on my forehead, but I guess that's not necessary now."

"I would have suggested something less frontal, like journalism. You have no idea, for example, what business this little column brings in."

"True," the 3L replied jealously, "But who has the time? I had to change my whole schedule to get into Kaufman's course on *Professional Reputation*."

"That's a start. But you have to discount his claims that he can make you 'extravagant, artful, self-laudatory and brash, in just two credits. Often it takes twice that."

"Fenno, you misread the course description. The course you described is for future faculty only. All Kaufman promises for students who want to practice is general irresponsibility."

"That may be enough." Fenno showed the 3L his copy of the *Free Paper*. "Look at this ad which came out just after *Gilmore* was executed."

The 3L read: "Someone you love on Death Row? BWM, HLS '69, well-hung, will keep him from being same. No fats please. Real Box 400." The 3L had to admit it had the Kaufman hallmark.

"Yes, Kaufman," Fenno agreed. "But if the ad had read 'reasonable rates' I would have guessed Dershowitz."

"This rule will be such a bonanza for all faculty here that Harvard can start selling seats like the CBOE."

"I'm sure," Fenno replied calmly, "that all of us associated with this venerable institution will reap a tremendous windfall. As Langdell once said, 'Yes, Virginia, there is a Santa Claus.'"

Letters to the Editor of the RECORD

And What If Exams Came At 'That Time'?

To the Editor:

The last paragraph of your "Yellowed Record" reprint from March 23, 1948, intrigues me. It said "of the students in the opposition [to admitting female students] camp . . . others second the reasons advanced in the RECORD editorial."

For the sake of nostalgia, why not share with us your predecessors' editorial opinion on the subject?

Elise B. Heinz '61
Arlington, Va.

Ed. note: The RECORD editorial of March 2, 1948, invited readers to voice their opinion about whether the Law School should admit women after the accelerated program for men returning to the Law School after World War II was completed. Although the RECORD took no stand on the question, it did raise issues on both sides. Among the reasons for continuing to exclude women the editorial noted were: that women don't contribute to the intellectual level of discussion, that women could not meet the physical and psychological pressures of law practice, and that only one in ten women law graduates actually practiced law.

A Founder Gushes; We Like Us, Too!

To the Editor:

Your "Thirty Years Ago" box on the Letters page, RECORD, December 10, 1976, provokes these comments and a little nostalgia.

I agree that the RECORD is a "joy to behold," and not just because starting the RECORD back in 1946 was my idea. But I do overflow with paternal pride from time to time.

I continue to protest, however, the use of the phrase "America's Oldest Law School Newspaper." Age has nothing to do with being a joy to behold. Some wine improves with age and some doesn't.

As for the letter from "Fourth Termer", I'd guess he soon changed his opinion, as did Dean Griswold.

One of the final decisions of Dean Landis before his resignation was to approve the establishment of the RECORD. Two faculty members opposed its birth and one of those was Dean Griswold who did, however, as his letter shows, soon become a strong supporter; in fact so strong that when I reminded him of this last year when I met him briefly outside the Law School, he'd forgotten all about ever being opposed to the RECORD.

The other founders of the RECORD are Paul F. Hellmuth, '43 ('47), managing partner, Hale & Dorr, Boston, a job he

took over from the RECORD's best friend and mentor, Reginald Heber Smith '14, and Charles G. Sweet, '42 ('46), Judge of the Court of Common Pleas, Washington, Pa.

Thirty years ago? Closer to thirty-one now. We had just survived four years of active duty in WWII. I ended up a 1st Lieutenant in the Air Corps, Hellmuth had been a Lt. Colonel in the Air Corps on the staff of Gen. Spaatz and Sweet had been a major in the Marines. Our interlude as soldiers had made us understand the importance of lawyers as citizens. We believed, along with others who helped us get the RECORD launched, that Oliver Wendell Holmes, Jr., was right about the necessity of getting involved in the passions of our times.

My congratulations to you and your associates,

Charles O. Porter '44 ('47)

This Guy Must Do My Phone Bills, Too

To the Editor:

I had mixed emotions when I read Andrea Brown's piece about the encounter she had with the Legal Profession computer exercise (RECORD, Dec. 10). Her article was lively and funny. On the other hand, because I wrote the exercise she described, I'm sorry to hear that there have been so many technical difficulties.

All I can say is — bear with us. We're trying to get things straightened out. Someday it may be possible to use the exercise without being accused of ILLEGAL PARAMETERS or other infractions.

Roger Park '69

"This Garbage Isn't Funny" — How's That?

To the Editor:

May I compliment you on the RECORD — it is great and most interesting always.

In the next available issue will you please describe what is the T.G.I.F.? In order to unearth the mystery I have waded through the Widener stacks, the H.L.S. library, the N.Y. Public Library, the library at the Sorbonne, all to no avail — not a clue: Simply by using my deductive powers I have arrived at the conclusion that it must be one of the following! But which? —:

1. Thy God is First.
2. Two Guys in Falmouth.
3. Thy Guilt is Full.
4. Thayer-Griswold isn't Freund.
5. Three Gs is Fatal.
6. The Girls is First.

7. Trenton Girls is Fast.
8. Thy Gift is Fruitful.
9. Theatre Goers incite Fires.
10. Tuesday Group in Finance.
11. There goes 'is Fancy!'
12. Tell Gwen I'm Famished.
13. Ted's Gall is Fantastic.
14. T'll give if Forced.
15. Tom's Gall irritates Fran.
16. The Great International Flop.
17. Tessie's Girdle is Floppy.
18. Two goes into Five.
19. Thirty G's incites Fervor.
20. Thursday golf is Furtive.
21. Thespians grow into Fame.

I will be awaiting the next issue with bated breath to discover which one of the above is T.G.I.F.

I thank you. Thy gift is Fabulous!

Yours in the spirit of *Lawrence v. Fox*,
Roscoe Williston Cox
(alias Austin Wakeman Warren)
H.L.S. 1878

Ed. Note: We could have come up with much funnier possible meanings for "T.G.I.F." and you could have, too. Anyone could have. So why did we print this? Because there was nothing else to put here. Maybe we should just have left this space blank.

Law Notes

All first semester grades should be available to students no later than the first week in March if faculty members comply with the Registrar's instructions about reporting grades. Mary D. Upton has asked the faculty to submit criminal law and torts grades by Monday, Feb. 7, and other grades by Tuesday, Feb. 22.

Grades will be distributed in classrooms during designated hours. Upton advises students who do not wish to obtain their grades in this manner to pick them up in the Registrar's Office after the day of *en masse* distribution.

No grades will be mailed to students now enrolled in the Law School unless the students leave stamped, self-addressed envelopes at the Registrar's Office. Mailed grades will be received after the distribution of other grades.

* * *

The Law School is presenting Kenneth Clark's "Civilisation," a 13-part series of one-hour color films, this spring. Part two of the series will be shown Wednesday, Feb. 2, at 2 p.m. in Pound 101. A complete schedule for the remaining shows will be announced at a later date.

Part one of the series, "The Skin of Our Teeth," was shown this week. "Civilisation" was presented at the Law School four years ago and played to SRO audiences, according to Assistant Dean Stephen M. Bernardi.

* * *

SPORTS QUIZ

1. The winner of the 1966 Masters Tournament failed to make the 36-hole cut in 1967. Who was he?
2. Who holds the record for most points scored in an NBA playoff game?
3. Who was the oldest man ever to win a major league batting title, hitting .328 in 1958?
4. What NBA player, still active, holds the career record for most assists for a forward?
5. Only one major league pitcher has thrown a no-hitter on opening day. Who was he?
6. The record for highest career fielding percentage belongs to what former first-baseman for the Los Angeles Dodgers?
7. What player led the NBA in scoring for the 1967-1968 season, snapping Wilt Chamberlain's string of 7 consecutive scoring titles?

DEALER'S CHOICE:

8. Identify the subject of the following sports film biographies and give the name of the actor who played him:
 - a. *Fear Strikes Out*
 - b. *Somebody Up There Likes Me*
 - c. *Pride of St. Louis*
 - d. *The Jackie Robinson Story*

(Solution on Page 14)

Cryptic Law

This week's feature is dedicated to the 1Ls who, having survived their first exams, now begin one of the Law School's more cryptic courses, i.e., Property. The following excerpt from a famous property case is in "judicial code." Decode it. (Hint: Each letter stands for a different letter of the alphabet.)

"Pags tbqgkhc sblh qhxbqnhn ski bc
gsh ubj ay ebgkaec nahc b tkqbgh . . .
Skc nhtqhnbgkaec ae ybqihqc ben ae
pbqe dbqnc, sblh eag phhe yaqxagghe;
ben ga tmg ski ga nhbgs jshqhlhq
yamen, kc buuajhn ga ph
ihqkgaqkamc, ben ay tlpukz phehykg.
Shezh kg yauuajc, gsbq amq nhzkckae
csamun sblh be lkhj gsh xqhbghcg
tacckpuh hezamqbxiheg ga gsh
nhcgqmzgkae ay be bekibu ca
zmeekek ben qmgsuhcc ke skc
zbqhhq."

(Solution on Page 15)

Outsiders Looking In

(Continued from Page 8)

issues open in the SALT Talks are the treatment of the Soviet Union's Backfire Bomber and the United States' Cruise Missile within the body of the nuclear arms accords.

Professor Charles Harr said he thinks the cabinet is a progressive, evolutionary and pragmatic group of team players. However, he added that it's not clear yet what the patterns will be, what the administration's budgetary priorities are or how the different departments will relate to one another.

Harr said he was disappointed that the Carter economic proposal which proposes a major tax cut coupled with a jobs program, did not place a priority on housing development, particularly in urban areas.

"The thing that troubles me about this last package is that there is nothing about housing in it and this is an area where you can open up the spigot with jobs especially in the inner cities and ghettos quickly and without an inflationary impact."

Professor James Vorenburg said that while it is still too early in the new administration to make an informed comparison with previous democratic administrations, he is hopeful that the President will fulfill his campaign promises to make the FBI more responsive to the Justice Department and thoroughly reexamine the Law Enforcement Assistance program which he termed "a national embarrassment which has

been up to as high as \$1 billion (annually) and is generally regarded as quite disappointing and ineffective.

Vorenburg said his general impression is that this administration is committed to worry more about the problems of poor people, black people, Chicanos and minorities in general than the last administration.

In the area of criminal justice reform, Vorenburg said he would be amazed if legislation is not forthcoming which combines proposals by Judge Marvin Frankel, Senator Edward Kennedy, Professor Alan Dershowitz and others to limit judicial sentencing discretion.

"I've never seen any articles which indicated what Carter's position was on any of these issues," Vorenburg noted, "but my strong guess is that he and the people around him are interested in improving criminal justice administration."

Another Carter campaign pledge which has aroused considerable faculty interest is the proposed "scalping down" of the American ground troop level in South Korea.

Professor Jerome Cohen noted that a similar attempt in 1970 to reduce the level of American troops stationed in South Korea from 60,000 to 40,000 stimulated the Korean Lobby effort as the anxious administration of President Park Chung Hee sought to bolster Congressional support for his government. Cohen said the Carter proposal, which calls for close consultation with the governments in Seoul and Tokyo, should also emphasize the immediate removal of existing nuclear weapons from that East Asian nation.

"I thought the inauguration speech read very well and had a healthy emphasis on human rights at home and abroad," Cohen said.

In the days following the November election local media was rife with speculation concerning possible appointments of Law School faculty members to various

(Continued on Page 14)

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Nader Report: Page after Page of Illegalities

(Continued from Page 9)

seven veterans out of the 29 million veterans directly affected by the VA had a *bona fide* legal complaint between January, 1971, and August, 1974. . . . Because of the unusual gap between veterans' complaints and their apparent inability to challenge the source of their complaints (due to statutory non-review provisions), a) VA cases should be able to be appealed to a federal court as other agency cases can be, b) the \$10 lawyers' fee maximum should be abolished and c) a separate unit should be established within the VA to process veteran complaints and to sue the Administrator if necessary.

Compliance Reports: One way to help spur executive officials on to enforce the law rather than ignore or violate it is to require the maintenance and release of regular compliance reports. The public may occasionally learn of a violation by a company, but nowhere is there a systematic report on the level of violations and resources in particular areas. For example, a compliance report could contain the following: the laws enforced by the agency, the resources given it, and the remedies available to it — e.g., recall, repair, fines, warning letters, referrals to the Justice De-

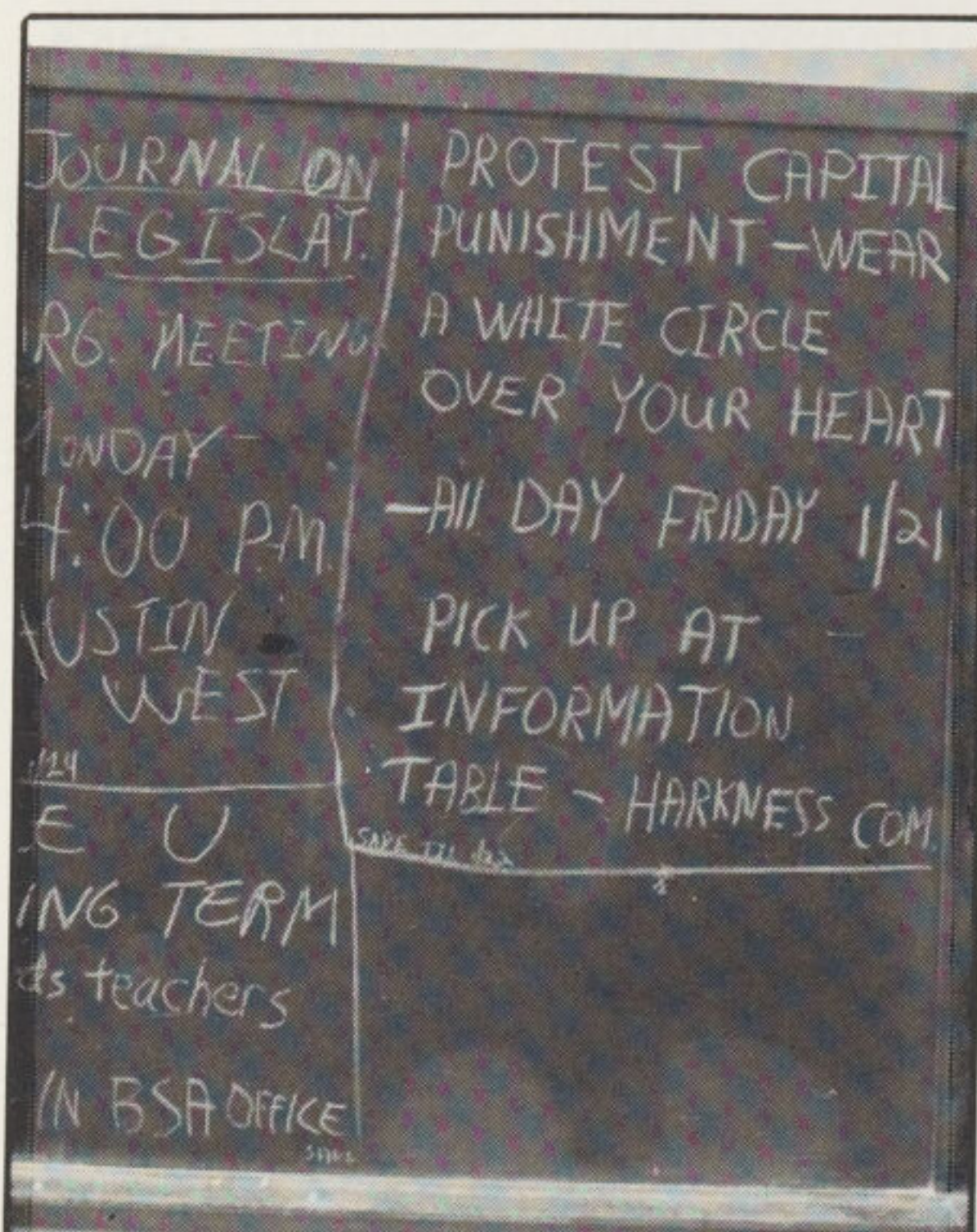
partment for prosecution, etc.; a list by company of each violation established and the corrective action required and taken; a statement of what additional tools are needed . . . ; an analysis of priorities for compliance activities and how they are determined; an analysis of the cost to citizens and the economy of the level of violations uncovered and the cost of the level of estimated violations. . . .

CARG Targets: Executive Outlaws

Conflicts-of-Interest: An actual or apparent conflict-of-interest by a federal official does not necessarily mean that an official will be ineffectual or act unlawfully. But such situations are the soil in which pro-business or unlawful decisions can grow. And the indications are that conflicts-of-interest permeate the executive branch. . . . Given this evidence, all executive branch personnel at the GS-15 level or above should be required to file a detailed financial statement, which would be made publicly available; failure to file, as well as wilfully or recklessly inaccurate filings, should lead to removal from office and criminal fines. . . . The acceptance by an agency official of substantial gifts, loans or other favors

should be disclosed and the acceptance of any such benefits from regulatees strictly prohibited. No former agency official should be able to appear before his or her agency in a legal proceeding for two years after leaving government. . . . A Federal Conflicts-of-Interest Panel should be created to apply and interpret conflict-of-interest laws government-wide. Such a panel could avoid the inherent conflict of particular agency officials judging conflicts situations and establishing precedents which can later apply to them.

Merit Appointments: There is, admittedly, no objective litmus test to measure and guarantee the quality of each executive branch appointment. But that the goal of quality appointees involves subjective judgment does not mean that quality cannot be obtained. It must be. For the quality and integrity of executive officials is the first line of defense against corrupt and unlawful government. . . . [T]hose responsible for selecting candidates for executive offices should invite public comment on prospective candidates — an approach consistent with the style with which President Carter chose his vice-presidential running mate; there should be the public disclosure of Congressional reference letters, which should be limited solely to a candidate's character and record; and the Senate should more aggressively scrutinize, rather than merely rubber-stamp, an appointee's character and experience. . . . The failure to opt for integrity over political convenience can be a legacy of illegality — as courts for years hand down decisions rebuking agency action. Assuming that President Carter appreciates the dismal history of executive branch mediocrity and lawlessness that has preceded him, he can seize the opportunity to make merit appointments of individuals who understand that "[i]f the government becomes a law-breaker, it breeds contempt for the law."



Notices like these appeared around the Law School in response to the Gilmore saga.

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CLASSICAL GUITAR
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'Blind Grading' Endorsed

(Continued from Page 5)

full consideration being given to the subject by the faculty.

Professor and Associate Dean Robert E. Keeton responded that most teaching fellows only taught Legal Methods during one of their two years at the Law School. He said that, in the past, the Law School had, when necessary, been able to hire a teaching fellow for an additional year, or rehire a former teaching fellow who had remained in the Boston area, in order to insure continuity in the program.

The faculty decided to give Dean Sacks the power to decide how many experimental sections will be conducted next year, and how many new teaching fellows will be hired. He is to exercise that power consistent with professors' teaching loads, budgetary constraints, and with other concerns expressed by faculty members at the meeting.

At its earlier meeting of December 15, the faculty approved a modified version of the honors proposal on which it had declined to act at the November 17 meeting (RECORD, December 10). The average needed to attain a rank of *Summa cum laude* was raised from 7.0 to 7.2, on a scale ranging from 8 to 0 for A+ to F. This was done to prevent an average of one additional person from every class graduating *summa*. *Magna cum laude* was left at 5.8, and *cum laude* was left at 4.85.

The faculty also voted on December 15 to adopt the anonymous grading system that had been approved by the faculty the prior academic year. The proposal provides for faculty members having the discretion to grade members of classes of less than fifty up or down on the basis of overall class participation, in addition to any examinations or formal exercises that are assigned.

If a graded exercise is available to all students, in a class of any size, the professor may include the grade in the final grade if he announces his inten-

tion to do so at the beginning of the year. Professors in classes of more than 50 cannot, however, use individual class participation, whether voluntary or assigned, as the basis of any part of the grade. Professors will not be allowed to see the name of the student who wrote any examination until they have turned in a list of all their grades, by examination number, to the Registrar's Office.

Professor Abram Chayes, Chairman of the Legal Education Committee, originally interpreted the proposal to mean that professors could change examination grades on the basis of class participation, even in classes of more than 50, if all students were called on during the course. Dean Sacks and Professor Duncan M. Kennedy expressed contrary recollections.

Sports Answers

1. Jack Nicklaus.
2. Elgin Baylor, who scored 61 points for the Los Angeles Lakers against the Boston Celtics on April 14, 1962.
3. Ted Williams, Age 40.
4. John Havlicek.
5. Bob Feller of Cleveland against the White Sox in Chicago on April 16, 1940.
6. Wes Parker, .9956.
7. Rick Barry.
- 8a. Jimmy Piersall, played by Anthony Perkins, who also starred in *Psycho*.
- b. Rocky Graziano, played by Paul Newman.
- c. Dizzy Dean, played by Dan Dailey.
- d. Jackie Robinson, played by himself.

Carter Cabinet

(Continued from Page 12)

administration posts, however, at this writing, they're all still here.

Explaining this phenomenon, Cohen said local people always like to think the people they know will get tapped, but unlike 1960 when we had a president elected from Massachusetts, the new President has brought a high percentage of Georgians to the White House who didn't go to Harvard.

"I think President Carter suspects there is some irritation and annoyance with the Eastern establishment and that there is a reservoir of untapped talent throughout the country. And there are people in Michigan, Berkeley, Texas and other places where talent lies who want to be represented and who want to participate," Cohen observed.

Cohen said that because President Carter's selection process began so early and was so methodical many people think the appointment process is completed. He noted, however, that with multitudinous sub-cabinet, staff and ambassadorial posts left to be filled the process is by no means complete.

And, lest any Harvard types feel left out, Chayes noted that cabinet secretary Jack Watson, domestic affairs adviser Stu Eizenstadt, Transportation Secretary Brock Adams and Solicitor General Wade McCrea are all HLS grads.

"We manage to get our share," he said, "one way or another."

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Will Politics Sway Editorship Choices?

(Continued from Page 4)

tical influence on the fields which they treat. Laws are passed and repealed, litigants succeed or fail, administrators act or fail to act in some small part because we move people by what we write. It is to our discredit if we journal members sometimes forget, in our capacities both as electors and as editors, what Max Weber in his superb essay on *Politics as a Vocation* called an "ethic of responsibility" — that one must give an account to one's conscience of the foreseeable results of one's actions.

In voting for the next editor-in-chief, journal members should exercise their franchise so as to ensure as best they can that the work they will do for the journal will not lead to results repugnant to them. To do so they will need to know the political perspective with which each of the candidates intends to approach the job. Moreover, they should consider adopting procedures to ensure that the new editor-in-chief and officers are accountable to the membership, at least in a general way, for major decisions regarding the journal's political content. Any efficiency loss resulting from the weakening of the editor-in-chief's arbitrary authority may well be outweighed by the enhanced feelings of involvement in journal decision-making on the part of staff members and by the positive value of settling the moral responsibility for the real-world consequences of material published in the journal

on the shoulders of all those who create the material.

There is another dimension to the editor-in-chief's political control: the shaping of organizational structure and work relationships among the members. It is in large part the editor-in-chief that determines whether staff members exist in a hierarchical, competitive, tension-filled environment, absorbing the values which tend to permeate such settings, or whether they work together in a more egalitarian atmosphere of camaraderie. Candidates for editor-in-chief should outline their views of the kind of working atmosphere to be fostered and of the degree to which the editor-in-chief should be open to staff members' sentiments for change.

Some may argue that it is unfair to prevent a highly qualified candidate from obtaining the office (and the career rewards that tend to accompany it) "merely" because the person's political beliefs or plans for the organization are incompatible with those of the majority of the membership. I find the argument unconvincing. The effect on people's lives of the decisions of an editor-in-chief of incompatible views acting in unaccountable fashion is likely to outweigh by far any "unfairness" in the electoral defeat of a minority candidate for what is in many respects a political office. Structuring the organization

so that the editor-in-chief is accountable to the membership for his or her essentially political decisions, on the other hand, would remove most of the political objections to election of a highly competent candidate of unpopular views; and the candidate might well stand for election on such a structural-reform platform.

If I obtain the consent of the *Journal* membership, I will conduct our February election of my successor in the manner suggested above. It is my hope that the other law reviews will see fit to do likewise.

Solution to "Cryptic Law"

"Both parties have regarded him as the law of nations does a pirate . . . His depredations on farmers and on barn yards, have not been forgotten; and to put him to death wherever found, is allowed to be meritorious, and of public benefit. Hence it follows, that our decision should have in view the greatest possible encouragement to the destruction of an animal so cunning and ruthless in his career." *Peterson v. Post*, 3 Cal. R. 175 (N.Y. 1805) (Livingston, J., dissenting). To those law students unfamiliar with the case of *Peterson v. Post*, Judge Livingston's vigorous condemnation of this ruthless pirate must sound at odds with the time-honored principles of due process and fair trial. As yet, however, these protections have not been extended to that "wild and noxious beast," "so pernicious and incorrigible," to wit, the fox. Judge Livingston dissented from the court's holding that merely seeing or pursuing wild animals did not support an action against others for intercepting and killing such animals. Livingston would have allowed such an action on the ground that were the hunter to be deprived of the object of pursuit, he would have no incentive to pursue the "wild quadruped," and the public interest would suffer.

Dorm Council Activities
This Weekend
TGIF—Today, 4-6 p.m.
Harkness Downstairs Lounge
"THE LONELINESS OF THE LONG DISTANCE RUNNER"
Starring
Tom Courtenay
& Michael Redgrave
8:00 p.m. and 10:00 p.m.
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KNOCKING ON DOORS?
The Harvard Law RECORD is seeking a new Business Manager to serve throughout the Spring Term, 1977 and next year. *Inter alia*, the position entails selling advertising space, handling accounts payable and receivable, and preparing the annual RECORD budget. Commissions vary, but overall compensation is generous. A sinecure it's not, since what you make is what you do. For more details, contact Steve Davidson, the current Business Manager, at 876-0253. Tempus (and\$\$) fugit. Do it today.

New RECORD Staff: Same Old Faces

"Old faces in new places" is how one observer described the new editorial staff which will produce Volume 64 of the Harvard Law RECORD.

On December 13, 1976, the 17-member Record Corporation Board of Directors elected **Charles C. Jordan, 2L**, as **President** and **Editor** of the Record and chose **Paul J. Coady, 2L**, to be **Editorial Manager** and **Managing Editor**.

Jordan, who served as Managing Editor of the RECORD last semester, has been admitted to a graduate program at a prestigious journalism school but chose to come to a prestigious law school (Harvard) instead. He foresees no dramatic changes in the editorial stances or the physical appearance of the RECORD, but the atmosphere around the newspaper's offices may be a little different. "Some of my predecessors tried to run this place with too heavy a hand," Jordan commented when reached late last night, "but I intend to avoid that trap." A native of Dallas, Texas, and a 1974 graduate of Emory University, Jordan is not related to Carter aide Hamilton Jordan — "We don't even pronounce 'Jordan' the same way."

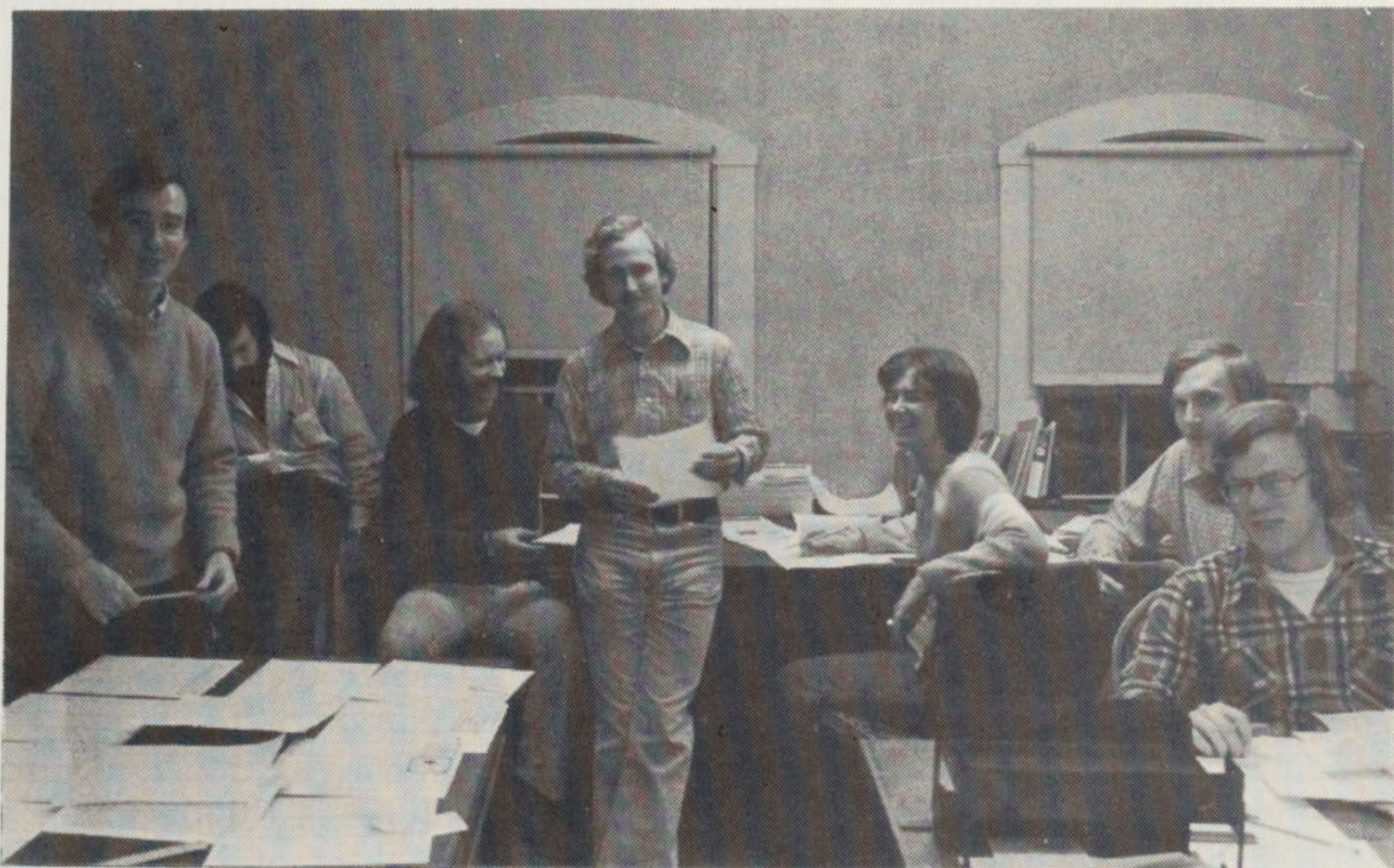
Outgoing Editor Coady originally joined the RECORD last March as a staffer. Some two months later, he hurtled over the backs of three more senior editors — who themselves had risen through the ranks — to be elected RECORD President by its Board of Directors. "I was a victim of circumstance," the self-effacing Coady recently quipped. "I guess they might call it in the trade an 'involuntary con-

version.'" Coady, who came to the RECORD with prior academic journalistic experience, admits that taking a secondary role will be a challenge after heading up the RECORD editorial chain of command last semester. "I flirted with the idea of going out to pasture," Coady mused. "But I think the new Editor and I will work well together. . . . Besides, with Jordan at the tiller, someone has to stick around to be the bagman and pick up the pieces."

Soon after his election, Jordan filled four top appointive editorial jobs after an intensive talent

Parkwood High School (Joplin, Missouri) *Spectator*, and graduated from Rice University in 1974. He is an exponent of the "write nice things about yourself and your friends, and stab your enemies in the back" school of journalism.

Andrea Brown, 2L, will serve as **Associate Editor** and will assume some special responsibility for editorial writing. A native of Brooklyn, New York, Brown is a 1975 graduate of Cornell University where she was an editorialist on the *Daily Sun*. Brown, the sole *femme* on the RECORD editorial staff, was formerly Features



From left to right, the "new" crowd at 23 Everett Street: Paul Coady, Vince Pagano (staffer), Gary D. Hailey, Charles Jordan, Andrea Brown, Charlie Cheatham and Terry Keeney.

search and screening process.

New **Executive Editor Gary D. Hailey, 3L**, is the senior Record editor, having served as News Editor and Associate Editor under three previous RECORD regimes. Hailey was an editor of the

Editor.

Charles E. Cheatham, 1L, was reappointed to the position he held last semester, **News Editor**. A 1972 graduate of Oklahoma State University, Cheatham was a high school newspaper and year-book editor in Pawnee, Oklahoma.

The new RECORD **Features Editor** is 1L **Terry Keeney**. Keeney is a native of Kensington, Maryland, and graduated from the University of Notre Dame, where he wrote for *The Observer*, in 1976.

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