

Activities Are Not 'Extracurricular'

By Michael J. Henry

Recognition and service are two primary motivating factors that help account for the proliferation of student activities at Harvard Law School in the postwar era, Vice Dean Louis A. Toepfer said in a *Harvard Law Record* interview. The RECORD, in exploring the general function of

the Law School's student activities, asked essentially "what makes them tick?"

Dean Toepfer pointed out that the most fundamental characteristic of law school activities is that they are not really extracurricular, but are almost all professionally oriented in a broad sense. While this is most clear in the case

of the three oldest activities, which date back considerably before World War II — the Law Review, Board of Student Advisers, and Legal Aid Bureau — newer organizations such as the Forum and political clubs can also be considered professionally oriented if the role of the lawyer is
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Harvard Law Record

America's Oldest Law School Newspaper

VOL. 35

CAMBRIDGE, MASS., NOVEMBER 29, 1962

NO. 7

Class of '52 Averages \$15,000

By Donald W. Kramer

An average Harvard Law School graduate ten years out of school earns \$15,000 a year, according to a survey of the Class of 1952, which was distributed at the Class Reunion here November 2 and 3.

More men reported that salary figure than any other. It was also the median salary for the class. But a few highly salaried graduates pushed the overall class average income up to \$17,400 a year.

Out of 486 graduates and 575 members of the class, 308 persons, representing 63% of the graduates and 54% of the class, returned the unsigned questionnaire.

Unlike the Class of 1927 (see RECORD, Nov. 15), the class boasts no "outstandingly unusual" occupations. Several members are now clergymen, a few are law professors, several are politicians, several are in foreign or international law, one is a doctor, one a psychiatrist, and two are judges.

Nearly two-thirds of those who responded to the poll are engaged in full-time private practice, and about two-thirds of these are located in a metropolitan area of over one million people.

Also there are 24 governmental lawyers, 43

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Perleman to Speak Monday

Prof. Charles Perelman of the University of Brussels (Belgium) will speak on "Logical and Judicial Proof" Monday at 5 p. m. in the Littauer Auditorium under the co-sponsorship of the Law School. Prof. Perelman has devoted his professional career largely to the role of rational argument in legal, political, and moral decisions.

Rolling Stones . . . No Moss

Over the course of the semester the RECORD has discussed several problems which confront the Law School — such as the auditory difficulties in the classrooms and the dangerous conditions created by the insufficient number of exits in the rooms in Langdell. We feel that the only adequate solution is the replacement of Langdell and Austin halls by a new physical plant, and we think that the Administration should soon appoint a committee composed of alumni, faculty members, and students to formulate plans for these new facilities and to lead the drive to secure the necessary funds.

We well realize that the money the Law School has raised in the past has gone for such important objectives as professors' salaries and scholarships and that a large amount of money will be required to reach this new goal. However, there must be a beginning, and even though this project may take years to complete, the fact that the School has initiated and given its stamp of approval to the drive will supply the impetus for securing the requisite assistance of the numerous persons interested in the future development of the School.

There are those who while agreeing with us apropos of the defects in the physical plant tell us that, in effect, we are wasting our time — that this is the way things have always been and the way they will always be. But we beg to disagree with the "inertia" explanation of the School's dim prospects for physical progress, for we feel that the School is not hopelessly committed to the *status quo* and that if such a leading law school as Columbia has been able to secure new facilities, Harvard Law School can, also.

If even a small number of interested persons become *determined* to achieve a new building, we are confident that the objective can and will be reached. And any student who has repeatedly spent most of the ten-minute break between classes trying to get out of the first room only to be late for the second class or one who has to struggle to hear what is going on in class should be vitally interested.

Indeed, it is for this reason that we urge the Administration to include several students on the committee which would chart and conduct the drive. We are certain that student suggestions and ideas, resulting from day-by-day exposure to the inadequacies of the present plant, would prove valuable in planning the new Langdell Hall. And there are many students who would give of their time for such a cause.

Harvard Law Record

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

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TONGUE 'N CHEEK

By Fenno

One of the toughest jobs for a law student is getting out of a classroom at the end of the hour without dislocating every bone in his body. He can use several possible techniques:

Famous Last Words Approach. As the professor coughs his last gasps — barely audible above shuffling of notebooks — leap from your seat and jump from desk-top to desk-top. As you leave the room and hear him mumble "and now I will summarize the black-letter law," reflect on how you beat the crowd . . . out of school.

Carry The Torch. Light a cigarette and hold it in front of you while stumbling through the door. When the party gets dull, casually burn the neck in front of you.

Open Door Policy. No one ever opens the other half of the door. When the mob reaches a peak, quietly unlock the door. With a "Charge!" swing it open, casually driving 30 students into the wall — where they will hang for future generations to admire.

Co-education. Sneak in line behind a girl and follow her out. Either waters of wide-eyed bystanders will part or she will be clobbered like anyone else. In either case, she runs interference for you. There are two difficulties: there may be no girls in your class or *you* may be a girl. Both problems seem insolvable.

Wait And See. Don't rise until you see the whites of the eyes of the incoming group. Then, as the next professor uncorks the new hour, get up and leave. However, one danger is that he has locked the doors to retain classroom attention.

Legalistic Approach. Fold your arms, lower your head, and bulldoze your way through the line.

Regardless of the strategy taken, those on the outside seem as eager to get in as you are to get out. Hurray for osmosis!

Mock Registration Slated Monday

Second-year men will have an opportunity to express preferences for third-year electives in a mock registration starting Monday under the sponsorship of the Dorm Council. The survey forms will be distributed to all second-year men in their required courses on Monday and are to be returned to the information desk in Langdell by the following Friday.

The objective of the survey is to provide guidance for the Administration in determining the number of sections to be offered in various third-year elective courses. The disproportionate size of the sections in certain courses this year, a situation which developed during pre-registration last spring, revealed the need for such a survey.

Details of the survey were reported to a Dorm Council meeting Monday by project chairman Arthur Lombard, who emphasized that the usefulness of the survey depended on a sizable response and careful consideration of what they intend to take by second-year men. He also said that if the project is successful, a similar survey may be conducted later in the year among first-year men for second-year electives. The survey is being conducted in cooperation with Law School Secretary Russell Peck.

In other business considered by the Dorm Council Monday, the athletic committee reported that a basketball league similar to the touch football league would be organized. The social committee reported that the November 4 mixer was successful and that the Council had realized a small profit on it.

Athletic Tickets to Go on Sale

The Harvard Athletic Association has announced that athletic participation tickets for the special winter term, commencing December 1 and ending with the start of Spring Vacation, will go on sale at the Athletic Office (corner of Boylston and Eliot streets) Monday, December 3. The athletic participation tickets permit holders to use indoor athletic facilities at the University.

The RECORD advises weekend athletes, who do not wish to pay 75¢ to use the Harvard gymnasiums this first weekend of the winter term, to go for that last swim in the Charles.



Secretary Peck

Traffic Survey in 'Dull Stage'

By Stewart D. Davis

The survey being conducted to determine the future of the Harvard Square area of Cambridge is now in the "middling, dull stage" according to Alan McClennan, Cambridge Planning Director.

Bruce Campbell and Associates of Boston, the engineering firm acting as consultants in the survey, have had some 40 persons walking through the Square and University area checking on such problems as traffic and congestion.

McClennan said that the field work in the traffic survey is now substantially complete. The figures are being fed into IBM machines, totalled, and projected into the future. The results and suggestions of the survey, the cost of which is being underwritten by the Harvard Trust, the Harvard Coop, and Harvard University, are slated to be publicized next March.

Planning Director McClennan said that his planning board staff is making a survey of its own in the Square's commercial area, seeking information on land values, why merchants are here, how long they plan to stay, and so on. Eventually the two surveys concerning Cambridge's present problems and future solutions will be merged.

Conservatives Replace YAF

The Harvard-Radcliffe Young Americans for Freedom changed its name to the H-R Conservative Club last Tuesday.

Explaining the change, Mike Liles, 3L, newly-elected President, said he anticipates that it will be easier to get new members with the new name. He feels the Conservative Club title will immediately let others know the philosophy of the group, while the old YAF name might have left them guessing.

The local club is still affiliated with the national YAF.

Liles replaces William Graham, another third-year law student, as president. Four other law students serve on the Club's executive committee. They are Diarmuid F. O'Scannlain 3L, Richard W. Scarritt 3L, H. Woody Turner 2L, and Graham.

Republicans Change Officers

Three vacancies were filled recently at an executive meeting of the Law-Graduate Republican Club, it was announced this week. Elected to serve until general elections of the club on December 11, were W. Phillips Rockefeller, 3L, Red Hook, N.Y., vice-president; Maura Nolan, an assistant to Dean Bevins from Tacoma, Wash., secretary; and Stuart Hall, 2L, San Jose, Calif., Member-at-Large.

The vacancy in the vice-president's office resulted from the resignation of Hugh A. Norton, 3L, Cambridge, Mass. Miss Nolan replaces Mary Cooke, a graduate student, who resigned.

The membership-at-large spot was vacated by Rockefeller.

Reservists Return

The four Harvard Law School Air Force reservists who were recalled to active duty on October 28 have been released, and they returned to classes this week. The four are Duane R. Batista, Chicago, Ill.; Edwin H. Amidon, Jr., Dewitt, N. Y.; Gene E. Penn, Dunbar, W. Va.; and David O. Brownwood, Berkeley, Calif.

Hughes' Manager Describes Campaign Techniques

By L. F. Kaplan

Mr. George Sommaripa, campaign manager for H. Stuart Hughes, spoke on the how, what, and why of politics before a closed meeting of the Democratic Club last Tuesday.

Mr. Sommaripa described the ease of working in politics and the quick movement up the ladder of authority. His method of entry into politics is to approach someone who has lost an election. Because the loser has experience in politics and no longer has an organization, he will appreciate a novice who has enthusiasm.

Mr. Sommaripa characterized an ability "to ask people for things," a facility for organization, and a magnetic personality as the attributes of an effective politician. A capacity to mobilize people quickly into an effective organization is another crucial attribute. Although organizing was described as a heavy drain on the campaign manager, this drain is offset by the reward of finding a self-sacrificing candidate, a "golden person."

He described the technique of campaign financing as a three-phased operation. First, to insure a quick and enthusiastic start, one must set a quota to be raised before the candidate formally commits himself. This fund will usually come from a small group of close friends of the candidate. Second is the search for new people with new money. This was characterized as the "dry-gulch period" because of the work and frustration involved in this type of solicitation. The last phase is the "massive recap." This involves an effort to induce the original small group to provide the money necessary to put the candidate "over the top."

Ames Semifinal Winners

Story Equity Club will face the Holmes Club in the final round of the Ames Competition next spring. Story Equity won its place in the final round by defeating Choate Club in the semi-final round held on November 20. Holmes defeated Marshall Law in the semi-final round held one week later on November 27.

Herwitz Helps Out in Washington

By Neil L. Chayet

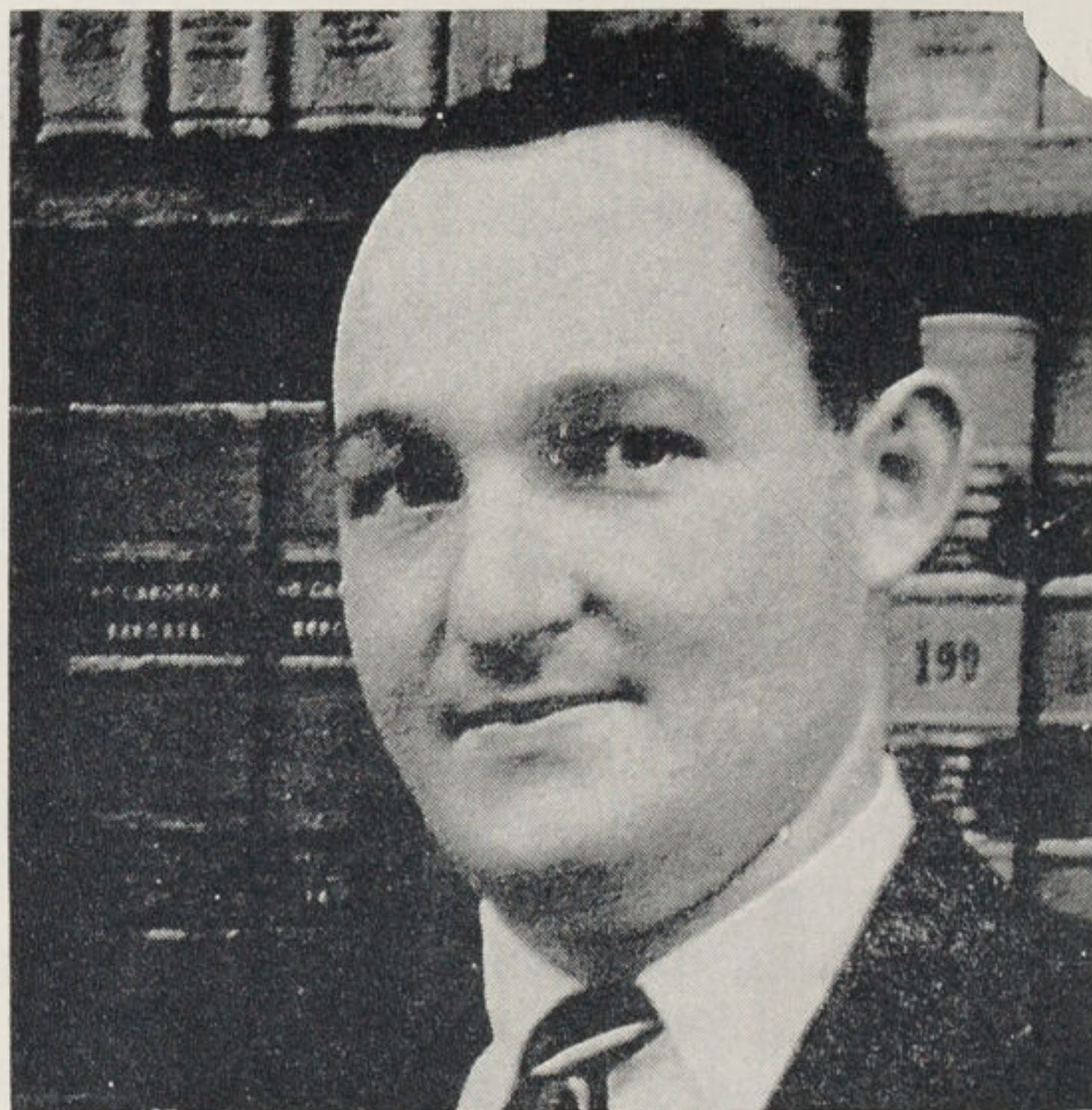
At least twice a week, Professor David Herwitz is the recipient of a lengthy telephone call from Washington; the caller — usually someone on the staff of former professor Stanley Surrey, Assistant Secretary of the Treasury, or, not infrequently, Donald C. Lubick '49, Tax Legislative Counsel (and Professor Herwitz's classmate), and the subject — tax reform.

Professor Herwitz, who has made several trips to Washington since January, 1962, is one of many tax consultants who work with the Treasury Department staff in a continuous search for ways to make the tax laws better — and fairer — for both government and the taxpayer. Professor Herwitz points out that the concept of tax reform, so much in the news at the present time, is really nothing new; the aim of the Treasury Department is a continuous reform and a never-ending search for solutions to the difficult problems which are inherent in any complex system of taxation.

When asked if the "spirit of reform" is more spirited under the Kennedy administration, Professor Herwitz declined a comparative comment but stated that in each of his visits he has been greatly impressed by the "sense of purpose and the vibrant atmosphere which seems to envelop the Department." He also emphasized the fact that much of the vital work is done by young men, and he named several instances where young lawyers, several of whom were graduates of the Harvard Law School, played crucial roles in the key issues which have been at the fore in the recent tax action. Professor Herwitz also pointed out that Messrs. Surrey and Lubick are continually searching for responsible and hard working young men, and he urged graduates to consider starting their career at the Treasury, even though "the ten-hour day inclusive of Saturday" has proved to be the rule rather than the exception in the past few months.

Professor Herwitz remarked that his own work is in the area of technical changes and improvements, rather than in what may be thought to be the more glamorous "closing of loopholes." He played an active part in the formulation of Revenue Procedure 26-21, which provides more liberal depreciation allowances for business assets. He also has spent a good deal of time working on the problems inherent in the very complex collapsible corporation area. He also is assisting the Treasury in taking a look at various means of reconciling to some degree the divergence between tax and accounting procedures in the area of prepaid income and future estimated expenses, a controversy vividly reflected in the well-known Pacific Grape Products case.

Using the Depreciation Problem as a specific example, Professor Herwitz pointed out that, contrary



Professor Herwitz

to widespread public opinion, the Treasury Department is not always at loggerheads with the taxpayer. When the Treasury receives well-based complaints from a sizable segment of the economy, it initiates a comprehensive study of the issue, utilizing the services of consultants, professors, economists, accountants, and lawyers. In the instant case, industry received an accelerated depreciation allowance, based on average industry replacement practices, which, combined with the recent investment credit, results in a real gain for business. The same comprehensive study is underway in the areas of the collapsible corporation and prepaid income. The depreciation problem was six months in the solving, and, throughout, Professor Herwitz was impressed by the Treasury's determined efforts to obtain a wide expression of views, both from various individuals and Washington conferences which provided a real opportunity for interchange of conflicting opinions.

Professor Herwitz stated that in these areas, whatever may be the case as far as law school examinations are concerned, "spotting the issues is just the beginning — It is the resolving of the problem which requires all the thought." He emphasized that although consultants may be able to make some useful contribution, the really hard work of progressing from a general idea to an administrative or legislative draft is done by the remarkably small but able Treasury Staff.

In conclusion, Professor Herwitz said that the experience has been, for him, invaluable, providing a significant new dimension in learning and the opportunity to work with outstanding individuals in government and in private life.

Dorm Council Moves for GSA Tie

By Michael J. Henry

According to Graduate Student Association President John Brode, the projected cooperation between the GSA and the Law School Dormitory Council will benefit law students through an increased number of social and cultural events. At a recent meeting the Dormitory Council voted to establish formal liaison with the Graduate Student Association.

Informal cooperation has already taken place this year between GSA and the Dorm Council in the co-sponsorship of mixers. Such cooperation lessens the financial risk in sponsoring costly major events such as dances and concerts because there is a larger student body from which to draw. This, in turn, makes more such events possible. GSA, for instance, is interested in sponsoring a series of concerts by major chamber music groups, probably in Sanders Theatre. Combined sponsorship with the Dorm Council would make the project more feasible.

Such cooperation, however, raises one major problem yet to be overcome. This is the difference in the composition of the two organizations. The Graduate Student Association draws upon the entire student body in the Graduate School of Arts and Sciences for membership. The Law School Dormitory Council "membership," on the other hand, is limited to residents of the dormitories. GSA can legitimately use the funds derived from its membership to support projects which benefit all graduate students, but it is more difficult for the Dorm Council to justify doing so because its funds are derived only from dorm residents.

This difference in operation of the two organizations also affects another major project for which GSA is seeking law student support. This is GSA's campaign against discrimination in off-campus private housing. Since this problem by definition concerns non-dormitory residents, it is technically outside the scope of the Law School Dormitory Council's function. In the absence of a broader law student association, however, the Dorm Council has not, in practice, confined itself to exclusively dormitory affairs.

The benefits of combined law and graduate

student activities are not limited to major events involving sizable financial risk. Since there is not enough general graduate student interest in athletics to justify a separate GSA program, those graduate students who are interested can participate in the law dorms athletic program. Conversely, law students with the interest and singing ability are welcomed in the Graduate Chorale, which meets weekly at Radcliffe Graduate Center and gives periodic concerts.

Other Graduate Student Association activities include smaller social affairs such as sherry parties, outings such as hikes, a monthly newsletter, and the "Unofficial Guide to Graduate Life at Harvard," which is distributed with membership cards. It also sponsors a monthly series of small, informal lecture-discussions with prominent faculty members.

GSA President Brode noted some potential "fringe" benefits of GSA-Dorm Council cooperation. The chronic problem of getting a sufficient number of student workers will be reduced by eliminating duplication of similar projects. Brode also commented that greater integration of law and graduate student activities may help bridge the gap in outlook which sometimes seems to separate law and graduate students.

Griswold on ABA Committees

The American Bar Association has invited Dean Erwin N. Griswold to serve on a Special Committee on Defense of Indigent Persons Accused of Crime. The project will be carried on cooperatively with ABA sections, the National Legal Aid and Defender Association, and state and local bar associations. Associate subcommittees will be set up in each state to study present practices and to push for new programs where necessary.

The Dean was also re-appointed Chairman of the ABA Special Committee on Professional Relations, formed in 1954, to consult with members of the American Institute of Accountants on mutual problems of the two professions.

Freund: *Engel* Basis 'Unfortunate'

By Richard A. Hannaway

Professor Paul A. Freund spoke on the Supreme Court's decision in *Engel v. Vitale* at a luncheon meeting of the governing council of the American Jewish Congress in Boston on November 11.

After noting generally how the operations of the Court in civil liberties matters are controlled by the natural limits of the litigation process, he went on to the manner in which the Court dealt with the explosive question of the separation of Church and State. He explained that two clauses of the First Amendment, which through the Fourteenth Amendment apply to the states, were involved. The first prohibits the establishment by the state of any religion, and the second prohibits the interference of the state in the free exercise of any religion. In *Engel*, the New York test case, these clauses were in apparent conflict; one side argued that the prayer constituted an establishment of religion, and the other felt that to outlaw it would be a prohibition of the free exercise of religion. Prof. Freund went on to say: "It is unfortunate, I believe, that the Court elected to deal with the case in terms of the establishment clause, and it was doubly unfortunate that the New York case was made the test case." If the Court had chosen one of the cases now coming before it involving the reading of a certain passage from a certain version of the Bible and had based its decision on State interference with the free exercise of religion, the issue would have been much clearer and more persuasive. Also the Court could have restricted the effect of its decision to the classroom and avoided the introduction of unrelated matters like Federal aid to parochial schools and tax exemptions for religious institutions.

But the professor did not seem to agree with the more violent critics of the Court. He pointed out that though opponents of the decision argue that the prayer was voluntary, in view of the circumstances of the schoolroom "In a realistic and meaningful sense

such exercises are in fact coercion." Also, the opinion of the Court does not, he believes, bar a period of silent devotion in class. To those who protested that religion was being driven from the schools, he responded: "Surely it is superficial and deluding to think that a few watered-down words spoken routinely are more important in creating an atmosphere of reverence, humility, and awe than the character and quality of the teaching." He ended his address with these words:

"When critics speak of taking God out of the classroom, I remember some lines of Wordsworth:

'Dear child, dear girl, who walkest with me here,
If thou appear unmoved by solemn thought,
Thy nature is not therefore less divine;
Thou liest in Abraham's bosom all the year
And worshipest at the temple's inner shrine,
God being with thee when we know it not.'"

New York to Revise Bar Exam

New laws adopted in New York State have caused revisions in the Bar examinations of the state.

Legislative action has supplanted the old Civil Practice Act with new rules, which will take effect on September 1, 1963. The Legislature has also adopted the Uniform Commercial Code, effective September 27, 1964. Substantial amendments to the Corporation Law will become effective on September 1 of next year.

Because of these enactments, the State Board of Law Examiners has adopted a new examination policy: (1) The Bar examinations to be held in November, 1962, and March, 1963, will be graded on the basis of existing law; (2) The Bar examinations to be held in July, 1963, and thereafter will be graded on the basis of the new Civil Practice Law and Rules and the new Corporation Law; (3) The Bar examinations to be held in July, 1964, and thereafter will be graded on the basis of the new Uniform Commercial Code.

Politics and Spaghetti

Feature Forum Discussion

Life is a bowl of spaghetti, around which are gathered a band of men who may roughly be categorized as activists and moralists. This concept emerged from the Law School Forum's symposium on the means-ends relationship.

Carl J. Friedrich, Eaton Professor of Government at Harvard University, moderated the panel composed of Wassily W. Leontief, Henry Lee Professor of Economics at Harvard University, Arnold Brecht, Professor Emeritus at the New School for Social Research, and Hans J. Morgenthau, Professor of Political Science at Chicago University.

Mr. Leontief introduced the spaghetti analogy. He argued that ends are the only justification possible for means but that the end sought is never the only one to result from any particular means. Even though one cannot tell which ends will follow, one must carefully balance probable good results against the probable bad results. In short, one simply cannot pull just one strand from the bowl of spaghetti; invariably a knot of other strands will land in one's lap, and he cannot tell in advance whether this knot will contain more good strands than bad.

Mr. Morgenthau argued that the question of justification has no meaningful answer. The activists do not ask it; they simply choose a strand and pull. They are limited only by very broad social prohibition against the removal, direct or indirect, of certain strands. Only the moralists ask the question, and it is significant only because, by asking it of each other, they are deterred from joining the activists in selecting and pulling spaghetti from the bowl. If most men were not moralists and were not deterred from pulling strands, the situation around the bowl would get quite messy and would approach Thomas Hobbes' war of each against all.

Mr. Brecht argued that we must bring science to bear on the problem of the composition and size of the spaghetti knot that will land in our laps and choose the strands to be pulled on this basis.

Casner Going West

Associate Dean A. James Casner is packing his suitcase. He will travel to Tempe, Arizona, to present a discussion at the Annual Tax Institute held at Arizona State University. Speaking on the morning of December 1, Professor Casner will discuss estate planning and the avoidance of tax hazards in income taxation of estates and trusts. Lawyers throughout Arizona have been invited to the two-day Institute, which is sponsored by several groups interested in the general development of federal tax matters. According to Professor Casner, it is a good example of the continual post-graduate legal education programs which are becoming popular throughout the country.

Later, on December 4, Professor Casner will talk to Harvard Law School alumni of the Arizona area.

Class of 1952

(Continued from page 1)

lawyers with private organizations, 9 in part-time practice, and 39 not in law at all.

The highest median income was \$18,000 — earned by men associated with one to 10 other lawyers in private practice in a city of from 100,000 to one million population. There are 25 in this category.

Next highest median was maintained by the 28 men practicing with 50 or more other lawyers in the metropolitan areas. Their median was \$17,500, with an average of \$20,400.

Individuals who practiced alone, the report said, "generally earned less than those associated with other lawyers." The lowest median income in any of the categories was \$9,600 for those in individual practice in a city or town under 100,000 population. Eight of the 25 solo lawyers were in this group.

The median range of those not in law was \$15,250, with an average of \$20,190. The income spread of this group was \$3,700 to \$75,000.

The only question not related to type of practice and income was: "Do you have a will?"

"Embarrassingly," said the report, "only about two-thirds (208) of those responding have a will."

Having a Party? Make it 'Private'

By Charles M. Hamann

The summary termination of a dormitory Halloween party by a University policeman caused an unhappy member of the Dormitory council to ask at a recent Council meeting just what constitutes the difference between a "public" party, which is prohibited, and a "private" party, which is allowed. Because *ignorantia legis non excusat* and numerous dormitory floor parties preceding Christmas vacation are in prospect, the issue has continued significance.

In order to have the distinction clarified, the RECORD asked Dean Wesley Bevins, the Law School's foremost authority on dormitory law, to define and distinguish public and private parties.

The Dean said that public parties are to be avoided. A public party requires permits, from both the City of Cambridge and the University. Whether the University would grant a permit for the purpose of dormitory fun, he deemed highly doubtful. If permits were granted, problems and expense would only begin. To keep the boys on their best behavior, police protection would be necessary as a requirement of law. And the law demands for the ladies an attended rest room and a place to lie down.

The problem of a public party should not be, however, an insurmountable obstacle to Christmas carousers and other devotees of the "big blast." According to Dean Bevins, "just where a public party begins and where a big private party ends, nobody knows." Rather than gain a place in *Words & Phrases* with an absolute rule, the Dean added that he preferred to leave the distinction somewhat undefined.

The Dean did, however, point to certain University regulations which would indirectly limit the size and location of a dormitory party, and he did offer in oracular fashion some advice as to how to remain on the private side of the invisible line.

He said the University prohibits all activities which disturb the peace either inside or outside the dormitories. Turning a corridor into a common room is not agreeable either to the University, the University Police, the City Police, or the City Fire Department. However, it is all right for a party "just to

spill out" into the hall if it first starts in a common room.

Advertising is taboo, at least where there is written evidence of it. News of a floor party should pass by "word of mouth," the Dean said.

Yale Law Starts Fund Drive

Yale Law School has embarked on the first capital fund drive in its history — a \$5 million program to strengthen its library, expand financial aids, and increase faculty salaries.

The program was first recommended in 1959 as a stage in the University's overall development program. It was given the go-ahead this fall after the success of Yale's Program for the Arts and Sciences.

The program is designed to "maintain Yale's capacity for creative pioneering." The Corporation has decided the School should "remain small, with an excellent faculty and a highly selected student body, stressing instruction through small classes, individual research and frequent informal consultations between students and professors."

The School intends to keep the size of its entering class at 165 and its graduate program at 50. But it will increase the size of the faculty, which now consists of 39 full-time teachers.

The "immediate capital needs" include \$1,750,000 for a library annex, \$500,000 for library acquisitions, \$1,250,000 for financial aid to students, and \$1,500,000 for faculty salaries, faculty expansion, and research. Long-term capital needs are listed at \$15,720,000, including \$1,220,000 for additional faculty offices and student dormitory space.

The current \$5 million effort will be combined this year with Yale's annual giving program, which has a \$150,000 goal. The School expects the remaining capital needs to be met "through a less organized effort" as part of "a continuous program of capital development."

Yale decided on a capital program because "it would be unrealistic to expect" the annual giving to provide sufficient funds and the faculty feels it would be unwise to raise the tuition rate, which now stands at \$1,350.



ACLU Head Urges New Freedom Concept

By Edwin S. Kahn

The time has come for Americans to re-appraise 18th century concepts of freedom, John Pemberton, National Executive Director of the American Civil Liberties Union, declared here November 16.

Speaking about "The McCarran Act and the Regulation of Political Heresy," Pemberton, a 1947 graduate of the Law School, posed two conflicting questions: "Are people free to seek out truth from error in the free market place of ideas?" or "Are we in need of protection from deceitfulness and 'offensive' doctrines?"

He said that once a line for the exclusion of ideas is drawn, there is always a danger of the line's being extended. He asked whether the limits placed on Communist and pro-Communist activities by the McCarran Act were necessary when there were already laws in existence dealing with espionage, sabotage, and the protection of classified materials.

Pemberton said that after ten years of litigation, the Supreme Court has upheld the requirement that the Communist Party register as a "Communist Action Organization." However, the Court did not rule on the constitutionality of the Act's requirement of registration of Communist-front or Communist-infiltrated groups or of individuals, he said. He explained that litigation on those questions is still in the Federal courts.

Pemberton took over as director of the ACLU in April. He commented that about 4,000 lawyers belong to the organization. About 1,000 contribute their services.

'Hows' v. 'Whys' Subject of Forum Program

The spirit of C. P. Snow will visit Cambridge tomorrow.

"Two Cultures? — The Gap between the Sciences and the Humanities," a program sponsored by the Harvard Law School Forum, will take center stage at Lowell Lecture Hall, corner of Kirkland and Oxford streets, at 8:30 p.m.

Featured speakers will be Professor Howard Mumford Jones, who is professor emeritus at Harvard and is now teaching English at MIT; Professor George Wald, who teaches biology at Harvard; and Professor Thomas Gold, who teaches astrophysics at Cornell.

Harvard history Professor Donald Fleming, a specialist in the history of science, will moderate the panel.

Football Game Cancelled

The Yale¹ Law² Journal³ cancelled⁴ a touch⁵ football⁶ game⁷, scheduled for Friday, November 23, with the Harvard⁸ Law⁹ Review¹⁰.

¹ Whether Yale is New Haven or New Haven is Yale is a question of fact for the jury. *Society for the Prevention of Yale v. Mayor of New Haven*, 962 Conn. 40, 1066 A. 2d 476 (2008).

² See *Seamless Web Co. v. International Darner's Union*, 1787 F. 2d 1215 (2024).

³ A journal is a newspaper or any periodical publication. *Tan's Law Dictionary* 855.

⁴ The meaning of a word is conditioned by the context. In this case the word "cancelled" means "chickened out." *Plucker v. Henton*, 1 Iowa County Reports 29 (1929).

⁵ For the defense to touch is within the area of lawful behavior, but offensive downfield blocking is battery. 6 Wilkinson, *Battery*, 47 (in a row).

⁶ For a study of the mechanics of this game, go west, young men. *Hayes v. Ivy*, 444 Ohio St. 888 (1984).

⁷ The Game is The Game. *Harvard v. Yale*, 79 Mass. & Conn. 7 (1875).

⁸ A statement by an agent that he was soliciting funds for Havad did not constitute fraud under the laws of Massachusetts, *Dun v. Solicitor*, 452 Mass. 85 (19 — etc.).

⁹ In *Minstrel v. Suh*, 808 Miss. 865, 1863 So. 2d 1954 (2054); the court held that it was not bound to reverse a judge who said "Law," when deciding a question of fact.

¹⁰ Da, da, da-te-da-da, da, da, da-te-da. Khrushchev, J., *re review*. *Folley, Berger et al v. Rockette World Can Co.*, 1 International 1 (1964).

Law, Government - No Strangers

By Daniel J. Kucera

"I was having a fine time in Washington," the tall, quiet man smiled. "But, I took a leave of absence from the Government for a year to see if teaching and I were compatible." And that is how Louis B. Schwartz became a professor! Reversing the trends of old and new frontiers, he was recruited *by* a university *from* the Government.

"Law was always in the picture for me," the Visiting Professor explained. Graduating from the Wharton School of the University of Pennsylvania in 1932, he moved right into that university's law school. There, he was note editor of the *Law Review* and top man in his class.

Federal service was the next challenge for the man from the Keystone State. As an attorney for the Securities and Exchange Commission from 1935 to 1939, he drafted regulations governing public utility holding companies and prosecuted security frauds. Then he jumped into the Department of Justice. Initially, he worked in the Criminal Division, directing FBI investigations and trying cases. Eventually, however, he settled in the Antitrust Division. He was chief of the Decree Section, and he negotiated terms for settling litigation. In 1946 the University of Pennsylvania Law School sent a committee to Washington to recruit new professors from government service. They convinced Mr. Schwartz to return to his Alma Mater.

At Harvard, the Professor is teaching one section of first-year Criminal Law, third-year Government Regulation of Business, and a seminar on the European Economic Community. He has also visited the Columbia Law School and the California School of Jurisprudence (Berkeley).

It would be unfair to call Professor Schwartz just a teacher—he is really an "all around" jurist. With Professor Herbert Wechsler of the Columbia Law School, he is Reporter for the Model Penal Code. In addition, he has been an assistant reporter for the Uniform Commercial Code. The second edition of his casebook, *Free Enterprise and Economic Organization*, was published in



Professor Schwartz

1959. Finally, he has served on numerous committees, including the Attorney-General's National Committee to Study the Antitrust Laws and the Executive Committee of the Philadelphia Defender Association.

"My reading is disorganized and takes the direction of books provided by colleagues," Professor Schwartz confesses. He enjoys a good game of squash during the winter months. When warmer weather comes, he plays tennis and does a little sculling, reminiscent of undergraduate days when he was on crews which rowed against Harvard.

Currently, the Professor is living in a suite in one of the Harvard houses. His two daughters have remained at home with their mother. Victoria is 15, and Johanna is 18.

The method of teaching at Harvard is "virtually identical" with that at Pennsylvania, Mr. Schwartz concluded. "Of course, the classrooms are smaller there. Here there is an extra strain on the teachers' tonsils and on the students' hearing."

Professor Schwartz has found the responses of Harvard law students to be lively—especially complaints of inability to hear. However, he believes that such complaints are a good thing. They indicate that the students are paying close attention and really "haven't missed anything"!

ExtraCurriculars

(Continued from page 1)

conceived as a leading member of the community as well as a specialist in law.

This professional orientation of law student activities, as opposed to undergraduate activities, reflects the fact that law students are adults who are more attuned to the real world which they are about to enter, Dean Toepfer said.

Students Are Leaders

In attempting to account for the great increase in law student participation in activities in recent years, Dean Toepfer noted that changed admissions procedures are bringing in many more students who were leaders and have been used to being recognized on their undergraduate campuses and who therefore are "not content with being just another law student." Participation in law school organizations provides a way of seeking recognition of the

individual person apart from the mass of students.

There has also been a considerable change in attitude among students in another respect — a substantial increase in what for lack of a sharper concept would have to be called "idealism." This is a necessary inference from the proliferation of such service organizations as Voluntary Defenders, Civil Liberties Research Service, Legislative Research Bureau, and the foreign student and job placement service activities of the International Law Club.

One other factor which has undoubtedly contributed to this growth is the greater integration of the law school community resulting from the centralization of physical facilities, particularly the construction of the dorms.

Hands-off Policy

The Administration policy toward student organizations is a "hands-off" one or at least a "negative hands-off" one. The standard birth, life, and death cycle of a student activity begins with the initiative of students. When it becomes convinced that a student organization has achieved some student support and is fulfilling a worthwhile function, the Law School will typically subsidize

the organization with funds to help it over the inevitable rough periods of continually changing membership. Almost all law school student organizations are subsidized. A sustained "rough period," however, is apt to result in a conclusion that the organization is no longer fulfilling a need and that the funds could be better used elsewhere.

Dean Toepfer noted that with the exception of helping out student activities when necessary, the Administration believes that students realize the greatest benefits from participation in such organizations when they have to work out their own problems. He commented that many law schools conduct moot court as a regular course but that Harvard is able to achieve the same objective through the Ames Competition. "It is testimony to the excellence of our students that they can do this first-class without the spur of supervision and the carrot of credit," Dean Toepfer said.

Publication Scheduled

Next Thursday marks the 105th anniversary of the birth of author Teodor Jozeff Konrad Korzeniowski. The RECORD will nevertheless publish.

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Somniferous Jurisprudence in America

By Daniel J. Kucera*

"I have given the juror a visible and auditory examination. . . ." he was "obviously asleep and snoring quite audibly." Thus did Justice Irwin D. Davidson of the New York Supreme Court excuse a jury foreman from service and from consideration of judicial mattress (matters). According to the New York Times of October 4, 1962, court officers twice had to awaken the juror, and the Justice had warned him against snoozing. The juror said that he merely was listening with his eyes closed. During testimony by the key prosecution witness, however, he was seen slumped over in the jury box. Justice Davidson concluded, "it would be a mockery of the jury system to continue him in service in this case."

This was not the first slumber party experienced by American courts. In fact, there is a whole line of decisions in which counsel have rested the case.

In *Pelham v. Page*, 6 Ark. 535 (Sup. Ct. 1846) appellant argued for a new trial on the ground that three of the jurors had been drunk and incapable of understanding the case and that one of them was asleep "to all appearances." The court held that the "ground taken that one of the jurors was to all appearances asleep during a portion of the trial is scarcely worthy of consideration. . . . Once adopt the rule that the appearance of being asleep on the part of a juror, is a ground for a new trial, and the motions for that reason would be endless." (Emphasis added). Query, did the court mean that such motions would be endless because of counsel's tactics to help his client or because, in fact, so many jurors *do* fall asleep?

Pillow talk was also involved in a later Arkansas case. Here, assignment of error included that

while counsel had been arguing, one juror was asleep, "absolutely oblivious to what was taking place in the courtroom." The trial judge told a fellow juror to wake him up, "which he did by touching and shaking him." However, the suspected juror swore that he "was leaning on the shoulder of a fellow juror, and asleep about half a minute," but that he was positive he heard every word. The court affirmed a denial of a motion for a new trial, saying "so it seems that not much of the eloquence of the learned advocate was wasted upon the drowsy juror." *Dolan v. State*, 40 Ark. 454 (Sup. Ct. 1883).

Snore Decisis

In *Braunie v. State*, 105 Neb. 355, 180 N.W. 567 (1920), defendant asked for a new trial because "one of the jurors went to sleep while testimony was being taken and appeared to pay but very little attention to the testimony or argument of counsel." The court held that "there was no showing that defendant was in any way prejudiced." It said that "the length of time the juror was asleep is not shown, nor does it appear what testimony was introduced during that time, nor that it was of any importance" Moreover, counsel must call the court's attention to the sleeping juror at the time, not after the verdict.

In a more recent case, it was apparent to everyone that on three occasions a juror was asleep. The first time, counsel approached the bench and told the court about the juror, but he asked for no relief. When the trial resumed, the judge asked the bailiff to check the heat in the radiators, saying, "Maybe we can all stay awake a little better if we get the heat cut off." The second time, counsel asked the juror if he could hear, and the juror replied that he could. The third time, the bailiff handed the

juror a glass of water, and the court asked, "Are you awake now, Mr. B?" "Yes sir, I am awake now," he replied. The trial continued without objection. The court held that although counsel brought the juror's condition to the court's attention, he did not ask for relief at the time and thus waived his right to claim error for alleged misconduct of the jury. *Casey v. Williams*, 47 Wash. 2d 255, 287 P. 2d 343 (1955).

Therefore, in summary, to get a new trial because of a sleeping juror, counsel must (1) make sure the juror was in fact asleep; (2) bring it to the court's attention right away; (3) ask for relief right away; (4) on appeal, show prejudice to his client. However, these requirements raise interesting problems.

Eye-Openers

First, what courtroom strategy should counsel follow? Should he hand out coffee when he speaks and chocolate sleeping pills when opposing counsel argues? Perhaps he could demand that the jury box be wired like an electric chair. To make a point or to spark the jury's attention, counsel would merely pull a switch. (Would this now be a "circuit" court, in "current" terminology?) An alternative would be to allow the jurors to sleep as they wish, as long as one juror is awake at all times to keep guard. Maybe counsel should question the jury a la Socratic Method; every juror would keep awake from fear of being called on, and a reply of "unprepared" would be prima facie evidence of a nap.

Second, how can counsel make sure a juror is asleep? He can listen for snoring or observe sleep-walking. Also, he could ask that blood pressure testers be attached to each juror. To check male jurors, he could introduce an im-

(Continued on page 15)

* © Daniel J. Kucera 1962

Former Nairobi Mayor Sees Hope in Africa

By Thomas E. Woodhouse

Employing the pronoun "we" with evident relish in referring to Tanganyika and betraying his intimate relationship with such personalities as Dr. Julius Nyerere and Tom Mboya by use of their first names alone, Sir Ernest Vasey informed his audience at a luncheon meeting of the International Law Club on Nov. 13 of several of the problems of regionalism and federalism in the East African Territories.

Mr. Vasey, a Knight of the British Empire, has also been mayor of Nairobi. He has lived 26 years in East Africa and served from 1959 through 1961 as Finance Minister for Tanganyika. With the advent of independence for that country, he remained as financial advisor to Dr. Julius Nyerere.

The term East African Territories, Mr. Vasey observed, although at times inclusive of the islands of Zanzibar, specifically refers to Kenya, Uganda and Tanganyika. The history of the region and the complexion of many of the problems besetting it today began by accident with the building of a railway in Kenya by the British Government. African unskilled labor was supplemented by the importation of Indian artisans, a situation which created a structure of three nationalities. The same horizontal pattern has since come to permeate the political, economic and

social realms in the region, with the politically dominant Europeans initially in political conflict with the Asians and more recently with the Africans. In a conference held in 1960, the British Government for the first time accepted Kenya as an African, not a European, democracy, a conception long supported by Vasey and others. Kenya remains a crown colony at this time but, Mr. Vasey predicted, should attain independence by 1964.

In contrast to disappointed early hopes for Kenya, Tanganyika was brought by its "brilliant teacher-leader," Dr. Nyerere, from the rear to the head of the race for political independence. Tanganyika now has a well-fitting constitution, something between the American and the British ones, and a government which has demonstrated that it is solidly against political corruption.

The problems of Uganda are those of a loose federation of traditionally differing groups. One newly elected member of the government confessed, Mr. Vasey related, that he did not know whether he represented his tribe, his party, his constituency, or the paramount interests of his country.

Looking from the present to the future, Mr. Vasey foresaw a great task for constitutional lawyers in creating a single political executive out of a crown colony, a republic, a federal system engrained with a strong monarchical tradition, and a constitutional monarchy (Zanzibar) but predicted that the task will be done.

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Letters to the Editor

Gentlemen:

A strong protest is made to your editorializing with the news. Certainly, Harvard Law School has the right to have speakers on all subjects, whether we agree with their views or not, but your reports on them should state the facts or the stand of the speaker and not your editorial comments.

How do you justify your comments in the October 25th issue, concerning William Higgs' talks to Democrats when you stated "—Higgs, free lance lawyer — rides a different charger than most white Mississippians — the cause of Negro equality. His is a bare-backed militancy, unadorned by the spangles of evangelism, clothed only in honest conviction." "The Free Press, oracle of the Mississippi integration movement —." I doubt that it is regarded as an infallible guide or indicator of such a movement.

"The integrationists of Mississippi don't discourage easily —." "To an ordinary man (plans to run against Senator Eastland in 1966) this course might seem naive, but to a man like Higgs — opposition to a segregationist or segregation is not a matter of practical politics but a matter of duty and right."

To me this is not a news report, but is the Record's editorial opinion of what Higgs stands for. We like all the news, but when you write an editorial, please so designate it.

Very truly yours,
Joseph O. Walton

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Low Review

(Continued from page 13)

pressive witness like Brigitte Bardot and watch the dials and meters jump. For female jurors, he could introduce Ben Casey, who would be asked to smile.

Third, how can counsel bring the situation to the court's attention, especially if the judge is also sleeping? This is a difficult question. Counsel's best plan would be to catch up on some lost sleep.

Fourth, what relief should counsel request? He could ask for a night off or for a short recess to get 40 winks. And he might demand a psychoanalysis of the jurors' dreams to determine what the verdict would be.

Finally, there is the ultimate problem of counsel keeping himself awake. If his case is a real nightmare, this task is easy. But, if the case is going well and seems to be in the (sleeping) bag, he could occasionally rustle a few sheets. At any rate, the law makes strange bed fellows . . . and . . . er . . . ZZZZZZZZZZZZ.

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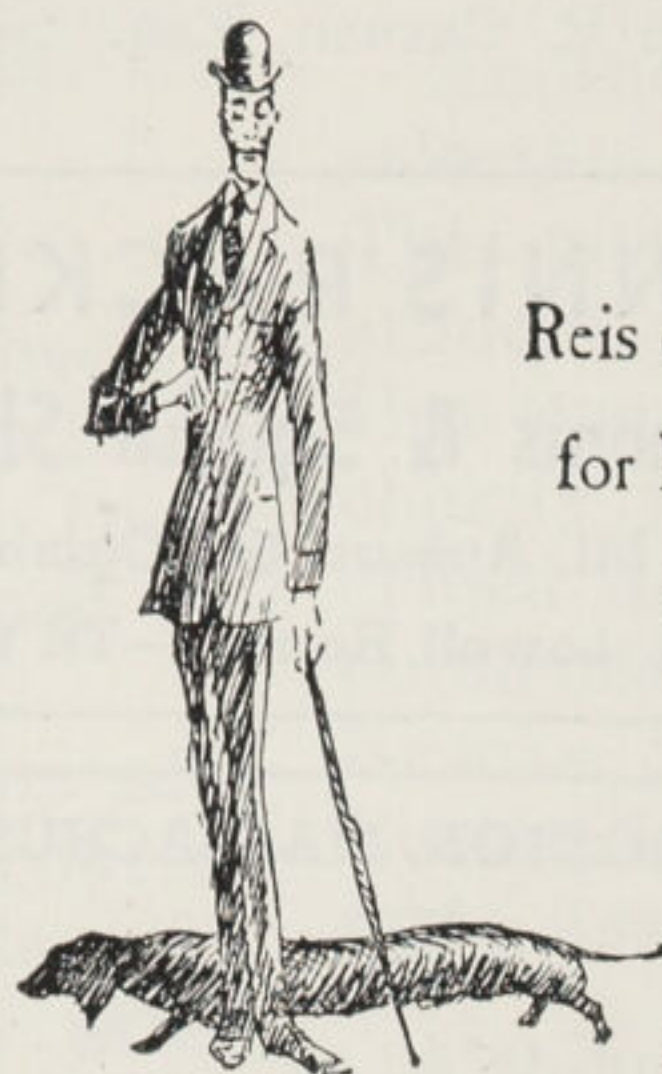
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Further information is available at the Placement Office, 23 Everett Street. Not all opportunities are listed here. Interviews are listed in the following order: city, name of firm, interviewer, (deadline for contacting Placement Office), date of interview.

THIRD YEAR INTERVIEWS

Chicago: Northern Trust Co., James L. Porter, Esq. (1 p.m. tomorrow, Nov. 30) Friday, Dec. 7.

Cincinnati: Proctor & Gamble. Henry H. Wilson, Jr., Esq. (1 p.m. today, Nov. 29) Thursday, Dec. 6.

New York: Western Electric Co. William R. Woodward, Esq. (1 p.m. tomorrow, Nov. 30) Friday, Dec. 7.

THIRD AND SECOND YEAR INTERVIEWS

Detroit: Lybrand, Ross Bros. & Montgomery. Jerome Y. Halperin and Joseph E. DeCaminada, Esq. (1 p.m. today, Nov. 29) Thursday and Friday, Dec. 6 and 7.

New York: Strasser, Spiegelberg, Fried & Frank. Laurence Rosenthal, Esq., and Hebert L. Galant, Esq. (1 p.m. Monday, Dec. 3) Monday, Dec. 10.

SECOND YEAR INTERVIEWS

Richmond, Va.: Hunton, Williams, Gay, Powell & Gibson. George D. Gibson, Esq., and T. Justin Moore, Esq. (1 p.m. tomorrow, Nov. 30) Friday, Dec. 7.

THIRD YEAR OPPORTUNITIES

Boston: Nathanson & Rudofsky. Contact Norman Hassman, Esq.

Cincinnati: Proctor & Gamble Patent Division. Contact J. D. Schaeffer, Esq.

Detroit: Benjamin H. Long. Contact Mr. Long.

New York: Mutual of New York.

Contact Richard I. Fricke, Esq.

New York: Renbar & Zolotar. Contact Mr. Renbar.

Falo Alto: Howe, Finch, Spaeth & Young. Contact C. Grant Spaeth, Esq.

Pittsburgh: Allegheny Ludlum Steel Corp. Contact W. H. Meanor, Esq.

Richmond, Va.: Christian, Barton, Parker, Epps & Brent. Contact Horace D. McCowan, Jr., Esq.

Rochester, N. Y.: Robinson, Williams & Brown. Contact Carl Angeloff, Esq.

St. Louis: Green, Hennings, Henry, Evans & Arnold. Contact Lewis C. Green, Esq.

Washington: Arms Control and Disarmament Agency. Contact Mr. Leininger, ILS.

Washington: Atomic Energy Commission. Patent Attorney and Attorney - Trainee Programs. Contact Placement Office.

Washington: Morison, Murphy, Clapp & Abrams. Contact David D. Lloyd, Esq.

ACADEMIC OPPORTUNITIES

Boston University: Law-Medicine Research Institute. Contact Dr. Curran.

University of Colorado: Rocky Mt. Mineral Law Foundation. Contact Placement Office.

Northwestern University: Criminal Law Fellowships. Contact Claude R. Sowle, Esq.

Princeton University: Office of Legal Counsel. Contact Lawrence R. Caruso, Esq.

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