

HLS Contributes to 1965 Voting Rights Bill

By Paul M. Branzburg

A Harvard Law graduate and three students are primarily responsible for the technical drafting of the Voting Rights Bill of 1965 introduced in the House of Representatives on Feb. 8 by Congressman Joseph Y. Resnick.

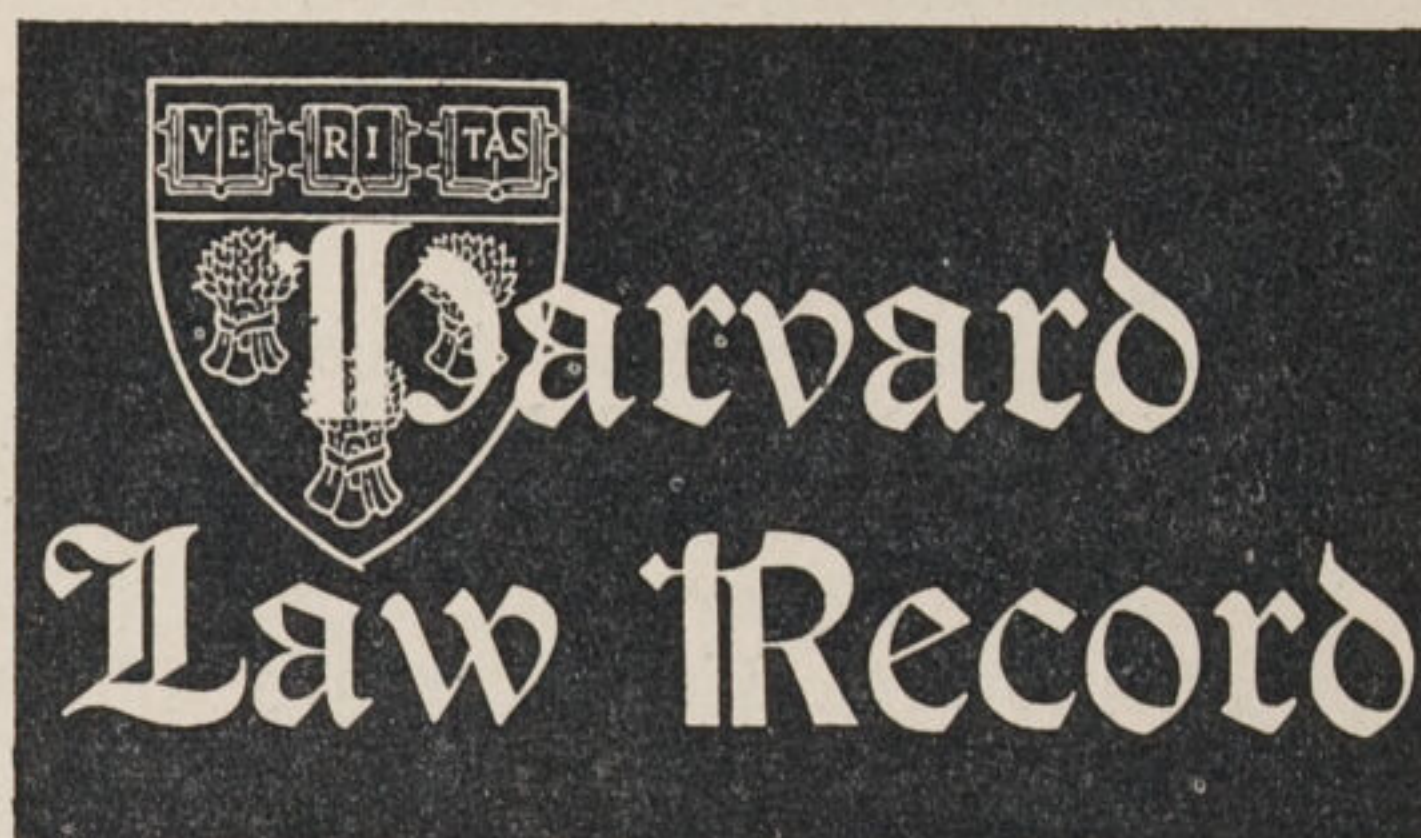
They are William L. Higgs, LL.B., '58; Robert W. Bennett, 3L; Jay L. Kriegel, 3L; and Gary Schwartz, 2L.

The bill, designated H.R. 4509, is designed to "further secure the right to vote, free from discrimination on account of race or color, through the establishment of a Federal Voting, Registration, and Elections Commission."

The bill is intended to give a new federal commission sweeping powers to end voting discrimination because, charged the first-term Democratic Congressman from New York, "sufficient authority does not exist in the laws of the United States to prevent discrimination at the ballot box."

Three Harvard Law School professors have attested to the constitutionality of the bill. In a letter to Rep. Resnick released last week, Professor Mark DeWolfe Howe wrote that he had "studied the draft of the

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America's Oldest Law School Newspaper

VOL. 40 NO. 3

FIFTEEN CENTS

CAMBRIDGE, MASS.

FEB. 18, 1965

Justice Office: A 'Dialogue'

By Frank W. Lloyd

A number of Harvard Law School students and recent graduates, along with students from other law schools, are aiding the newly created Office of Criminal Justice in its research projects, according to Professor James Vorenberg, who was appointed last August to head the Office.

Groups from the Civil Liberties Research Service have researched in the areas of parole revocation procedure and *nolo con-*

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Prof. Fisher Assails Raids

By Frank R. Parker

The initial U.S.-South Vietnamese air strikes against North Vietnam were designed "to communicate a threat," Professor Roger Fisher, part-time Defense Department consultant, told a Feb. 5 meeting of the International Law Club in Harkness Commons. But because United States demands are "vague" and "ambiguous," Prof. Fisher contended, the strikes may prove "ineffective" attempts to achieve this aim.

"The purpose of the joint air raids across the Vietnamese border was not the physical destruction of what we were striking," Prof. Fisher indicated. Best intelligence shows that "even daily strikes would produce only

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Professor Fisher

Fisher on Vietnam

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marginal military effects." Instead, the purpose was to "send a message for the future" — to convey a "threat."

The Law School professor teaches courses in international law and has been flying regularly to Washington for consultation with the Defense Department, largely in the area of arms control. He is currently writing a book containing a section on the policing of international agreements.

"My criticism of the strikes," Prof. Fisher continued, "is that we have said, don't do X or we will do Y, but it remains quite fuzzy what our demands are or to whom they are addressed." He pointed out that in the few days prior to his speech newspapers reported at least six or seven "authoritative" statements of what we want the Communists to do or refrain from doing. The principle justification of the attacks must lie in their effectiveness as a means of communication, and in this Washington has perhaps failed. "We have demonstrated that we will carry out our threats, but we have not said what the terms are," he asserted.

A 'Guessing Game'

One of the statements recently issued by highly-placed government sources stated that the attacks are not precedent for future actions. This has been contradicted, Prof. Fisher said, and is "clearly wrong." The obscurity of our motives has made Washington policy a "guessing game." "Was the strike intended to influence the North Vietnamese, Premier Kosygin, or the Viet Cong in the South?" asked the professor. "Was the attack designed to deter future assaults on American bases, or will our forces retaliate for attacks against South Vietnamese bases as well?"

Attempting to tell Hanoi that we are "getting mad" is "not constructive," Prof. Fisher contended. If we are trying to tell the Russians to go to the British to arrange a conference, "we have sufficiently close communications with the British to do that." If we want a conference on the Vietnamese situation, the United States can "reveal this without bombing North Vietnam," he argued. "Of all the possibilities, this seems not what

we are trying to communicate."

In discussing the military situation in Vietnam, Prof. Fisher maintained that even if the United States were to succeed in shutting off Hanoi's support of the guerrillas in the south, fighting would continue there. He stated firmly his view that "the United States cannot by purely military means defeat the South Vietnamese guerrillas."

Further, Prof. Fisher indicated that there were problems of communicating with Hanoi that made the situation more difficult. "Even if the North Vietnamese met our demands — presumably that they reduce their level of support of the Viet Cong — we might not know it for months."

Rep. Kastenmeier Opposes North Vietnam Retaliation

By Paul M. Branzburg

"We have been taught since the Cuban crisis to think that the atomic powers will not unleash their nuclear strength for military purposes, but the Vietnamese escalation in recent days leads me to doubt such conclusions."

Representative Robert Kastenmeier (D-Wis.) made the observation in a speech Feb. 11 before the Harvard Law Graduate Democratic Club in Harkness Commons.

Rep. Kastenmeier has represented Wisconsin's Second Congressional District since 1958. He has received attention for his backing of civil rights legislation and for his "noninterventionist" view of the cold war.

Addressing himself primarily to U. S. involvement in Vietnam, voting rights, and the House Committee on Un-American Activities, the Congressmen charged that "American bombing of North Vietnam does not produce anything useful for us. I don't think we are able to predict the results."

Rep. Kastenmeier opposes, "in principle, military intervention in North Vietnam." He proposed, however, that the United States "step up the offensive against the Viet Cong in South Vietnam."

The Congressman conceded that the "outlook for neutralization to succeed in the long

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Complexity is Key to a Simple Solution

Prof. Sohn Offers Plan To Keep UN Solvent

By Martin E. Robins

Professor Louis B. Sohn's philosophy on the resolution of international disputes is to devise arrangements so complicated and so interconnected that each side cannot help but claim it has gained something from the settlement.

Relying on this concept of complexity, the Bemis Professor of International Law submitted, in a letter to *The New York Times* of Feb. 8, a three-part plan designed to solve the current United Nations financial crisis and simultaneously fulfill the objectives sought by the United States, the Soviet Union and the smaller nations.

As matters stand now neither the U.S. nor the U.S.S.R. will act to break the impasse for fear of losing face.

By the terms of Prof. Sohn's proposal, the United States, the Soviet Union and other wealthy nations would transfer savings resulting from disarmament cutbacks to a proposed "United Nations Capital Development Fund." The transfer, consisting of money or capital goods, would be given to the fund in the form of a gift or 20-year interest-free loan.

Next, the development fund would lend to underdeveloped nations at a reasonable rate of interest perhaps four percent. The interest from these loans would be fed back into a new UN fund, established to finance the world organization's peace-keeping missions. A committee composed of 20 nations would preside over the allocation of these funds, as envisioned by Prof. Sohn.

The professor's letter states that "[t]he combined effect of these measures would strengthen the United Nations in several ways: the current financial crises would be removed, a permanent United Nations peace-keeping fund would be established, a meaningful cut would be made in armament expenditures, and significant progress would be made toward the development of the developing countries."

This particular "mixing up of one idea

with others in order to get people to agree," is intended to satisfy first, the United States' commitment to force a Soviet payment on peace-keeping missions; second, the Russians' demand to include budgetary arms control in any settlement; and third, the underdeveloped nations' efforts to obtain economic aid through the United Nations.

Prof. Sohn believes that introducing the element of economic aid into the settlement will deflect the small nations from their attempts to persuade the U.S. to back down from its unpopular legalistic stand and instead, to direct their efforts toward reconciling the major powers.

Although Congress has long been antagonistic to the establishment of a UN-administered capital development fund, Prof. Sohn thinks it might accept the idea now in order to assure financial stability for the world body.

"George Kennan created quite a furor several years ago", Prof. Sohn observed, "when he said Americans too easily simplify issues into inflexible moralistic and legalistic positions. In the UN financial crisis he's right on both counts.

"It might be wise," he said, speaking of his procedure to complicate issues that have been drawn too clear-cut, "to apply it to other areas of foreign policy such as Vietnam." He pointed to President Johnson's seemingly incidental inclusion of aid to parochial schools in his comprehensive federal education bill as an example of sleight-of-hand by complexity.

In his letter Prof. Sohn advocates an initial \$3 billion transfer by the combined resources of the United States and Soviet Union. This would result in a more than \$100 million a year peace-keeping budget for the UN after the plan had been in operation for a time. He further suggests the U.S. and U.S.S.R. might make a temporary advance of \$50 million to the new Fund in order to pay old debts and finance it in the immediate future, thereby ending the financial crisis without forcing either side to yield in its legal position.

The professor has little worry about the capital development fund's ability to pay

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Criminal Justice

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tendere pleas. Prof. Vorenberg hopes a third group will soon begin to investigate whether the "dangerousness" of persons may be considered in releasing them with or without bail.

Prof. Vorenberg sees the role of his office as two-fold, acting both as an objective forum for a dialogue on the problems of administration of criminal justice, and as an instrument for promoting tangible action once decisions have been reached. He emphasizes that "we are not public defenders, nor are we prosecutors. The measure of our success will not be recorded in the statistics of convictions or acquittals," but in the contributions made by the office to the fairness and effectiveness of the criminal system.

The office has five full-time lawyers working in the Justice Department. Prof. Vorenberg commutes often from the Law School, where he carries a full teaching load. He is also called upon to speak to such groups as the First Regional Conference on Bail and the Right to Counsel, held Jan. 23 in Louisville, Kentucky. Prof. Vorenberg noted that the Conference, an outgrowth of the Attorney General's National Bail Conference last May, was well-attended, and hopefully would set a pattern for similar conferences in other regions.

GOP: Party of Honest Bookkeeping

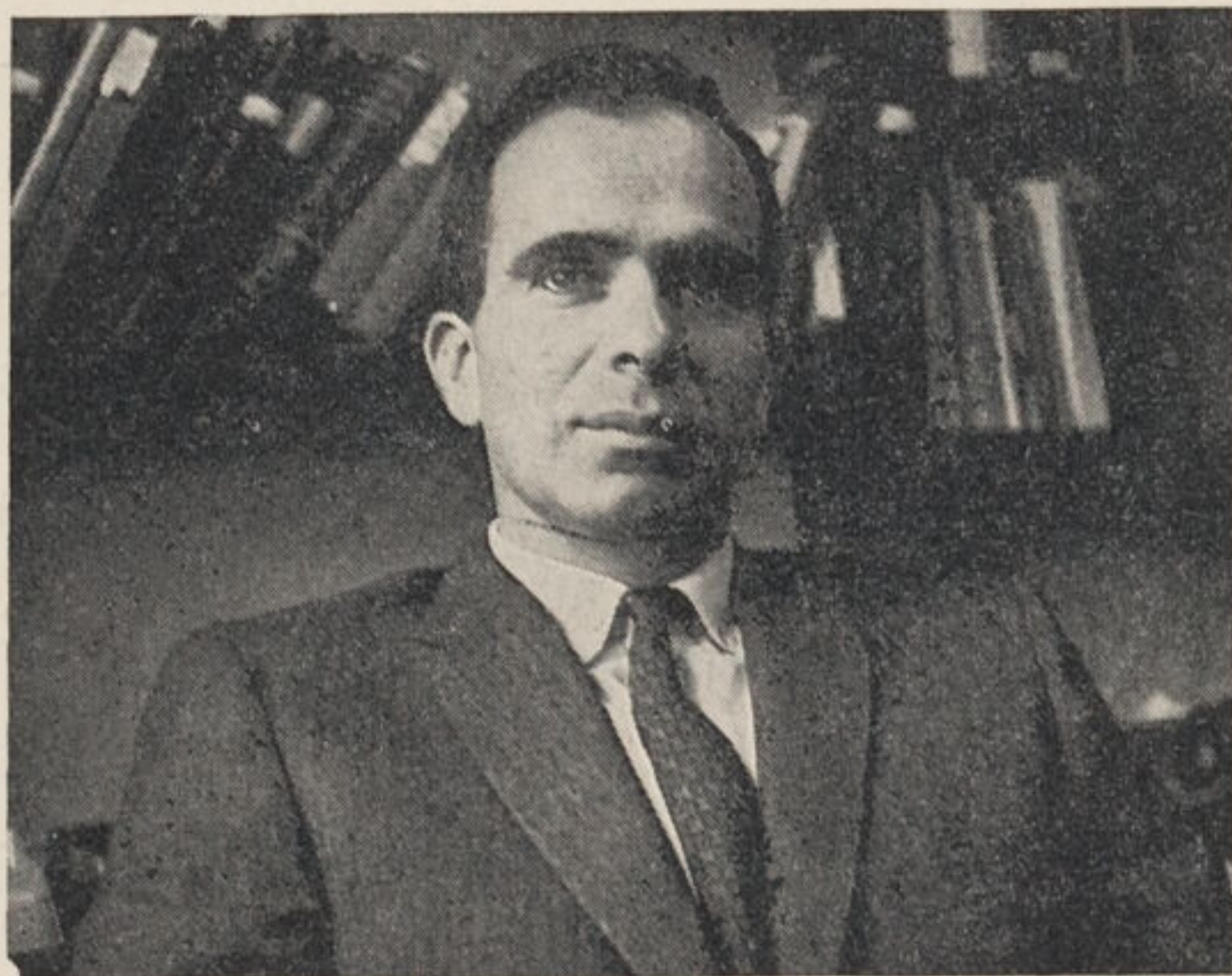
"If the Republican Party in Massachusetts preserves the notion that it is the party of honest bookkeeping, its future prospects look good," Professor Robert Braucher told a Tuesday meeting of the Law and Graduate Republican Club. "A lot of people will vote for this even though they don't get excited about it."

Citing Massachusetts as an example, Professor Braucher noted that a U. S. Senate seat in 1960 and the major state executive offices in 1960 and 1964 were won by Republicans while in those same years the nation and the state were electing a Democratic President.

Professor Braucher has been mentioned as a potential candidate for statewide public office in Massachusetts.

Problems before, during and after trial are being scrutinized by the Office. The currently active debate on publicity — and in particular, how best to reconcile the legitimate competing interests of free press and fair trial — is under study by the Office. The passage of the Criminal Justice Act of 1964, which provided for payment of counsel for indigent defendants in federal courts, brought with it problems of application to collateral criminal proceedings such as *habeas corpus* and parole revocation.

A study of the U. S. "Commissioner System" has been undertaken by the Office.



Professor Vorenberg

The system came before the public eye after the release of the defendants in the Mississippi slaying of three civil rights workers last summer. Other questions being studied are whether public defenders may be preferable to compensated private counsel under the Criminal Justice Act; how the criminal bar can be upgraded; and how the broad aims of criminal sentencing can be realized.

The Office is now drafting an omnibus bail bill, embodying a range of alternative methods of securing pre-trial release, which should soon be ready for submission to Congress. The Office is also providing information to communities interested in improving their own local bail practices.

Although the Office does not deal with individual cases, hundreds of letters from persons lost in the intricacies of criminal procedure have been mistakenly sent to it.

Prof. Vorenberg added that there are many projects in these areas and others which he could suggest to students or graduates willing to devote substantial time to them.

An Uneasy Access to the Library's Wealth

By Frank R. Parker

First-year students who expect circulation desk personnel to be legal encyclopedias and third-year students who don't yet know the location of the U.S. Reports contribute to a student-staff irritation which becomes more apparent in the Harvard Law library during Ames months.

"A major source of the difficulties," one library worker suggested, "is that communication between the staff and students is so poor." Most students have not learned to use the library properly, she said, and the library authorities could do much more to help them.

In the absence of a course in legal bibliography, the library attempts to inculcate a basic orientation of its vast resources with brief guided tours and the distribution of legal publishing company brochures at the beginning of the first year. But this is the period during which students are preoccupied with the mysteries of *Sibbach v. Wilson* and gifts *causa mortis*, and it is understandable that they can forget the location of the law reports of the Queen's Bench Division.

There are two reference librarians—George A. Strait and Philip A. Putnam. Their offices are in the main reading room, but they can only deal with one student at a time and are burdened with administrative duties.

As a result, circulation desk personnel, most of whom are not law students, have to serve as research and library guides while at the same time trying to satisfy the heavy demand for reserve books.

One library employee has suggested that much of this confusion might be eliminated if a large detailed map of the library were posted in a conspicuous place in the reading room. Another recommendation is that students refer to the card catalogue and reserve book catalogue before asking library employees about a particular volume.

But this would be of no help to students who have stack passes but who are often unable to locate needed works in the largest law library collection in the world. In this regard library authorities are the first to admit that the stack organization poses challenging retrieval problems which plague staff as well as students. The arrangement

of works into very general subject-matter categories with alphabetical classification within these categories often produces startling anomalies. Who, for example, would look for the *Sixteenth N.Y.U. Conference on Labor* in the Anglo-American treatise section under "C"?

According to Head Librarian Earl C. Borgeson, a specially designed decimal system is being introduced to provide a rational classification of the Harvard Law collection and to promote easy location of books. Eventually, the card catalogue references are to be published in bound volumes which will replace the card index file. Although this new decimal classification has been completed for the International Legal Studies collection, and the third volume of the catalogue references is being published, re-classification of the Langdell Hall library will take years to complete.

A further contention of library employees is that service to students is hampered, especially during the Ames rush, when the requests of non-students must be satisfied. The problem is most acute on Sundays.

James T. Coward, a library staff supervisor, recalls that before World War II the library was only open on Sundays as a study hall from 2 to 6 p.m. After the war, law students grew restive and, as a result of a heavy petition campaign, Sunday hours were extended to 10 p.m. But the concept of a Sabbath study hall, with no stack service but access to reserve books, was retained.

Because few other local law libraries are open on Sunday, the Harvard Law library becomes a collecting place for judges, old and new alumni, non-alumni lawyers, students from other law schools, and non-law students doing legal research problems. Sunday library staff maintain that they are willing to serve them during slack periods, but that performing reference and limited stack retrieval functions for this group during the Ames competition disadvantages the tuition-paying Harvard Law students.

The argument for "paternalism" in the library, then, is not a wholly negative approach, but suggests the need for increased discipline and guidance, both indispensable aspects of the same notion.

University to Resist a Property Tax . . .

By Michael D. Hampden

The Cambridge Board of Assessors faces a challenge from Harvard University to its position that Peabody Terrace, Harvard's new high-rise married-student housing complex, is taxable by the city.

Under Massachusetts statutes and decisions, dormitories of charitable institutions such as Harvard are exempt from a property tax. The Cambridge assessors take the position that married-student housing units are not dormitories for purposes of taxation and thus not subject to an exemption.

A formal encounter with the city is being delayed by counsel for the University. They are watching the progress of an appeal to the Appellate Tax Board taken by the Massachusetts Institute of Technology from taxes paid in 1963 and 1964 on their married-student facilities. But that proceeding is pending before the Board, with no set date for a hearing, and an appeal by Harvard from its assessments is expected to be made this year to avoid a waiver of its objection to being taxed on Peabody Terrace.

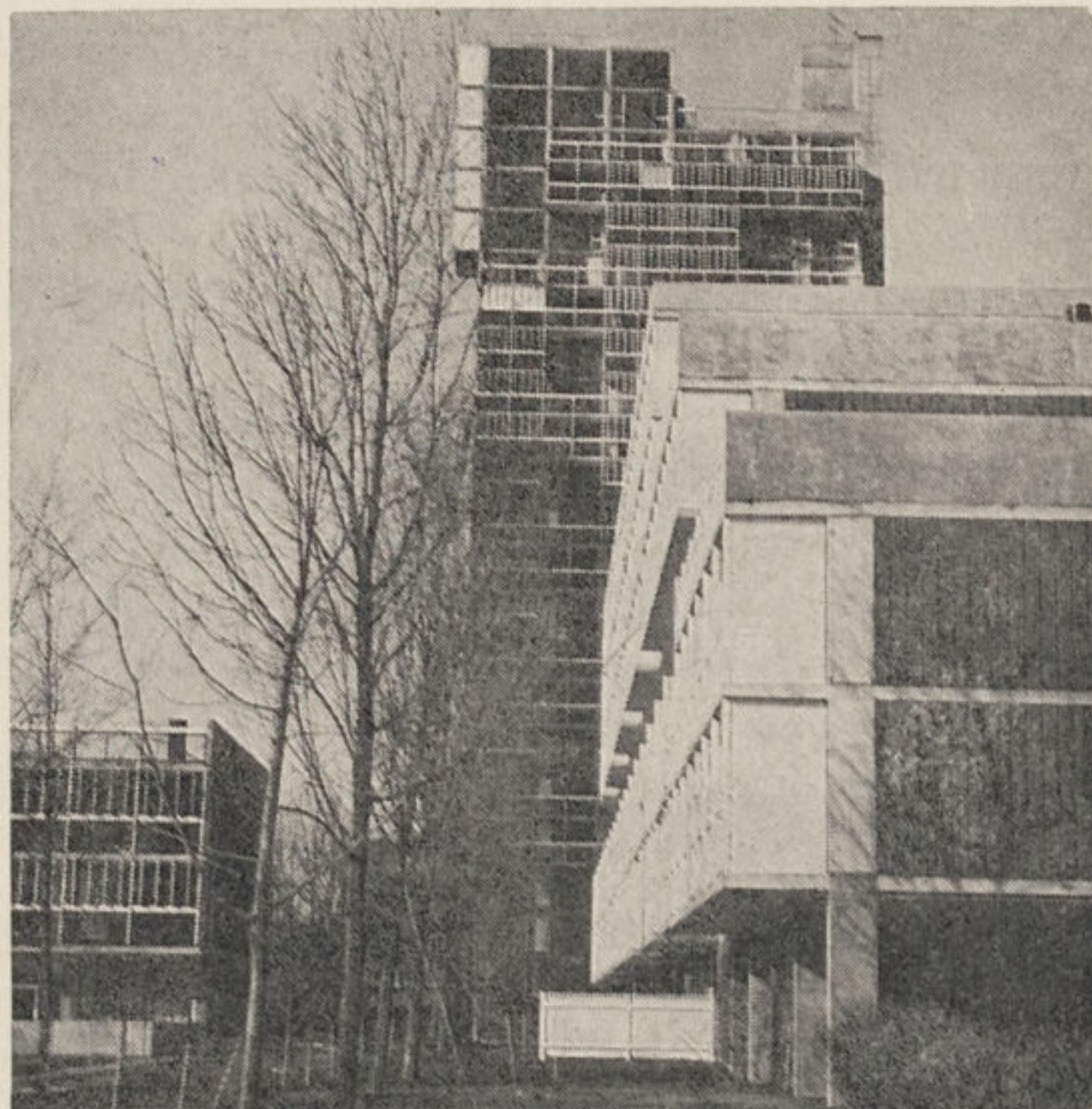
According to Henry H. Cutler, Harvard's Manager for Taxes, Insurance and Real Estate, the University paid its assessed tax for 1964 without protest, since the complex last year was still under construction, and the amount assessed was far less than it would be this year, after completion. The assessed value in 1964 was \$1,136,300, of which \$386,300 was for the land and \$750,000 for the unfinished improvements.

Lincoln's Inn Elects

The membership of Lincoln's Inn recently chose William E. Peacock, 2L, to be president of their eating club for the coming year. Other officers elected were Robert H. Craft, 2L, vice president; Craig A. Peterson, 2L, secretary; and William G. Bardel, 2L, treasurer.

Chosen to make up the board of governors were: John S. Chapman, 2L; Richard B. Collins Jr., 2L; Lester G. Fant III, 2L; Richard B. Stewart, 2L; Christopher H. Buckley Jr., 1L; and John D. Hastie, 1L.

Thomas F. Gibson, one of the three-man Board of Assessors, said that the assessed value for 1965 is "substantially higher" — that the buildings themselves are now valued



at over \$1 million. Mr. Cutler estimated the present tax rate for such a structure to be "approximately 20 percent" of the assessed value.

Notice of the assessment for 1965 has been given to the University, Mr. Gibson explained, and payment must be made before Nov. 1, with interest from Oct. 1 in the event of default. Harvard has until Oct. 1 to file an appeal for an exemption before the Appellate Tax Board. That body will not only have to decide the substantive issue, indistinguishable from the one MIT has brought before it, but also whether Harvard has lost its right to protest by its 1964 payment.

Harvard argues that an exemption for married-student housing is only a natural extension of the University's present status in regard to its undergraduate dormitories, dining halls and classrooms; that to tax married-student facilities would in effect discriminate against married students by inflating their rents; and that though the construction of Peabody Terrace admittedly took land off the tax rolls, that land was not formerly productive. Cambridge City Solicitor Richard D. Gerould, on the other hand, argues that Peabody Terrace houses not only students but their wives and children as well,

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... On High-Rise Married-Student Complex

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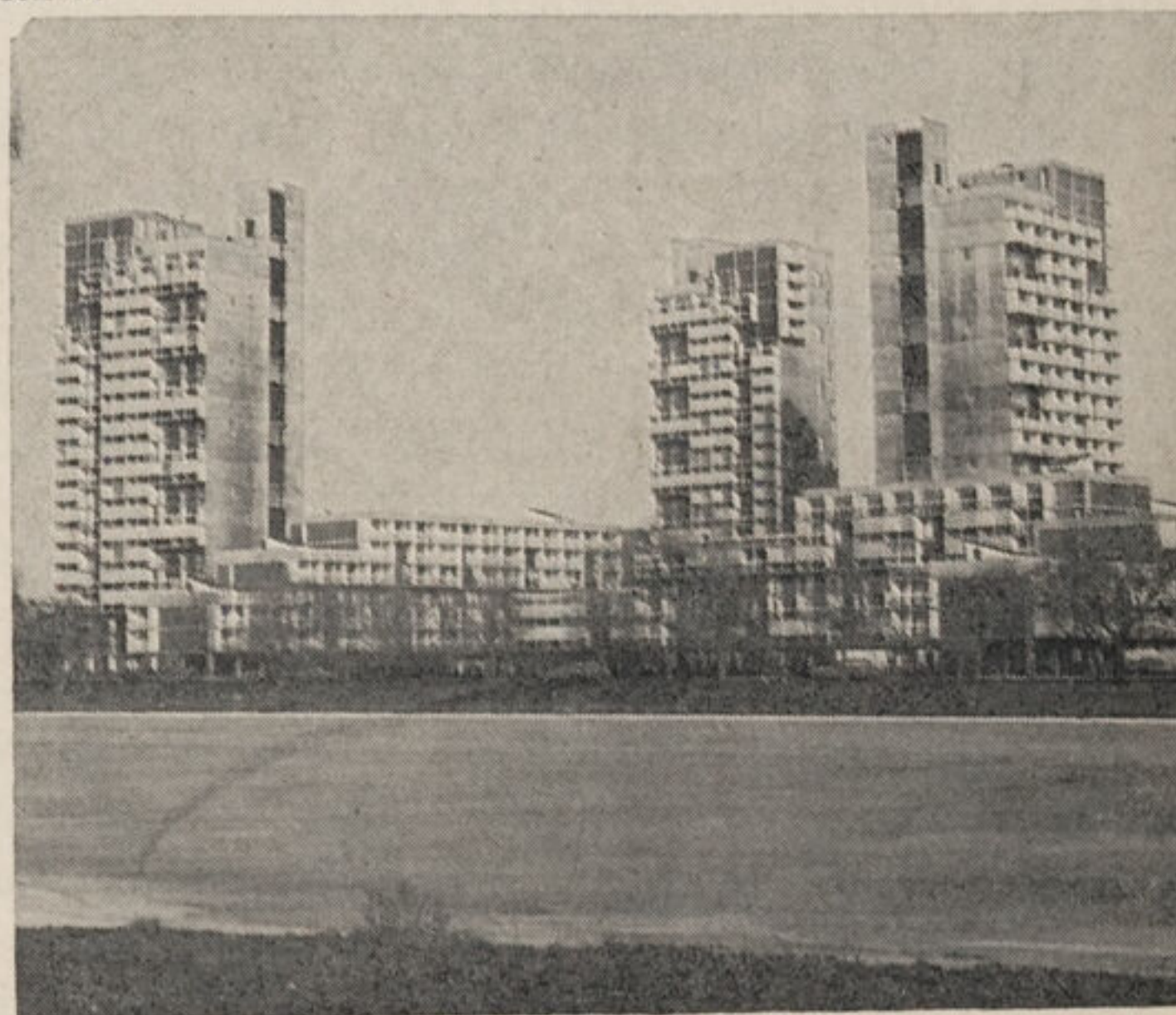
who have only an indirect relationship to the University; that these apartments are in genuine competition with local landlords, unlike the undergraduate dormitories; and that the complex houses primarily graduate students, who traditionally have no right or expectation of being housed by the University.

The question has been decided in only a few states, Massachusetts not among them. California courts have held that married-student housing is exempt. With more and more colleges and universities providing living space for the increasing number of married students, the question of their taxability will surely become more important.

As for Harvard, the issue is probably not settled by the city's tax treatment of the University's older and more modest married-student apartments, among them Holden Green and Haskins Hall. Both are held not by Harvard, but by Mid-Cambridge Corp., to whom Harvard transferred the properties when it acquired them primarily to avoid raising the tax question. The taxes paid by Harvard's straw corporation on these and other properties are small compared to the sum at issue in the case of Peabody Terrace. In 1964 the University paid \$35,000 in taxes in the name of Mid-Cambridge. (It paid \$336,000 in its own name.)

By special agreement, however, Harvard does make yearly payments in lieu of taxes

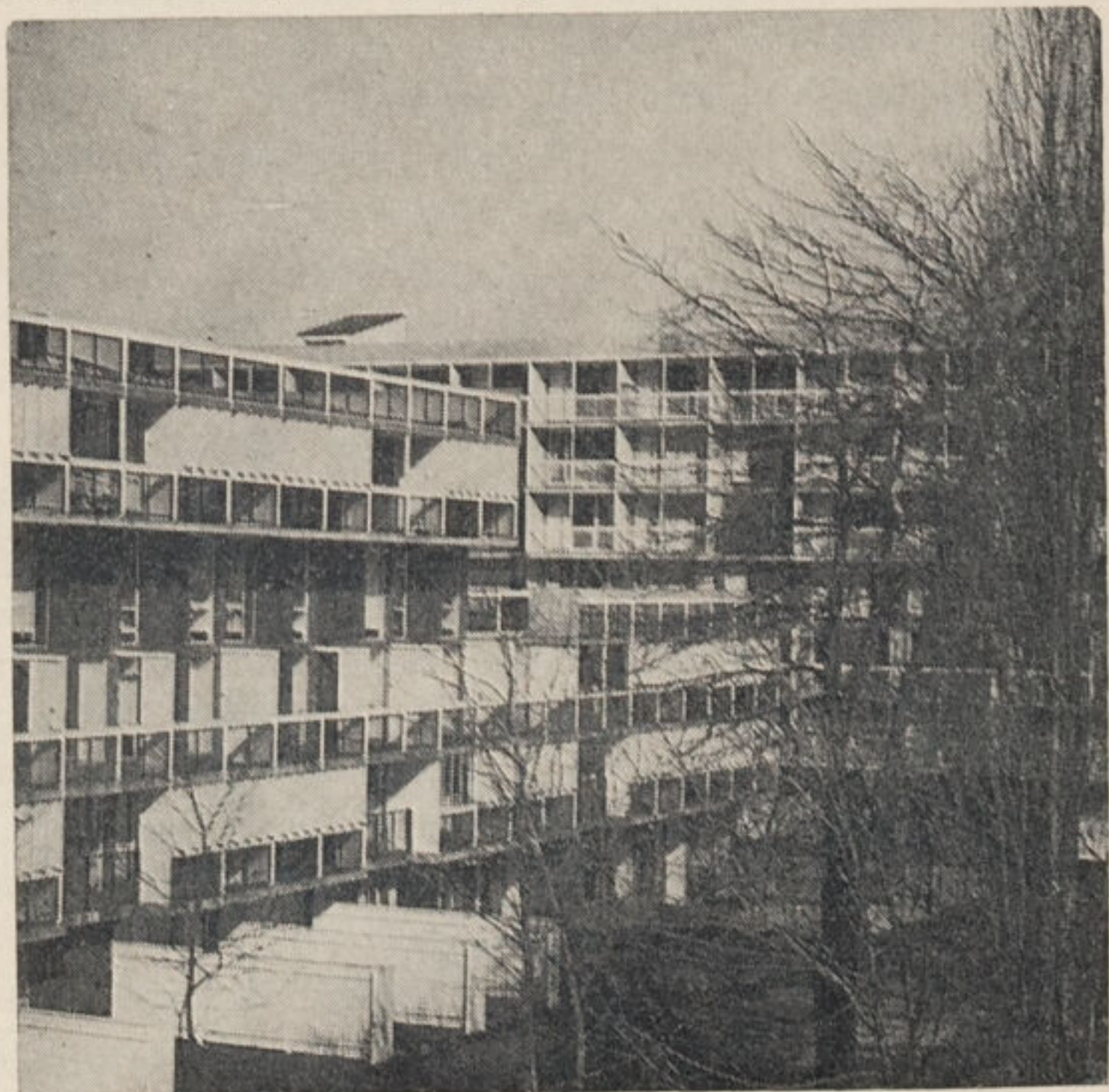
to the City of Cambridge. In 1964 the amount was \$35,000, but the figure varies from year to year, according to Mr. Cutler. The figure is decided under the terms of a 20-year agreement made with the city in 1928, and which has been extended for another 20 years.



The agreement had two parts: first, the staggered removal from the tax rolls of property acquired before 1928; and second, that payments in lieu of taxes on property obtained after 1928 would equal in each year the current tax rate times the assessed value in the year of acquisition. The formula was designed to take one uncertainty — that of future land values — out of the computation of the payment.

In informal talks between the University and the city, it has been assumed that Peabody Terrace, if found to be exempt, will not be subject to this formula. Instead, Mr. Cutler said, Harvard will pay Cambridge one half the amount of the tax, computed under the current rate and assessed value. If in 1965, for example, the tax on the housing complex is 20 percent of a hypothetical assessed value of \$1.5 million, Harvard would pay in lieu of taxes 10 percent, or \$150,000.

Although Harvard has been content to let MIT fight its battle, it must soon enter the fray itself or risk suffering the major embarrassment of waiving its claim. It may take a decision of the Supreme Judicial Court of Massachusetts to finally determine whether the "Harvard student housing complex" is exempt, or whether "900 Memorial Drive" will be taxed.



A Time for a Precedent

About two weeks ago the atomic submarine *Seadragon* docked at Sasebo, Japan. A letter to *The New York Times* from an American there reports that 10,000 protested its arrival and "countless others were silently indignant." The incident is a reminder of the fact that Japan alone among nations has experienced the horror of a nuclear attack. In the 20 years since the end of the war, Japan has come to fully appreciate the moral dimensions of the use of an atomic weapon—that its punishment extends not only to the warring population, but to innocent generations which follow.

There is no question but that the moral and tactical difficulties involved in the decision to bomb Hiroshima were immense. Those who took part in the decision still feel the weight of them. But this country generally has not accepted, has not even much thought about, the possibility of its moral and legal guilt for the bombings. In postwar years we have, in fact, set off great areas of the open sea to test nuclear devices, resulting in further physical injury to Japanese nationals. Decisions of the International Court of Justice that the territorial sea of a country can legitimately be determined by social and economic considerations are not precedents for such acts, as has been argued. And the bombings of Hiroshima and Nagasaki themselves violated at least the spirit of the principles of international law implicit, for example, in the Convention on the Prevention and Punishment of the Crime of Genocide.

If Professor Fisher is right that the United States has sent bombing missions into North Vietnam to "communicate a threat," (see page one) that is, for political rather than military purposes, an analogy can be made between them and the Hiroshima and Nagasaki bombings. The tactical decisions in both instances required a judgment that military means are not inappropriate to accomplish a political end.

The legal embarrassments Japan has suffered as a result of the bombings are commensurate with the physical agonies of many of its citizens. In a case decided a little over a year ago, Japan was the defendant in a civil action brought by victims of the bomb for compensation—it had waived claims against the U.S. in its terms of surrender after the war. Japan was in the grotesque position of having to defend the validity of the bombings under principles of international law. But as Richard A. Falk points out in the Feb. 15 issue of *The Nation*, the United States was the real defendant.

The case should not go unnoticed by the people of the United States or by their representatives in Congress. Although we have done much to rehabilitate Japan as a whole from the effects of the war, we have done nothing for individuals whose suffering at our hands has been borne for two decades, and in some cases transmitted to their children. This is their distinction from victims of conventional warfare, and upon this an obligation of compensation exists. It is obviously never possible to really compensate them. But an act of Congress creating the machinery through which to entertain claims for atomic injury would serve as a token of our understanding that a moral, and not just a military, decision was made to end the war as we did.

When it is remembered that the weapons used against Hiroshima and Nagasaki, for all their power of devastation, were mere hand grenades compared to the bombs in today's stockpiles, the moral imagination is overwhelmed, in the same way that it is at the thought of the mass killings in Germany during the war. That country has made payments to many families of victims. The United States should follow that example after a reappraisal of its moral obligations, and in light of its opportunity to set a salutary precedent in international law.

TONGUE 'N CHEEK

By Fenno

It was last year about this time that I opened my mail to discover \$1430, a little green man and an invitation to the "Eastern Duplicate Washington's-Birthday Long-Weekend Cut-Throat Monopoly Tourney."

The three-day classic began with a four-hour recitation of the rules and arbitration agreements for the match, according to the Restatement of Monopoly 2d.

Play commenced under the USIMA (United States Indoor Monopoly Association) Rules which incorporate the U.S. Bankruptcy Code and the UCC as adopted in Massachusetts.

By the end of the first day my partner and I had acquired several slums, two railroads (both declared to be in financial difficulty), a few scattered red, green and yellow fee simples and two get-out-of-jail-free cards.

Our big moment came in the third hour of the second day when we were able to take over the second mortgage on Boardwalk and foreclose on a technicality.

At the 3:30 p.m. break for tea we plotted the course of our conquest.

"We could form a collapsible corporation with Team Number Six with a 60-40 profit split on the greens," I said enthusiastically.

"That will cause section 341 difficulties, and even if it wouldn't we might end up with a derivative suit," he replied curtly.

"How about trading for Park Place?" I said, flipping through the pocket versions of Corbin and the American Law of Property.

"Too risky," he said. "And besides I've just figured out that if we can get rent control through on a 'chance' card and change the backing of the currency we can win—that is if we can sell our air rights over the railroads without unduly appreciating our opponent's holdings."

"This is really tricky stuff. Whether you win or lose depends on how you play," I said gamely.

Letter to the Editor

A Modest Proposal

To the Editor:

Consider the predicament of today's graduate student. In response to the goading of school, family and friends, he must press on with greater and greater efforts. To aid students who flounder, universities double and even triple the number of their resident psychiatrists.

The pressures on the Harvard Law student are especially great. Surrounded by Rhodes Scholars and valedictorians, berated by a distinguished faculty, housed in a cubicle, forced to vie with bohemian undergraduates for the favors of no less bohemian, mangy-haired girls, the law student trudges wearily from Harkness to Langdell, from Ames Competition to Practice Examination, from eager anticipation to grim determination, his workweek bro-

ken only by the dozen hours between Saturday noon and Saturday midnight.

Finally, early in June, days of decision arrive. Primed with Latin phrases and black-letter law, Student spends two weeks probing tales of A and B, Uncle and Nephew, Pat Passive and Dick Diode. Each adjective betrays negligence and every connective forms a contract. Yet, when exams are through, what can Student say to his parents, his relatives, his girlfriend, his pals at Local Law School? Only this: "Got a C+ average."

What can be done to lighten the step of our poor friend, to ease his burden a little, to help him on his way? The solution is simple, even simple-minded: since there is no B— grade, call C+ "B—."

What a boon! No longer need Student think of himself as little better than "average" but, rather, as little worse than "good." No

longer need his parents wonder where their money is going. No longer need he bow to his uncle, the accountant. Now his girl will put aside her misgivings. Now his friends at Local will hesitate before shattering his arguments. Now Student's travails have import, for he has achieved a B— average at the Harvard Law School.

Very truly yours,
Harvey London, 1L

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Published on Thursdays ten times each semester by THE HARVARD LAW SCHOOL RECORD CORPORATION, 23 Everett Street, Cambridge 38, Massachusetts. Subscription price: \$2.00 per semester, \$4.00 per year mailed; student subscription, \$2.00 per year distributed at the Law School. Individual copies 15c each at the Law School, 25c each mailed. Business and editorial offices, 23 Everett Street, Cambridge 38, Massachusetts. Telephone UNIVERSITY 8-7600, extension 418.

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Voting Rights Bill

(Continued from page 1)

bill with considerable care" and concluded, with Professors Paul A. Freund and Louis L. Jaffe, that "its provisions are constitutional."

The main feature of the Voting Rights Bill is the establishment of a new six-member Federal Voting, Registration and Elections Commission, which is to be comprised of three persons from each political party. This Commission may act only upon a finding, after a full hearing on record, that there exists in a particular area "a pattern or practice of denial or abridgement of the right to vote on account of race or color."

Automatic Effects

Once the Commission has made such a finding, certain results follow automatically. One is that for any applicant in the locality to which the finding applies, a sixth grade education establishes a "conclusive presumption" of literacy. The 1964 Civil Rights Act merely derived from a sixth-grade education a rebuttable "presumption" that the applicant was sufficiently literate to vote.

Another automatic consequence of the Commission's discrimination finding is that the applicant seeking to register to vote will "be allowed to satisfy any registration or voting requirements at any time until thirty days before an election." This would operate to frustrate the manipulation of registration deadlines so as to deprive individuals of their suffrage.

Discretionary Remedies

Under the bill as it now stands, the Commission is given broad discretionary powers to abolish voter discrimination and its effects. It may supervise or void state and federal elections, prescribe registration forms to be used by officials, and establish a system of federal registrars to register persons to vote in municipal, state, and federal elections. Further, the Commission is empowered to

issue cease-and-desist orders to proscribe discriminatory election practices, which are enforceable in federal Courts of Appeals.

If an election official refuses to honor a ballot cast pursuant to Commission-ordered registration, an automatic civil penalty is imposed. Both the official and his local unit of government are assessed \$300 for each ballot not honored.

Another key section of the bill abolishes poll taxes in state and local elections, thereby extending the 24th Amendment, which applies only to federal elections. Authority for this section is believed to be found in the 15th Amendment prohibition against discrimination "by the United States or by any State."

According to one student observer, without such legislation the Southern Negro cannot possibly realize his right to vote in the near future. "There have been five suits by the Justice Department against the Dallas County [Selma, Alabama] Board of Registrars since 1961," he said, "and still Dallas County Negroes have obtained no meaningful relief. Not even one voting referee has been appointed."

Prof. Sohn

(Continued from page 3)

back the capital loans to the contributing countries 20 years hence. "The trouble with these plans is getting them started," he commented. "Once you do that they create their own impetus. Other nations should contribute substantially so the money would be available."

The transfer of goods rather than money will aid in the policing of the agreement. The Russians, he pointed out, could ill-afford, without damaging the consumer sphere of their economy, to produce more than \$1 billion in goods for the fund and then resort to secret production of armaments. For the U.S., the plan would take up the slack in the economy caused by disarmament cutbacks.

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Recent Book

An Informed View of the Legislature

In Congress Assembled: The Legislative Process in the National Government. By Daniel M. Berman. New York: Macmillan Co., 1964. Pp. 432.

By Peter L. Sill

"Congress is today under heavy attack along a broad front. It is accused of being slow, inefficient and haphazard, and shot through with conflicts of interest. Its procedures are stigmatized as undemocratic, irrational, and obstructionist. Its representative character is thrown into serious question and criticism is levelled too at the extent to which its leaders exercise power without commensurate responsibility and accountability. The demand for reform is widespread."

This is the author's conclusion. It comes on page 400. But for the first 399 pages, the author's purpose is vague.

It is hard to categorize this book. In some parts, it reads like a high school civics text; in others, it is complex and cynical. In one chapter, the author explains the subtle and intricately entrenched power of the committee chairmen. In another, he spends 20 pages supporting the revelation that an incumbent Congressman has advantages over an insurgent at election time.

But Daniel M. Berman is well qualified to discuss the legislative process. A former Congressional Fellow of the American Political Science Association and staff member of the Senate Subcommittee on Constitutional Rights, he is now Professor of Government and Public Administration at The American University in Washington.

Mr. Berman's approach to the legislative process and to the machinations of the legislators themselves is well handled. Of particular interest is his treat-

ment of the informal rules and customs, the guiding procedures that only an insider can understand.

Laymen commonly suspect their Congressmen of duplicity or carefully concealed "shady" dealings. Without pointing to any specific area of corruption, Mr. Berman does nothing to refute the suspicion, although the author does generalize that the power of lobbyists has not been adequately controlled, that nepotism is rampant, that Congress has not adequately provided for the revelation of its members' financial manipulations, and that there do not exist adequate safeguards against conflicts of interest.

The Congressman interested in misleading his constituency, and the voter who suspects his representative of it, will find a wealth of advice in this book. For example, by voting to send to committee a bill which the Congressman knows will never emerge, he may doom a bill which he opposes but which his constituency favors. If by chance the bill is returned to the floor and passage is imminent, the legislator need only cast his vote in favor of the bill to make political hay at home. The only vote his constituency normally sees is the final one.

Reasons for the sluggishness of reform are plentiful. Entrenched power holds the key to its own doom. The procedures which would initiate reform lie with the discretion of those who have nothing to gain and much to lose by that reform. Not until an aroused public forces the issue can substantial gains be made.

Unfortunately, *In Congress Assembled* will not arouse the public. Although it is a good restatement, too many pages must be read to find things not already evident. Criticism is too often veiled behind description. The prescriptive exists, but mostly by implication. Problems are raised, but solutions are rarely suggested.



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Jurisdiction Studied By ALI Group

A group of Harvard Law School professors attended an Advisory Committee Meeting of the American Law Institute in New York City on Feb. 15 and 16.

The professors included Richard H. Field, Reporter; Charles A. Wright, Associate Reporter; David L. Shapiro, Assistant Reporter; and Henry M. Hart, member of the Advisory Committee.

Proposals for suggested changes in the federal diversity and federal-question jurisdictions were discussed in preparation for the annual meeting of the American Law Institute in May.

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Events of Note at the Law School

The Yale Russian Chorus will perform this Friday and Saturday, Feb. 19 and 20, in Sanders Auditorium. Thomas L. Chun, 2L, a member of the chorus, will participate.

* * *

Peace Corps placement tests will be given every day except Sunday beginning Wednesday, Feb. 17 through Tuesday, Feb. 23. Information and application forms are available at the Phillips Brooks House.

* * *

Fred Scribner Jr., counsel to the Republican National Committee, will speak to the Republican Club on the future of the Republican Party — Tuesday, Feb. 23, at 1:30 p.m. in the Mallory-Smith room.

* * *

Fulton Lewis III will be the featured speaker at the Harvard Law Forum on Friday, Feb. 26. Time and place to be announced.

* * *

The International Law Club has invited Edmund Gullion, former U.S. Ambassador to the Congo and presently Dean of the Fletcher School of Law and Diplomacy, to speak on the Congo, Monday, Mar. 1, at 8 p.m. in Harkness Commons.

* * *

Mid-term examination grades then available will be distributed on Monday, Mar. 1, at 3 p.m. in Langdell South Middle. A list of those courses for which grades are ready will be posted a few days earlier.

* * *

The Harvard Law Forum will present Herve Alphand, the French Ambassador to the United States, together with a panel headed by Henry Kissinger of the Harvard Center for International Affairs, and Professors Milton Katz and Arthur von Mehren of the Law School. The subject: "De Gaulle and World Affairs." Ames Court Room, 8:30 p.m., Mar. 5.

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Seminar Held with Charm and Intelligence

By Caroline M. Simon

Any group at the Law School which can discuss strict liability one week and natural childbirth the next is worth a visit. On that theory I went last week in disguise upon the highways to attend the Law Wives' seminar on manufacturers' liability conducted by Professor Robert E. Keeton.

The seminar was the last in a series sponsored by the wives' group and led by Law School faculty members. The sessions are designed to give the women some background in the law as well as aiding them in understanding what it is that their husbands are talking about.

Although many male students evidently view the Law Wives as a bevy of gossiping cookie-bakers, the women at the meeting proved to be charming and intelligent. The wives practice a brand of graciousness that is noticeably absent from most Law School gatherings. By serving refreshments before as well as after the evening meeting early arrivals were encouraged to converse with one another and the Harkness meeting room was filled with discourses on cheese souffles and child psychology. Their talk was blissfully free of anecdotes on the foibles of professors and pedantic pronouncements on unilateral contracts.

The women engaged in a lively discussion of the latest trend in tort law, although at times it seemed that the concept of strict liability was not unanimously grasped ("But if the machine didn't work it had to be somebody's fault!").

The seminar itself revealed the wives to be eager students. Prof. Keeton had assigned

Greenman v. Yuba Power Products, Inc., 59 Cal.2d 57 (1963) and *Goldberg v. Kollsman Instrument Corp.*, 12 N.Y.2d 432 (1963). Most of the 50 participants seemed to be as well prepared as their husbands usually are.

One wife argued for the plaintiff's "assumption of risk." The surprised Prof. Keeton commented that she had "been reading too much law." There was no lull in the give-and-take on the subjects of exploding bottles, rash-producing deodorants and mal-adjusted altimeters.

Where were the husbands? Not present. According to one wife "they always talk about coming but somehow never make it." Another commented that she was glad the men absented themselves; "to make a mistake in front of them would be mortifying." Husbands do participate in other functions, however, including the annual faculty cocktail party, the children's Christmas party and dances.

It is unfortunate that Law School men who give females the burden of rebutting a presumption of idiocy, were not present at the seminar.

Squash Extension Continues

Because of a continuing student interest, the squash courts in Hemenway Gymnasium will remain open from 7-9 p.m., Mondays through Thursdays.

The decision to continue the extended hours was announced after a meeting of the Dorm Council on Wednesday, Feb. 10, by Robert A. Shelton, 2L, chairman of the Council's Athletic Committee.

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Rep. Kastenmeier

(Continued from page 2)

run is not good." But he urged that "we must be willing to gamble and accept this risk. It is better than accepting military risks."

'Pure Suffrage'

On the question of voting rights, Rep. Kastenmeier called for a "pure and absolute suffrage." Referring to the Civil Rights Act of 1964, which applies only to federal elections, and to the 24th Amendment, which prohibits the poll tax as a qualification for voting only in federal elections, the legislator declared that the "right of a Negro in the South to vote only in federal elections is relatively meaningless. He must be able to vote in local elections — for his mayor and sheriff."

The lawmaker contended that federal voting-rights legislation must cover all elections — federal, state, and local; it must effectively outlaw all devices used to prevent

Negroes from registering and voting; and it must be easier to implement than the technique of drawn-out litigation embodied in the 1964 Civil Rights Act.

As an alternative to new federal legislation, Rep. Kastenmeier suggested a Constitutional Amendment which would "wipe out all voting qualifications except residence and age."

A long-time foe of HUAC, the Congressman ventured that it "would be a useful development if liberal members of Congress sought membership on HUAC." He also proposed that HUAC's legitimate functions, if any, be transferred to the House Committee on Judiciary, of which he is a member.

Expect a Whitewash

"As for those who urge HUAC to look into the KKK and the John Birch Society, I must dissent. It is impossible to investigate activities of this type without looking into ideologies. Moreover, you could expect nothing but a whitewash from HUAC. It would not address hostile questions to its principal support."

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Italy's Complex Tax Structure Described

By Michael Lowenberg

The recent publication of *Taxation in Italy* has added a tenth volume to the growing World Tax Series. The Series consists of basic reference works on the tax systems of foreign countries, and is the largest single research project within the Law School International Program in Taxation.

Taxation in Italy is the only comprehensive English-language description of the complex Italian tax structure. It is the work of Charles K. Cobb, Research Associate in Law, and Francesco Forte, Professor of Tax Law and Public Finance at the University of Turin, with the assistance of Boleslaw A. Boczek, also a Research Associate in Law at Harvard.

Italy's tax structure reflects the country's turbulent political history. "Before the fascist period," Mr. Cobb explained, "there was considerable imagination in the tax system," but Mussolini drew a great deal of political support from the people who were opposed to tax reform. In consequence, the modernization of the tax administration was prevented, and a complex and "archaic" income tax has persisted with little change.

Mr. Cobb described the Italian income tax as an involved collection of separate taxes: one scholar has counted eleven hundred. Despite its complexity, he found the system to be "not very productive, and together with the corporation

tax, it constitutes less than six percent of the total revenue, which is proportionately less than in most industrial nations. The most important single tax in Italy is the turnover tax, which is imposed on gross receipts from sales of goods, except at the retail level.

A distinctive feature of Italian tax administration is its emphasis on individual assessments, based in part on the taxpayer's standard of living. Mr. Cobb illustrated the consequences of this system with a description of an opening of the La Scala opera house in Milan. Mingling with the elegantly attired crowd were local tax agents in rented tuxedos, carefully noting the names of the music lovers as they drove up in their Mercedes and Alfa Romeos, resplendent in furs and jewels, and unwittingly increasing their tax liability. The use of tax returns was introduced in 1951, but Mr. Cobb noted that the taxpayers "don't really trust the administration, and the administration doesn't trust the taxpayers."

From both the administration's and the taxpayer's standpoint, this system is "unsatisfactory," Mr. Cobb added. Change is slow, largely because Italian governments have not been able to gather sufficient political support for a sweeping reform of the tax system. Each one of the hundreds of taxes, he said, is assessed in a way which was "perhaps appropriate at the time it was first

introduced, but here again, mainly because of the preoccupation of the fascist government with political problems, it was never kept up to date." Prof. Forte, one of the book's authors, was a member of a commission which has recently studied the problems and has recommended extensive changes in the system.

Additional volumes in the Tax Series are now in preparation on the tax systems of France, Switzerland, Belgium, and Japan. Professor Oliver Oldman, director of the project, said that the Series will eventually publish full volumes on approximately 15 countries, with shorter works dealing with several others. Prof. Oldman emphasized the problem of supplementing the volumes in the series. Commerce Clearing House, the publisher of the series, is planning a monthly newsletter dealing with changes in the tax laws of the countries covered by the series. CCH newsletters will be followed by revised volumes, as the changes accumulate.

Forum Officers

Newly elected officers of the Harvard Law Forum are: president, Morton Bobowick, 3L; vice president (programming), Thomas S. Johnson, 1L; vice president (administration), Murray S. Levin, 1L; secretary, Edwin N. Sidman, 1L; treasurer, Samuel I. Doctors, 1L.

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ABA to Offer Guidelines on Criminal Justice

By Robert M. Goff

The American Bar Association has recently embarked on an ambitious project—the formulation of uniform national standards for the administration of criminal justice in the United States.

Financed by three equal grants totalling \$750,000 from the ABA Endowment Fund, the Avalon Foundation, and the Vincent Astor Foundation, the project will design guidelines embracing all phases of the criminal process, from the investigative stages through judicial proceedings, sentencing, appeal and parole.

Judge J. Edward Lumbard, LL.B. '25, Chief Judge of the U.S. Court of Appeals for the Second Circuit and Chairman of the ABA special committee directing the project, said in a January news conference that the aim of the project is to strengthen the administration of criminal law and thus help curb the rising crime rate.

Action Program

"The American people are not going to tolerate an administration of justice that fails either to protect the rights of accused persons, or to protect the rights of the public," Judge Lumbard said. "We propose to make a frontal attack on these problems. It will be an action program. We intend

to formulate guidelines for police, lawyers, prosecutors and judicial officers. With respect to some aspects of criminal law enforcement there now are no standards at all. In other respects, the standards vary widely among the states."

Eighty leading judges and lawyers from all sections of the country have been enlisted to serve on the six advisory committees which will assist the Lumbard special committee. Two members of the Harvard Law School faculty are among those chosen.

Professor Livingston Hall, former President of the Massachusetts Bar Association, will serve as a member of the Advisory Committee on Criminal Trials.

Acting as Reporter for the Advisory Committee on Fair Trial and Free Press will be Assistant Professor David L. Shapiro.

In a speech describing the project to the New York State Bar Association, ABA President Lewis F. Powell Jr., LL.M. '32, noted that recent dramatic interpretations of constitutional safeguards by the Supreme Court have induced a great deal of uncertainty in the state courts as to the applicable standards. This confusion, coupled with the outmoded criminal codes in many states, has handicapped law enforcement. "Without impairment of constitu-

tional rights," Mr. Powell stated, "the remedy for this unsatisfactory situation must be found in legislative action (both state and federal) which strengthens and clarifies our criminal law."

The project is expected to take three years. It will be coordinated with other programs already under way such as the American Law Institute's plan to draft a model pre-arraignment code, and the Uniform Post-Conviction Procedure Act currently being studied by the Commissioners on Uniform State Laws.

Procedure Only

The project will not include such matters as the definitions of crimes, responsibility, and other matters commonly regarded as substantive criminal law.

The six advisory committees which have been appointed will each investigate a specific area of criminal procedure and will have the responsibility for drafting whatever standards it may choose to recommend. These specific areas are the police function, pre-trial proceedings, prosecution and defense function, trials, sentencing and review, and fair trial and free press. Each will have the assistance of a staff with the overall administrative supervision of the Institute of Judicial Administration of New York.

The results of this project and the recommendations of the special committee will ultimately be submitted to the ABA Board of Governors and House of Delegates. When these groups have approved the standards, they will be transmitted to courts, law enforcement agencies and bar associations throughout the country.

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