

HARVARD LAW RECORD

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TWENTY CENTS

'Missed' Series Call Is a Hot Topic Here 2L Members Announced By Harvard Law Review

By Roger P. Evans

Ed Armbrister, pinch hitter. Carlton "Pudge" Fisk, catcher. Larry Barnett, home plate umpire.

A bunt and a stutter step. A throw skittering into center field. And no cry of "yer out!" at home plate.

Such are the raw elements of a play in Game 3 of the World Series, certain to remain one of the most controversial in Series history.

The furor has spilled over into the halls and classrooms of Harvard Law School. Professor Alan M. Der-showitz's Criminal Law class discussed the call the day following the game. Students debated the play from Dane Hall to the tunnels of Langdell.

The relevant statutory provisions read as follows:

Rule 2.00(a) "Offensive interference is an act which interferes with, obstructs, impedes, hinders, or confuses any fielder attempting to make a play."

Rule 7.09 (1) "It is interference if the batter fails to avoid a fielder who is attempting to field a batted ball or interferes with a thrown ball." (emphasis added).

(Continued on Page 2)

By Susan Gillette

Ten new 2L members of the *Law Review* staff have been selected through the writing competition. They were notified last week. The *Review* then announced, as promised, the names of all its 2L members, without designating which joined the staff in August following selection on the basis of first year grades.

One of the 2L members, Christopher Edley, is the first black to join the *Review* since the 1940's. Three of the 2Ls are women, bringing the total number of women on the *Review* to five.

The number of 2Ls added was determined by the quality of case notes prepared in the competition, according to *Review* editors. The notes were evaluated by *Review* staff and professors.

F. Whitten Peters, *Review* president, said in September that the *Review* would not relax criteria for the

(Continued on Page 9)

2d Reject Heads for Court To Challenge HLS Decision

By Frank E. Sisson

Harvard Law School is facing a second law suit by a rejected applicant charging the institution with violations of 14th amendment rights to equal protection of the laws.

Harvard is one of five Boston-area law schools being sued by legal researcher William L. Donnelly who claims that he is "competent to study law; has demonstrated his proficiency to study law; and is being denied admission into law school for reasons that are totally irrelevant to his competency" (i.e. discrimination as a white male).

Donnelly holds a B.A. from Bentley College and scored 534 on the Law School Admission Test. His claims closely parallel those presented in the suit of Marco Defunis against the University of Washington Law School, the reverse discrimination case which made its way to the Supreme Court in 1974 only to be left substantially unresolved.

The suit brought against the Law School by Kenneth B. Krohn,

(Continued on Page 16)



Professor Lance Liebman

Liebman: Ump Barnett Blew Call R

(Continued from Page 1)

As Dershowitz notes, Rule 2.00(a), on which Barnett apparently chiefly relied, does not state "that the act of interference must be intentional to constitute a violation." The majority view of Dershowitz's class was that "it is not generally necessary to show intent in order to prove violations of sports regulations."

Barnett had averred in a post-game interview that "it was simply a collision. It is interference only when the batter intentionally gets in the way. I signalled the ball was fair and in play. The key thing is that the batter did not intentionally interfere."

Professor Lance Liebman takes strong issue with this statement of Barnett's. Liebman explains, "In legal terms, the question is whether this is a case of an absolute liability crime or a case of a mens rea crime."

A fervent Red Sox rooter, Liebman sees no finding of intent necessary to the disposition of the question. "It's the batter's job to get out of the way," explains the Property professor. "It's simplistic (for Barnett) to say what was going on in Armbrister's mind. He'd have to psychoanalyze him to do that. The bad deed is to interfere with Fisk, not to interfere with the intent of blocking him."

Summing up, Liebman stated, "Barnett blew it!"

A further concern of Liebman's is the lack of a procedure for appeals. In a regular game, noted Liebman, there is a designated chief umpire. In a World Series there is not a senior umpire and all umpires see duty on a rotation basis. Still, Liebman feels that the other umpires should have spoken up at what he believes was clearly an erroneous decision.

Yale Law School professor Robert Winter has been quoted as stating that a "prima facie case for interference" was apparent in the play at home plate.

"Up at Harvard," stated Winter, "they're very literal-minded about this, while we down at Yale are legal realists concerned with social implications — in this case, to be precise, with the fact that the

Red Sox lost."

Liebman is, by his own tongue-in-cheek admission, presently in one of the "most difficult moral crises" of his life. He regards the possible 7th game as a potential "religious experience" and is pondering the weighty question of whether the "1st Amendment right to freedom of religion" would allow him to cancel classes in the event of an afternoon game.

Students Plan Research In Women's Issues Law

By Fairlea Sheehy

A new student group, a "women's issues research organization," is getting underway here this fall. Directed by Susan G. Gillette and Peggy A. Miller (2Ls), the research organization is designed to provide assistance to attorneys and other women's rights advocates as well as research or casework experience for HLS students.

"We really don't expect to be in full swing until next spring," Gillette said. Contact has been made with several lawyers associated with the Civil Liberties Union of Massachusetts (CLUM), the Massachusetts Committee Against Discrimination (MCAD), and the Woman's Law Collective in Cambridge.

The organization will limit its involvement in sex discrimination cases to the Boston area both to control the volume of potential cases and to provide for broader participation in the whole litigation process, according to the research organization's directors.

"We are primarily interested in research involving original

investigatory work or that concerning legislative or regulatory decisions," Gillette said. "We want to get a taste of what a practice involving women's issues would be." Furthermore, encounters with women lawyers can provide role models for HLS students.

The roster of the research group includes about a dozen persons, men and women, most of them 1Ls. "Another dozen or so 2Ls are waiting until the interviewing season is over before they make any significant time commitment," Gillette said. At that time 1Ls will tap the experience of 2Ls who have greater knowledge of law and research techniques in the field.

Most 1Ls will be held off case research until second semester, when they have Legal Methods under their belts and can manage the basics. More 2Ls and 3Ls are needed now to handle projects this fall.

A long-range goal for the research group is the development of a clinical program, for credit, in women's rights cases, operating alongside the research program. "This would require a lot of growth, both in experience and in finances," Gillette said, "but we are sure, and we want to show others, that case work deserving credit can be done in this field."

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Random Thoughts on Good Judges

Ed. Note: This is the first installment of a three part article submitted by the author, a criminal lawyer from St. Paul, Minnesota. The article was published in the November-December 1974 Hennepin Lawyer, published by The Hennepin County Bar Association.

By Jack S. Nordby, '67

Foreword

This article consists, as its title intimates, of random thoughts. "Random" is defined by the best authority¹ as: "proceeding, made or occurring without definite aim, purpose or reason." Like any scholarly study in a learned journal, it is presented with the utmost earnestness and therefore should be read, if at all, only for entertainment. Dr. Samuel Johnson (1709-1784) (who, to the law's enduring loss, was never a judge) once said: "No man but a blockhead ever wrote except for money."² The author has accepted no remuneration for this essay,³ none having been tendered.

Defining the Subject

The only consistently interesting and entertaining contempts are direct criminal contempts; that is, those committed entirely in the immediate presence of the court,

while it is in session, and punished to vindicate the court's authority.⁴ Other contempts are constructive⁵ — committed outside the court's presence, or civil⁶ — punished to enforce the remedies of private parties, or both, and thus they lack the impromptu drama of direct criminal contempts. (Direct criminal contempts are, in turn, subdivisible into several species, the most common of which are: opera bouffe, soap opera, comedy of manners, comedy of errors, slapstick and Grand Guignol. The often elusive distinctions among them, are, fortunately, too intricate to be fruitfully explored in a study of this length. A prime example of the slapstick species is, however, set forth below.)

It is not always immediately clear whether a contempt is committed in the court's presence; for example, when an attorney fails to appear before the court at the appointed time, troubling metaphysical questions arise: Is the contemptuous nonappearance made in the court's presence? If not, where? Is the nonappearance out of the court's presence? If so, is the offense repeated each time he appears somewhere else? Quite sensibly the courts have answered — 'well, yes and no.'⁷ The alibi defense becomes a

complex matter in these circumstances.⁸

Of Punishment and Efficiency

Direct criminal contempts are, as is everything in the law, *sui generis*. Like a coelacanth in a troutstream,⁹ the direct criminal contempt tends to surface unexpectedly, and to leave one rather at a loss as to what to do with it. (This may depend upon the propensities of the judges in question, some of whom fish for the sport and release their catches, others of whom consume the fish or patronize taxidermists.)¹⁰ What a judge *may* do, however, is easily understood: he may put the contemnor directly and immediately in jail.¹¹

(To Be Continued)

8. But where could be more suitable the proverbial "I wasn't there when I did it" defense?
9. Coelacanth: "A crossopterygian fish, *Latimeria chalumnae*, thought to have been extinct since the Cretaceous period, but found in 1938 off the coast of southern Africa." *Random, supra*, note (1). The Cretaceous period was circa 70,000,000-135,000,000 B.C. The summary contempt power probably emerged about the same time, but is not extinct. Darwin is not known to have touched upon this anachronism.
10. I have also heard it said — not of a judge — that he may not always be right, but he is never in doubt. Of a judge it *has* been said: "No judge is always right, but Lindley, even if he were wrong, was consistently sound." *The Times of London*, Feb. 18, 1932. There are exceptions to all rules, not to mention metaphors.
11. Minn. Stat. §§ 588.20; 609.02 Subd. 3.

Ed. Note: The Harvard Law RECORD invites members of the legal profession or the legal community to offer for publication articles regarding current legal controversies or general problems of the law.

The RECORD will not be published next week, due to printing schedules based on an October 27 Veteran's Day. This means that the staff will be working on November 11, the "new" (old?) Veteran's Day, so bear with us. The next RECORD will appear on November 7.

1. *The Random House Dictionary of the English Language* (Unabridged Edition 1966).
2. Boswell, *Life of Dr. Johnson*, 1791, (Everyman Ed.), Vol. II, p. 16. Dr. Johnson also said: "The law is the last result of human wisdom acting upon human experience for the benefit of the public," and: "In lapidary inscriptions a man is not upon oath," and: "A tavern chair is the throne of human felicity," and: "Sir, a woman preaching is like a dog's walking on its hind legs. It is not done well; but you are surprised to find it done at all." He said a great many other things, not within the limited scope of this article.
3. Dr. Johnson in his *Dictionary* defined Essay thus: "A loose sally of the mind; an irregular and undigested piece."

4. Minn. Stat. § 588.01 Subd.2(2); *Lopiparo v. United States*, 222 F.2d 897 (8th Cir. 1955). In England, where it began, contempt punishment was used to avenge forthwith any affront to the monarch, which may account for its continuing popularity. *Murray's Case*, 1 Wils. K.B. 299 (1751).
5. Minn. State. § 588.01 Subd. (3). *Random, supra*, defines "constructive" as: "helping to improve (opposed to destructive)."
6. *Peterson v. Peterson*, 278 Minn. 275, 153 N.W. 2d 825 (1967). *Random, supra*, defines "civil" as, *inter alia*: "adhering to the norms of politeness and courtesy."
7. *Knajdek v. West*, 278 Minn. 282, 153 N.W. 2d 846 (1967); Anno., Attorney's Failure to Attend Court, or tardiness, in Violation of Order as Contempt, 97 A.L.R. 2d 431.

Law Coop's Byron Offers Verses

By Phil Heagney

Although nothing could add to his reputation as one of the friendliest people on campus, Byron H. Lowe, the manager of the Law School Coop, may soon join the ranks of Harvard's published poets.

Lowe reported that he has recently submitted a collection of 80 of the more than 175 poems he has written during the past two years to the Wesleyan University Press. Wesleyan's poetry editors reviewed his selections and promised to make a decision about publication sometime this fall. Wesleyan's latest response has been negative, but their letter listed a number of alternative publishers. The author said that he would be delighted if a small paperback collection of his works is printed.

Lowe wrote a few poems more than ten years ago when he was living in the British West Indies but then put all writing aside. He began again two years ago at the urging of the daughter of a friend who had read some of his earlier works. His recent poems touch on a wide variety of subjects including love, daily life, Biblical themes, landscapes, political satire, and humor.

In addition to his obvious ability to enjoy his life and his work, Lowe brings a past of varied experiences to his writing. The youngest of eight children, he was born in Family Tree on the island of Barbados in the British West Indies. After completing his college education at Erdiston Teachers' College in Barbados, he taught elementary school for 17 years on the island.

In 1957, Lowe married a woman from Barbados who had been born in the Central Square neighborhood of Cambridge. He explained that it was his marriage which brought him first to New York City in 1961, where his wife's sister lived, and then to Boston in August of 1969.

While living in New York, Lowe worked for the New York University campus stores for seven years and also took

graduate courses in business and education at NYU. Early in 1969, he moved to the Marine Midland Grace Bank & Trust Company on Wall Street. However, six months later, he brought his family to Boston after visiting the city on a vacation. Lowe said that during his visit to Boston he was impressed with the city and concluded that it would be a safe place to raise his three daughters.

Lowe started working for the Harvard Cooperative Society soon after his family arrived in Boston. He spent a brief period of time moving through several departments at the main Coop and the Medical Coop and then worked for a year and a half as an assistant textbook buyer for the main Coop. In late 1971, the first manager of the Law School Coop quit in exasperation with the customers, and Lowe took over the foundering branch store.

Lowe said that the first manager warned him about law students and predicted that he wouldn't want the job for long. But, as he nears the end of his fourth year at the Law School Coop, Lowe says he "never enjoyed

working at any other place in the Coop more than I've enjoyed working here."

He suspected that there was some stealing from the store but also noted that some students have come back to report that they were undercharged or that they had forgotten to pay for something. He said he has run into many instances of honesty and personal kindness from members of the Law School community.

Lowe said that he has showed some of his poems to several people at the Law School and was pleased that they enjoyed reading them. Professor Philip Heymann first recommended to Lowe that he submit some of his poems for publication. After consulting with Director of the Coop Textbook Division and the manager of Reading International in Harvard Square, Lowe chose the Wesleyan Press as the first candidate to receive a selection of his recent poetry.

Lowe mentioned that on several occasions senior managers at the Coop have proposed moving him to a higher position at the main store

"ME? A STUDENT OF HARVARD LAW SCHOOL? NEVER!"

By Byron H. Lowe

I'd never be a student of Harvard Law, that's true,
I wouldn't say this to others, I'd just say it to you.
Cloistered in dorm and library to study big law books
Would really drive me crazy. 'Tis not for me. Oh shooks!

Gosh! There is Corporation Law, there's Admiralty too,
There's Common Law and Contracts, if I might name a few.
What's more, law books are costly, I'm told by friends of mine,
And then, if I did study law, most words I'd underline.

I couldn't be a law student, I am not kidding you,
I'm sure I wouldn't be counted, save on the Law Review.
To me, the studying of law would simply be a waste,
Unless I really figured in things like — "Paper Chase."

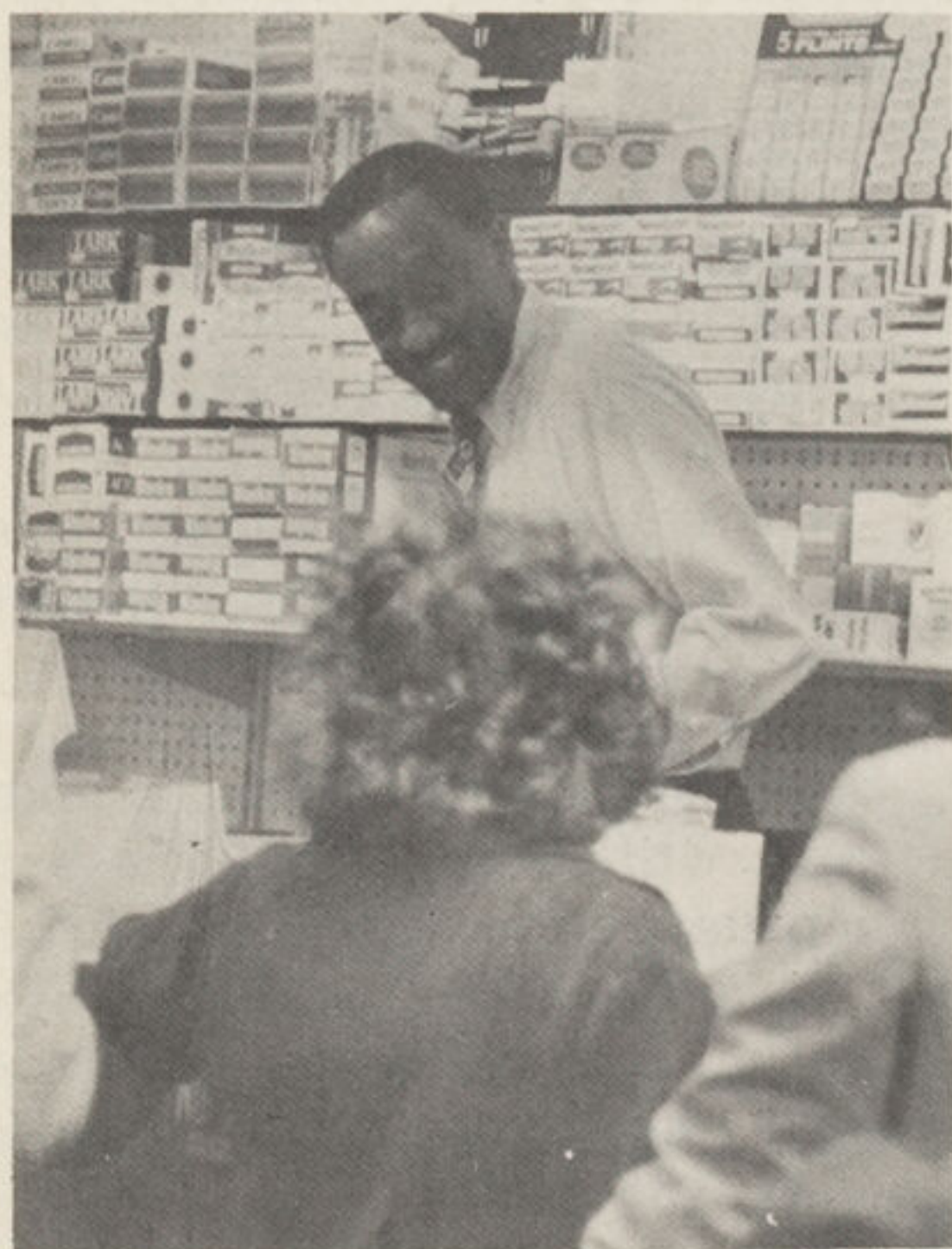
I swear that law is not my bag, you see, I couldn't be free
To use up many short-cuts, so I'd be out my tree.
The law savors of lengthy things, e'en writing of a brief,
Professors, too, mark lousy and this adds to one's grief.

I'd never go to Harvard Law, despite who thinks its swell,
Professors would gang up on me, the Deans would give me hell.
You see, I am the kind of guy who'd always state real facts,
Who knows if these would be approved by Harvard's Dean? Dean Sacks.

To Printer

or to the Customer Relations office, but no action has been taken. Several persons familiar with the operations of the Law School Coop said that the Coop management does not pay the manager of the Law School Coop the salary his work merits.

Lowe said that while he enjoyed his work and his writing, he would like to have a chance to return to teaching and work closely with students at the College. "That's what I'd really love to do someday," he concluded.



Byron H. Lowe

Solution to "Cryptic Law"

(1961).
Providence, 93 R.L. 227, 174 A.2d 117
Early Estates, Inc. v. Housing Board of
 jurisdiction.
 habitation. . . . [T]he council exceeded its
 ings and dwelling premises fit for human
 ment reasonably necessary to make dwell-
 health and welfare, nor is such require-
 necessarily related to sanitation or public
 The requirement of those facilities is not
 sary to achieve the desired purpose? * * *
 installation of hot water facilities is neces-
 habitation," the legislature meant that the
 ings and dwelling premises "fit for human
 minimum standards necessary to make dwell-
 powering the [city] council to enact min-
 [C]an it reasonably be said that by em-

Women, Blacks Point Out Job Bias, Token Sanction

By Arnold S. Rosenberg

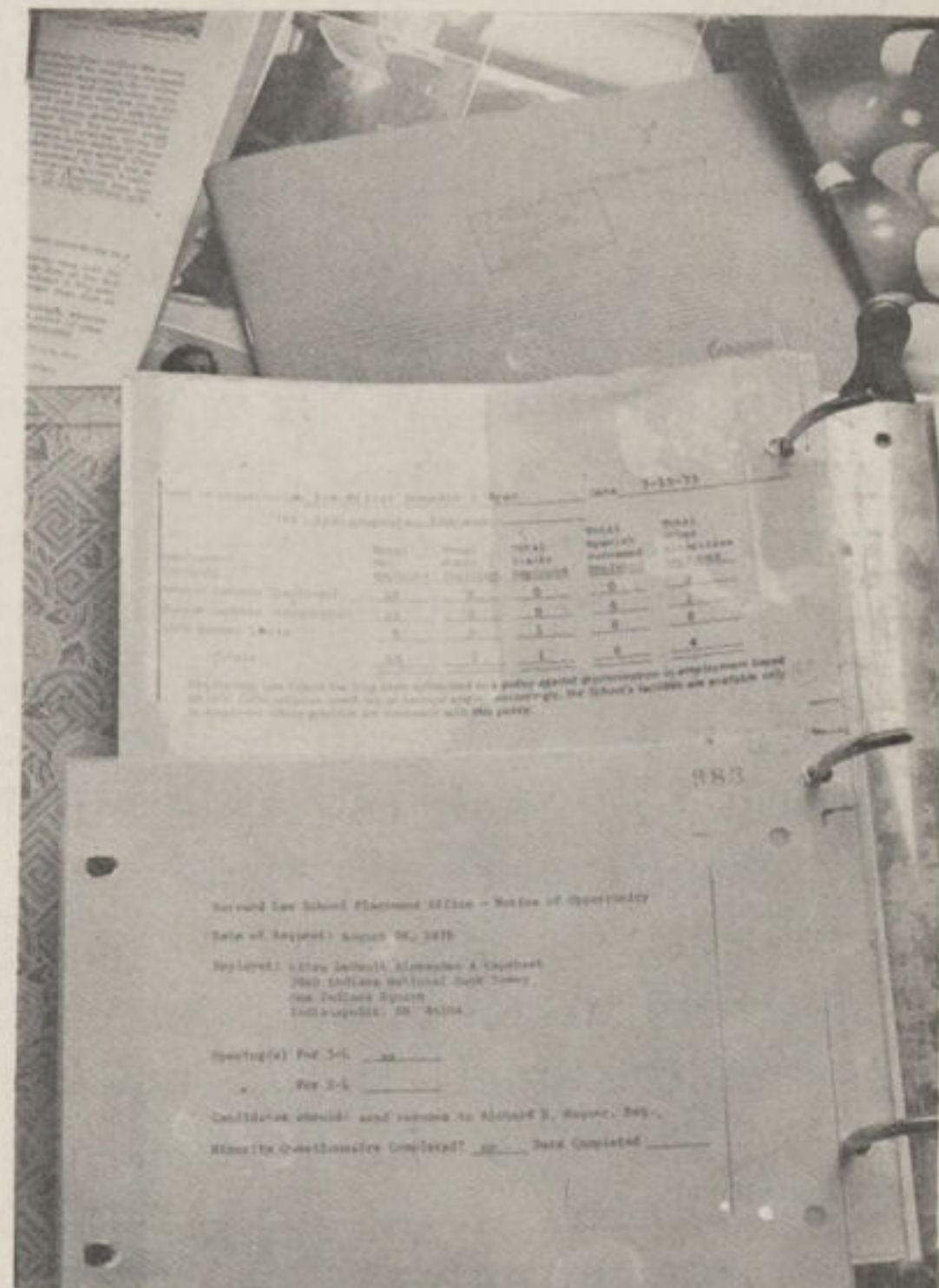
At least 29 recruiters have failed to disclose statistics regarding hiring of women and minority group members, Women's Law Association members revealed this week.

The organizations were Beverly Hills: Foonberg & Frandzel; D.C.: Cox, Langford & Brown; Fried, Frank, Harris, Shriver & Jacobson; Kalor, Worsely, Daniel & Hollman; Federal Trade Commission; Atlanta: Arnall, Golden & Gregory; Gambrell & Russell; Chicago: Friedman & Keven; Price, Cushman, Keck, Mahin & Cate; Indianapolis: Kreig, Devault, Alexander & Capehart; Baltimore: Miles & Stockbridge; Boston: Gadsby & Hannah; Herrick, Smith, Donald, Farley & Ketchum; Detroit: Clark, Klein, Winter, Parsons & Prewitt; St. Louis: Armstrong, Teasdale, Kramer & Vaughan; Lewis, Rice, Tucker, Allen & Chubb; N.Y.: Aranow, Brodsky & Behlinger; Donovan, Leisure, Newton & Irvine; Jackson, Lewis, Schitzler & Krupman; Kreindler & Kreindler; Morgan Guaranty Trust Co.; Touche, Ross & Co.; Union Carbide Corp.; Zimet, Haines, Mess & Good kind; Syracuse: Hiscock, & Goodkind; Syracuse: Hiscock, Lee, Rogers, Henley & Barclay; Philadelphia: Blank, Rome, Klaus & Solis-Choen; Pittsburgh: U.S. Steel; Nashville: Bass, Berry & Sims.

Firms were denied the privilege of having their descriptions included in the law firm notebooks kept in the Placement Office. This sanction "may be inadequate", according to Suzanne Stocking, 2L. Assistant Dean Russell A. Simpson, however, evinced reluctance to take further action against law firms unless they manifest "overt" discrimination, such as making discriminatory statements in interviews.

Statistics compiled by Dr. Marcia Guttentag and Joseph R. Dewhirst of the Harvard School of Education in a *Report on the Job*

Placement of Harvard Law School Graduates, 1971-74, to Dean Albert M. Sacks, indicate that, in certain cases, discrimination may run deeper than statements in job interviews. While no significant difference was found between the overall rates of hiring male and female law students, there was a significant difference between the percentage of non-honors female



graduates remaining jobless at graduation (25%) and that of non-honors male graduates (13%).

WLA members agree that discrimination has become more subtle; some say it has increased, despite the mailing by the Law School Placement Committee of a three-page letter to employers giving examples of conduct considered "offensive". This subtlety, manifested by veiled questions about "plans to move to other cities" due to marital obligations and provisions for child care, makes it difficult to police discrimination. However, reports are coming into the Black Law Student's Association of more overt discriminatory statements than in recent years — at least four this year — leading BLSA to conclude that "some interviewers didn't read the letter."

Skinner Still For Cultural Design

By Charles Jordan

Standing before the Harvard Law Community Association nine days ago, Burrhus Frederic Skinner offered America more than happiness. He offered it efficiency and survival.

The barely-publicized address followed an HLCA reception and a short business meeting. A crowd of 150 jammed the tiny classroom in the Pound Building to hear the guru of modern behavioral psychology. The Harvard professor *emeritus* gave them an informal, non-technical look at the status of behavior modification in the '70's.

The announced topic was "Walden II Revisited." The Professor reminisced, "It was a better world when I wrote that book (in 1945). Hitler was dead, the German menace was about over, Russia posed no threat, there was no Bomb and no pollution to speak of. And all the shortages were wartime."

Skinner focused on the village described in his utopian novel. He posited the small-community ethic of *Walden II* as the answer to the world's woes. In his view, technology is not the only answer. "There's always a behavioral problem back of the biological, technological, chemical problems. Solving it is a *real* problem."

"It's silly what we do about major problems. Raising the price of gas is not the solution to the energy crisis. The behavioral solution would be to give people interesting small communities as alternatives to big cities. People won't waste gas driving to the cities if they have something more interesting on their own front steps."

"I'm inclined to mark off big cities. Life in big cities is becoming impossible. The future may be a network of small communities."

Skinner criticized the so-called "American life-style." He assured a mildly skeptical audience that the time wasted in idle recreations like drinking, smoking marijuana and

gambling should be channelled more efficiently. He proposed, as alternatives, reading, music, and other intellectual pleasures that develop the individual.

In taking questions, Professor Skinner encountered a humanist audience bent on challenging his theories. He was asked what his concept of individual autonomy is.

"People act as if they are autonomous. This is good. But if you are trying to design a culture, you have to be realistic. Individuals have ideas of what is right, of what makes them happy, but the survival value is the only value. I don't choose survival. Survival chooses me."

In response to questions about the possible use of behavioral engineering in the penal system, Skinner mentioned the film *Clockwork Orange*. He was amused that critics have ascribed to him the Pavlovian techniques pictured in the prison sequence.

"Give prisoners *positive* reasons for behaving well. In responding, they may be playing games, thinking they are 'ripping off' the system, but that's fine with me. At least they are learning self-control." An important question, he conceded, is whether the State should deprive a prisoner of what he has a right to expect in order to modify his behavior by "rewarding" him with it. He answered rhetorically, "What does a prisoner have a right to ex-

pect?"

"Permissiveness is not a viable alternative to our present system of negative reinforcement through imprisonment. I think we should maintain the *status quo* until something better is developed."

Several questions probed the philosophical underpinnings of Skinner's theories about design of culture. But the Professor was determined to talk on a very general level. "We have reached the stage when we can design the culture. There is nothing wrong with this. It is the result of the natural evolutionary process."

"We are engaged in a gigantic act of self-control. Everything in this room is manmade. This is a tremendous step forward. But it is just the start."

Other topics of discussion ranged from the problems posed by the Third World, to chromosomal engineering, to behavior modification in mainland China, to Skinner's brief acquaintance with Aldous Huxley, the author of *Brave New World*. Surprisingly, particular legal implications of his theories were not mentioned.

After the talk, Professor Skinner autographed books. He responded with obvious pleasure to the appreciative comments of several of his academic disciples who had attended.

Dorm Council Activities

This Weekend

TGIF — Today, 4-6 p.m.

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Vischer, aus der Schweiz, Visits

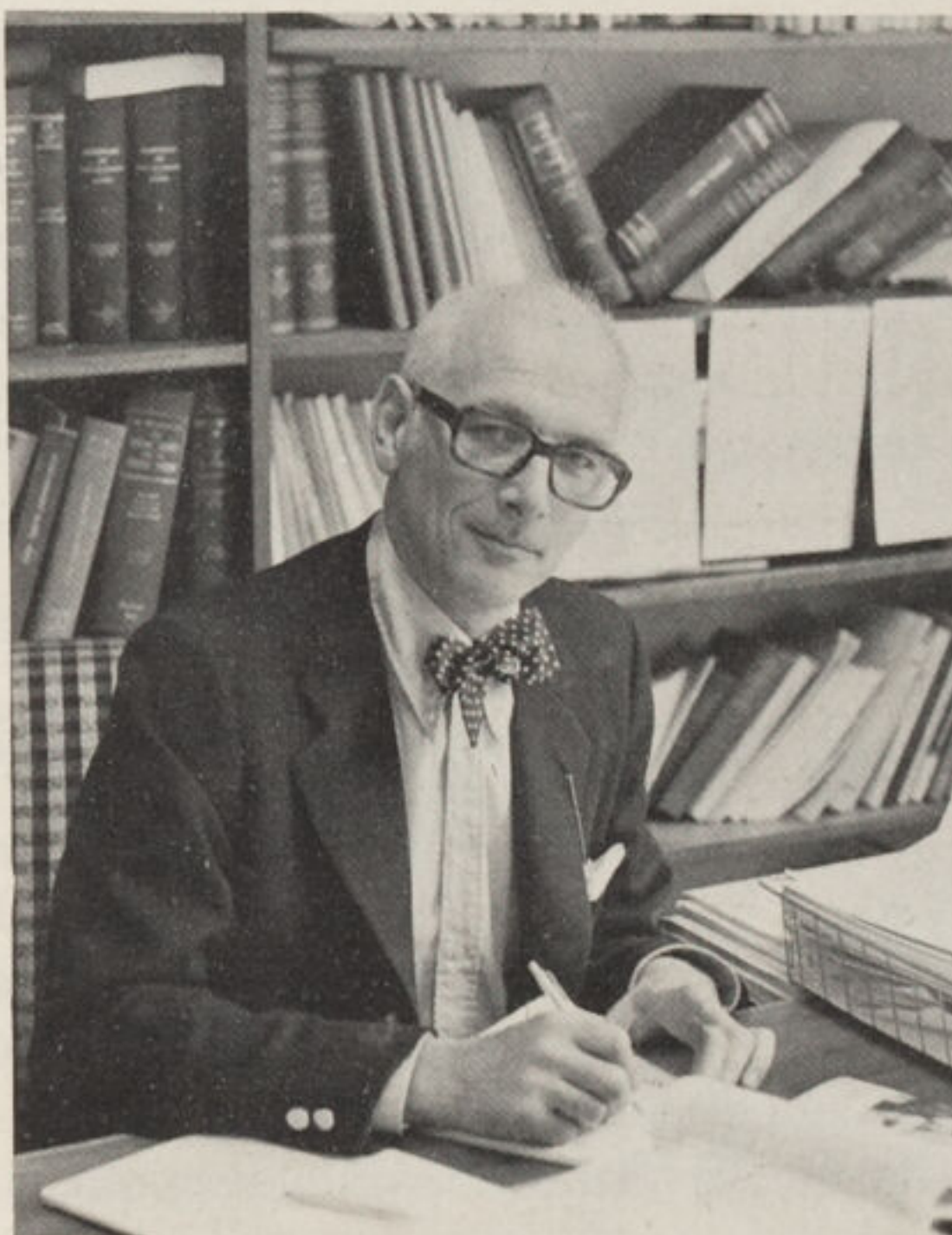
By Marc Lauritsen

The University of Basel's temporary loss is Harvard's gain. Visiting Professor Frank Benedict Vischer is well into his first prolonged stay in the United States and regrets that his duties on the governing board of his home university don't permit him to spend more than the fall semester here. Those attending his *Conflict of Laws* course and his *Corporation Laws and the European Economic Community* seminar will share the regret of his return to Europe.

Professor Vischer's first contact with Harvard came while he was serving as the Swiss delegate to the International Conference on Uniform Conflict of Laws Rules at The Hague. He managed to meet Erwin Griswold and Arthur Von Mehren, who were in the American delegation. Von Mehren frequently sits in on Vischer's course, and Vischer likewise attends Von Mehren's course, providing opportunities for fruitful cross-pollination.

Listing curiosity, honor at an unexpected offer, and a desire for further acquaintance with a

law school enjoying a top reputation on the Continent as reasons for his acceptance of the transatlantic bid, Professor Vischer took time to note a few differences between his own school and ours. He has had some difficulty adjusting to our notorious "socratic method", but feels that the distinction between it and the continental approach is perhaps overstressed. He is impressed with



Professor Frank B. Vischer

the willingness of American students to work hard and participate actively in class, but senses that their general historical and philosophical backgrounds are not quite as rich as those of their European counterparts. In particular, the lesser facility with foreign languages here makes selection of course materials difficult at times.

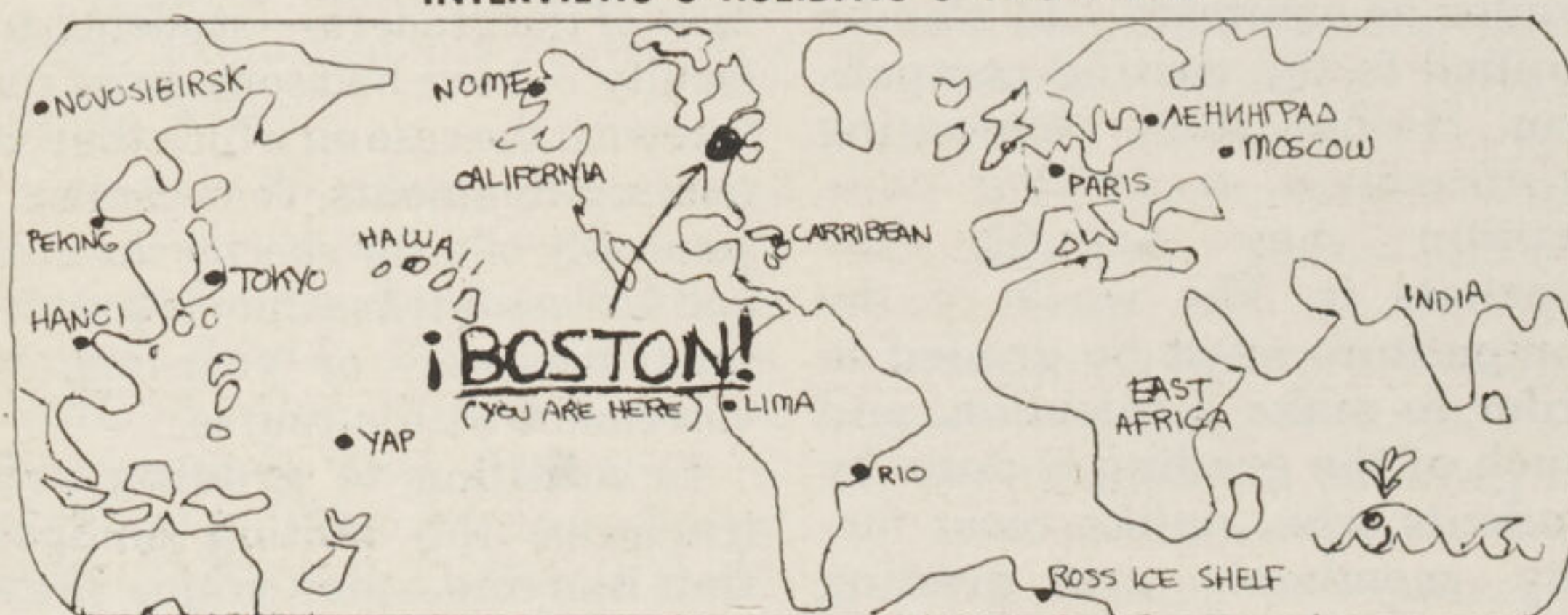
"I like the historical and social dimensions of problems," the professor said, and he emphasizes them in his teaching. He expressed a high opinion of a selection he read from Assistant Professor Duncan Kennedy's work-in-progress on the history of legal thought, and endorses Kennedy's approach in some basic respects. Like many European legal scholars, Vischer finds his perspective on corporate law different from that generally prevailing here in his greater willingness to entertain less conventional conceptions of the nature of corporations and their role in society. He feels, for instance, that another of his specialties — labor law — and corporate law "are becoming more and more one."

Professor Vischer's primary extra-legal activity is serving as president of the board of the Basel Museum of Art, which ranks among the best in Europe. He is especially involved in new acquisitions, which has produced in him an admirable familiarity with contemporary art.

One might think that Professor Vischer's hands would be quite full, if not overflowing, with his vocations and avocations. But he still finds the time and energy to be an avid and wide-ranging reader. While history and biography present the strongest claims on his reading, he takes an active interest in the modern novel and poetry, placing Pound, Auden, Lowell and Nabakov among his favorites.

Sei willkommen, Herr Vischer.

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Review Editor Evaluates Competition

By Phil Spector

Elsewhere in this issue, the RECORD has listed the names of the 28 second-year students invited to join the *Harvard Law Review*. About two-fifths of this group found out about their selection just last week; they are the winners of the *Review*'s writing competition. As one of the persons actively involved in grading that competition, I have been thinking throughout the selection process about similarities and differences between the competition and grade-based selection. With the competition now completed, a few comments may be appropriate on what the writing competition is and is not.

The writing competition is, most fundamentally, a good way for the *Review* to obtain well-qualified editors. The participants in the competition must first complete a three-day substantive citecheck of a *Review* student's work. Those who pass this stage (over half of this year's entrants) are then asked to write, in seven days, a first draft of a case comment. The subcite stage is graded by third-year *Review* editors; the second, case draft stage, by third-year editors and faculty members.

Through this two-stage process, the participants invited to join *Review* (about one-third of those asked to enter the second stage this year) have fully demonstrated their ability to do *Review* work. The efficacy of the writing competition screen is attested to by the performance of those who join the magazine from the competition. In the six previous years of the competition, persons who joined in this way have gone on to hold many officerships as 3Ls. Their numbers have included one *Review* president.

In addition to helping the *Review*, the competition serves an important function for the Law School as a whole. It eases some of the pressure to perform on first-year

examinations, pressure that might otherwise be felt by those 1Ls concerned about making *Review*. It provides, in other words, a second chance. (A third chance to make *Review* comes after the second year, when a group of about eight 3Ls is invited to join on the basis of second-year or combined first- and second-year grades.) This second chance is particularly important for those who perform better on research and writing exercises than on examinations.

Since the writing competition has so much to be said for it, one is naturally led to ask whether it should become the exclusive means to *Review* membership — a position

pers on the same subject. With such a large sample, he or she may at least have some confidence that the truly outstanding papers can be identified. In the second stage of the writing competition, by contrast, only four students write case comments on each case, and the making of intra-group comparisons (between comments on the same case) with such a small group is often difficult. Comparisons between comments on different cases, which have to be made at the margin, are even more difficult, since different cases call for very different types of discussions, and decisions at the margin thus have an unavoidable element of arbitrariness.

"... both grades and writing as criteria of selection have inherent problems ..."

taken by many in the past. Here it becomes important to emphasize what the competition is not. While as good as or better than grade-based selection in some respects, in other respects the competition is as bad as or worse than grade-based selection.

The familiar critique of grades as arbitrary can also be applied to the writing competition. Rather than eliminating arbitrariness, a writing competition may actually exacerbate it. The work of the competitors must be graded in order to make a selection, and much of the grading is done by students who, unlike most faculty members, are grading papers for the first time in their lives. Whatever one learns about the elimination of grading arbitrariness through the process of doing a lot of grading, that learning is largely absent from the writing competition.

A related problem with the writing competition concerns the size of the group being graded. After a typical first-year examination, a professor has about 135 pa-

Examination letter grades are also based on a subject-matter expertise that is largely absent from the writing competition. A professor's exam questions are written by the professor and are designed to test comprehension of a course that he or she has organized and taught. In the writing competition, while most of the graders — students and faculty — have had some prior contact with the case on which they are reading comments, that contact is generally of a far shorter duration and far less intense than is a professor's semester- or year-long involvement with a course.

In addition to grading arbitrariness, the writing competition has one other major drawback: the resources it requires. It takes many hours of *Review* time that could be spent producing a better law review, and, more importantly, it requires a commitment from the faculty that many professors simply are not willing to make. Over half of the faculty members asked to grade this year's competition

(Continued on Page 16)

New Members Announced By Harv. L. Rev.

(Continued from Page 1)

competition in order to replace three 2Ls notified this summer who declined membership on the *Review*. They are Elizabeth S. Bernstein, Barney Frank and Steven Solomon Miller.

Bernstein said this week that she turned down the *Review* because she "wasn't interested enough in turning out the Law Review or the things it would get" for her after law school "to make it worthwhile to devote all that time."

Persuasive, but the decisive, factors in her decision were "what competition for the Review does to first year students" and the failure of the Review to criticize the legal system.

Miller explained his move simply: I didn't think it was the most valuable thing I could do with my time." (He is Business Manager of the *RECORD*, a member of the Board of Student Advisors, a regular meditator and fund-raiser for a library in Nepal.)

Frank, a Massachusetts legislator, explained his choice in a word: "Time."

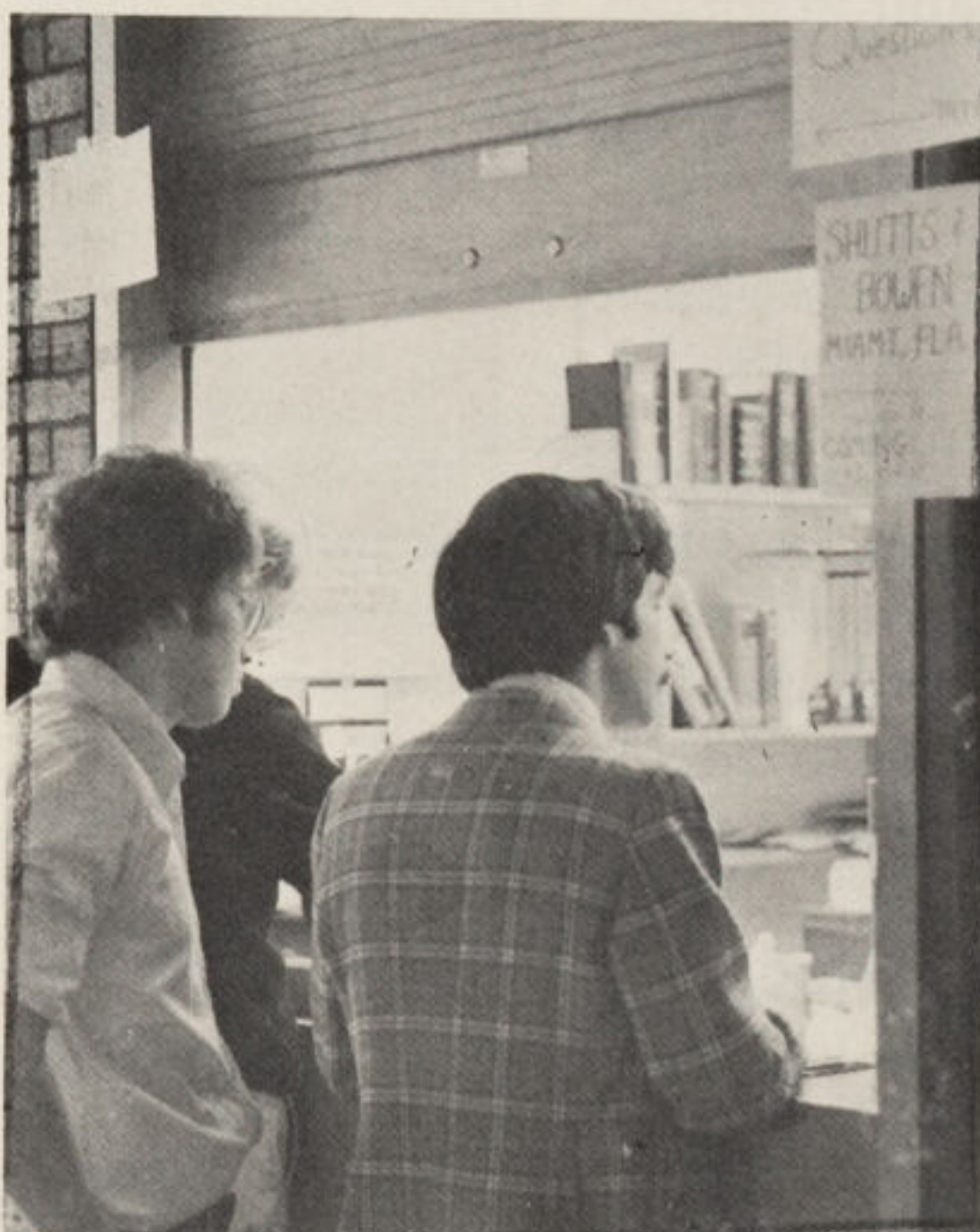
So, only 28 strong, these second year students are at work on the *Harvard Law Review*: Filiberto Agusti, Brad D. Brian, Richard A. Briffault, Alan E. Brownstein, C. Christopher Cox, Jonathan B. Dubitzky, Christopher Edley, Susan R. Estrich, Andrew E. Furer, Merrick B. Garland, Philip A. Gelston, Daniel M. Harris, Robinson B. Lacy, Richard M. Lent, Robert N. McDonald, Jerry A. Menikoff, Stephen L. Nightingale, Alexander A. Notopoulos, Mark L. Perlis, Kate Pressman, William A. Schmalzl, Dinah A. Seiver, Stuart S. Taylor, Marc K. Temin, Claude M. Tusk, George M. von Mehren, Peter A. Wald and David B. Watkiss.

OCTOBER 24, 1975

Student Complaints Bring New Complaint Procedure

By Phil Heagney

In a move designed to insure that student criticisms of placement activities at the Law School will have an appropriate forum, the new Office of Placement and Counseling has instituted an informal complaint procedure to supplement the official procedures for investigating violations of Placement Office rules.



Placement Office, 1975

Assistant Dean Russell A. Simpson, one of the three administrators involved in the new program, explained that the informal complaint procedure was inaugurated at the beginning of this year's interviewing season. Simpson said that the procedure was devised by the Placement Committee after some students objected last spring to the lack of alternative methods for filing complaints about placement activities.

The formal procedures for handling complaints of violations of Placement Office Rules are listed in the Placement Office's Information Bulletin. These procedures include eight separate steps and empower the Placement Committee to receive complaints, hold hearings, and recommend sanctions.

By contrast, the new informal complaint procedure consists of a one-page form on which a student

need only write his or her name and address. The student submits this form to Assistant Dean Alfred Daniels, the director of the Office of Placement and Counseling, or to Assistant Dean Simpson. Complaints which do not involve allegations of discrimination may also be submitted to Eleanor Appel, director of the Placement Office. The complaining student then meets privately with the person to who he or she submitted the new form to discuss the incident or grievance involved.

Dean Simpson stated that the purposes of the informal system were to give students a place to discuss complaints either without having to take formal action or before taking such action and to give the Placement Committee a more accurate picture of the problems students are encountering during the interviewing season.

Simpson added that he has already discussed complaints with more students this year than he did all of last year when the informal system was not available. Most of the complaints this year have concerned discriminatory conduct by interviewers or cases of "terrible manners." There have also been some criticisms of Placement Office practices.

A group of women law students met with Simpson last April and told him of reports of discriminatory actions or offensive behavior that they had received. Some students told Simpson that the formal complaint procedures were inaccessible because they were so time consuming, and others said they feared that their employment prospects would suffer if they filed formal complaints.

Simpson said he has sent out several letters to law firms this year based on informal complaints about their interviewers at Harvard. Informal complaint forms are available at the Placement Office and at the office of Balsa and WLA.

(Continued on Page 14)

Highballs

Perhaps contrary to the assumptions of many, the majority of students here lack a realistic orientation both to the law profession in general and to the lawyers in their selected communities. The alumni practicing in many large cities could ameliorate this problem.

In many urban areas, there are clubs composed of Harvard Law School alumni. Students from those cities, or students who would like to practice there, would certainly appreciate invitations to some of the clubs' activities. The resulting contacts — made before, during, or after first year — would give students the opportunity to develop a feel for legal practice which the school cannot give and allow them to become more familiar with lawyers whom they might not otherwise have the opportunity to meet. On their part, alumni might be able to develop a more realistic feel for what is happening at the Law School. The opportunity to do some informal interviewing for their firm's future needs would also be present.

The benefits which both alumni and students would derive from such interchange need not occasion great costs. At the most simple level, clubs might consider forwarding general invitations to the RECORD. We'd be happy to print them.

Baseballs

We congratulate the Boston Red Sox on a great World Series. But an error of "law" occurred which may have cost the Red Sox the series.

Larry Barnett's call that Ed Armbrister of the Cincinnati Reds did not interfere with Carlton Fisk's play on the bunted ball was highly questionable. Armbrister's delay in leaving the plate and his failure to get out of Fisk's way indubitably affected the effectiveness of Fisk's throw to second base. To rule the play a "collision" suggests a feeling that "Armbrister didn't mean to do anything." As Professor Liebman so eloquently pointed out, mens rea has no application to this area of the Rules of Baseball "white book" citation form is unfortunately unavailable). Fisk was interfered with and Armbrister should have been called out. That extra out could have enabled the Sox to recover in Game 3 of the Series, which might have been theirs in six games.

To err is human. Barnett erred. The sorry fact is that there is currently a lack of appellate procedure for the Red Sox, a fact noted by Professor Liebman. We encourage our fellow professionals in baseball to look to our legal system, which carefully considers issues of fairness to those for whom judgments are rendered.

HARVARD LAW RECORD

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Fenno

"What are you doing," Fenno asked as he came upon the 3L paging idly through 12 So. 2d, "researching a third-year paper on *The Establishment Clause and the Abominable and Detestable Crime Against Nature Not To Be Named Among Christians?*"

"I'm trying to come up with a third-year paper topic," the 3L responded. "Any topic."

"Why don't you just regurgitate one of your summer memos?"

"They were all on Antitrust topics, and the only Antitrust professor supervising papers is Professor Arena. But he's only willing to take papers dealing with the anticompetitive implications of the chairman of the Chase Manhattan Bank being the brother of the vice-president of the United States."

"Did he actually say that?"

"What he actually said was, 'If you can come up with something I can use to get Rockefeller, you've got an A+; otherwise go waste somebody else's time.'"

"Didn't you try to think of topics over the summer?"

"Sure. And I came up with one. But when I proposed a paper titled *Feminist Eugenics and Antenuptial Agreements: The Interaction of Roe v. Wade and the Contracts Clause*, Professor Lunge opined that it wasn't of sufficient scope to satisfy the written work requirement."

"What did you say to that?"

"I opined that I could name professors at this Law School who give entire courses that aren't of sufficient scope to satisfy the written work requirement, but what the hell, you scratch my back, I'll scratch yours."

"I take it she wasn't persuaded."

"No. She said she had a right to control her own body, including her back, and then threatened to perform a post-natal abortion on me if I didn't leave. Then I went to Professor Liebperson and offered to do a paper on whether a personal property interest attaches to expected tenure rights. He said he was already supervising 15 papers on whether it's state action for a major league umpire to blow an interference call."

"So what are you going to do?"

"I guess I'll approach Professor Potter with the title, *Tightening the Screws: The Imposition of Non-Reciprocal Obligations by Cynical Faculty Members Pretending That a Mindless Charade is a Meaningful Experience*. He'll say he won't have time to read it, and I'll say that makes us even, I promise not to have time to read his article on Administrative Law."

Fenno shook his head. "Stick with the abominable and detestable crime against nature," he advised. "You shouldn't have any trouble finding a supervisor for that."

HARVARD LAW RECORD

Letters to the Editor of the RECORD

Success Must Turn On Failure's Name

To the Editor:

This letter is to correct several misleading statements made in Arnold S. Rosenberg's article entitled "Amnesty Policy Called Total Failure" in the October 3, 1975 edition of the Harvard Law Record.

The article erroneously asserts that President Ford's Clemency Proclamation excludes from eligibility individuals who left or remained away from the country to avoid military service. The Proclamation does exclude from participation in the Clemency Program individuals who are barred from re-entering the United States by virtue of 8 U.S. Code 1182 (a)(22). That section applies only to individuals who are *aliens* at the time of reentry and who departed or remained outside the United States to avoid military service. An American citizen who fled the country to avoid the draft was not barred from participation in the Clemency Program unless he subsequently became an alien by "voluntarily relinquishing" his citizenship. See *Afroyim v. Rush*, 387 U.S. 253, 268 (1967). It is not likely that of the estimated 2,500 fugitives eligible for the Clemency Program residing outside the country, many had voluntarily relinquished U.S. citizenship under the strict standards established in *Afroyim*.

The article also implies that the decision to exclude from the Clemency Program individuals barred by section 1182(a)(22) was an "anomalous" or "inconsistent" Presidential choice. On the contrary, that section was enacted by the Congress. The President lacks authority to decline to enforce a statute merely because it would interfere with a desired Presidential objective. Indeed, recent history teaches that a President's failure to "take care that the laws be faithfully executed" (see Art. 2, §3 of the Constitution) may be an impeachable offense!

Finally, the article asserts that the Clemency Program was a statistical failure within its own assumptions because it failed to reach those whom it was designed to help. It is true that in aggregate substantially fewer than 50 percent of individuals eligible for all three parts of the Clemency Program chose to participate. However, the Program was designed to reach all Americans, not only those who might receive clemency under it. As the President's Proclamation states, the Clemency Program was intended "to bind the Nation's wounds and to heal the scars of divisiveness" caused by the Vietnam war. Accordingly, the success of the Program should be judged by whether

the American people believed that the President's offer of clemency was fair, in light of the sacrifices of those who served in the military and the scruples of those who opposed the war.

Bruce E. Fein '72
Department of Justice
Washington, D.C.

P.S. The views expressed above are my own and not necessarily those of the Department of Justice.

Mr. Rosenberg replies:

Mr. Fein is correct that alienage is required for persons to be barred from reentering the country under Section 182. However, he understates the importance of that bar. A 1972 deal offered by the Canadian government to exiles in Canada resulted in numerous individuals relinquishing their citizenship. Since the Immigration and Naturalization Service — part of Mr. Fein's agency — will not release the list of those they consider barred, no one can be sure how many persons are affected.

As to his second point, if the President can authorize the Justice Department to withhold prosecution of draft evaders who consent to the Program under the pardon power, why can't he authorize withholding of deportation as well?

Supervision's Demand On Cambridge Dons

To the Editor:

From a number of comments I have received since the publication of the article in last week's RECORD, I fear that, in indulging in the national vice of understatement, I may have given your readers a misleading impression of the quality of English legal education. It is true that English Universities have not always found it easy to recruit law staff; but it is also true that they have always endeavoured to appoint, and I believe have succeeded in appointing, persons of the highest academic ability.

Moreover, I did not give sufficient emphasis to the *positive* merits of a system of teaching — the supervision — which is unique. Here, a small group of students, in a relaxed and informal setting, discuss the cases and review articles they have read and apply them to a series of problems, akin to Harvard exam questions. Obviously, this is a demanding intellectual exercise for the student. It is demanding too for the Don, in terms of time and effort; although the terms are much shorter, the average Cambridge law Don may teach 13 hours a week and still will have to mark the weekly batch of essays written by his students.

Such a method of instruction is expensive. Oxbridge relies on the Government for a large part of its income (perhaps 90%). There are murmurs in the wings that Oxbridge should have less of the national educational cake because of its private endowments. As yet these are murmurs. But if they become reality, then the personal method of teaching, which we value so highly, will be endangered.

Professor Gareth Jones
Cambridge, Massachusetts

SPORTS QUIZ

By Katz, Noto
& Zagrans

1. Who was the only pitcher ever to pitch in all seven games of a World Series?
2. The Baltimore Oriole pitching staff set a Series record by throwing 33% scoreless innings against the Los Angeles Dodgers in winning the 1966 Series in four straight games. What "old man" began the streak with a superlative relief performance in the first game, followed by successive shutouts from Jim Palmer, Wally Bunker, and Dave McNally?
3. Although he was a lifetime .300 hitter, Dale Mitchell is best known as the batter who struck out ending Don Larsen's perfect game in the 1956 World Series. Less well known is the identity of Larsen's mound opponent, who threw a brilliant five-hitter in losing 2-0. Least well known is the plate umpire who made the game-ending called third strike. Name them.
4. Name any four out of the eight "Black Sox" who were banned from baseball following the fix of the 1919 World Series against Cincinnati.
5. Many trivia buffs know that it was Joe

(continued on page 12)

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DiMaggio who hit the long drive on which Al Gionfriddo made his great catch in front of the bullpen in 1947, and that Vic Wertz powered the 450-foot smash on which Willie Mays turned in his memorable play in the 1954 World Series. But who hit the long, slicing fly ball down the left field line that Sandy Amoros spectacularly caught to save the Dodgers first world championship in 1955, Walter Alston's rookie year as manager?

6. The first grand-slam home run ever hit by a National Leaguer in a World Series occurred in 1962. Who hit it?
7. In the 1960 classic, despite hitting .338 as a team over the seven games and winning by scores of 16-3, 10-0, and 12-0, the Yankees fell victim to the curse of the Green Weenie, losing the seventh game 10-9 as a double-play grounder hit the Yankee shortstop in the Adam's Apple, opening the way for a five-run Pittsburgh eighth inning affording them a 9-7 lead. Pirate reliever Bob Friend gave up two runs in the top of the ninth to tie the game. Then came Mazeroski's home run to win the most dramatic Seventh Game ever. Who was the losing Yankee relief pitcher?
8. Another bad hop gave Walter Johnson his only World Championship after 18 years with a losing team. After losing two games of the 1924 Series as a starter, Johnson relieved in the ninth inning of the 7th game after manager Buck Harris' ground ball took a sudden hop over the head of the Giants' substitute third baseman, allowing two runs to score, tying the game 3-3. In the 12th, an Earl McNeely grounder took a sharp bounce over the same third baseman's head to drive in the winning run. Name this 18-year old who had replaced season regular Heinie Groh for defensive purposes.
9. Who are the four pitchers since the Second World War to go 3-0 in one World Series? (As of the time we go to press, Rawly Eastwick and Luis Tiant have a chance to become the fifth pitcher to do so.)
10. Three Cleveland Indians, Bill Wambach, Elmer Smith, and Jim Bagby, Sr., had Series firsts in the 1920 battle with the Brooklyn Dodgers. What were these historic firsts?

Who was the Yankee shortstop in Question 7 who got hit in the adam's apple with the ball, thus permanently impairing his ability as an announcer?

What seven left-handed centerfielders did Fred Lynn tie by blowing his nose four times in a nine inning second game of a World Series, played in an American League park?

Now add up your score and check the relevant advice:	
9-10 Try your Loo-ie like moves and finesse at the next mixer.	
6-8 Good job, Rogelio. Next year we'll let you do another quiz.	
3-5 Make friends with Pete Rose. With your brains and his charm . . .	
0-2 If Larry Barnett retires, we'll give you a call. (That last pun is safe as it was unintentional.)	

Bonus Question: Tony Kubek

10. Respectively, first unassisted triple play, first grand slam, and first home run by a pitcher.
St. Louis, 1946, vs. Boston.

1. Darold Knowles, Oakland, 1973, vs. New York.
2. Moe Drabowsky.
3. Pitcher: Sal Maglie; Umpire: Babe Pinelli.
4. Pitchers Eddie Cicotte, Lefty Williams; Joe Jackson (LF), Happy Felsch (CF), Chick Gandil (1B), Swede Risberg (SS), Buck Weaver (3B), Fred McMul-lin (Utility).
5. Yogi Berra.
6. Chuck Hiller, a journeyman second baseman.
7. Ralph Terry.
8. Fred Lindstrom.
9. Mickey Lolich, Detroit, 1968, vs. St. Louis; Bob Gibson, St. Louis, 1967, vs. Boston; Lou Burdette, Milwaukee, 1958, vs. New York; Harry Brecheen,

Rep. Robert Drinan (D.-Mass.) will speak in the Ames Courtroom at the Harvard Law School at 8:30 p.m. on Friday, October 24. Sponsored by the Harvard Law School Forum. Open to the public. Tickets \$1.50.

Sen. Claiborne Pell (D.-R.I.) will speak in the Ames Courtroom at the Harvard Law School at 8:30 P.M. on Tuesday, October 28. Also sponsored by the Forum and open to all. Tickets are \$1.50 at the door.

"Alice Doesn't. . ." The **National Organization for Women** is promoting a women's strike, set for Wednesday, Oct. 29. N.O.W. encourages women to demonstrate their impact on the American economy by abandoning their work and postponing all spending for a day. No organized activities by strikers are planned in the Boston-Cambridge area.

Harvard Law Community Association: On Friday, October 31st at 8:00 P.M., H.L.C.A. will host a Halloween Party at the Peabody Terrace Common Room. Prizes will be given for masks! Come and sip some cider and meet other law couples. Everyone is cordially invited. Non-members—50c.

The Law School Directory is available at the receptionist's desk in Langdell. You must have your I.D. (or some other form of identification) in order to pick up a copy.

The library is featuring an exhibition on **Women's Rights in Law and in Fact** (U.S. and International Action). It will run through November 1.) The exhibit is in honor of International Women's Year.

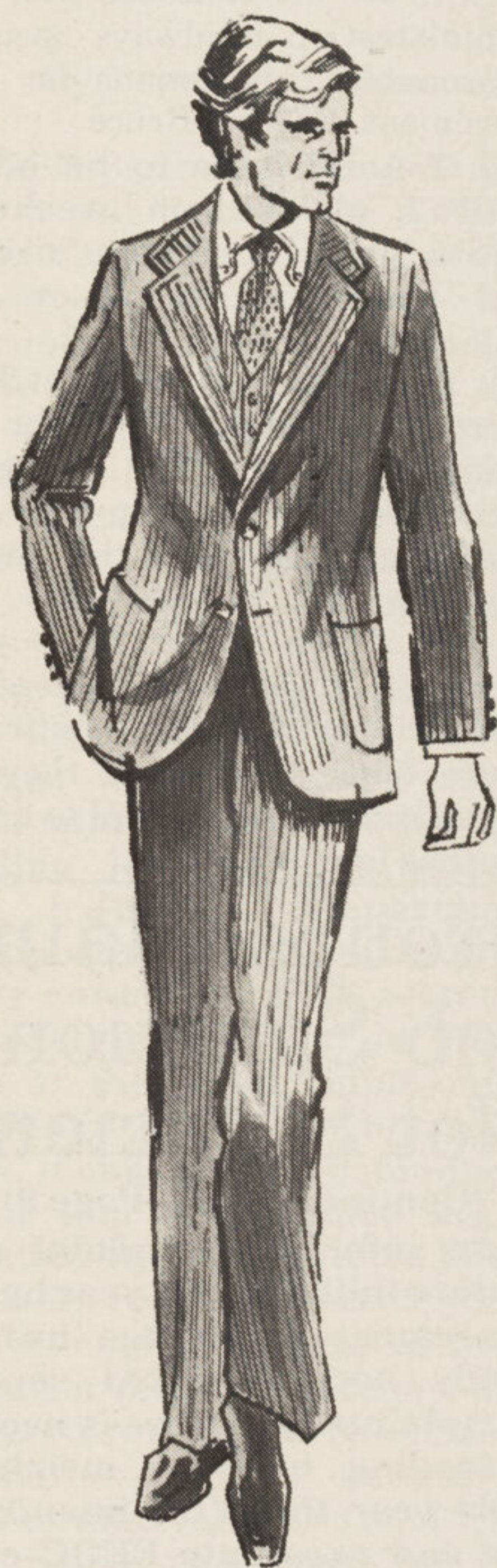
A library exhibit entitled **Law and the American Revolution** will run from November 1 through the end of January. The exhibit will be in three parts, the first of which is *On the Road to Revolution*, a survey of legal events and issues relating to the pre-revolutionary period 1760 to 1775.

The following excerpt from a not-so-dated opinion is in "judicial code." Decode it. (Hint: Each letter stands for a different letter of the alphabet.)

[E]zm dp fgzxmztor tg xzdn puzp tr
ghyjcfdml pug [edpr] ejkmedo pj gmzep
hdmdhkh xpzmnzfnx mgegxxzfr pj hzag
ncgoodmlx zmn ncgoodml yfghdxgx "bdp bjf
ukhzm uztdpzpdjm," pug ogldxozpkfg hgzmp
puzp pug dmxpzoozpd jm jb ujp czpgf
bzedodpdgx dx mgegxxzfr pj zeudgwg pug
ngxdfgn ykfyjxg? * * * Pug fgskdfghgmp jb
pujxg bzedodpdgx dx mjp mgegxxzfdor
fgozpgn pj xzmdpzpdjm jf yktode ugzopu
zmn cgobzfg, mjf dx xkeu fgskdfghgmp
fgzxmztor mgegxxzfr pj hzag ncgoodmlx
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(Solution on Page 5)

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HARVARD SQUARE

Jessica Osterheld Appointed Psychiatric Counsellor at HLS

By Beth Emery

Business has been both "brisk" and "terribly interesting," for Dr. Jessica Osterheld, recently-appointed counselor to students at the Law School.

Osterheld, who has M.D. from Tufts and a residency in psychiatry at the Boston Veteran's Administration Hospital, holds a unique position here. She is located in the law school clinic, but is not associated with University Health Services (UMS).

Dean Albert M. Sacks explained that the administration wished to provide a counselor who would work directly in and for the law school, supplementing UHS services which often require students to go to Holyoke Center for psychiatric counselling. "We wanted to strengthen and improve the program," he said.

"Osterheld is available to assist any student with problems, in particular emotional ones," Sacks said.

Osterheld added that problems could be either personal or school-related. She and Sacks both noted that she was appointed with the idea of being particularly available to women students, as one of her professional interests is conflicts women face in career-choices, family roles and traditional feminine roles.

"It's pretty clear the law school needs more women role models generally and in counselling particularly," she said, explaining her presence as a first step in that direction. "I'm spearheading what I hope in time will be an expanded function."

A spokesperson from the Women's Law Association (WLA) said that WLA members lobbied heavily last March for a woman counselor to be placed on campus. (Dr. Preston Munter was the only psychiatrist at the law school clinic last year.) WLA believes that those

spring meetings with administrators resulted in the decision to create Dr. Osterheld's position.

Osterheld, who feels the most important reason for her presence at the law school is to give students a choice between a male or female counselor, said she was told that the decision to create the position was in response to requests from women students.

Sacks added that the post was created in an attempt to improve counselling services in a broad way, in a variety of contexts.

He said the two most obvious areas which required improvement were emotional counselling filled by Osterheld) and placement counselling (a duty of newly-appointed Assistant Dean Alfred Daniels).

Sacks said plans are now being considered which would add vocational counselors to the staff sometime in the future.

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Rule 26: Courts, Lockers, Late Nights

By Gary Hailey

Q. Will Professor Shapiro's health problems prevent him from teaching the spring semester Federal Courts course? If so, will someone else teach it?

A. The Registrar's Office did not have a definite answer to this question. Professor Shapiro will undergo further surgery, but he is in excellent mental condition and there is a reasonable chance he will return to teach this course. If Shapiro is unable to teach the course, efforts will be made to find a substi-

tute, but there is an outside chance the course will be cancelled. (Professor Bator, a logical replacement, will be on leave this spring.)

Q. Will we commuting students be able to get lockers in the tunnel locale we prefer next year? It would be nice to have a locker below the building where you have most of your classes.

A. Sorry. Due to the long lines and confusion which appear annually when lockers are distributed by the Langdell receptionist (the hassle, she claims, is totally unnecessary since there are enough lockers to go around), the lockers, which rent for \$3 a year, will be distributed on a random basis in

the future. Sure, it would be nice to have a locker near your classes, and Dean Bruce has conceded that the administration is always open to "reasonable" suggestions for improvement. So buzz Bruce.

Q. I don't have to be home until 1 o'clock on weekend nights. Why don't the mixers end then instead of at 12 o'clock?

A. Dorm Council President Tom Burroughs had two reasons for the midnight ending time. Harkness personnel must clean up after the mixers, and the later they must stay, the more it costs. Also, the masses of non-law students who flock to the Friday night galas often need to use public transportation to return home (that is, if they do return home) and it's hard to find a bus that late.

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Groups Claim Job Sanctions Not Sufficient

(Continued from Page 9)

An informal complaint procedure initiated this year by the Placement Committee has already accommodated several complaints. But more is needed according to WLA members. This year the WLA intends to file and prosecute EEOC complaints on behalf of law students, if any so desire. Ms. Stocking also suggests that Harvard inform law firms that if they show no improvement in their percentages of woman and minorities over a set period of time — perhaps three years — they'll be barred from using Placement Office facilities. Abigail A. Jones, 2L, adds that this measure could be particularly effective if taken by several law schools together. An additional recommendation was that HLS emulate Boalt Hall, where interviewers attend an informal session with WLA and BLSA members before they commence interviewing.



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Justice Dept. Challenges S. Carolina

By Frank E. Sisson

The Department of Justice has filed a suit against the state of South Carolina alleging that the state's teacher certification system discriminates against blacks.

The challenged certification system operates on the basis of unvalidated National Teacher Examinations scores. Compensation of teachers is also tied to the unvalidated score of the applicant teacher.

The suit is being brought in the form of a class action against the state and various state administrative bodies, including local school boards. The Justice Department charges that the use of an arbitrary cut-off and NTE scores is unconstitutional and in violation of the equal employment section of the Civil Rights Act of 1964. It charges that defendants knew that the practice would result in barring qualified black teachers from full certification, and in confining many of them to lower-paying positions and reduced retirement benefits.

Attorney General Edward H. Levi certified the suit to be of "general public importance;" it was filed September 15 in the U.S. District Court in Columbia, South Carolina.

South Carolina had only 9,554 black teachers in 1972-1973 as compared to 21,573 white teachers; 4,915 of the black teachers were not fully certified.

The suit seeks preliminary and permanent injunctions aimed at correcting allegedly discriminatory policies, as well as compensatory damages for affected black teachers.

A similar suit was filed against North Carolina in 1973, and was resolved in August when a three-judge court declared that state's practice unconstitutional.

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Applicant Sues For Admission To Law School

(Continued from Page 1)

discussed in the October 10 RECORD, also raises the Defunis issue in an amendment of the original complaint. But Krohn is suing only Harvard. And his suit contains the additional claim that the Law School's secretive admissions process violates due process rights to a hearing to contest his rejection, Krohn's score of 800 on the LSAT (the maximum possible score) was achieved on his second sitting for the test.

Both cases rest on the premise that state action is involved in the rejections. Donnelly argues that since state law requires that an applicant to the state bar be a graduate of an accredited law school, the 14th amendment should apply to the schools to which he applied.

Krohn, concerned only with Harvard, points to provisions in the state constitution regarding state influence over the governing of the University and making it accountable to the legislature.

Donnelly and Krohn are each representing themselves against Harvard, which is being represented by Ropes and Gray.

Donnelly's motion for a temporary restraining order (to mandate that the five law schools admit him pending decision on the merits) was denied on October 9. He now is seeking admission and \$20,000 damages for missing a year of law school.

HLR Competition Winners Hold Own on Review Staff

(Continued from Page 8)

declined to do so, usually with comments about how busy they were. If the competition were expanded to become the sole method of *Review* selection, all faculty members would have to participate in the grading (assuming that such faculty participation is preferable to grading by students alone). Since full faculty participation seems unlikely to occur in the near future, a selection system relying solely on a writing competition is not a viable possibility.

There are finally two areas in which the writing competition is no worse than grades, but in which, contrary to initial appearances, it is no better. First, the pressure to perform on first-year exams would be eased only marginally if *Review* selection did not depend on these exams. Employers choosing between second-year students for summer positions would continue to be interested in first-year grades, and 1Ls are very much aware of this interest. Moreover, the writing

competition brings pressures of its own; the days of the competition and the few weeks wait afterward for the results were as agonizing for many of this year's participants as the comparable period around first-year exams had been.

Second, the claim that the competition tests skills that are more relevant to *Review* work than are grades simply has not been verified by the available evidence. Although persons invited onto the *Review* on the basis of the competition have generally done as well as their grade-selected 2L colleagues in performing the assigned tasks, they have not done any better as a group, and they certainly have not surpassed the grade selectees in the way that the theory would suggest. Whatever the reasons for this the empirical observation, combined with the fact that pressures would not be eased, together suggest that a system based exclusively on a writing competition would have few or no advantages to offset the increased costs in terms of faculty and student time and grading arbitrariness.

As one initially disposed to favor a writing competition as the exclusive means to *Review* selection, I have come with some reluctance to conclude that the present mixed system may be the best that can be achieved. Both grades and writing as criteria of selection have problems, and both have certain advantages. By taking some people on the basis of writing, the *Review* may ease a bit of the pressure to perform on exams and provide itself with a more diverse group of editors. By not taking everyone on the basis of writing, the *Review* avoids a vast commitment of resources to a rather arbitrary selection process. The mixed system, while far from perfect, does tend to minimize the worst features of each means of selection and to provide the *Review* with an outstanding group of 2L editors.

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