

HARVARD LAW RECORD

AUG 14 1973
America's Oldest Law School Newspaper

VOL. 56, NO. 6

MARCH 9, 1973

TWENTY CENTS

Lawsuits Challenge State Bar Exams In 8 Jurisdictions

By Kermit Kubitz

Suits challenging the bar examinations of at least eight states are now on file, alleging discrimination against black applicants, denial of procedural due process, and lack of validity of the results.

HLS graduates were among the plaintiffs in the three states mentioned in the RECORD's lead story on December 8 — Alabama, Georgia, and Virginia. In addition, suits have been instituted in California, Maryland, New Mexico, Ohio, and South Carolina, according to Elaine Jones, staff attorney of the NAACP Legal Defense Fund in New York. The first suit in this area, *Harris v. Louisiana*, 334 F. Supp. 1289, was dismissed on a motion for summary judgment by the defendant

(Continued on Page 15)

First-Year Committee Asks Schedule Orientation Shifts

By David J. Cocke and Daniel M. Taubman

After seven months of deliberations, the Committee on First Year Evaluation and Related Matters has proposed a wide-ranging series of preliminary recommendations focusing on faculty-student relationships during the first year and calling for the completion of first semester examinations before Christmas vacation.

The committee's recommendations appeared in a letter sent to Dean Albert M. Sacks February 13 by chairman Professor Jerome A. Cohen and made public Wednesday. They did not include any discussion of the grading system; a recommendation in that area is expected this spring.

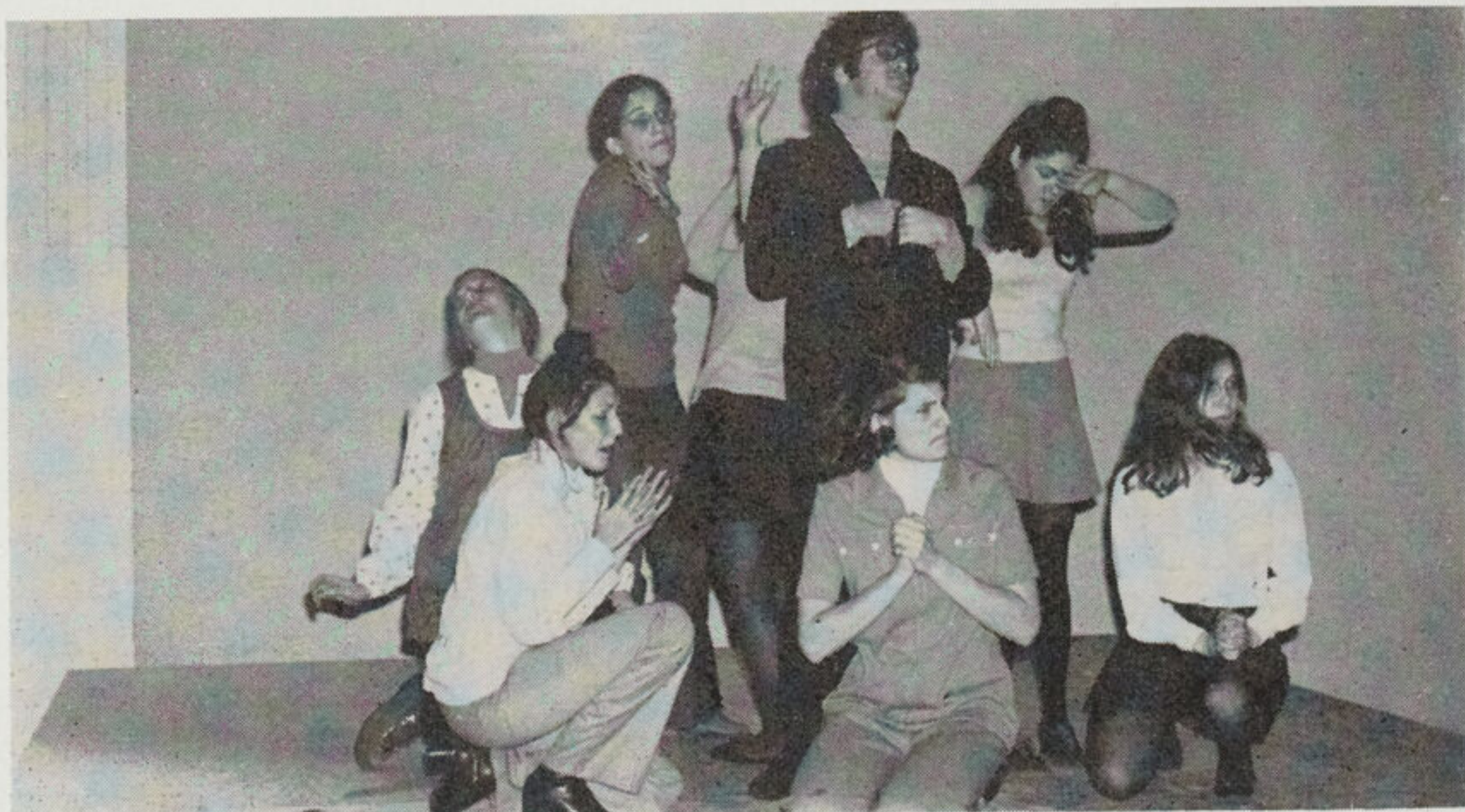
Cohen said that the preliminary report was designed to "clear the table" of as many issues and

problems as possible so that his committee could begin to deal with the really "tough" questions, such as grading. That subject has evidently been the source of a great deal of controversy in the Committee, which has been meeting behind closed doors since January.

Release of the committee's recommendations was deferred pending notification of other law school committees, to which the proposals will be submitted. Faculty consideration of some proposals is expected later in the spring, while others may be implemented by the administration.

The first set of recommendations relates to first-year orientation efforts, and includes a suggestion

(Continued on Page 2)



Charles Soberman

Rehearsals are proceeding apace for the Law School Show, to be held March 16-18 and 22-24.

Motion Charges War Is Illegal

Professor Vern Countryman's defense of alleged Selective Service violator Charles Sumner Gibson, Jr. has moved into a critical stage with the filing of a motion to dismiss and an accompanying affidavit which reads like a pocket history of the Vietnam war.

The motion, filed February 28, seeks dismissal of the charges against Gibson on three grounds. First, it asserts that the orders of

(Continued on Page 6)

Group Proposes 1L Orientation

(Continued from Page 1)

tion that faculty advisers be appointed "from the very beginning of the year so that students can meet with them during the earliest days of their career here.

Other proposals regarding first-year orientation include more frequent faculty-student luncheons, scheduled office hours and/or appointments by faculty members, organization of a new program for discussing career options and the law, and "early discussion of the facts of life concerning first and second year summer employment."

A further major proposal is for early exposure of students to actual trials and appellate arguments through visits to courts and for the arrangement of actual trials to be held at the Law School. According to Cohen's letter, "many students believe that seeing lawyers at work in real life usually gives students more confidence about their own ability to carry on satisfactorily in Ames and other exercises."

Presently, students are exposed to actual trials only during the second and third years, either in clinical courses or extracurricular activities.

The faculty-student committee has also recommended that 2Ls and 3Ls "adopt" individual first-

year students as advisees to increase contacts between 1Ls and other students.

In the area of scheduling, the group has suggested conducting the first-year Ames competition between first and second semesters so students can devote full time to that activity during that period. According to Cohen, "there is a growing feeling at the Law School that Ames shouldn't interfere with classes." He stressed that the group's proposal was intentionally general, so that details could be worked out by the First-Year Committee.

The group also proposes that at least one day per week there should be no classes between 1 and 2 p.m. This is designed to allow student-faculty contact in lunch-hour discussions. Cohen said that Sacks has already instructed the Registrar's office to effectuate this change.

The committee has also suggested:

- *Reconsideration of whether and how to help 1Ls find summer employment;

- *Serious consideration of establishing a central social location in the Pound Student Lounge;

- *Reexamination of the present athletic fees and use of facilities. "The fee system seems to discourage participation in athletics and

our facilities may well be inadequate," the letter states.

- *Reexamination of appropriate dormitory assignments, including the possibility of further "mixing of the sexes" and integration with graduate students.

In recent weeks, three student members of the committee have submitted lengthy (20-30 page) memos to the group on the grading issue. Two, including one by last year's Sears Prize winner, Ronald S. Stern, 2L, call for a mandatory pass-fail system for the first year; the other recommends the present system with a few minor changes.

A fourth report, by Arthur M. Klebanoff, 3L, was commissioned by the First-year Committee to study faculty attitudes on the subject. "We asked Art to help us," explained Cohen, "even though he was not a member of the Committee, because he had a background of administering and interpreting surveys." Cohen said that he could not release the details of this report without the concurrence of the other members.

Stern asserted in his argument for a "nongraded system of first-year evaluation" that "the costs of grading" outweigh the present evaluative benefits. "The faculty resources spent in ranking examinations, both in getting the mass of exams to fit within the 'normal' grade distribution and in deciding borderline cases between grade categories, could be better spent, in terms of educational results, in dictating textual comments," he said. If such textual comments were provided, he continued, "most students would be encouraged to make a good faith effort both because of a desire to do well and to obtain an honest evaluation of their strengths and weaknesses."

Unreported Grades Ready Today

Grades for upperclass courses not yet released will be announced today, according to Law School Registrar Mary Upton. Grades for most courses were available last Friday, but a list of about 15 courses distributed at that time indicated that the data for the fall semester was then incomplete.

Upton said information concerning grades will be posted on bulletin boards today, and was

to have appeared in yesterday's *HLS Adviser*.

"Of course, previous years have been better," Upton explained, "but the demanding schedules of most of the faculty at Harvard Law School did have its effect."

The Registrar attributed the delay in grades to the large volume of tests to be graded in some courses.

Faculty Women Urge 'Affirmative Action'

By David J. Cocke

The Law School's two women professors, Elisabeth A. Owens and Diane T. Lund, were among the 33 signatories last week of a letter to President Derek C. Bok urging greater "affirmative action" in hiring women for University positions. All of the complainants were women faculty members or administrators.

The letter complained that efforts in most University departments to follow an Affirmative Action program mandated by federal law have been "lacking or proceeding at a very slow pace." As a corrective measure the University was urged to publish a statement outlining its commitment to opportunities for women and to make certain that all women at the University were informed of their rights under

the law and the procedures for appeal to implement those rights.

"[W]omen throughout the University feel they have not had monetary and status rewards commensurate with those of their male colleagues nor been given sufficient opportunity for advancement," said the complainants in their letter to Bok. "It is urgent," they continued, "that the University clarify its position, its good will, and its intent to undertake action to change the traditional pattern in which few women have been placed in tenured or advanced faculty rank."

According to Owens, who was one of the drafters of the letter, the document was written after a series of meetings involving numerous women from the University community and top University administrators. These

included sessions with Bok, Radcliffe University President Martina Horner and special assistant to President Bok, Walter J. Leonard.

Owens was uncertain about the impact of the letter. "It is hard to do anything on a University basis," she said. "In this particular area each school and faculty has very different problems." Most of the women attending the meetings and signing their names to the letter are engaged in similar efforts in their own schools, she explained.

"My own personal objective was to try to disseminate information to interested women about the legal situation," said Owens. "Sometimes it is hard for us at the Law School to realize this is a blank in someone else's mind."

The University-wide complaint is similar in substance to part of a formal charge made by members of the Women's Law Association in December aimed at conditions in the Law School. That complaint was filed with the Office of Civil Rights of the Department of Health, Education and Welfare, and alleged, among other things, that the Law School had failed to make an active commitment to hiring women professors and administrators. The charges were denied by Dean Albert M. Sacks.

WLA Representative Alice W. Ballard, 3L, said that a request by the WLA that the Law School make a public statement expressing its commitment to women was turned down by Sacks.

Owens denied that the letter sent to Bok could be fairly compared to the WLA complaint. "The thrust is quite different," she said. "What we were trying to do was to keep the activity that now exists going."

Grace W. Blumberg, a Teaching Fellow in Law, was also listed as one of the signers of last week's letter to Bok.

Former Clerk Backs New Court

A former clerk to Justice Felix Frankfurter has written a letter to Loeb University Professor Paul A. Freund indicating his support for a new National Court of Appeals. This is apparently the first public support for the new court, recommended in December by a seven-man committee chaired by Freund, by a former clerk not a member of that group.

The letter by Roland S. Horner, Jr. '61 came in response to a statement by Professor Alan M. Dershowitz on a recent program of "The Advocates" television show that "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."

Freund's committee recommended the establishment of a new National Court of Appeals to ease the growing caseload of the Supreme Court. Wrote Horner, "... no thoughtful student of the caseload statistics you have compiled can deny that the quality of the court's work is threatened with inundation, and that some structural and/or procedural revisions are in order."

"Your proposal," he indicated to Freund, "operates at the very least as an order to show cause what alternative mechanisms might better perform the needed task; and none as yet have come to light."

Published ten times each semester by the Harvard Law School Record Corporation, 23 Everett St., Cambridge, Mass. 02138. Telephone 617-495-4418. Subscription price: \$3.00 semester, \$6.00 year mailed; \$8.00 year mailed outside U.S.; students \$3.00 year distributed at the Law School. Individual copies including back issues: 20 cents at the Law School, 35 cents mailed. Second class postage paid at Boston, Mass. Copyright 1973 by the Harvard Law School Record Corporation.

ALUMNI: Alumni who receive the Record as a result of membership in the Harvard Law School Association should mail change-of-address information to the Harvard Law School Association, Harvard Law School, Cambridge, Mass. 02138.

PLAP Expands Legal Assistance to Prisoners

By Paul Weiner

The Prison Legal Assistance Project, which last year appeared to be on the verge of extinction, has quadrupled its membership since September, in some part due to a recent Supreme Court decision which extended various due process rights to parole revocation hearings.

In response to last summer's decision in *Morrissey v. Brewer*, Massachusetts now guarantees former prisoners whose parole has been revoked a right to counsel. In February, PLAP began systematically to offer its assistance to all prisoners returned to Massachusetts Correctional Institution—Concord after having their parole revoked. PLAP won six of its eight parole cases in February; before that it had only handled one or two such cases a month, and then only for the group's current clients rather than for all the inmates at Concord.

According to Wynne S. Carvill, 2L, a member of the project, there are basically three kinds of parole cases:

(1) The parolee may have had a bad behavior record on parole, perhaps because of a drug habit. In such a case, his counsel would arrange a drug withdrawal program for him and present it to the parole board.

(2) The parolee may have a factual dispute with his parole officer over the facts of an alleged parole violation.

(3) In the most delicate case, a parolee with an otherwise clean record has been charged with, but not convicted of, a second crime. Often the Parole Board demands testimony about the alleged crime before reinstating parole, but the parolee wishes to take advantage of the Fifth Amendment to keep silent until the trial. According to Carvill, there are few precedents in this area.

The District of Columbia U.S.

Court of Appeals has ruled in *Melsen v. Sard* that the Fifth Amendment requirement is satisfied if statements made by the parolee during the parole hearing are not used affirmatively against him at his trial, but Carvill feels that this solution is not entirely satisfactory because it forces the parolee to reveal the nature of his defense before trial.

"The organization was just about dead last year," said Carvill. PLAP started in September with only six members, all of whom enrolled in Professor Gary Bellow's *Lawyering Process A*.

Court ruling extends due process rights

Active membership is now up to 29, including 14 1Ls who were selected from approximately 45 applicants in January. The group is now processing more than 140 files.

Besides the parole revocation hearings, the group handles civil cases for prisoners and sentencing modification. PLAP does not take on actual criminal trials.

During November, there occurred a disturbance and a 24-hour lockout at Concord. PLAP was part of a coalition which threatened to sue Massachusetts Corrections Commissioner John Boone if the lockout was not ended. Later, PLAP and the Peaceful Movement Committee, a group of inmates, former inmates, and other interested citizens, formed a citizens' monitoring committee which for a month had 24-hour access to the cells. PLAP helped work out the agreements between administration and inmates which took effect after Thanksgiving.

Though all inmates at Concord have already been convicted of one offense, 40% have warrants outstanding against them on other charges. PLAP has been working out a speedy trial pro-

gram for these prisoners. Speedy trials on second charges benefit the prisoners in two ways. First, they cannot be paroled while awaiting trial on the second charge. Second, if an inmate is convicted of a second charge early in his term, the judge is more likely to allow him to serve the two sentences concurrently.

Carvill sees a number of unique advantages in working for PLAP. It is one of the few Law School groups to completely integrate 1Ls into its operations. It provides "civil experience as well as quasi-criminal experience and gives members a chance to know an institution completely." Members can "learn to negotiate and settle disputes informally as well as formally."

PLAP plans to take on new members at the end of this semester and at the beginning of the fall semester. It may also provide summer work for some members.

Besides Concord, which houses mostly youthful offenders (ages 18-27), PLAP works at MCI—Framingham, a women's prison.

According to Carvill, 3Ls in the group might be able to begin to try actual criminal cases if the group is assigned a teaching fellow for supervision next year. Howard M. Rochestie, GL, a member of the bar, has been supervising the group's court appearances as an unpaid volunteer. Professor James Vorenberg serves as the group's faculty sponsor.

Younger Members' Committee
Harvard Club of Boston
invites

HLS community, alums & their guests
to JOLLY UP PARTIES

1st & 3rd Mondays & Fridays
From 7 p.m. to 11 p.m.

Admission Price: \$1.

Complete Cash Bar
Music and Dancing

at the Harvard Club House
374 Commonwealth Avenue
(near Massachusetts Avenue)
Boston, Massachusetts

Women & Men from other Clubs
& Schools also have been invited

Dawson, Field Plan Retirement

By Phil Spector

Two veteran Law School professors will assume the position of professor emeritus at the end of this academic year. John P. Dawson, Charles Stebbins Fairchild Professor of Law, and Richard H. Field '29, Story Professor of Law, will have both reached the mandatory Univer-



Charles Soberman

Professor John P. Dawson

sity retirement age of 70 and must give up their teaching posts. World War II colleagues in the Office of Price Administration, both men plan to keep active with law-related jobs after they leave the Law School.

Although Dawson said that he is looking forward to retirement "in some ways," the transition will be to a large extent mitigated by the fact that Dawson plans to teach on a part-time basis next year across the Charles River at Boston University Law School. One of the main attractions in accepting the BU post, Dawson said, was the fact that Professor William Burnett Harvey, currently of Indiana University Law School, will be teaching at BU next year; Dawson and Harvey collaborated on the popular casebook *Cases on Contracts and Contract Remedies*.

In addition to *Contracts*, Dawson taught at the Law School a

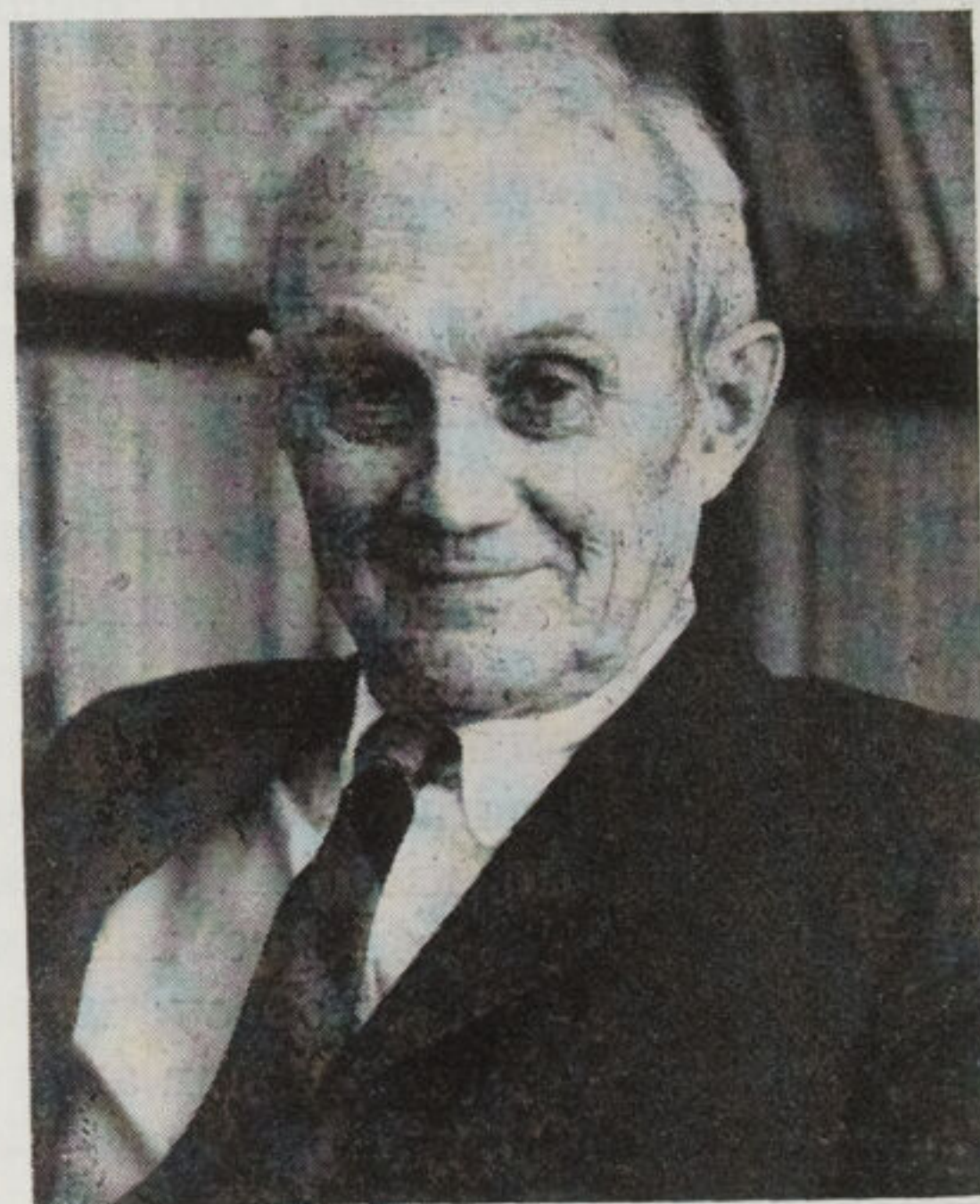
one semester course in *Restitution*. He will teach the same courses at BU. The former University of Michigan Law School professor plans to maintain an office at the Law School and to continue his research and writing projects here.

While Field also plans to maintain an office and to continue research at the Law School, he will be somewhat farther away than Dawson for the next year and a quarter. Field has accepted a position in Maine as Reporter for an advisory committee charged with formulating rules of evidence for that state. A teacher of Civil Procedure at the Law School for more than 25 years, Field is looking forward to the Maine job, partly because he helped draft the Maine Rules of Civil Procedure and is author of *Maine Civil Practice*, and partly because, as he points out, "I was born and grew up in Maine and have a sentimental feeling about the state." Field is also co-author (with Benjamin Kaplan, a former HLS professor and now Associate Justice of the Massachusetts Supreme Judicial Court) of a widely-used *Civil Procedure* casebook. A third edition of the casebook will be published this year, and Field expressed regret that he will not have an opportunity to teach from the new edition.

When asked whether he was looking forward to retirement, Field emphasized that he believes that a flat rule of compulsory retirement at 70 is a "sound idea. . . . If senior professors are allowed to stay on too long, it delays the progress of younger men." Feeling that teaching is a continuing process of improvement, however, Field said that "I'm aware that, when I walk out of class this year, I'm never going to have a chance to do it better." As to travel plans, the long-time Boston attorney (Field was in private practice from 1929 to 1942) said, "I'm

foolish enough to like New England and its weather. I've been teaching since the end of World War II and have never taken a sabbatical year to travel, although I spent one year as a visiting professor in England. I can't think of anything I'd enjoy as much as doing my work here."

Both Field and Dawson had ex-



Charles Soberman

Professor Richard H. Field

perience in government during World War II. Dawson was Chief Counsel in the Rent Section of the Office of Price Administration and later served as Chief of the Middle East Division of the Foreign Economic Administration. In 1947-48, he was Director of Foreign Trade Administration for the Greek Government. In 1950 and 1952, he ran for Congress as a Democrat in his home state of Michigan.

Field too was involved with the OPA, first as Boston Regional Attorney and then as General Counsel for the OPA in Washington. He pointed out that "price controls are never popular, but the current ones do not have the public support that the controls had in World War II." More recently, Field was a member of the Board of Selectmen in the town of Weston, Mass.

Motion Attacks War Conduct

(Continued from Page 1)

the local draft board were invalid because they would have required Gibson to serve in a "war being waged by the United States in Indochina without the prior authorization by Congress required by Article I, Sec. 8, Clause 11."

The second ground urges that the Vietnam war was a "violation of the international law of war" as embodied in the Hague convention of 1907, the Geneva Conventions of 1929 and 1949 and the 1945 Charter of the International Military Tribunal at Nuremberg.

If the court declines to rule on either of the above grounds, the motion urges dismissal because the trial of the defendant "would violate Article III, Sections 1 and 2, and the due process clause of the Fifth Amendment of the United States Constitution." In connection with these grounds, the United States Attorney is asked to specify which facts in an accompanying affidavit by Countryman he would controvert. An evidentiary hearing would then be held on those facts.

Such a hearing might well result in a new Pentagon Papers volume, for the affidavit details American involvement in Southeast Asia from April of 1956 ("the United States continued to supply economic and military assistance, including military equipment, to South Vietnam") to the present day.

The affidavit notes that, "Feb. 1, 1964, President Johnson ordered clandestine military operations in Indochina consisting of sabotage and psychological warfare missions in North Vietnam, the manning of fighter-bombers in Laos bearing Laotian Air Force markings by employees of the United States Central Intelligence Agency, and the operation of destroyer patrols in the Gulf of Tonkin."

Some of the potentially controversial allegations of the affidavit include, "Since 1961, as a matter of deliberate executive pol-



Charles Soberman

Professor Vern Countryman

icy, the United States has engaged in the use of herbicides . . . to defoliate and destroy forests, crops and other vegetation in Indochina, with consequent malnutrition of people, animals, and soil."

And, "As a matter of deliberate military policy . . . practiced by United States field commanders and known to and acquiesced in by their superiors including the President of the United States,

U.S. ground troops in Vietnam surrendered captured prisoners of war to South Vietnam military forces for torture, and, in many instances, execution. As a part of the same military strategy . . . U.S. ground troops in Vietnam frequently executed captured prisoners of war."

By agreement, the government must answer the motion by March 19, with argument set for March 26. Countryman did not think it likely, however, that the U.S. Attorney would let pass all of the allegations of the affidavit. Countryman refused to comment on the possible length of an evidentiary hearing exploring all the issues raised by his affidavit.

Countryman was appointed counsel for Gibson last December by Federal Judge Charles E. Wyzanski '30, with directions to challenge the constitutionality of the war. Several students aided his research into the issues which culminated in the filing of this motion, including Donald M. Solomon, 3L, Steven L. Landers, 3L and William O. Luck, 2L.

By Kermit R. Kubitz

BSA Presents Movies

The Board of Student Advisers this week began a Free Film Series of creative shorts and documentaries for the Law School community.

"It's all free because I'm getting everything free," said Mark I. Baseman, 2L, the BSA member who initiated the program. Baseman is selecting most of his films from the Locke Film Library of the Graduate School of Education and the Boston and Cambridge public libraries, so there is no rental charge for the films. The Dormitory Council has lent the BSA its film projector also without charge. Baseman noted that the Law School does not own a projector.

Baseman sees the films as "an educational supplement. Some will be more law-oriented than others." He adds that "there

just aren't many up-to-date films on law per se."

The series opened Wednesday with W. C. Fields in "The Barber Shop", "The Ballad of Crowfoot", about the Indians of Canada's West, and "Huelga!", a documentary on the Delano grape-pickers' strike.

Films scheduled for the future include "Night and Fog" by French filmmaker Alain Resnais; "Summerhill" narrated by British educator Alexander S. Neill; "Rhinoceros", a condensed animated film of Ionesco's play; "That's Me," one of Alan Arkin's first movies; and "Salt of the Earth," about a strike in a Spanish mining town.

The films will be shown every Wednesday in Pound 107 from 5:30 to 7:30 p.m. Announcements will appear six days in advance in the *HLS Adviser*.

Council Discusses Harkness Cutbacks; Pool Table Coming

By Pat Connolly

Services at Harkness Commons were the chief topic at last Monday night's meeting of the Law School Dormitory Council.

The Council acknowledged that rising prices and rising labor costs required the closing of the Harkness grill each evening at 8 p.m. It was reported, however, that service may be reinstituted between 11 p.m. and 12 midnight. Also in store for the Hark is an experimental extension of the serving of breakfast until 10:30 a.m.

A pay pool table will shortly be available in Holmes Hall. Pass keys for its use will be available (in exchange for bur-sar's cards) from all the resident assistants and from one Dorm Councillor in each hall.

In other business, the Council defeated a motion to appropriate \$300 for a spring party for itself and the resident assistants. Thirty dollars was appropriated, however, for a meeting between the Dorm Council and the still to be selected resident assistants for 1973-74.

Finally, a resolution was passed stressing the illegality (and undesirability) of placing un-posted mail in students' mail-boxes, a practice which has not been uncommon of late. Also, the possibility of extending the coffee house in Harkness to Saturday nights, so as to operate in conjunction with the movies, was discussed, but further discussion was deferred until the next meeting, March 19.

Holmes Lectures

Professor Francis A. Allen of the University of Michigan will give the Oliver Wendell Holmes Lectures March 13-15 at 8 p.m. in Ames Courtroom on "The Crime of Politics: Political Dimensions of Criminal Justice."

Kitagawa, Japanese Law Prof, Will Teach at HLS Next Year

A Japanese legal scholar who has written extensively in Japanese, English, and German on Japanese civil law and the comparative law of contracts will serve next year as Visiting Professor on the Mitsubishi endowment. This endowment was created in September when the Mitsubishi Corporation of Tokyo gave the Law School \$1,000,000 to be contributed over a five-year period.

Zentaro Kitagawa, a 40-year-old Professor of Law at Kyoto University, will teach *U.S.-Japanese Contract and Sales Problems* in the fall and a seminar on *Japanese Legal Institutions* in the spring with Professor Jerome A. Cohen.

Cohen met Kitagawa last year when Cohen was a Visiting Scholar at Doshisha University in Kyoto. According to Cohen, Kitagawa is "unusual in that he can teach in both German and English as well as his native language." Kitagawa, says Cohen, "has a broad interest in the sociology of law as well as in legal craftsmanship and legal technicalities. He was very successful when he taught at the University of Washington [in 1969-70]; we're very lucky to get him."

Kitagawa, with University of Washington Professor Warren L. Shattuck, has written a casebook on *U.S.-Japanese Contracts and Sales Problems*, which he will use here next fall. According to Cohen, "he wants another run-through with American law students" before publishing the casebook.

Kitagawa received his LL.B., LL.M., and Ph.D. from Kyoto University, the last in 1961. Since then, he has been a member of Kyoto's faculty of law, with frequent sojourns overseas for teaching and research. In addition to his stay at the University of Washington, he visited Harvard and a number of other American universities briefly in early 1966 and has visited at Munich Univer-

sity, Freiburg University, and the Max Planck Institute for International Patent Law at Munich on German and Japanese scholarships.

Harvard Law School has an ongoing series of exchanges with Kyoto University. According to Cohen, two other Kyoto law professors have recently been to Harvard: Yasuhei Taniguchi, who was Visiting Scholar in 1970-71, and Shigeaki Tanaka, who is here as a Visiting Fellow this year.

Kitagawa will teach at Harvard from September 1973 through the end of March 1974; he will spend the remaining months of his leave from Kyoto visiting in Germany.

According to Cohen, the \$1 million endowment which Mitsubishi gave to Harvard in September will be used to support "a series of visitors until we're ready to make a more permanent appointment."

Jaffe to Preside In School Case

Professor Louis L. Jaffe has been appointed a hearing examiner by a federal administrative law judge in a case involving the desegregation of the Boston public school system.

Administrative Law Judge Lawrence M. Ring ruled last Friday that Boston is operating a de jure segregated school system in violation of the 1964 Civil Rights Act, and is in danger of losing eight million dollars in federal funds.

Jaffe will serve as a hearing examiner in a reconsideration of racial imbalance by the state education board. The Byrne Professor of Administrative Law said Tuesday that hearings would commence March 19, and last about a week. He said the hearings would not interfere with his classes.

"I'll just adjourn the [hearing] meetings to teach my classes," he commented.

Russian Urges Right to Exile

By Karen Bier

A Soviet physicist who is a co-founder of the Moscow Human Rights Committee has called for the international right of a convicted criminal to choose permanent exile from his homeland in preference to punishment by that country, in an article in the latest issue of the *Harvard Civil Rights-Civil Liberties Law Review*.

Valery Chalidze, a prominent member of the Soviet democratic movement, was himself stripped of his citizenship last December while on a trip to the U.S. He has remained in this country since

ible in cases where the state has "distinctive criminal laws," such as the Soviet prohibitions against voluntary surrender to the enemy, and private trade for profit.

Chalidze's work also focuses briefly on the political prisoner and the hope that these criminals will be given "freedom to depart," with the parenthetical qualification, "unless they [Soviet authorities] decide even sooner to discontinue such trials."

The *CR-CL Law Review* editors introduce the essay with the suggestion that "parallels in the United States abound," for exam-

stresses that while Soviet law recognizes "retribution as the basic aim of punishment," the "idea of granting freedom of emigration to convicted criminals" does not violate the "theoretical background" of Soviet criminal legislation because it preserves the aim of social defense. Berman interprets this to mean that, under Soviet law, punishment aims at retribution, in that "it hurts"; but that "its purpose is not retributive — its purpose is not to hurt — the purpose of the hurting is to safeguard social interests."

With respect to voluntary exile of political prisoners, Chalidze buttresses his position with the argument that political trials "do not enhance the prestige of the U.S.S.R." in the "eyes of those who would like to view the Soviet Union as a rather liberal State."

He writes, "Trials, with indictments for so-called anti-Soviet agitation, for dissemination of what the court terms knowingly false and vicious inventions defaming the social and State system, evoke a special concern in the West since there such activities are considered the normal public exchange of opinion."

Volume 8, Number 1 of the *CR-CL Law Review*, with Chalidze's article, was released earlier this week. Copies are available at the publication's office in the basement of Langdell Hall.

Dissident asks right to banishment Rather than punishment for criminals

then on a lecture tour. Chalidze was not seeking political asylum on the trip, and would like to return to the U.S.S.R. whenever possible.

Although Chalidze has championed the cause of Soviet political prisoners in statements here and through his former position as "executive" of the Moscow Human Rights Committee, the article does not deal primarily with the question of political exile. Rather, his essay suggests the alternative of banishment for all convicted criminals, providing another country would accept such persons. This would mean that banishment would be most feas-

ible in the cases of "war protesters" who flee to Canada without having "had their day in court." In a comment following the Chalidze article, Law School Professor Harold J. Berman explains that the Moscow Committee is a "'creative association' of persons dedicated to the cause of human rights" which "disavows political activity of any kind." According to Berman, the Committee states that "its activities are directed solely to upholding Soviet law."

Chalidze argues the case for voluntary banishment of convicted criminals within the framework of Soviet legal theory. He

Apartment insurance, in a low-cost package.

Our single, low-cost coverage protects all your personal property, including credit cards. And not just in your apartment, but world-wide.

W. T. Phelan & Co.

Insurance Agency, Inc.

11 Dunster St., Harvard Square (next to the Holyoke Center).
876-0876. Representing Aetna, Travelers, Hartford.



\$6

Rent a Volkswagen
Per Day + Mileage

Lowest Rates In
Harvard Sq.

Compacts - Sports Cars - Sedans
Station Wagons - Small Vans
Bicycle and Ski Racks Free

491-7600

106 Mt. Auburn St.
At the Coolidge Bank

The Sated Gourmet: Circling the Square

By Mark C. Rutzick

There's probably only one spot in the entire world where 34 restaurants are located in a three-block radius. It's not New York, though some blocks come close; it's not Paris, which is just as well for mind and wallet; it's not London, though Soho gives it a run. In fact, it's none other than Harvard Square, and no serious gourmet (even self-nominated) can ignore its multifarious delights.

By now the reader (glutton though he or she be) has had an ample chance to explore the mitigated offerings of the upper Mass. Ave. kitchens. Do not despair—Harvard Square should keep us all busy until summer.

As with our previous endeavor, *'s refer to quality of food, and +'s refer to ambiance. The prices indicated refer to average complete dinners, without liquor.

Casa Mexico **1½* +++ 75 Winthrop. Hidden in a basement off Boylston St., the only Mexican restaurant in the Harvard Square area offers excellent platters and specialties, featuring a standard Mexican menu. If you like Mexican food you'll enjoy it; if not, what can I say other than to offer my sympathy? Though the prices are something of a rip-off in light of the cost of these dishes in Mexico, it's tough to go to Mexico City for dinner, and this is the best we can do. Bring your own wine, and watch the chili dip before dinner. \$5.

The Spaghetti Emporium *+ ½+ 33 Dunster. Part of a nationwide chain of spaghetti "mills", this establishment offers its title dish and not much else. There is little to differentiate one sauce from another except color, and that is sometimes misleading. Really, it's not so bad, if you're in a mood for spaghetti. In later years you can at least enjoy a "Remembrance of Things Pasta." \$3.

Henri IV ***1½* +++ 96 Winthrop. The best French restaurant in the Square, indeed the best restaurant in Cambridge to my experience. A magnificent place to dine, in the fullest sense of the word. The sole Veronique is exquisite, the duck superb. In fact everything is great—what more can I say? Housed in a small building in an out-of-the-way corner of the Square (a paradox, I know), it fills up fast and reservations are a necessity weekends. \$7. Closed Sunday.

Henri IV: 'best French restaurant in the Square' Ferdinand's: 'a strong second'

Ferdinand's **1½* +++ 121 Mt. Auburn. Were it not for Henri IV, this would stand out as the best French restaurant in the Square. As it is, it's a strong second. The soft-shell crab was quite good in a delicious butter sauce, the duck good but not great. Its desserts are sadly unimaginative. A very pleasant, relaxing atmosphere. \$7.

Chez Dreyfus. **+ 44 Church. Bringing up the rear in the Square's trilogy of French restaurants, Dreyfus is surely adequate, even good, but still the poorest of the three. The onion soup was fair, the salad somewhat bland, the entrees satisfying but not inspired, the atmosphere pleasant but unmoving. Still, if the other two are full or closed, Dreyfus won't do wrong by you. \$7. Closed Sunday.

Young and Yee **+ 27 Church. Another fierce competition around the Square is between this Chinese restaurant and the Hong Kong down the street. Ultimately, I just can't decide which has better food. Young and Yee's curried beef and bean-sprouts is terrific, their lo mein with oyster sauce a sensation, but their sweet and sour only fair. The atmosphere is rather utili-

tarian (at best), and the service is very quick. \$2.50.

Hong Kong **++ 1236 Mass. Ave. Those into dark rooms with Oriental decorations will prefer this to Young and Yee, but the food is no better and you pay for the atmosphere. Their sweet and sour is excellent, the lo mein excellent (but not quite up to Young and Yee's in quality or size), the chow mein only fair (but that goes for chow mein in general). Warning—the menu

on the second floor charges slightly more for everything than its identical counterpart on the ground floor. Save your money and eat downstairs. \$3.

Grendel's Den *1½*++ 1 Winthrop Square. Located in a former Harvard College eating club, this is a nice place to eat, but not such a good place to eat. The curried lamb is pleasant, and the beef fondue fine (as usual) but their vegetables are bland at best. The menu is quite varied as to national emphasis, with a nice cosmopolitan effect. \$3.50.

Iruña *1½*+ 56 Boylston. It's curious how so little can be made of so much. A Spanish restaurant should be a magnificent visual and culinary experience, but the Iruña fails in both ways. Nothing could possibly be duller than their absolutely blank walls, and their food is only somewhat better. The national dish, paella, here is a bland concoction of seafood, chicken, sausage and rice. Appetizers are their strongest offerings—the artichokes and the shrimp in garlic are both tempting. But generally this is the biggest disappointment in the Square. \$4.50.

(Continued on Page 15)

Words are not enough

The recommendations of the Committee on First Year Evaluation and Related Matters represent the most sensitive and imaginative thinking around the Law School in recent memory. The student-faculty group has surveyed a wide range of complaints and urged a series of important changes.

The committee's proposals for increased communication and contact between students, especially 1Ls, and the faculty cut directly to the heart of the educational process as it should be. Even a brilliant faculty, as ours is reputed to be, is worthless if it never comes out of its brick-and-glass tower except for set class hours. We, after all, pay the faculty's salaries; for our money we deserve more than a perfunctory performance. The committee report suggests that at least some faculty members appreciate this need, and it should be hoped that increased contact could begin to occur without formal administration action.

The committee's suggestions for a 1L orientation program are long overdue, and little testimony is needed to establish that action should begin at once to implement such a program for next year's entering class. Both faculty and upperclass help should be sought, and a structured series of events and meetings should be adopted.

The proposal to complete the first semester before Christmas, thus enabling students to have a real vacation between semesters, should also be acted on at once. As the RECORD suggested some weeks ago, such a change can at little cost to the Law School drastically improve the quality of life for the student body. Next year is not too soon to make this change.

The idea of conducting the first-year Ames Competition between semesters in January has considerable merit, but should be reviewed in light of the problems of concentrating 500 1Ls in the Library at one time.

The proposal for a central "social location" is the most novel and perhaps the most significant for its recognition of the gap between social contacts here and those at most normal schools. Around here, no one ever seems to know or care very much about problems of a general interest to students, and there is virtually no sense of togetherness or communion among us. The lack of a central place for students to go for information or talk contributes to this problem, and the committee's proposal should receive immediate attention.

The test of the committee's ideas comes not in their advocacy but in their implementation. Words without action have no value, and only when the changes proposed by the committee come into being will the effort to create a better Law School begin to show results. Immediate action is in order.

HARVARD LAW RECORD

MARK C. RUTZICK	Editor
DANIEL M. TAUBMAN	Editorial Manager
KERMIT KUBITZ	News Editor
DAVID J. COCKE	Senior Editor
PAUL J. WEINER	Senior Editor
GARY L. RUBIN	Associate Editor
ROBERT FLANDERS	Arts Editor
CHARLES SOBERMAN	Photography Editor
TERRY COLEMAN	Business Manager

Staff: Bob Brown, Fenno, Paul Gutierrez, Phil Spector,
Frank V. Calaba, Karen Bier, and Pat Connolly.

Secretary: Elaine Burke

Fenno

Fenno sighed remorsefully and lifted his head from his casebooks. Another sigh. Never had he felt so strongly about a colleague. Never had the study of law become so muddled by the mere presence of a classmate.

The library in Langdell was dim as usual yet was somehow made brilliant by that law student's face. Standing quietly, thumbing through the Massachusetts General Laws Annotated, Fenno saw the future Ms. Supreme Court Justice or "Justress" as it were. Her hair flowed about her shoulders like the silken ebony robe of the Great Learned Hand. Her lips were redder than the eyes of a guilty defendant and would surely speak soft words of justice. Her eyes sparkled like Big Al's forehead, her skin was smoother than Professor Miller's technique. Her profile would seem to indicate that she was hiding Williston's Treatise beneath her blouse. Or at least Volumes 1 and 2, Fenno thought.

Another sigh.

Fenno imagined the two of them, budding lawyers, poring over class material together, or maybe even comparing briefs!

An even *bigger* sigh. Fenno dreamed of them "courting", watching "Perry Mason" reruns while dining in a quiet corner of the Hark. Imagine, Fenno thought, they would watch them all: "Dragnet", "Owen Marshall", "Judd for the Defense", and all the while counting the defendants they would get off or challenging the admissibility of all that evidence. Wouldn't it be great?

Of course, Fenno explained to himself, he knew with that type of woman he would have to lay down the law with her quite early, even though he had been trying to taper off his male chauvinism. Suddenly he shuddered at the thought of the aggressive backlash he might encounter. Oh well, Fenno thought, let's face it, he was a sexist.

But who was he to let sex get in the way of law school? Yet, sex did have its place but, interfere with his studies? No, Fenno wasn't going to take that lying down.

Still, learning the law had greatly affected him and had permeated his mind. For even as he fancied himself kissing her goodnight at the door and slipping on the "Welcome" mat, he could only think of suing her for every cent she had!

Letters to the Editor of The RECORD

Prisoners of War

To the Editor:

The first large groups of Americans have come home from the prisoner-of-war camps of Indochina. Despite the fact that many have endured years of isolation and captivity, they have returned unbroken in spirit, with heads held high.

Every American should be profoundly grateful for the inspiring example set by these wonderful men. In a time too often beset by uncertainty and cynicism, these proud soldiers offer living proof of the strength that flows from belief in God, love of country, and devotion to duty.

They have served their country well. They may yet serve it anew by helping us really to believe again in ourselves and in America, a nation that, for all its problems, is still the America that Lincoln called the last, best hope of all mankind.

To express our thanks we might paraphrase the moving words of Navy Captain Jeremiah Denton, Jr. and say, "We are grateful to have been served by you during these difficult times. We are joyful for the day of your release. God bless you, and all the brave men who served with you."

J. Ken Davis, Jr., 2L

'Arrogant Conceit'

To the Editor:

I, for one, am fed up with pedantic putdowns to the effect that mere students are incapable of evaluating the caliber of their instructors. Who is better equipped?

Law students are among the ultimate consumers of higher education. For most of us law school is the culmination of at least sixteen years of close association with the learning process. With that background we should be able to discern the clarity of thought, organization, rapport with the class, and that extra measure of inspiration which lead to a meaningful educational experience and are the hallmarks of a truly fine instructor.

On the other hand, we should be equally adept at spotting the uninspired, the doctrinaire, and the dogmatic. We should be aware of the arrogant conceit of those who place a higher value on their own opinions than anyone else's. We should sympathize with the closed mind and shun the boring.

Perhaps we are incapable of textbook reviews, but our undergraduate careers should have vested in us sufficient appreciation of such qualities as orga-

nization, style, consistency, and readability to sort the worthwhile from the banal. In any event, the caliber of the teacher determines the value of the text: a good teacher enhances a poor text; a bad teacher detracts from a good one.

To conclude, who is in a better position to know whether a student's educational needs are being fulfilled than the student himself? If he does not supply the necessary feedback on deficiencies, who will? There is nothing wrong with Mr. Spector's argument that it would be beneficial to the law school, students and teachers both, to institutionalize the "grapevine" which provides the student a method of ascertaining who the good teachers may be.

P. Courtney Hunt, 1L

Law Notes

The Harvard Law Wives will hold a Monte Carlo night of gambling, auctions, and games tonight from 8:30 p.m. to midnight at Lincoln's Inn, 44 Follen Street. The evening will feature several professors dealing at the card tables, including Professors Arthur R. Miller and John P. Dawson (dealing Blackjack, of course).

Gambling chips may be purchased during the evening and used to amass a small fortune. Later in the evening an auction of prizes donated by local business establishments will be held and gamblers may use chips they have won to bid on prizes. Proceeds will go to establish a new community residence for retarded adults.

Admission is \$1.50 for a single and \$2.50 for a couple. Tickets may be purchased in advance by calling 492-7079, or in a limited amount at the door.

This year's Law School Show, *Praise the Law and Pass the Erudition*, an original musical satire of life at the Law School, will be playing March 16-18 and 22-24. Tickets at \$2.50 or \$2.00 with a student I.D. are available at the Holyoke Center ticket office, the Langdell receptionist's desk, the Hark, and at the door.

Noted black attorney Howard Moore, Jr. will discuss "Political Trials and Black Defendants" Thursday, March 15, at 8 p.m. in Lowell Lecture Hall. The lecture is sponsored by the Black Law Students Association, and will cost one dollar.

The Lincoln's Inn announces the election of Paul D. Gutierrez, 1L, and Peter L. Muhs, 2L, as Co-Chairmen of the Board of Governors for the 1973-1974 academic year. Other recently elected members of the Board include: John H. Enteman, 1L; Richard K. Willard, 1L; Ned Young, 1L. Also elected were: Donald A. Bacek, 2L; Stephen B. King, 2L; Philip J. MacDonnell, 2L; Joan M. Markey, 2L; Hal M. Mickelson, 2L; and Steven S. Rosenthal, 2L. Elected Social Chairman at the Inn's regular meeting was Robert A. Schwed, 2L. Other members of the Social Committee are Edward M. Dunham, 1L, Jeffrey N. Drummond, 1L, and Steven D. Gordon, 2L.

Meserve Supports Federal Legal Aid

Robert W. Meserve, President of the American Bar Association, has warned Congress and the Nixon Administration that legal representation for the poor is being seriously jeopardized by debate over the future of the Office of Economic Opportunity's legal services program.

Continued delay in charting a clear course for federal legal services "will seriously damage the program and perhaps critically obstruct the continuation of the legal services movement," Meserve said in a statement released late last month. "The continuation of the program in its current posture must be viewed as a most serious crisis by all concerned."

The House Subcommittee on Equal Opportunities has been investigating proposals to create a national legal services corporation to administer the legal service functions performed by OEO.

Meserve said the ABA supports the concept of independent legal services, but has not endorsed any of the specific bills proposing service corporations. "While we insist on policy-making on a national basis," he said, "we would recommend continued consultation with state and local governments and state and local bar associations."

The Boston Consulting Group

ONE BOSTON PLACE • BOSTON • MASSACHUSETTS 02106

Life Cycle of the Industry Leader

Companies who are pioneers develop great technical expertise. This is very valuable to their customers, particularly in the early stages of the development of the customer's own expertise. This is a source of great pride. It is considered to be proof of leadership. This reinforces emphasis on technical development. Technical pride leads to tailoring each order to the optimum specification.

This in turn leads to the evolution of a manufacturing organization which is geared to produce a very wide variety. Likewise, the marketing organization seeks out the unusual and the technically difficult orders where this kind of flexibility and excellence offers the greatest competitive advantage. This is where the wide profit margins are.

These things reinforce each other. The company's leadership and success reinforce the corporate culture. They preserve and strengthen this pattern of competition.

Almost all original leaders developed this way. They became leaders and prospered because they did. It is necessary. In the early stages of every product and every industry, customers must have this kind of service and resource. The leader is rewarded handsomely because his greater experience and scale result in proportionately lower costs, i.e., the experience curve effect.

However, as the market becomes very large, the leader comes under price pressure from much smaller and less well equipped competitors. The problem usually appears first with the largest and most knowledgeable customers. They have become expert themselves. They buy product, not service.

Such sophisticated customers do not need the full range of technical services and manufacturing variety that are available. They begin to find smaller, less competent suppliers who can give them an acceptable product at a lower price. At this stage, such competitors are rarely profitable. However, since they are able to concentrate their experience in a particular sector, their costs come down rapidly in that sector and their competence in that sector increases rapidly.

This competition poses a serious problem for the original leader. Large markets always have a number of sectors that differ materially in their needs and characteristics. The costs of serving these sectors differ widely. It is often very difficult to price in a fashion which reflects the differences in services actually rendered or available.

If prices are high enough to cover the cost of the most expensive services available, then large portions of the total market will be lost to the specialized competitors who provide limited services and price accordingly. These prices are too low to cover costs for those customers who need and use the specialized service. A price midway between the two is worse than either, since it has the handicaps of both.

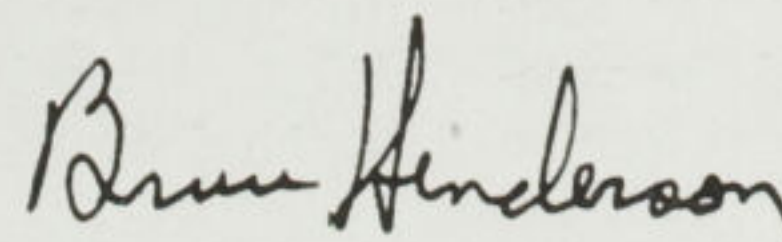
Under these conditions, market leaders usually try to price to preserve their average margin. This accelerates their margin shrinkage, because they tend to lose their volume base on price, but increase their proportion of high service, high cost, technical output.

This trend, if continued, changes the whole character of the leader with respect to costs, product characteristics, price policy, growth rates and kinds of market sectors served. He becomes a high price, high cost, low volume specialist. If the problem is not recognized and dealt with explicitly, it leads first to unprofitable business and then to inability to compete except in low volume, high margin specialties. By then, survival requires specialization in certain sectors and abandonment of the balance.

If the problem and its roots are recognized early enough, however, the leadership, the volume and profitability can be protected and preserved. But for this to happen, major changes in policy are required. These changes are to policies that are fundamentally different from those that brought early success. This is where most pioneers lose their leadership.

It is a rare pioneer or industry leader that successfully makes the transition from generalized excellence across the board to focused competition segment by segment against specific competitors. There are too many forces that work against this adjustment.

The health and life cycle of the pioneer are determined by two factors. The first is his ability to recognize significant differences in customer segments and optimize his cost of serving each segment separately. The second is his appreciation of the cost value of experience that is common to more than one segment.



Bruce D. Henderson

Perspective # 113

BOSTON • LONDON • MILAN • PARIS • TOKYO

Book Review

Nizer Recreates Rosenberg Spy Trial

By Robert Flanders

THE IMPLOSION CONSPIRACY, by Louis Nizer. Doubleday and Co. Garden City, N.Y. 1973. 495 pages. \$10.00.

Louis Nizer has captured all the high drama and tragedy of Julius and Ethel Rosenberg in this, his ninth book. The famous author of *My Life In Court* and *The Jury Returns* has lost none of his flair for courtroom theatre as he retraces the lives of the principals, Julius and Ethel; their involvement with Communism; their betrayal by Ethel's brother, David Greenglass, the man allegedly responsible for abducting the secret of the atom bomb from the Los Alamos plant in which he worked; the ordeal of the trial and endless appeals of their counsel, Alexander and Emanuel Bloch; and finally, their all-too-graphically described execution.

Although Nizer has done a thorough research job, it is most evident that his purpose is not merely an accurate recreation of the Rosenbergs' trial. Rather, Nizer attempts a critical scrutiny of the trial tactics and mistakes of the adversaries, and through them tries to reach an understanding of the American judicial system. He notes the great and perhaps inevitable emotional involvement of Emanuel Bloch with his clients, going so far as to babysit for the Rosenbergs' children, and Nizer speculates as

to how that may have lessened the effectiveness of the defense. He also recalls Alexander Bloch's attempt at the Steuer Stratagem, named after the famous trial lawyer who used it so devastatingly: suspecting that Ruth Greenglass' testimony was a carefully rehearsed and memorized speech, Bloch tried (and very much succeeded) to expose the rote, staccato quality of her testimony by asking her to repeat her direct examination on cross. Yet the effect of this dangerous ploy was somewhat muted by Judge Irving Kaufman's sustaining of an objection and cautioning Bloch that any verbatim repetition would have to wait until a comparison of the testimony could be made.

The role of Judge Kaufman in the trial was of course crucial. Again and again he intruded into the examination of the witnesses, often with the result of dissipating an effective line of questioning by the Rosenbergs' counsel. It seemed whenever they were scoring heavily on cross-examination, Kaufman would butt in with what he thought to be a clarifying question, but which really was an effort at redirect. Naturally, this was very frustrating to the defense, and

throttled many of their attempts to demonstrate the venality of the prosecution's witnesses.

As much as the Rosenbergs, it is American justice which is on trial in *The Implosion Conspiracy*. Nizer's language and style are always entertaining, and they abound with a laconic homespun wisdom that is instructively delightful, if sometimes hardpressed, as in this description of Alexander Bloch: "he practiced law by the seat of his pants, not by the books in his library. He did not fail to see the forest of practical solution because of the trees of technical involvement." Or in this explanation of the prosecutor's homey, sincere approach: "Like so many persuaders, who lack the voice and eloquence to set the atmosphere around them ablaze until the flames jump over the jury rail and set fire to the conviction of the jurors, he adopted the opposite technique."

The Implosion Conspiracy has all the voice and eloquence of Louis Nizer. It is to be especially valued for its insightful analysis into the trial tactics of both sides, as well as the wealth of experience and dynamism of its author.

Record Names Rutzick Editor

Mark C. Rutzick, 3L, has been named editor of the RECORD for the remainder of the term. Rutzick, who has served as News Editor of the paper since January, succeeds Paul J. Weiner, 2L, in accordance with a December decision of the RECORD board of directors. Weiner will complete the term as Senior Editor.

Rutzick, a native of Annandale, Virginia, is a 1970 University of Michigan graduate with a degree in economics.

Also assuming key posts this week are Daniel M. Taubman, 2L, who becomes Editorial Manager;

and Kermit Kubitz, 2L, now News Editor. Taubman is a former News Editor of the RECORD, and Kubitz has served the paper in an editorial capacity since spring, 1971. Gary L. Rubin, 1L, formerly Managing Editor of *The Cornell Daily Sun*, has been named Associate Editor.

Remaining editorial positions will continue to be filled by David J. Cocke, 3L, Senior Editor; Terry Coleman, 3L, Business Manager; Charles Soberman, 3L, Photography Editor; and Robert Flanders, 2L, Arts Editor.

SUNDAY BRUNCH

10a.m. - 2p.m.

In the
Harkness Commons
Dining Room

'Representation Without Taxation'

By Daniel M. Taubman

More than four years ago, Ralph Nader '58 returned to his legal alma mater and sounded a clarion call for the establishment of more public interest law firms to counterbalance the "power brokers" of the large corporate law firms.

"Official Washington would never be the same again," Nader predicted, "if you had several hundred lawyers working the other side of the fence — working to force disclosure, ripping aside

The Backbencher

the curtains of secrecy to instill a professional quality of representation of the public in the administrative process . . ."

Yet today, the "power brokers" seem as influential as ever, even if they sometimes have to pay as much as \$20,000 annually to attract talented law students. Each year, representatives of hundreds of private law firms eagerly visit Harvard Law School, knowing they will be able to hire their choice of law students in a highly competitive market. At the same time, only a handful of attorneys from public interest law firms, legal services offices, and state and local governments make the journey to Cambridge.

Part of the reason for this is of course financial. Many public interest groups either don't have the money to visit law schools like Harvard at all, or don't know their summer and permanent job requirements until the spring because of budgetary constraints.

At the same time, as two Law School students — J. Stuart Lemle, 2L and Steven L. Landers, 3L — have written in a short paper soon to be published in the ABA's Pro Bono Report, "the law schools themselves bear heavy

responsibility for discouraging many students from pursuing careers in the public sector.

"Not only does the traditional law school curriculum and environment militate against student pursuit of such careers," they write, "but equally important, law schools fail to adequately inform students of the public interest opportunities presently available to them."

Until recently, Harvard was one of the worst offenders in this area, offering virtually no guidance or assistance to those interested in pursuing careers in some form of public interest law. Its recent willingness to consider the establishment of a new public service placement office is encouraging. Such an office, together with a planned directory of public interest employers — a sort of armchair liberal's answer to Martindale-Hubbell — should go far towards assisting students who do not wish to "go the corporate route."

Yet, for all the Law School's avowed interest in redressing the present imbalance, it is apparent that the present reforms are not enough. A counter-placement office may be of little use if public interest employers cannot afford to come here. And the initial interest in public sector employment which entering students manifest, according to a recent survey conducted by the Women's Law Association, will continue to

diminish so long as few public interest jobs are readily available.

The former problem can perhaps be ameliorated by the Law School's imposing a small tax on each law firm, the proceeds of which could be used to defray the traveling expenses of public sector employers. If each law firm were to contribute one dollar per student interviewed, or \$10 per interviewer per day, the Law School would realize a substantial amount of money which it could use for these purposes. And it is difficult to believe that law firms would not accept such a proposal, inasmuch as they are now receiving a substantial benefit (e.g., use of interviewing rooms, computer processing of prospective interviewees) at no cost. This now constitutes "representation without taxation."

Furthermore, to the extent that representatives of public interest organizations are able to come to the Law School, perhaps fewer students will side with the "power brokers" of society. And, perhaps in the long run, there will be more public interest jobs and less difficulty in gaining access to those which do exist.

As Lemle and Landers argue, law schools "must now respond to a growing concern in serving the larger public interest." Only when they do will Nader's hopes for offsetting the balance of corporate power be realized.

No hair too long or too short for Gino & Mike's expert service.

Gino and Mike Barber Shop

Opposite Holiday Inn
ONE BLOCK FROM
LAW SCHOOL

1638 Mass. Ave., Cambridge
354-9790

We do razor styling.

Poly Clean

**COIN-OPERATED
DRY-CLEANING**

Open 7 a.m. to 10 p.m.

7 days a week

1685 Mass. Ave.

(between Harvard
& Porter Squares)

Suits Challenge Bar Exams Jackson Quintet

Tops A League

(Continued from Page 1)

Louisiana State Bar Association. That suit was filed by graduates of the Southern University Law School.

The suits are being loosely coordinated by Jones, who is co-counsel in three suits, and raise objections to the bar examination process on three grounds. First, it is alleged that the bar examination does not really measure legal competence and is arbitrary in its choice of what to test. Even in states that use some portion of the multi-state bar exam, the weight to be allocated to the multi-state and local portions of the examination is left to the discretion of the state.

The second ground for challenge is the existence of mechanisms such as the required photograph or space on the application for a notation of race, that allow the possibility of discrimination. The South Carolina suit alleges that the bar examiners know the identities of the applicants, a litigation strategy which Jones criticized as "dangerous, because there exists no way of proving it."

The third ground alleged is the denial of due process resulting from the lack of review of a failing grade or even an indication

of areas of weakness. The only recourse a failing applicant has is retaking the exam limited by law to two or three retakes.

The first case to come to trial will probably be Alabama's, since the courts will hope to deal with these issues before the bar tests in June and July. Some of the named plaintiffs in the suits have withdrawn after recently passing the bar. This includes Philip Lee, '70, a Virginia plaintiff.

Commenting on the uses of the multi-state bar exam, Joe E. Covington, S.J.D. '52 of the University of Missouri Law School, and Director of Testing of the National Conference of Bar Examiners, said, "I think it's true that people who are preparing the multi-state are probably experienced people in the field, more so than those who draw up the state examinations. Sometimes they shift around and they aren't experienced in the field."

The multi-state bar exam has only five subjects, each under the supervision of three law professors and two bar examiners. Most states have 11 to 22 subjects, while Pennsylvania comes closest to the multi-state with six. Pennsylvania revised its own examination in response to a report of the Philadelphia Bar Association. The result is reported in 44 Temple Law Quarterly No. 2 (1971).

The possibility of a three-way tie for first place in the intramural basketball A league was foreclosed on the final night of play this week as the Jackson Five convincingly defeated the always tough Thundering Herd 60-45. The victory gave the Jackson Five an undefeated season and sole possession of first place going into the all-league play-offs.

The Five showed its desire to resolve any doubts about its superiority by taking charge of the game early. Fine outside shooting by Jerobim Gilbert, Clint Birch and Sherman Stimley allowed the Five to take an early lead. Meanwhile pivotman Gregory Tillman controlled the boards and maintained law and order defensively for the Five.

The tight ball-hawking defense of Jim Gray and the rest of the Jackson Five kept the Herd offense from running its usually effective patterns. Some great outside shooting by Rodney Wulff and short shots by Rich Weisaupt kept the Herd within potential striking distance, but the Jackson Five made it clear that their undefeated season was not going to suffer any last moment setbacks.

In another important A league game, the Divinity School Saints defeated the Gargoyles and thus gained a berth in the all-league play-offs. The game was fast and hard-fought, and the Gargoyles relied on outside shooting (Elliot Silverstein, Mark Strouse, Brook Baker) to gain a 10-point lead by half-time.

However the Saints came on strong in the second half, outscoring the Gargoyles by 17 points in the first 12 minutes, as John McCarthy controlled play under the basket and Allan Kulp continued scoring the long bank shots which are his trademark, as the Saints scored a 64-56 win.

Sated Gourmet Circles the Square

(Continued from Page 9)

Buddy's Sirloin Pit * $\frac{1}{2}$ + Brattle St. Before its price jumped last year from \$2.11 to \$2.45, the "sirloin" steak special here was one of the best buys in town. For the latter amount, the hungry diner gets a rather charred, heavily tenderized steak, baked potato, salad and "Texas Toast." The atmosphere makes a place like Young and Yee look like an Oriental palace (see above to under-

stand that), but if you get off on assembly-line steak houses, this one is second in the world only to the Best Steak House No. 21 in Ann Arbor, Michigan. \$2.50. Closed Sunday.

Stop. I can eat no more. Though we've only covered 10 of the 34 restaurants in the Square, the rest will have to wait for another, hungrier era. Despair not — the Sated Gourmet will return.

Freund Remembers Brandeis, Frankfurter

By Daniel M. Taubman

Professor Paul A. Freund reminisced last Friday evening about two of his mentors, former Supreme Court Justices Louis D. Brandeis and Felix Frankfurter, in a talk presented to an overflow audience at Harvard's Philips Brooks House.

Freund, who clerked for Brandeis during the October 1932 Term of the Court, said that Brandeis was one of the men he most revered, noting in particular that he was free from pettiness, and that he set an ideal that Freund found impossible to realize himself.

He explained Brandeis' affinity for hard work, and noted that he sometimes wrote literally dozens of drafts in longhand before he was satisfied with an opinion. Brandeis, Freund related, habitu-

ally began work early in the morning, but never worked in the evening because he believed one could not think clearly when tired. The practice among law clerks, by contrast, was to arrive at "a gentlemanly nine o'clock" and work long into the evening.

About 5 a.m. one morning, Freund continued, a surprised law clerk reportedly slid a draft of an opinion under Brandeis' door, only to hear the early-rising Justice retrieve it.

According to Freund, Brandeis always wrote his opinions in his small apartment or in a study upstairs. He never set foot inside the offices set aside for him at the Supreme Court Building, opened in 1935, Freund recalled, because he felt it was too ostentatious. Supreme Court Justices, he believed, should be judged by the quality of their opinions.

The veteran Law School faculty member stated that Brandeis' advice was frequently sought by President Franklin D. Roosevelt. So that Brandeis' advice to Roosevelt would not seem to be an inappropriate communication between the judiciary and the executive, Freund said, Brandeis' opinions went under the code name of "Isaiah reports."

Freund explained that the one word that best characterized Frankfurter was "bounciness." He said that when Frankfurter entered a room his eyes would dart about, surveying the scene, and he would then rush over and engage someone in conversation.

Freund, a former student and later close personal friend of Frankfurter, described the latter as well-read, lively, and interested in attractive women. He noted that "one of the most painful moments of my life" occurred when Frankfurter asked him to participate in his funeral, reciting a passage from *Pilgrim's Progress*.

Freund, speaking at the Hillel-sponsored function, also cited the strong support for Zionism manifested by Brandeis and Frankfurter, both of the Jewish faith.



Charles Soberman

The original musical "Suffragette", written and directed by Joshua M. Rubins, 2L and George P. Birnbaum, 2L, debuted last night at the Agassiz Theatre and will continue weekends through March 24.

ENTERED AS SECOND CLASS POSTAGE, BOSTON, MASSACHUSETTS

RETURN ADDRESS:

HARVARD LAW RECORD
HARVARD LAW SCHOOL
CAMBRIDGE, MASSACHUSETTS 02138

Professional Dry Cleaning
and Shirt Laundry

at

Rite-Way
CLEANERS

KI 7-8008

4 Hudson St., Cambridge

(off 1672 Mass. Ave.)

GET READY FOR
MARCH 17:
THE GREENING OF
AMERICA

SAVENOR'S
LIQUOR MART INC.

100 Kirkland St.

547-7300