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TWENTY CENTS

Legal Methods Faces Changes

By Daniel M. Taubman

The new director of the Legal Methods program for first-year students is planning major changes for 1973-74 that will provide an emphasis on early access to the library, a focus on litigation, and an extension of Legal Methods and the Ames Competition until the end of February of the first year.

Michael D. Rosenberg, newly-appointed head of the program, (Continued on Page 7)

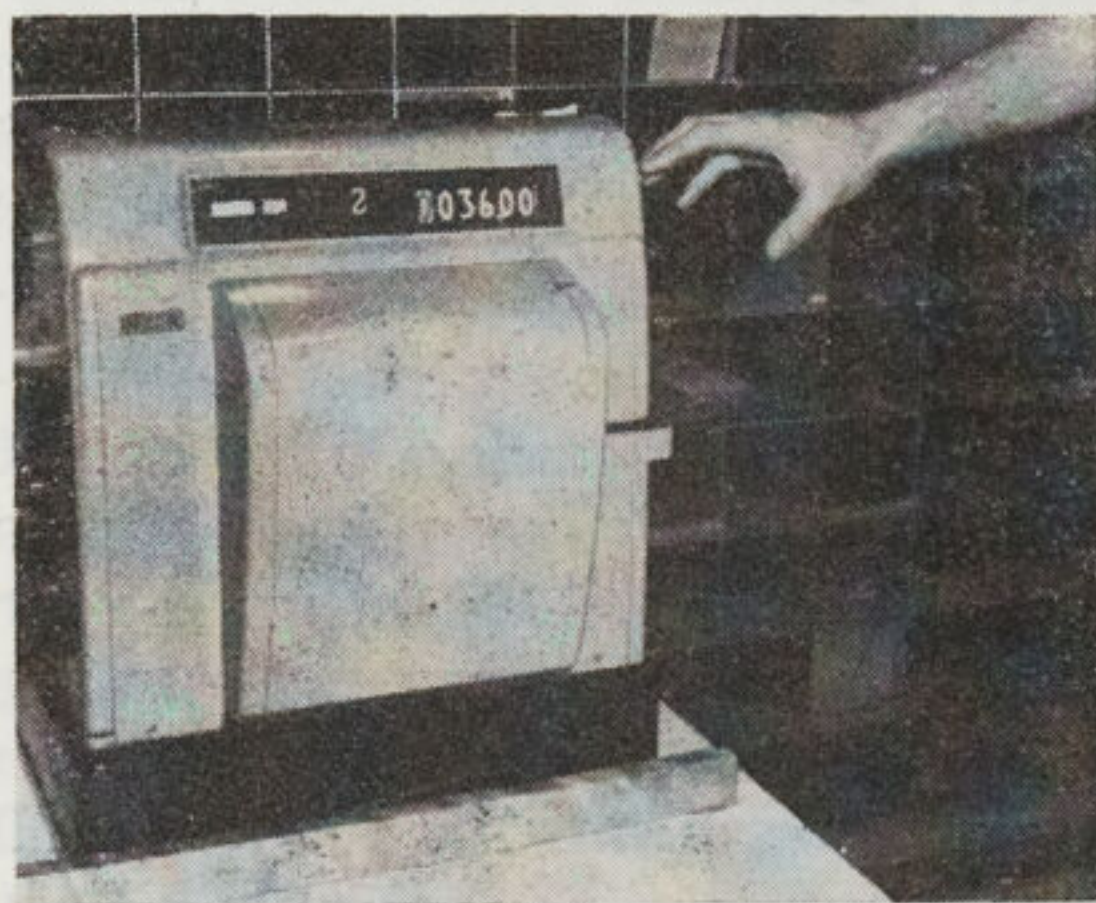
Hark is Missing \$3600; Audit Brings Dismissal

By Mark C. Rutzick

An assistant manager of the Harkness Commons Dining Hall was fired last week following the discovery by the Marriott Corporation of a \$3600 discrepancy in the books of the dining facility. The action followed an investigation by a Marriott auditing team in Cambridge and in the corporation's Washington headquarters.

Both the assistant manager, Joseph Burgstresser, and Frank Gallagher, manager of the Harkness and Pound Building food services, were suspended with pay by Marriott on January 25, following the preliminary discovery of errors in the accounts. Both men were flown to Washington, where the full audit was conducted, while other auditors and investigators from the corporation's Boston regional office spent several days at the Law School last week attempting to unravel the bookkeeping procedures in question.

On February 2, Marriott completed its investigation and cleared Gallagher of all charges and suspicion. He returned to his position on Monday. At the same time, Marriott and Vice Dean (Continued on Page 2)



Charles Soberman

\$3600 — No Sale

Health, Rooms, Food Up; Tuition to Remain \$2400

Tuition at the Law School will remain at \$2400 for the 1973-74 academic year, but the cost of health services, dorm rooms, and food at Harkness Commons will all rise, according to Vice Dean William L. Bruce. In addition, he said, maid service in the dormitories will be eliminated next year.

The statement came only days after it was announced that tuition at Harvard College, Radcliffe, and the Graduate School of Arts and Sciences would increase \$200 next year. The Law School raised its tuition last year from \$2100 to the current figure, which is among the lowest of the top-ranking law schools.

Bruce said that the health service fee would increase from \$130

to \$135 in 1973-74, and the cost of dorm rooms would increase 5%. He also said that he expected the cost of contracts at Harkness to increase about 5%, but that he hadn't yet set a figure. He expects the cost of a la carte items to follow the new contract price.

The Vice Dean attributed the elimination of maid service to an effort to control the Law School's budget. He expects to save \$40,000-60,000 with the action. He noted that among all the schools in the University, only the Business School and the Law School still retain maid service of any sort. He added that he plans to explore the possibility of selling maid service to dorm residents on an individual basis, at an as yet undetermined price.

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Audit Brings Hark Employee Firing

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William L. Bruce agreed that Burgstresser would be released.

Bruce described the discrepancy as being between the amount of cash intake as shown on cash register tapes and the amount deposited in the operation's bank account as reflected by deposit slips. He said the prescribed bookkeeping procedures had not been followed throughout the fall term, and that while the amount which is unaccounted for is no more than \$3600, the exact figure could not yet be accurately determined.

Bruce said that he would meet soon with Marriott officials to determine who should bear any loss which in fact stemmed from this incident, but that he expected that Marriott would bear the complete burden. He added that as a result of this affair, Harkness's bookkeeping methods would be changed to prevent repetitions of this kind of loss.

Burgstresser had been employed at Harkness since the fall of 1971 as a bookkeeper and assistant manager, but Bruce said that no questions about accounting procedures had arisen until last fall, when bi-weekly figures which Harkness was obligated by contract to send to the Law School began to arrive late and incomplete. He had repeatedly pressed the Harkness managers for more complete information, Bruce added, but had been unsuccessful. He noted that the data went from Harkness to Marriott's Washington headquarters, and from there to the Law School.

Gallagher joined the Harkness operation last fall as manager, after extensive experience in the food service business with Marriott and other food catering corporations. He soon became a popular figure with many students, Harkness employees and the administration. David M. McDonald, President of the Dormitory Council, said, "He was always

very responsive to whatever complaints he would receive from students. We've had fewer complaints about the Hark this year than in the past, and Frank was able to take care of most of them. And he always considered every complaint, whether he acted on it or not."

Bruce has been pleased with Gallagher's performance as well. "Gallagher is the first manager in some time to do a thorough cleaning job in the kitchen and dining areas. He's made the Hark a much more pleasant place to eat." He also added that Gallagher had instituted security procedures to limit inventory losses from theft, cutting down on the operation's loss from that source.

Gallagher has also been successful in lowering the deficit which the Harkness service runs every year. The 1972-73 mid-year audit, even including the missing \$3600, is showing a deficit at an annual rate of around \$10,000 less than that of last year. Last year's deficit was over \$65,000, according to Bruce.

The Marriott Corporation took over the Harkness operation in 1969 from the Stouffer Corporation. Bruce had invited Marriott to bid on the Harkness contract after being favorably impressed by the quality of service Marriott had provided at President Nixon's 1969 inauguration, which Bruce had attended. Marriott's bid had been under Stouffer's and they took over the operation.

At the time Marriott began operating there, Harkness was operating at a \$140,000 annual deficit. After the first year, Marriott began to cut down that figure until it reached the \$65,000 level last year, and appears to be heading for an even lower mark this year.

The level of deficit is of primary concern to the Law School, Bruce said, because under the contract between Harvard and the past and present caterers,

the Law School and the Graduate School of Arts and Sciences split most losses incurred by the operation.

The contract now in force calls for the two schools jointly to cover the first \$38,900 of loss, and then for Marriott to split with the two schools any loss between that amount and \$70,900, and for the schools to cover any loss over that figure.

The contract also provides for the schools to pay Marriott an amount equal to eight per cent of gross sales up to \$600,000, and five per cent on gross sales over that figure. It calls for a payment of five and one-half per cent of gross sales in the Pound Building cafeteria. Harkness last year grossed \$467,000, while sales at the Pound operation were around \$50,000, Bruce said. The Pound cafeteria lost around \$12,000 last year.

The result of the contract is that Marriott makes a profit even though the operation incurs a loss. But the agreement does provide incentive for Marriott to try to minimize the loss, according to Bruce, by the loss-sharing arrangement, and by the fact that the Harkness manager receives a bonus for producing a low deficit. Bruce stressed that he personally interviews the incoming managers to determine if they appear to be seriously motivated toward cutting down on the Harkness deficit.

Bruce also noted that the entire cost of the Marriott audit just completed was borne by Marriott, not by the Law School.

He emphasized as well that neither he nor Marriott had concluded that any wrongdoing had occurred, but that the failure to follow bookkeeping procedures was itself a valid reason to dismiss Burgstresser. He said he regretted Burgstresser's departure, but felt that the need to protect the Law School from further loss justified it.

Council Backs Pass/Fail Grading

By Gary L. Rubin

Following a lengthy session of soul-searching and parliamentary wrangling, the Law School Council voted last Friday to endorse mandatory pass/fail grading for first-year students.

The 8-5 vote came on the mo-

tion of David W. O'Connor, 2L, who argued that "the student body felt fairly well betrayed" by the Council's decision of December 18 not to endorse the pass/fail concept. He cited a Council poll which revealed that 63% of this year's 1Ls are in favor of pass/fail grading, al-

though only 10% of the first-year class chose not to accept traditional letter grades for their January exams.

The Council recommendation, which applies to both semesters of the first year, will be forwarded, along with a supporting document yet to be drafted, to the Committee on First-Year Evaluation and Related Matters.

Profs Promote Joint Degree

By Phil Spector

Approximately 50 first- and second-year students gathered in the Pound Building late last week to hear faculty members and students from the John F. Kennedy School of Government discuss the combined program in law and public policy. The program, now in its fourth year, allows students to complete requirements for both the J.D. and Master of Public Policy degrees in four years. Joint degree candidates spend one year at the Law School, one year (generally after the first or second year of Law School) at the Kennedy School, and meet the remaining Public Policy course requirements through cross-registration while at the Law School.

The early part of the meeting focused on the first-year curriculum at the Kennedy School. Instructors from the *Economic Theory*, *Statistics*, *Political Analysis*, and *Workshop* courses spoke briefly on their subjects; there is a fifth first-year course in *Analytic Methods*. Professor Thomas C. Schelling, who teaches the economics course, also emphasized the advantages of having a very small entering class (25-30 students) in terms of getting to know one's classmates and teachers. Professor Richard E. Neustadt, who teaches the *Political Analysis* course, mentioned his personal belief that, for the serious student of public policy, the four-year combined program is preferable to taking the public

policy courses offered within the Law School curriculum.

Current student participants in the program also presented their opinions and advice. One student, now back at the Law School after a year at the Kennedy School, described the first-year public policy curriculum as "hard work" and as being more difficult than the Law School, particularly for those who do not like working under time pressure. Another student said that a strong mathematics background was not necessary, but others among the public policy students commented upon the extensive use of charts, graphs, and calculus notation.

Assistant Kennedy School Dean Harry Weiner then described admissions policies. Of the 25-30 students admitted, he said, approximately one third are usually Harvard Law students; this means that admissions are very competitive among HLS applicants, all of whom generally have outstanding records, and about one in six HLS applicants is admitted.

The admissions criteria used are standard, Weiner said, including grades, both college and Law School, test scores, three recommendations, and an additional, somewhat less tangible criterion of "commitment to public service." For those admitted, he noted, financial aid is more generous than at the Law School. The closing date for applications is March 1, and Weiner expects admissions decisions to be completed about April 1.

Much of the Council's debate focused on the advisability of presenting the first-year committee with written arguments in support of pass/fail. According to Council Chairwoman René Townsend, 2L, the committee has intimated that Council endorsement of pass/fail grading would have little impact unless accompanied by a well-reasoned defense of the change.

Professor Jerome A. Cohen, chairman of the first-year committee, has reportedly told certain Council members that a pass/fail system is difficult to defend in print, even for those who claim to support the concept.

O'Connor and several other students argued that the pros and cons of pass/fail grading have been adequately explored at the Law School through public debate, but the Council voted 11-1 to appoint a special committee to draft arguments in support of the change. When completed, the document will be distributed to the general public as well as the First-Year Committee.

The committee itself, meanwhile, has been considering alternative proposals for grading reform throughout the academic year, and Townsend said Cohen had hinted to her that "some change will be taking place in the first-year grading process." But as for the Council's recommendation, student committee member Conor D. Reilly, 1L, has reported that plans for mandatory pass/fail appear "almost inconceivable with this committee."

HLS Prizes English Scholar

By Patrick Connolly

If it seems surprising to learn that there is only one professor of English legal history in England, it may be even more surprising to learn that this semester there are *no* professors of legal history in England. For at the present time that sole professor is teaching at none other than the Harvard Law School, and it seems clear that England's loss is Harvard's gain.

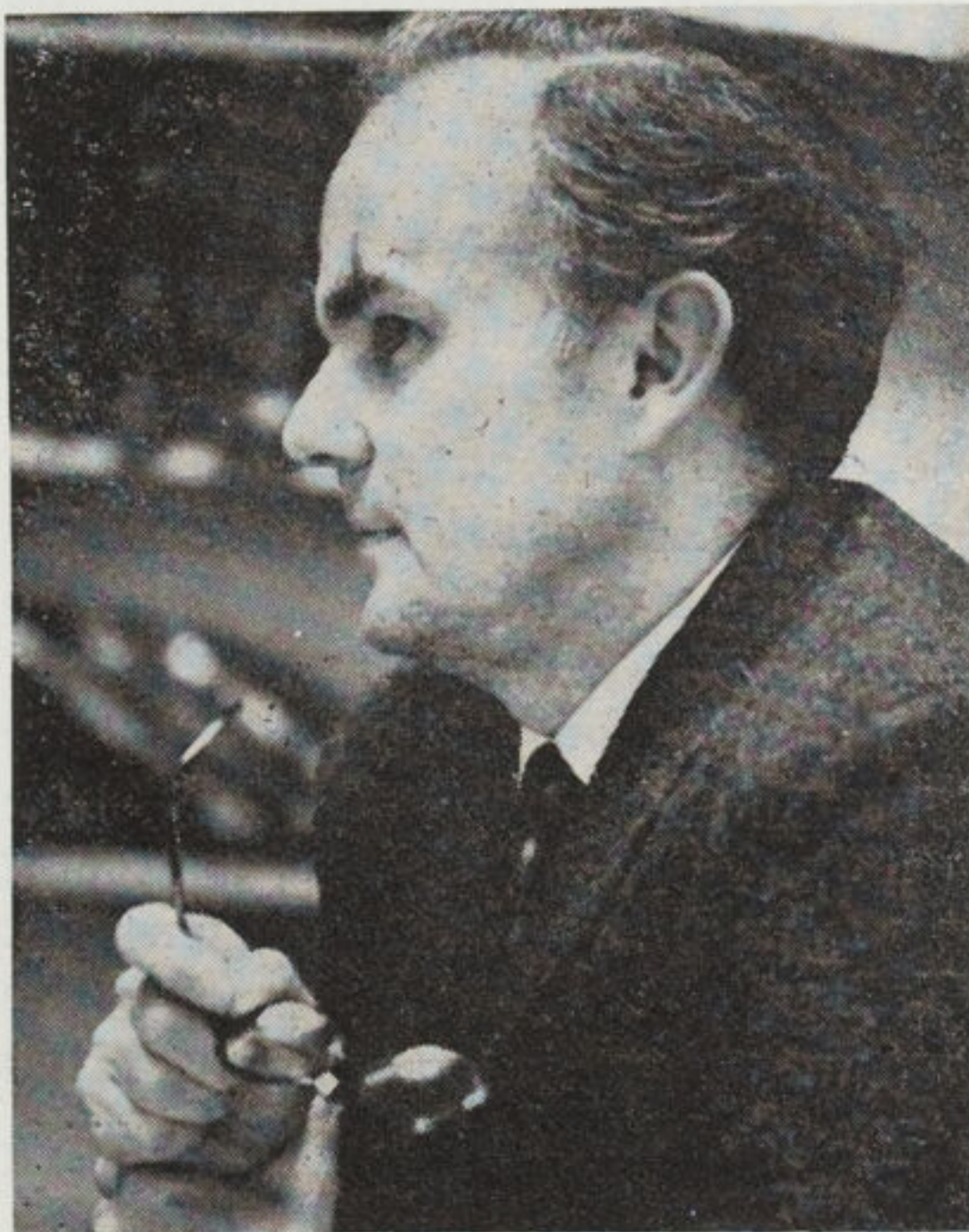
Stroud Frederick Charles Milsom is not only England's only legal historian, he is also the latest recipient of the highly regarded Ames Prize for his 1969 book *Historical Foundations of the Common Law*. The Ames Prize was established in 1898 by a gift in honor of Dean James Barr Ames, and is given by the Harvard Law faculty every four or more years for "a meritorious essay or book on some legal subject", the operative criteria being "depth and range of scholarship, freshness of insights, quality of writing, importance for the present and likelihood of endurance." Before Milsom's award, the prize had last been given in 1966. Milsom says the receipt of the prize in 1972 has given him "great pleasure."

The book, an analytical study of the development of the common law, its institutions and principal subjects, was cited by a special faculty committee as "closely woven, frequently subtle and demanding, yet presented with grace and wit." The treatment of the topic "unfailing reflects a critical and highly informed mind independently assessing the evidence," the committee stated.

Milsom has also been well received in his classes here. In addition to a Law School course in *English Legal History*, he teaches an undergraduate course on *The Legal Framework of English Society in the 12th-16th Centuries*. Many students would say that the phrase "grace and

wit" would be an equally apt description of the historian's classroom presence.

Born near London in 1923, Milsom studied at Trinity College, Cambridge and became a fellow first at Trinity and later at New College, Oxford. At the present time he is professor of legal history at the University of London. Milsom is also an honorary bencher (member of the governing board) of Lincoln's Inn in London.



Charles Soberman

S. F. C. Milsom

Milsom admits to having been "brought up a lawyer." After serving with the British army in combat in World War II, he was called to the bar in 1947; he then intended to practice as a barrister. But history had become a hobby for him, and when he received a Commonwealth Fund Fellowship (a graduate travelling fellowship now known as a Harkness Fellowship) to come to the United States (to study at the University of Pennsylvania) in 1947-48, he was well on his way to becoming "a historian for life."

Milsom's particular area of interest and expertise now is the twelfth through fourteenth centuries. The length and style of the parchment records of the

period, he says, are a formidable barrier to extended or even casual study. Milsom finds a further problem in the fact that modern scholars tend to evaluate these records in terms of modern standards, to "read them as Supreme Court decisions and then be disappointed when no substantive principles are self-evident." These records are then discarded as being "purely procedural" and irrelevant, which he says is a great mistake.

Milsom makes no claim that the law of that period is "relevant" to the contemporary lawyer in his day-to-day practice, but maintains that it is vital to the historian, legal or otherwise, and beneficial to the informed lawyer, to learn how the system worked at that time and how lawyers viewed and dealt with problems then. As is the case today, he says, an understanding of the law of a period depends upon an examination of the "social set-up from which it came" and which it reflects.

Milsom's commitment to English legal history and his contribution to the growing realization of its importance in England (and America as well) is exemplified by his association with the Selden Society. Founded by F. W. Maitland in 1887, this organization, named for a great seventeenth century scholar, is concerned with English legal history, primarily up to 1600. The Society, which includes many Americans, publishes a yearly volume of original materials, and has been responsible for much of the work that has been done in the area of English legal history. Milsom is currently its literary director.

Milsom is no stranger to American legal education. He has previously taught at Yale and N.Y.U. law schools, and these experiences, as well as his initial impressions of Harvard, lead him to the observation that law students in the United States

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Abortion Decision Stirs Controversy

By David J. Cocke

The recent Supreme Court decision in *Roe v. Wade*, which struck down anti-abortion laws in most states, stirred up a minor controversy at the Law School last week, culminating in a battle of petitions. The first sally in the brief skirmish was staged by a newly-formed group entitled Harvard Law Students for Life. That group sponsored a public meeting featuring the president of the Massachusetts Value of Life Committee and conducted an active anti-abortion petition drive at Harkness. An ad hoc group of students responded to the challenge with an "anti-anti-abortion petition." Both groups said they were planning to send their lists of names to the President and the Congress.

Robert L. Tortoriello, 2L, a spokesman for the Students for Life group, said that 82 students had signed a petition expressing "opposition to the recent decision" and urging the nation's leaders to "do whatever is in your power, through legislation or constitutional change, to protect the right to life of the unborn child." A second petition attacking the decision as a "disconcerting exercise of judicial lawmaking" attracted 63 signatures, including 20 who didn't sign the first petition.

In response to the activities of the Students for Life, Geoffrey W. Oblath, 2L and Neil V. Wake, 2L formed an ad hoc group which was responsible for posting a petition in support of *Roe v. Wade* on the wall along the ramp leading to the Harkness dining hall. "Don't let a well-organized minority erode your rights" read the headline. According to Oblath, more than 220 students signed the petition which sup-

ported "the right of all women to choose as a matter of personal conscience whether or not to have an abortion."

The focal point of the clash was a speech on abortion by Dr. Mildred Jefferson, a clinical instructor of surgery at Boston University and President of the Massachusetts Value of Life Committee. Jefferson spoke at what was expected to be a small gathering of "pro-life" advocates. More than 100 students showed up for the talk, including a large contingent from the Women's Law Association which seemed to be overwhelmingly opposed to the position of the Law Students for Life.

Jefferson told her audience that "if meaningful life can be ended by private agreement between a person and her doctor, then no one here ultimately has any protection from society." She stressed that one of society's responsibilities is to protect the weak and the helpless, and that included the unborn child. Drawing on images from her medical background, Jefferson argued that an eight-week-old fetus is a "small scale but perfectly organized human being" and should be protected. The Supreme Court decision, she said, "elevates a woman and her doctor to the positions of super citizens, able to enter a private contract to end a life."

Jefferson quietly responded to a question concerning the right of a woman to control her own body, "If one wants to control one's body, one simply has to keep another body out of it. . . . A woman runs all the risks," she continued; "she has to think more seriously about protecting herself and her reproductive equipment." Abortions, she ex-

plained, are still to a certain degree dangerous, even when performed by a doctor under hospital conditions. "Figures which have been published saying that an abortion is safer than live birth are invalid," she said, "because they do not take into consideration all factors in compiling the data." One of these considerations, she noted, was that public health departments have no way of following up on the results in abortion cases.

Most of Jefferson's audience was obviously critical but nevertheless subdued during the question period. Many, including a large number of women, walked out before it was over. A walk-out had been discussed before the meeting by members of the Women's Law Association for the purpose of showing unified displeasure with the speaker's position, but the actual exit seemed unrehearsed and motivated primarily by frustration.

One member of the WLA later said that many women who might have attended the meeting just didn't want to have to listen to a "predictable, moralistic speech." "This straight line approach that if you have an abortion you have murder and blood on your hands is rough to listen to."

Tortoriello called the speech an "excellent presentation" and the WLA response "not at all unpredictable." He mentioned that many women supported the pro-life movement and had signed the anti-abortion petition.

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Legal Methods Faces Changes

(Continued from Page 1)

outlined his proposals during an interview last week. He said that they could be implemented without faculty approval, but that he expects to present "a package" of his recommendations to the faculty within the next few months. In the meantime, Rosenberg has conferred informally with faculty members who, he says, have greeted his ideas with enthusiasm.

Two weeks ago, Rosenberg met with the Board of Student Advisers to discuss his plans and the Board's potential role in carrying them out next year. Board members' reactions to the new proposals were said to be mixed.

According to Rosenberg, the Legal Methods-Ames program would involve three phases: products liability, a general case, and Ames Competition.

The products liability phase is expected to last three to four weeks and to involve a change from case analysis to legal analysis.

"In first-year classes material is learned by assimilation. Students analyze cases well but don't analyze statutes well. A broader background than mere case analysis is needed," Rosenberg says. He noted that the familiar products liability case of *Ralph and All-Stop* will be replaced by another hypothetical.

During the first phase, questions of legal ethics will be raised more than before. "Should a lawyer represent a bakery making cake with a nail in it?" Rosenberg cited as an example. Students will also be asked to consider solutions to questions such as how to provide legal services to the poor and middle classes, and the feasibility of contingent fees.

"These questions will be raised to show they lurk behind almost any case students will study in class," the two-year veteran of Legal Methods classes said.

A further aspect of the first phase will be the early introduction of incoming students to the library. This will be done by presenting the introductory library lectures by Professor Morris L. Cohen during the first month of classes.

The second phase of the program will involve a "general case", with one hypothetical being constructed by each teaching fellow. This case will replace the insurance liability case used this year and the civil rights case used the year before, Rosenberg explained.

This phase of the program will emphasize litigation, with students participating in interviewing clients, drafting a complaint and answer, taking depositions, and cross-examining witnesses at a mock trial. Students will be asked to write memoranda and present oral arguments on questions raised in discovery, Rosenberg said. During this period, they will also be expected to utilize the library to locate cases related to their hypotheticals.

Phase II of the new program would last until November 30, Rosenberg said. Phase III, the Ames Competition, would involve cases at the trial level for the first time, instead of at the appellate level. "This way, students will have a better opportunity to put cases together," he said.

The new Ames cases will begin with client interviews, and like Phase II, will involve discovery, dispositive motions, and oral arguments. The oral arguments and the briefs will be the same as in the present Ames Competition, Rosenberg explained.

He said he wasn't yet sure whether next year's 1Ls would receive their Ames assignment in December or at the beginning of the second semester. At any rate, the Ames Competition would last until the end of February, thus avoiding the cramped schedule faced by 1Ls this year.

Rosenberg said he expects

Ames alternatives to continue, although he is personally opposed to them.

"No lawyer should accept 1Ls' work without doing it completely over again. It's just not fair to the client," he said with reference to Ames alternatives involving research in actual cases.

Ames cases, unlike the alternatives, "are so programmed out that we know the reasonable limits of what can be done," Rosenberg continued.

In addition to the above three phases of the Legal Methods-Ames program, three small library research projects are contemplated. One would involve drafting a contract provision or a legislative bill based on research with state cases and documents. The second project of a similar nature would deal with federal cases. The third and final project would concern administrative, tax, or labor law, and might also interest upperclass students, Rosenberg suggested.

One innovation contemplated by Rosenberg is the filming and videotaping of Ames oral arguments and of some first-year classes. "Students have a very grave fear and misunderstanding of what goes on in class," according to Rosenberg. He hopes that filming classes with the consent of first-year professors will increase students' understanding of what their professors are trying to accomplish.

Rosenberg agreed that there was "a lot of risk" in his proposals. "I don't know how well this thing is going to succeed, but I hope it is in response to student needs and is an effective response," he concluded.

Last fall Rosenberg taught a seminar on *Constitutional Litigation* with Professor Charles R. Nesson, in addition to his Legal Methods sections. He does not expect to teach the seminar again next year.

Bickel, Dershowitz Debate Proposal

By Daniel M. Taubman

A noted Constitutional law professor and his former student squared off on television last night and debated the proposition that a National Court of Appeals should be created to ease the burden of the Supreme Court.

The two, Professor Alexander M. Bickel of Yale and Professor Alan M. Dershowitz of Harvard, appeared on the Public Broadcasting Service program "The Advocates", on a program taped two weeks ago at the WGBH studios in Boston.



Professor Alexander M. Bickel

Bickel, one of the seven members of a committee which last December recommended the creation of the new appellate court, defended the group's principal proposal as "one that reforms in order to conserve."

His former student at Yale, Dershowitz, attacked the new court plan, maintaining that the Supreme Court is working "both justly and effectively. Let's not tamper with the foundations of our temple of justice."

Dershowitz and Bickel developed their arguments by questioning two of their own witnesses and cross-examining each other's witnesses. Dershowitz's co-advocates were Professor Paul M.

Bator of the Law School and Washington, D.C. attorney Eugene Gressman, a law clerk to Justice Frank Murphy for five years in the 1940s.

Witnesses for the proposal were Peter Ehrenhaft, a Washington attorney and member of the committee chaired by Loeb University Professor Paul A. Freund which suggested the creation of the new court, and Professor Paul Carrington of the University of Michigan Law School.

Moderator Michael S. Dukakis '60 opened the program by noting that the case load of the Supreme Court has quadrupled since 1965, and that the proposed new court would examine all cases which presently come to the High Court, forwarding perhaps 400 annually to the Supreme Court itself.

Bickel, author of *The Supreme Court and the Idea of Progress*, began his remarks by countering the oft-stated view that everyone has a right to bring a federal claim to the Supreme Court. "Now, for the better part of our history, this has simply flatly not been so, and even now is an illusion," the 1949 Harvard Law graduate stated.

"In the past, Congress has often foreclosed appellate jurisdiction, foreclosed appeal, access to the Supreme Court in whole categories, classes of cases," he argued. Bickel said that the last Congressional reform of the Supreme Court's jurisdiction, in 1925, while a solution to the problems of that era, "is now the problem."

Ehrenhaft, echoing Bickel's remarks, said that his work on the study group had convinced him that "the Justices have a real problem," being so overwhelmed by reading petitions for certiorari that "they feel that they cannot adequately give time to deciding the cases that they've agreed to hear."

Dershowitz, in cross-examination, found Ehrenhaft unaware that Supreme Court Justice Potter Stewart — in addition to Justice William O. Douglas — had expressed his opposition to the creation of a new appeals court. Dershowitz showed the skeptical Ehrenhaft a recent issue of the Harvard Law RECORD in which Stewart's comments appeared.

Ehrenhaft responded by saying that when he had spoken with Stewart as a member of the committee, the Justice had not disagreed that "some time in the



Professor Alan M. Dershowitz

foreseeable future" some change might have to be implemented.

Later, Dershowitz chided the Washington attorney, saying, "You're so sure of how you want to help the Court that you're willing to ram this proposal down the Justices' throats even if they object to it?"

"That's good television talk," the unruffled Ehrenhaft responded.

Shortly thereafter, Bickel asked his second witness if there was any substance to Dershowitz's contention that some groups or issues would be disfavored by the proposal.

"I don't see that it's an issue that should divide Democrat from

For New Court on 'The Advocates'

Republican or conservative from liberal," Professor Paul Carrington said. Dershowitz agreed with this statement, citing as a case in point Judge Henry Friendly, whom he referred to as "probably the most distinguished conservative appeals court judge in this country," as a strong opponent of the new court.

In response to another question by Dershowitz, Carrington approved the new court, as long as the Supreme Court maintained control over it. He said that some decisions must be made by other judges because "there's just not enough time in the day for nine Justices to make all those decisions in a serious, honorable way."

Dershowitz in his introductory remarks conceded that many of the committee's proposals are "commendable," but called the plan for a new court "a serious mistake."

His first witness, Eugene Gressman, maintained that "there has to be a clear distinction between a lot of hard work and being overworked or overburdened as an institution," and that Justices face the former, not the latter problem.

"I think the only civilized standard of whether the Court is overworked is whether there is a demonstrable backlog of work of the Court which delays justice," Gressman said, adding that there presently exists no such backlog.

He further maintained there are not enough cases on the docket today for argument to fill up the Court's schedule for the entire term.

Bickel, cross-examining Gressman about the caseload of the Supreme Court and other federal courts, asked, "Wouldn't you rather have your right to appeal cut off than to be put to the trouble of taking an appeal and then nobody reading it?"

When Gressman responded with a firm "No," and said he

Bator said the plan would "narrow and diminish the law- and policy-making power of the Supreme Court. The power to decide what cases to decide is the way in which the Supreme Court orders our priorities. . . . The question is whether we want to treat something as important, and that is an important policy-making function. The law is full of subjects in which cases were thought of as settled, easy, unimportant, not worth attention, until a judge or a group of judges perceived in those cases new prob-

'Let's not tamper with the foundations of our temple of justice.' — Dershowitz

preferred even one second of consideration by Supreme Court Justices, Bickel ceased his questions and declared, "That is, then, the issue before us."

Before questioning his second witness — Associate Dean Paul M. Bator — Dershowitz stated that in assessing the Freund proposal, "some weight has to be given to the extraordinary fact that virtually every judge who has spoken out has been critical of the proposal. Virtually every law professor and every law clerk to whom I have spoken, with the striking exception of those selected by Chief Justice Burger to serve on the committee, is skeptical as well."

lems, a need for re-examination."

Bator also questioned whether the proposed new court will have the "cohesion and continuity and kind of esprit and loyalty which a strong court needs." He also cited as a potential problem the interest, enthusiasm and dedication of the judges of the new court.

Under questioning by Bickel, however, Bator conceded that "there is or at least very soon will be a problem" about the increasing caseload of the Supreme Court.

When Bator suggested as a possible solution review of petitions for certiorari by panels of three High Court Justices, Bickel responded that this raises "a grave Constitutional question" since the Constitution stipulates there be only one Supreme Court.

Bickel concluded his remarks by invoking the words of Justice Felix Frankfurter of the tendency to "canonize the familiar into the eternal." "We must guard against this tendency," Bickel declared, "else by sticking with a familiar form, in this instance, we will lose a precious substance."

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Grades Should Stay

The Law School Council's recent endorsement of mandatory pass/fail grading for first-year courses marks a commendable break from the Council's first year of apathy and indecision. Nevertheless, we disagree with their conclusion and recommend that the Faculty retain the present system of grading.

The disadvantages of compulsory pass/fail grading in the first year are manifest:

Of all the nation's law schools, Harvard is in the least need of mandatory pass/fail. Because the range of grades tends to be so narrow, and the general reputation of the School so high, few employers make significant distinctions among students solely on the basis of grades. While at one time we might have had to qualify the above statement by excluding law schools and judges of high appellate courts, it now seems that even these selective employers will not rule someone out solely because he had only an average grade record. It is not the legal profession, but only some students, who now overvalue grades.

Though grades are not everything, they remain a valuable indicator of how much law a student has learned, and, at least to some degree, of how good a lawyer he will become. In the absence of such indicators, employers will surely tend to hire on less relevant factors, such as race, sex, ethnic background, connections or college records. While courses are not the sum of Law School experience, there remains a considerable proportion of students who devote their greatest effort to coursework. Mandatory pass/fail would deprive them of an opportunity to reap what they regard as the benefits of this effort. For them, abolition of grades is likely to cause a serious diversion of effort to non-curricular activities, and create a motivation problem.

Those students who wish to take the first year pass/fail can already do so. What's more, they can even take grades and decide after seeing them whether to reveal them or not. Though 1Ls may not realize it, there is little difference in success in second-year placement between those who reveal and those who don't reveal grades. Even so, only 10% of the current 1Ls have opted for pass/fail. Mandatory pass/fail would therefore provide little benefit for this group, but greatly infringe on the freedom of those who wish to be graded.

Moreover, abolition of first-year grades can only put greater pressure on second-year students. Second-year grades would still be inescapable, and they would become the only grades which employers would be able to see.

All things considered, the Faculty should reject the Council's proposal.

HARVARD LAW RECORD

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Fenno

The faint odor of cooking hamburger drifted down the hall like a silent vapor, seeking out and caressing every nook in the dorm. It swirled about the hallway, slipped under the door to Fenno's room and gently tickled his nostrils. He awoke suddenly and smiled. It's Tuesday, he thought, and room 601 has his burner working overtime. Fenno yawned vigorously, stretching his arms wide and scraping them on the wall. He winced in pain as he swept his feet from the bed, stubbing his toes on the opposite wall. Someday, Fenno thought, I'm moving to a bigger place.

He wrapped a towel around himself and stepped out into the hall. By now the smell of cooking hamburger had yielded to a more exotic culinary odor. Must be the foreign students, Fenno thought, and headed for the shower. Fenno could tell that he wasn't the first one up today, for already the hallway carpeting was covered with moist footprints. There were few things more discomfoting to him than walking on a cold, wet carpet first thing in the morning.

Later, as he dressed, Fenno gazed out his only window onto the quad below. What I'd give to look out at the ocean again, he thought, which is, by far, more esthetically appealing than the World Tree. The wind howled as if the Law School read his thoughts, and Fenno whispered quietly that there was, of course, nothing wrong with the World Tree. As if that recantation satisfied the God of Jurisprudence, the wind abated.

Fenno turned and surveyed his room, which, because of its size, took less than an instant. A pile of dirty laundry lay in a miserable heap in the corner. I should do my washing, he thought, but decided against it until the machines stopped stealing his money. He remembered that as of today the machines owed him \$342.75. He was glad that the Dorm Council was concerned, even though the bank had refused to cash their IOU.

Fenno shrugged his shoulders and sighed deeply. Someday, he thought, I'm going to look back at this and laugh. Besides, living in the barracks wasn't too bad. It was quiet and he had more than enough room to change his socks. He grabbed his books and headed for class. I understand the 1Ls have got an elective course in dorm living, he thought. They call it *Quasi-Criminal Confinement*.

Record 276 in Class of 1972 Accept Offers with Law Firms

The class of 1972, according to recently released Placement Office statistics, was the largest in the last 23 years and also had the greatest number of students taking jobs with law firms — 276 of those reporting compared with 204 in 1971 and 250 in the next highest year, 1951. Despite an increase of 46 in the size of the class, the numbers reporting judicial clerkships and government employment declined slightly. (See Chart B.)

Alongside the boom in law firms, legal services also achieved a new high — 14.

New York, as always, remained the most popular state for newly employed graduates with 91, followed by Massachusetts with 58, the District of Columbia with 47, and California with 38. (See Chart A.)

None of the four most popular states increased its intake from 1971, indicating perhaps that a tightening job market and an increasing class have driven more

10 (up from three in 1970 and 1971), Oregon with eight (up from two in 1971 and none in 1970), Pennsylvania with 22, Rhode Island with six, Texas with seven (tying 1964), and Virginia with four.

The District of Columbia dipped from an all-time high of 64

CHART B

Type of Job	1972	1971	1970
Law Firms	276	204	184
Judicial Clerkships	63	71	63
Government	44	46	12
Legal Services	14	13	8
Public Interest	8	7	1
Teaching	5	5	5
Study and Research	5	9	8
Fellowship	5	10	6
Business Concerns	4	7	9
Miscellaneous	4	9	2
Military	2	2	6
Banks and Accounting	1	2	5
Management/Urban	1	2	2
Peace Corps	0	0	1
Total reported	435	390	344
Total in class	566	520	381

in 1971 to only 47, which still exceeded 1970's 33.

Five cities — New York, Boston, Washington, Chicago, and San Francisco — accounted for more than half of all students reporting their addresses.

Law Notes

Law School Professor Alan M. Dershowitz, Harvard College Professor Nathan Glazer, and Walter J. Leonard, Special Assistant to the University President will discuss "Affirmative Action: On the Conflict With Meritocracy," at 3 p.m., Sunday in Emerson 105.

First-year students interested in participating in the Williston Competition (contract drafting and negotiating) should sign up at the Board of Student Advisers office by Friday,

February 16. Students can choose partners and opponents (two per side, four to a group) or they can sign up individually and be matched by the BSA.

The top two teams will divide \$500 in prize money. Students with questions should consult Mason R. Cargill, John G. Elligers, or Michael J. Critelli at the BSA office.

The following have been selected to serve as the Editorial Board of the **Harvard International Law Journal** for the 1973-74 term: David C. Hollrah, 2L, Editor-in-Chief; Stephen P. Mahinka, 2L, Executive Editor; Terry L. Albertson, 2L and Frederick B. Utley, 2L, Article Editors; Steve L. Wolfram, 2L and Jean A. Ullmer, 2L, Comment and Note Editors; Mitchell Knisbacher, 2L, Comment and UN Note Editor; William B. Hoffman, 2L, Special Projects Editor; W. Cole Durham, 1L, Managing Editor; and Patrick M. Norton, 1L, and Wesley C. Gryk, 1L, Book Review Editors.

Because of a squash tournament, intramural basketball games originally scheduled for Friday, February 22 and Sunday, February 24 have been rescheduled for Tuesday, March 13 and Monday, March 12 respectively. The games, involving D and E league teams, will be played at the usual week-night hours, with the first game beginning at 6:30 p.m., and the fourth and last game beginning at 9:30 p.m.

Harvey C. Dzodin '72; Howard B. Brownstein, J.D.-M.B.A. candidate; and Claire Fall are forming a partnership to be called **Cambridge Legal Research Associates** which will hire law students to do research for law firms. There will be a meeting at 4 p.m. on Thursday, February 15 in Pound 335 for all 1Ls and 2Ls interested in participating. The group expects to begin employment about March 1, and to pay more than \$2.75 an hour, the Law School part-time job rate. Student work will include corporate and environmental law and will be supervised by attorneys. The group will not practice law.

The copy center will have 23 **Law Review Outlines** available for copying until April 27, when they will be returned to closed reserve in the library. Students may arrange for reproduction from a list of titles available at the copy center.

CHART A

State	1972	1971	1970
New York	91	94	74
Massachusetts	58	59	63
District of Columbia	47	64	33
California	38	38	42
Pennsylvania	22	14	7
Illinois	21	17	9
Georgia	12	11	4
Ohio	12	10	5
Minnesota	10	3	3
Maryland	9	2	4

and more of the graduating students to the hinterlands.

Nine states set records for the number of employed graduates: Alaska with six (previously, the number had never been greater than two), Georgia with 12 (inching out last year's 11), Maryland with nine (surpassing 1959's high of eight), Minnesota with

Perfect Professor: A Polymathic Wizard

By Robert Flanders

We all have notions as to what makes a perfect teacher. Anyone who has ever been a student prides himself on being able to render on request an immediate composite of this ideal pedagogue, clicking off his attributes as if rotely memorized and fairly clucking at the prospect of actually having sat in this great mentor's class — yet only to have that vision melt into the drab and undistinguished reality of absolutely boring teachers who have somehow managed to populate the lives of us all.

I do not intend to waste your time by dredging forth yet another of those whimsical panegyrics which have no basis in reality; the man I will describe for you professes yet, though his days, I fear, are numbered. Advancing age has taken its toll upon his incomparable personage, though his wit and zest for life are as keen as ever. His gnarled figure is still seen about the campus, prompting more heads to turn his way than he would care to notice and thereby pulling many a poor scholar off his path momentarily.

(I really do wish I could divulge his name and not play this silly charade, but I fully intend to honor the great gentleman's request and therefore refrain from doing so, although I have no doubt that you will all immediately identify him, if you have not done so already.)

Those fortunate enough to have signed up early for his courses will kindly bear with me as I take time out to comfort those that have not as yet been admitted to his class with the news that the professor assures me he fully intends to stay on one or two semesters more, and will do everything in his considerable power to see that all are somehow accommodated. Yet a caveat: even he may have

underestimated the demand in this case, for the Registrar informs me that it would take a miracle on the order of the loaves and fishes variety to spread the professor evenly over the number of students clamoring to enter his course.

But after all, this is a petty matter to those of us who have already supped at the great man's table, who have drunk the wine of wisdom which he proffered, and who will forever more eructate blissfully those class hours which flew by in such sweet succession. How can I begin to describe this tutorial paragon to those of you as yet uninitiated into the greater glories of academic euphoria?

I will begin, humbly, with the exterior, that which first greets the eyes of those who behold him, and renders all their worldly cares migratory. It is, almost of necessity, less than dazzling. When the professor lopes into the room at precisely seven seconds before the class is to begin, all eyes greedily rivet on the great man's posture, which, though terribly awry, still is prophetically suggestive of a question mark: his back sloping rather sharply, veering first to the right, then contouring back to the left, then finding his fundament, so markedly upright and firm, but giving vent to two of the wildest appendages imaginable, each walking to the beat of a different drummer, yet somehow conveying the illusion of coordination, albeit a bit syncopated.

When he deigns to speak, his aquiline nose sniffs out the class's mien, as if to discern any restive shufflings of inattention, and actually lurches forward at intervals in order to punctuate his salient points, a role lesser teachers often ascribe to their figures. And the voice — how to describe that voice? Certainly not mellif-

luous, hardly stentorian, and only faintly cadenced, his is a quavering resonance, suggesting frailty at the beginning of the sentence, vulnerability at the conjunction, yet somehow finding a sonorous resolution in the predicate. Perhaps it is when he allows his muffled exuberance to pierce those mannered controls, so that his voice warbles with the emotion of the moment, perhaps it is then that we love him best. For it is precisely here that he reveals himself most human: where all his ideological constructs, so brilliantly appended, juxtaposed, and qualified, momentarily crumble in the exhaled genius of a man vainly reaching for a still higher octave to contain his persistent irony. It invariably leaves us drained, turning our heads and marvelling to each other as to how he can manage such sustained brilliance. Sometimes he will pause for a full 15 seconds to catch his breath before picking up the ball of his thoughts again, only to weave yet another broken-field pattern through the strewn obstacles of pedantry, sophistry, and obfuscation, as if they never existed, as if no true teacher would even condescend to acknowledge them, let alone be cajoled into their yawning pitfalls.

And so it goes class after class after class, leaving envious scholars to declaim: There but for the pace of God go I! Word has it that his polymathic wizardry continues unabated, diurnally exceeding even the loftiest expectations of those least disposed to that guileless equanimity with which he assails the frontiers of ignorance. Alas, though he be indeed the ideal professor, he can only leave us with the poverty of his words; yet even so we are suffused with an affluence, a late candor that verges on the edge of poetry, then subsides — ah, but ever so ebulliently.

CLRD Weighs Future After End of Draft

By Paul Weiner

With the draft scheduled to be phased out by the middle of the year, the Law School's five-year-old Committee for Legal Research on the Draft is facing an identity crisis. The committee and "all interested persons" will meet today at 3 p.m. in I-3 in the Inter-

military as well as draft work for a year or more now.

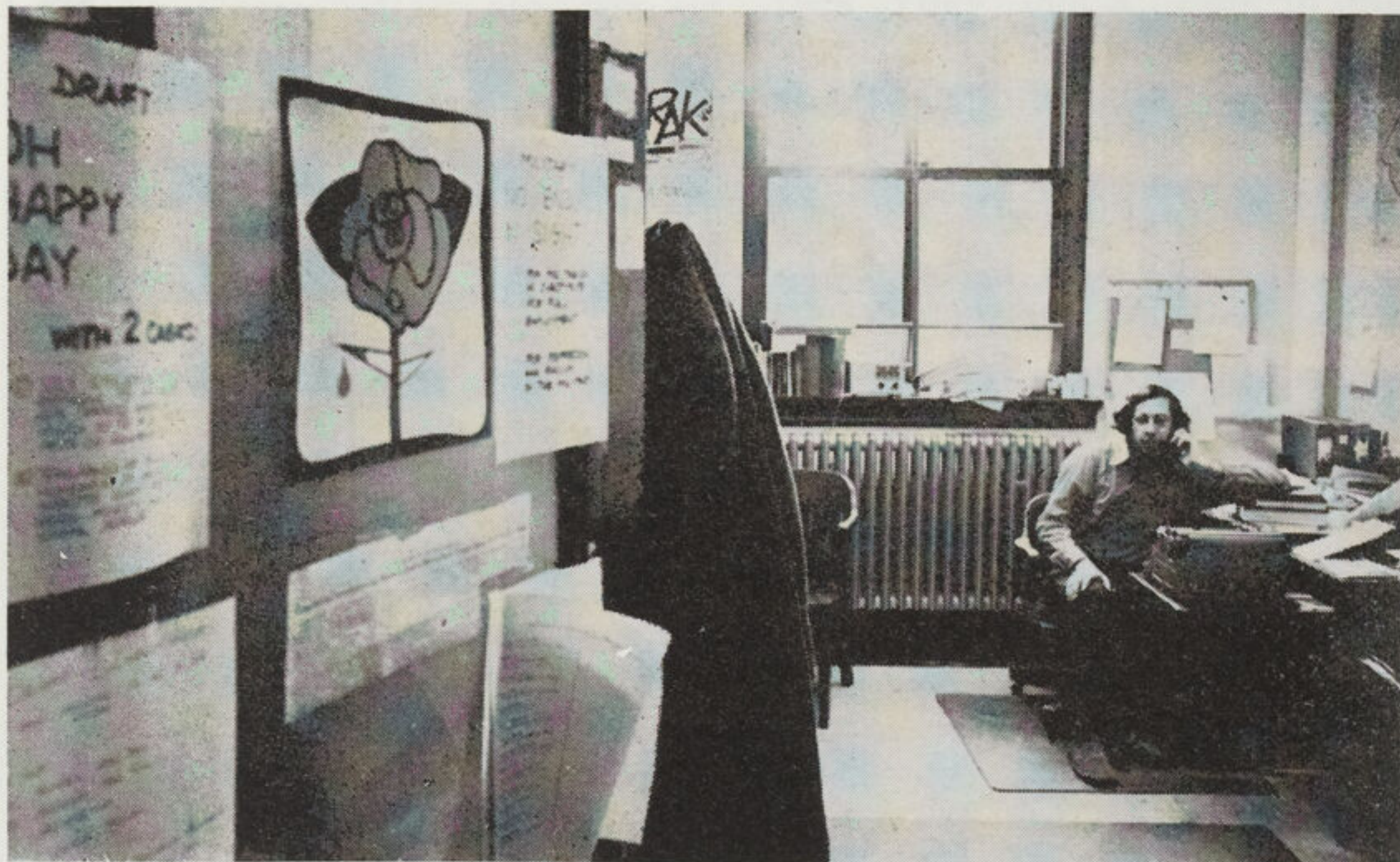
"A lot of military law is still very loose, very much of a new field," said Chase, who emphasized that until very recently the typical serviceman had no idea that he could enforce his rights in court. Most of the precedent-

does extensive research to be used by outside attorneys. Among its major triumphs are *Robison v. Johnson* (tried by Legal Methods Director Michael D. Rosenberg) in which the Massachusetts U.S. District Court ruled that conscientious objectors doing alternate service are entitled to veterans' benefits and *Friedman v. Froelke*, in which the First Circuit granted CLRD member Friedman and his fellow National Guardsmen the right to wear short-hair wigs to meetings instead of getting short haircuts.

The committee is now working with Professor Vern Countryman in preparing an argument on the unconstitutionality of the Vietnam War for the trial of an alleged Selective Service law violator in the federal District Court in Massachusetts.

There is little formal organization among members of the CLRD, and students are invited to pursue on an ad hoc basis whatever draft law or military law projects interest them. Chase, the only full-time salaried employee, is not a law student, but became interested in military legal problems while serving in the Navy.

The committee, a charitable foundation, is supported by the Law School, by grants from foundations, and by donations from individual lawyers.



Charles Soberman

Donald M. Solomon, 3L watches store at CLRD.

national Legal Studies Building to consider whether the committee should be disbanded, and if not, what new projects it should undertake. In any event the group is unlikely to disband before September.

Despite the end of the draft, "there will be appeals of draft convictions for a year or two years," said Bruce E. Friedman, 3L, a member of the committee.

Other directions in which the CLRD may move are military law, including the rights of reservists and National Guard members, and the problems of draft resisters now living in Canada, Sweden, and other countries, who wish to return to the United States.

Some of this change in emphasis would have come about whether or not the draft had persisted. According to Richard Chase, coordinator for the committee, the group has been doing

setting cases go back no further than 1968 or 1969. "There's very little old law — very little."

Chase emphasized the unique service which the CLRD provides for the legal community by keeping track of all new decisions and regulations as they are issued.

The CLRD generally does not represent parties in court, but

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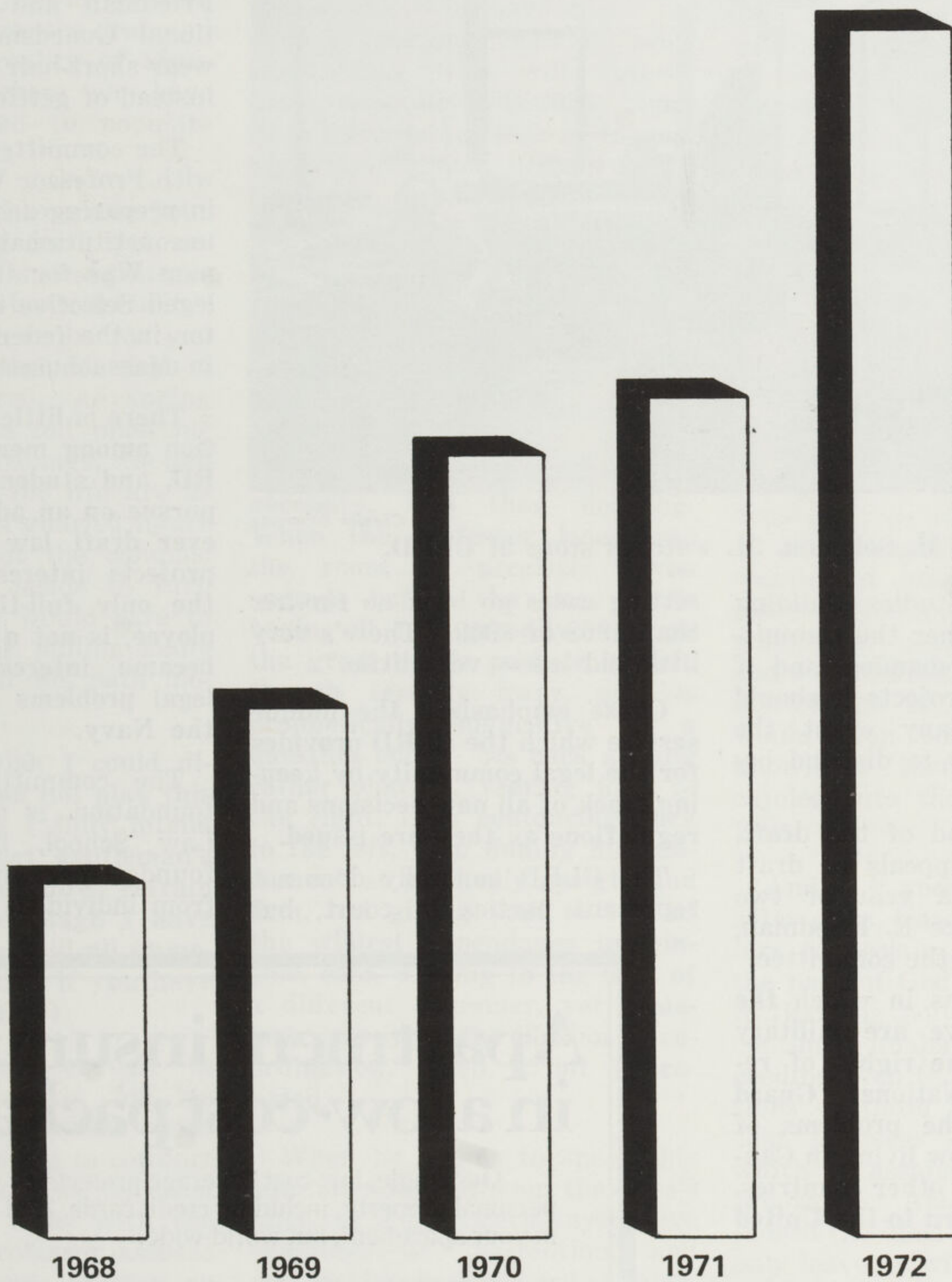
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2Ls Birnbaum, Rubins Write, Direct Musical at Radcliffe

By Kermit Kubitz

Tickets for the world premiere performance of *Suffragette*, a musical play written by 2Ls Joshua M. Rubins and George P. Birnbaum for the Radcliffe Grant-in-Aid show, are disappearing quickly at the Holyoke Center ticket office.

The story details the life of Emma Pankhurst and her group of militant feminists during their fight for the vote for women in England, from 1880 to 1914. Drawing heavily on historical information from the period, the authors feel the musical should be of interest to law students, especially women, because, according to Birnbaum, "It shows what it is to be a woman and try to do something politically."

The co-authors have an extensive background in Harvard Square dramatics, having written the 1968 Hasty Pudding Show and directed and acted in many other plays in the houses, Agassiz, and on the Loeb stage. Rubins spent a year directing the Children's Theater of Portland, Maine after graduating from Harvard in 1970. He also wrote the musical *Winnie the Pooh* which played last summer in the Harvard Yard.

George Birnbaum, also a '70 Harvard College graduate, has teamed with Rubins to produce four Grant-in-Aid shows, includ-

ing *How to Succeed in Business*, which produced \$1300 for the Radcliffe scholarship fund. The authors view their latest production as a training ground for new undergraduate producers.

The writing of *Suffragette* actually began in October and occupied most of the fall for the two. They took a break in January for law school examinations, and then finished. The book for the play began with a detailed scenario distilled from what Birnbaum called "volumes and volumes of history." From the scenario, Birnbaum wrote the script while Rubin composed 18 musical numbers. "He was ahead of me through the first act," Birnbaum recalled, "but we drew even going into the second."

While they claim not to have distorted history, they admit to having embellished the plot, focusing on the personal conflict of Ms. Pankhurst concerning her political commitment.

The authors soon realized the benefits of having a ready-made score and script. Rubins' music had to be orchestrated by another Harvard graduate, Peter Larson, now on the staff of the Berkeley College of Music in Boston. The score also had to be copied by the authors and friends into 18 sec-

tions for the different pieces of the orchestra.

The possibility of playing in a new work, however, did make it possible to attract actors with a professional background, and many from outside Harvard, although the cast includes one Radcliffe and four Harvard undergraduates.

Both Rubins and Birnbaum see their eventual careers taking advantage of legal and entertainment experience. Birnbaum will work for a Beverly Hills law firm next summer. Rubins says his Law School interests center around contracts and copyright, although he adds, "For the next month, I won't allow law school to interfere."

Suffragette will play March 8-10, 15-17, and 22-24 at the Agassiz Theater. Tickets, while the supply lasts, are available from the Holyoke Center ticket office.

Birnbaum sees a number of parallels between writing a script and a legal brief. "They both have to be incredibly clean, incredibly spare and," he adds, "they must convey feeling without being obvious." Perhaps someone should donate a set of tickets for *Suffragette* to the *Law Review*.



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England's Only Legal Historian Visits Harvard

(Continued from Page 4)

have "more fun" than their counterparts in England.

Although this observation might inspire as much sympathy for their English brethren as agreement by HLS students, Milsom makes it sound plausible. There being a single system of precedent in England, in contrast with the multitude of American jurisdictions, he says, there is "much less a lawyer can hope to do about it. The law is a great deal more fixed." The student's optimism and motivation are more easily kindled in the United States, he concludes.

Indeed, Milsom contends that, to the historian, this slower-moving, less responsive aspect of English law is the most important distinction between the English and American systems. He emphasizes that the emergence of a strict doctrine of precedent in England is a relatively recent historical phenomenon, and decries the restrictions in development which have accompanied it.

The English bar was "more masterful with cases a hundred years ago," he maintains. Today, the would-be legal activist in

England must rely more on legislative action. The promulgation of quasi-legislative guidelines, which has become not uncharacteristic of the U.S. Supreme Court, as well as other appellate courts, is not part of the English

legal experience. This has its corollary, he concludes, in legal training in that country, where law students and lawyers concentrate more exclusively upon the "skills of the trade" than they do in America.

Sports Briefs

A League: Mashuppee Tops Herd

In a rough, physical A league game, the Thundering Herd were dealt their first defeat by the reigning league champions Mashuppee County Maulers by the score of 45-37. Tight defense marked early play, as the Maulers took a 19-13 halftime lead. Play loosened up in the second half as Rodney Wulff for the Herd and Tom Pfister and Carl Hawkinson for Mashuppee began to find the range. At two minutes to go, the Herd was down 39-37 but failed to connect on three attempts at the basket for the tie.

Meanwhile Jackson Five kept on winning. Led by playmaker and sharpshooter Sherman Stimley, they held off a last minute rally inspired by

the Three-Fifths' Paul Oliver and posted their sixth straight victory, winning convincingly 64-54.

In the B league, a crucial game took place between unbeaten Little Big Men and the Court Gestures. Early in the game, the Court Gestures lost their playmaker Jeff Denner because of an injury; however Dave Tulchin and Bruce Hubbard scored heavily to edge the Little Big Men 41-40. The Court Gestures were unable to contain the Little Big Men's high-scoring star Dennis Waldon, but they kept him outside enough to win the rebounding battle. Other Court Gesture standouts were Dick Benka, George Singer, and Bruce Friedman.

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