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Fund Drive May Top Goal

By Donald W. Kramer

The Harvard Law School Fund drive is running \$80,000 ahead of last year and seems likely to surpass its goal of \$650,000, Assistant Dean Wesley E. Bevins, Jr., said this week. The figures will be reported to the annual meeting of the Alumni Council here Saturday.

About 65 members are expected to attend the all-day meeting. Included on the agenda in addition to financial reports and election of officers is a talk by Professor Albert M. Sacks on the work of the Faculty Committee for Planning and Development.

Professor Sacks will present some of the plans of the committee and ask for questions and suggestions. It will be the first board discussion of the group's report beyond the confines of the committee meetings.

The group has been meeting for more than a year, discussing the long range problems of the Law School and trying to formulate recommendations on such aspects as the size of the faculty, the size of the student body, the needs of building space and the relation of

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Judge, Jury Agree

By Neil L. Chayet

Judges agree with jury verdicts in civil and criminal cases 80% of the time, the Director of the National Jury Deliberation Study said in Boston last Saturday.

Presenting the more significant of the Study's findings at the Boston University Law-Medicine Research Institute's Conference on Personal Injury Litigation, held at

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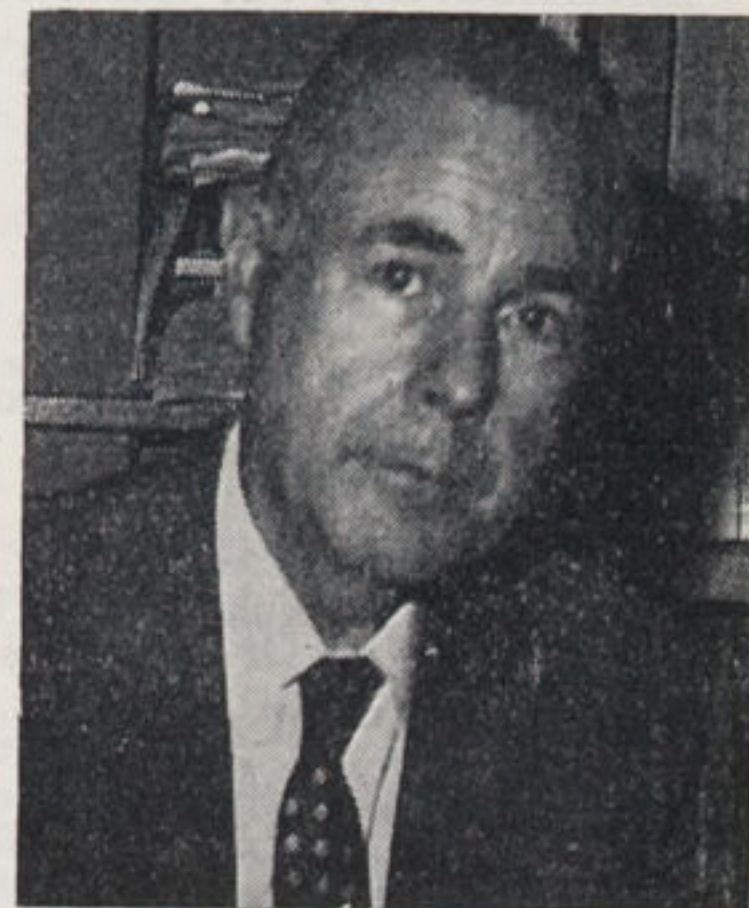
Faculty Wonders:

More Writing: How?

By Charles M. Hamann

Associate Dean A. James Casner said this week that there had been "a lot of ferment" on the part of the faculty for more writing in the curriculum prior to the publication of poll results in the RECORD, April 18, showing a strong student demand for such action. "The question," he said, "is how to accomplish this without impeding on the very valuable and already heavily mortgaged time of the faculty."

The 1960 report of the Committee on Legal Education headed by Dean Casner,



Dean Casner

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A Refreshing Breeze

A refreshing breeze blew over the Law School Tuesday afternoon. William Delano, General Counsel of the Peace Corps, spoke at Harkness Commons, and surprisingly enough, more than 100 Harvard Law School students gathered to hear what he had to say.

He spoke of disease, of filth, of boredom and of frustration, and he had the gall to say, here at this Law School, that he was looking for "middle level manpower" and "legal skills in a flexible human package." And people actually listened to him, and were truly interested, and talked afterward about how great it would be to teach at a law school in Nigeria or help develop rules of evidence for a lay magistrate in West Cameroon.

This is what we at the RECORD have been looking for; something which heralds a break in the conveyor belt which leads only to Wall Street, something which perhaps heralds the dawning of a new success image here at Harvard.

This is not to strike broad sweeps at the Wall Street law firms and the things for which they stand. It is rather to say that each and every law student should think a moment before trying to jump on the Wall Street bandwagon, or before sanctifying the *Law Review*, or before making the automatic leap toward these so-called pinnacles of the law.

For what is the pinnacle of the law? To us, the pinnacle may be found in the lowliest tort or criminal case, or in Nyasaland or Sierra Leone, as well as on Wall Street. For the highest peak a lawyer can reach is to know that he has been of service to his fellow man and that he has helped to better that system of rules and regulations which keep society functioning. He can achieve this in any field of the law, in any case he tries, and in any country of the world.

It was very good indeed to see 100 Harvard Law School students turn out to hear about the Peace Corps.

Harvard Law Record

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TONGUE 'N CHEEK

By Fenno

Often one wonders how effective one will be in actual practice, and how much carry-over there will be from the classroom. It takes only one or two real-life situations, such as a collision or two, to provide a glimpse of an answer, and also to prove the aged adage, "He who is his own lawyer is some kind of a nut."

After being hit in the right rear door the other day by a man backing out of his driveway, I realized I was living an exam question. I thought quickly, gathering the important knowledge I had gained about accidents.

The information I recalled fell into three categories: (1) My mother's words: Be nice to everybody; don't kick people when they are down; don't put bananas in the refrigerator. (2) General knowledge about accidents picked up outside the law school: don't say anything, get names of witnesses, driver of other car, his insurance company. (3) Knowledge picked up in law school: be suspicious of insurance companies generally.

Stepping out of the car, I began to apply my knowledge. I started out by saying to the driver of the other car "And how are you today, sir?" (He didn't answer). Then he got down on the ground to get a better view of the damage. I did not kick him.

Finally I went over to the only witness standing nearby, a young shapely girl. I immediately tried to get her name and every detail I could think of that would be useful. She slapped me. (It occurred to me later that she probably thought I was the Mad Strangler, and had staged the collision in order to make her acquaintance.) "Aha," I said, maintaining my composure, "you're going to be a hostile witness, eh?" She then bit me on the calf. I hobbled back to my car, gave a swift kick to the kneeling driver, drove home, and called Aaron Aabb, first lawyer in the yellow pages.

Dean Explains Civil Rights Report

By Donald W. Kramer

The Civil Rights Commission's request that President Kennedy consider withholding federal funds from Mississippi was only one suggestion in a report calling for the fullest use of both moral and legal powers of the Presidency so that "American citizenship will not continue to be degraded in Mississippi," Dean Erwin N. Griswold said this week.

The Dean, one of six signers of the unanimous report, said the emphasis had been misplaced in national press coverage last week. But he wholeheartedly stood behind the suggestion that funds might be withheld.

"We had no thought that everything would be cut off," he said. "We would not stop unemployment insurance, Social Security payments, or aid to the aged or the blind. We wouldn't even dream of that."

But he said there are two classes of federal aid which could be withheld until the state "demonstrates its compliance with the Constitution and the laws" of the Nation.

First, "the federal government should take more affirmative steps to prevent use of federal expenditures for the further extension of segregation," he said.

As examples, he cited the Federal Aviation Agency's grant of \$2,180,000 for the construction of a jet airport in Jackson, Miss., without questioning the plan to build separate eating and restroom facilities. He said the State Employment Service, wholly financed through federal funds, is completely segregated. He said children of military personnel who attend public school in "impacted areas" aided by federal funds attend segregated classes "without exception."

Second, he said he saw no reason why new projects, such as space centers, should go to Mississippi when there is good reason for them to go elsewhere.

The Dean said the Commission had been prompted to make its special report because of the "terrible" situation in the state.

He quoted the language of the document which cited numerous incidents of violence and "callous and discriminatory acts of Mississippi officials." He said the Commission was acting "a little bit as the nation's con-

science," in calling for greater leadership "to make less possible what has happened in Mississippi."

He stressed that the Commission was urging nothing that is not "consistent with the President's Constitutional and statutory authority."

The primary request in the report called for the President to "formally reiterate his concern over the Mississippi situation by requesting all persons in that state to join in protecting the rights of United States citizens" and "by directing them to comply with the Constitution and laws of the United States."

The Dean said he did not want to under-rate what the Administration has already done, especially in starting suits to enforce voting rights. But he said there should be more leadership.

"In particular," he said, "it is unfair for the administration to put all the burden on the courts." He said the courts had, "generally speaking, acted well and courageously in the area." But he added that the responsibility is far broader than the courts should have to handle.

Professor Glueck to Retire

Professor Sheldon Glueck, who has been on the Harvard Law School Faculty since 1929, is retiring from his teaching duties this year. Professor Glueck joined the faculty at the invitation of Dean Roscoe Pound and since 1952 has been the first Roscoe Pound Professor of Law.

Upon retirement Professor Glueck and his wife, Eleanor Touroff Glueck, will put the data gathered in more than 30 years of research through Harvard's giant IBM 7090 computer in a series of experiments searching for new ways of looking at people who get into trouble with the law.

The Glueck's partnership began with their marriage in 1922 when both were graduate students at Harvard — he in law, psychology and sociology, and she in education. To date their pioneering researches have covered the careers of criminals and juvenile delinquents, illuminated the surrounding fabric of criminal law and prison practice, and produced scores of detailed books and articles.

Jury Study

(Continued from page 1)

the Statler Hilton Hotel, University of Chicago Law School Professor Harry Kalven, Jr. said that more than 8000 cases were studied, over half of which involved personal injury.

In 1955 the Study provoked widespread controversy over taping of actual jury deliberations, a practice which had to be halted.

The current study, the results of which have not yet been published, is based in part on the report of some 1000 trial judges who were asked how they would have decided actual jury cases over which they presided.

In 2% of the criminal cases in which the judge disagreed with the jury's verdict, the judge would have acquitted where the jury convicted. In 18% of the cases in which there was disagreement, the jury acquitted where the judge would have convicted, thus affirming previous beliefs in the fact that juries tend to be more lenient than judges.

In civil cases, the judge and jury agreed on the question of liability in 80% of the cases studied.

On the average, however, jury verdicts are 20% higher than judge verdicts would have been for the same case. In 23% of the cases, the jury came out for a higher award than the judge, but, surprisingly enough, in 17% of the cases, the judge would have given a higher award than the jury actually gave.

Professor Kalven stated that one of the most significant results of the study was the conclusion that we are not approaching a system of "strict liability" for negligence cases. He pointed out that 45% of all negligence cases are won by defendants.

The fact that the judge and jury match up 80% of the time is a sufficient answer to critics of the jury system. Professor Kalven said, "If you don't like the results, then you don't like the whole system, not just the jury."

The Chicago study also tried to come up with some answers to the question of what makes a "good" juror from either the defendant's or plaintiff's point of view.

Interviewing several thousand jurors, the Study found that many factors which were thought to have an impact on the juror's

"pre-deliberation bias", actually play no part at all in the juror's decision. Professor Kalven listed such factors as religion, age, sex, marital status, and political affiliation.

He pointed out that two things do seem to make a difference — occupation and ethnic background. The professional-proprietorship class (the "upper crust") render an average verdict in a personal injury case of \$31,000; the clerical class, a verdict of \$35,000; skilled laborers, \$38,000 and unskilled laborers, \$45,000.

As for the second affective fact, ethnic background, Negroes grant the highest verdicts — an average of \$56,000. Italians, French and Swiss give average verdicts of \$50,000, third generation Americans give an average of \$36,000 and British and Scandinavians render average verdicts of \$29,000.

Professor Kalven pointed out the obvious dangers in over-reliance on these figures, which are only averages.

As far as delving any deeper into individual personality traits in an effort to find the "best" juror, Professor Kalven said that the study was generally unsuccessful. However, the answers to two questions did prove to be statistically significant. The first question was: "Have you ever felt you tired yourself out by attempting too much?" Those who answered yes to this question rendered an average verdict of \$14,000; those who said no gave a verdict of \$38,000. Professor Kalven said that, given some thought, these differences actually make sense in that those who are generally more carefree are more generous with their awards.

The second question which brought significant results, was: "If in trouble yourself, would you rather be tried by a judge or jury?" Those who said that they would prefer a jury tended to give much higher verdicts than those who preferred a judge.

"I have developed a kind of fondness for the jury," Professor Kalven admitted. In his opinion, problems such as court delay (40% more time required) could be corrected by a slight increase in the number of presiding judges.

"What appears to be criticism of the jury often turns out to be criticism of the substantive rules under which the jury operates," he said.

Pusey Sees Education Bill Failure

By Thomas E. Woodhouse

The Kennedy administration has no serious hope that the pending Education Bill will be passed in this term of Congress, Harvard President Dr. Nathan Pusey declared Thursday. Dr. Pusey spoke to an assemblage of noontime coffee-drinkers on Kennedy's Education Bill, in an address sponsored by the (weak) Coffee Hour in the Harkness Meeting Room.

Seen for the first time by many non-Harvard-graduate law students, Dr. Pusey showed himself to be a soft-spoken, though hard-headed, spokesman for federal aid to higher education in general and to Harvard University in particular.

Dr. Pusey observed that the federal government has passed no major legislation specifically on behalf of education—the Morrill Act was on behalf of agriculture and mechanical arts, the G.I. Bill was designed for the benefit of returning soldiers, the National Defense Education Act serves the ends of defense — and he evaluated the chances of its doing so in this Congress or the next.

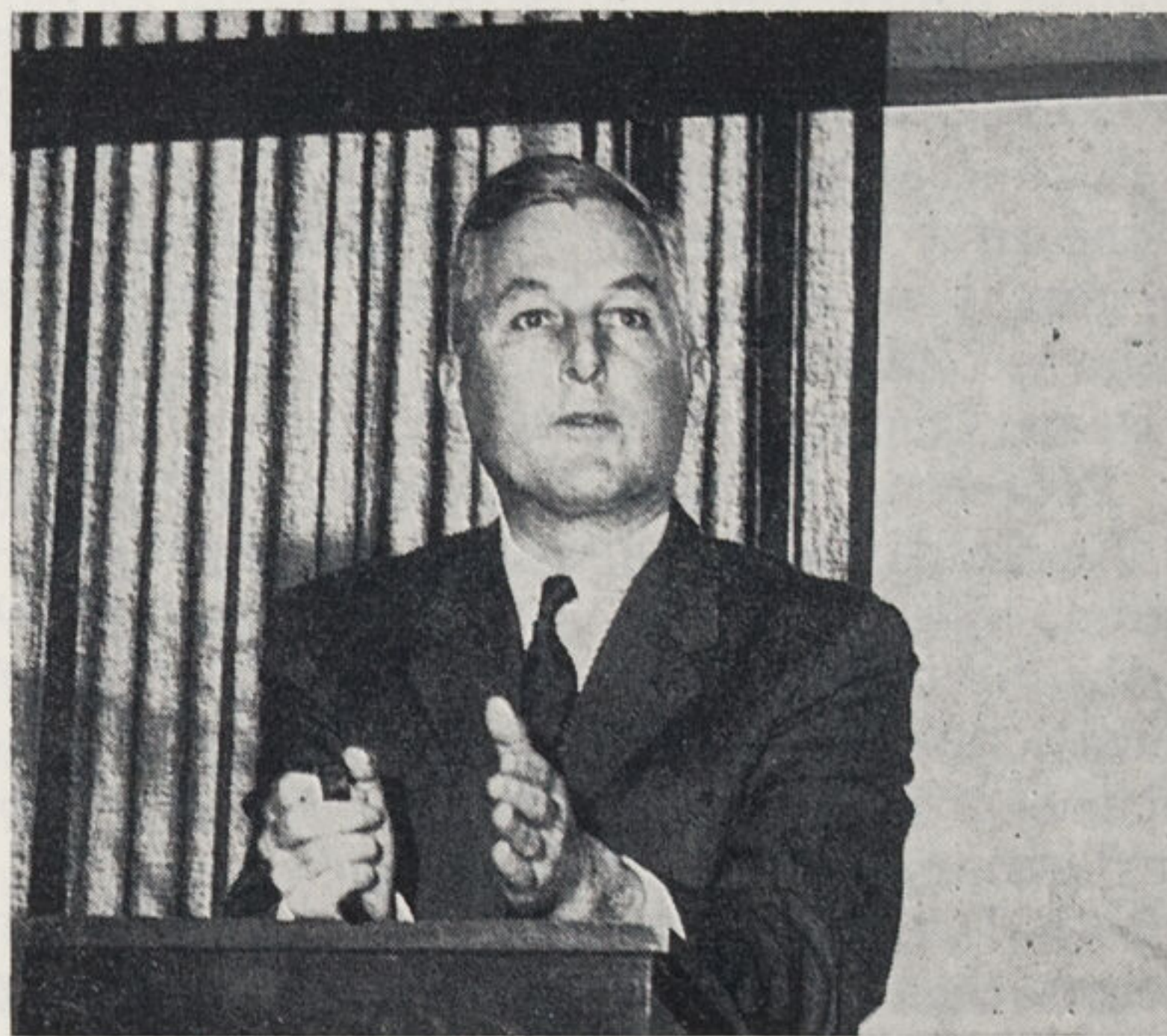
Educators Agreed

A year ago, he declared, there was widespread unanimity among educators as to the desirability of government aid for school building needs, although there was a marked lack of unity on other issues. Schools have been able to get government loans out of a revolving fund for the construction of money-producing buildings, but need funds for the construction of buildings which will produce no income.

Approaching the problem from the perspective of Harvard University ("I'm as self-regarding as the next man"), Dr. Pusey saw particular need for assistance in the building of laboratories for undergraduate use.

The President faced two controversial issues squarely. He opposes federal aid to private elementary and secondary schools. The aid instead should be directed toward making one strong system of public schools. At the level of higher education, however, he said that grants should be given in accordance with the quality of the institution and the service it is performing.

He saw no need for federal aid by way of scholarships. Such aid would be desirable if



President Pusey

the allotted money would go to those who most need it, such as Puerto Ricans in New York and Negroes in the South. He said, however, that such allotments would not be politically feasible, Congress having demonstrated that it would prefer a state by state allocation.

The federal government already is doing a tremendous amount to strengthen higher education, Dr. Pusey stressed. Funds are administered to colleges and universities through various government agencies, including the National Aeronautics and Space Administration. Few funds, however, with the exception of those administered through the health division, are being distributed through the Department of Health, Education and Welfare.

The needs of higher education are great. In the decade of the sixties alone, present college facilities will have to be reproduced. At present there are four million students enrolled; by 1970 there will be seven million. The effort needed to meet the demands of the near future will be tremendous. It is made far more difficult by the fact that the effort was not started before the 87th Congress, President Pusey noted.

Quinquennial Out in June

The Quinquennial Alumni Directory of the Law School should be in the mails about the beginning of June, Assistant Dean Wesley E. Bevins, Jr. said this week.

Written Work

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placed strong emphasis on this need, he said. The results were increased weight given to third year papers and more written work in the first-year group work program. The big gap at present, Dean Casner suggested, is in the second year.

Dean Casner's sentiments were affirmed by Professor Donald F. Turner, chairman of the Continuing Committee on Legal Education, established at the recommendation of the first committee. "Nobody doubts the educational utility of a writing program, but the problem is implementation," Professor Turner said.

Both Dean Casner and Professor Turner agreed that a faculty supervised writing program would involve an "enormous expenditure of time" by faculty members. Dean Casner noted that the faculty already had "a very heavy schedule." He speculated that "increasing the burden would do more long range harm to legal education here than it would do good."

Other possible solutions to the writing problem are an expanded faculty, more teaching fellows, outside lawyers, or third year *Law Review* students to supervise a writing program. Increasing the size of the faculty simply for this purpose would be "impracticable," Dean Casner suggested. Teaching fellows might not be a satisfactory substitute. Dean Casner questioned whether upperclassmen would be content with supervision by teaching fellows "just a few years older than they are and without much more experience than they have."

Although the primary need is for a program which will provide critical examination of written work, Dean Casner suggested that some benefit could be gained by incorporation of written memoranda into regular teaching methods, providing group supervision in class.

Graduating Class Speakers

Retiring Professor Sheldon Glueck will address the third-year class at graduation exercises on Law School Day, June 12. His subject will be "Law and the Stuff of Life." On May 7 Professor Richard H. Field will do the honors at the class party.

Students Will Help Higgs

William L. Higgs, LL.B. '58, told the RECORD that he expects from eight to ten students at the Law School to help him fight for civil rights this summer. They will be part of a larger group including students from Yale and Columbia Law Schools. At present, Higgs has about 15 students who have committed themselves to assisting him full-time. He hopes that his group will eventually number as many as 25.

The students will work in Jackson and Greenville, Mississippi, and Washington, D.C. Higgs himself will co-ordinate the operation from Washington. Much of the communication between the nation's capital and Mississippi will occur at night "to take advantage of cheap telephone rates." Part-time volunteers will aid this evening operation.

Higgs said that most of his volunteers are "working for subsistence wages, or little more."

Alumni Fund

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the school and its staff to law reform, governmental activity and the legal profession.

Since the final faculty recommendations may call for a substantial capital fund drive, the Council is being kept up to date as to all developments.

Dean Bevins said the annual Fund drive now has total contributions of about \$580,000 from 6429 donors. This is \$80,000 and 550 donors ahead of the pace at this time last year. He said there is some hope that the total will reach \$750,000 by the end of the drive which is June 30.

Dean Bevins said, however, that the feeling of success thus far must be tempered by the understanding that the total includes several substantial non-recurrent contributions. It includes the gift of property made last year and realized this year; a \$23,000 gift to endow a scholarship in memory of S. Parker Gilbert, LL.B. '15; and a substantial gift from non-alumni for scholarships in memory of Donald C. Swatland, LL.B. '21.

He said the drive does not show "the kind of normal growth rate we ought to have."

Assistant Dean William L. Bruce reported this week that the Alumni Association has increased its membership to a record figure of 11,693, more than 680 above last year.

Soviet Law Slow to Wither

By Charles M. Hamann

Special recognition is owed to Peter B. Maggs, a graduate research associate, who served as interpreter at two RECORD interviews with Professor Kerimov. Professor Kerimov speaks no English. The author speaks no Russian.

Professor J. A. (Jangir Ali-Abasovich) Kerimov is a tough man in class, but a true comrade outside it. A professor on the law faculty at Leningrad University, he admits that he's extremely strict with his students. "If one shows up unprepared, after I finish telling him off, he is unlikely to try it again." But after class he sometimes invites his students to his home "on a comradely basis."

Only survivors of a rigorous admissions procedure and a difficult course of study have a chance to acquaint themselves with Professor Kerimov, whether he is pursuing a hard or soft line. A visitor at Harvard, the professor, a broad-faced native of the Azerbaidzhanian S.S.R. (his mother was a Russian), described the Soviet system of legal education in some detail.

A prospective Soviet lawyer does not share the pleasures of an unadulterated undergraduate college life. He enters Law School directly from high school, embarking on a five year course of education which contains a smattering of liberal arts courses as well as courses on the law. "Preference," said Professor Kerimov, who looked something like a Chicago businessman, sporting a checkered vest and wearing a light-colored tie, "is given to those who have worked a few years on a farm or in a factory."

Entrance into the law school of Leningrad University is a two-stepped procedure. Step one consists of oral and written examinations on such subjects as history, Russian literature and a foreign language. Those that fail any one of these exams drop out of the competition. The rest proceed one by one before the school faculty, which seeks to discover what order of Soviet man is present before it. "This interview isn't a test in public speaking," the Professor stated — "its object is to test the applicant's understanding of art, literature, and culture because a law student has to be well-rounded."

The successful candidate for admission em-

barks upon a course of study which includes an average of six hours of classes and seminars six days a week. And for the first two years (at one time, for all five) no cutting of classes is permitted. A common criticism of the current system is that it contains "too much required work." "Most of the students agree," Professor Kerimov said, "that there is not enough time for individual study."

An extended system of academic clubs, which are attached to each division of the law faculty and in which membership is voluntary, further diminishes time for individual pursuit of legal interests. Flicking an ash from a Russian-made cigarette, the Professor spoke enthusiastically of the functions of these clubs. Mentioning a sampling of their activities, he said that sometimes a student will write a paper for discussion and other members of the club will criticize it. Sometimes a recent book is a subject of their inquiry. Often club members observe a court or administrative agency in action. "They will frequently write up their observations. If they see a need for improvement, they will write the appropriate government agency," Professor Kerimov said.

Emphasize Practical

The clubs are just one aspect of the pervasive emphasis in Soviet legal education on practical experience. In the first years, time set aside for such work is mainly confined to observation of court and agency procedures, but in the last years of his training a law student engages in actual legal work.

Organization is obviously central to the life of a Soviet student. Even forms of social and cultural relaxation are cast in an organizational mold. Sports clubs, drama clubs and glee clubs, representing different schools, compete intramurally for prizes and awards. The best of these clubs enter city-wide, national, and all-Union competitions. "Prizes exist at every level of the competition. The national prizes are, of course, much better than the local ones," Professor Kerimov explained. Particularly strong at Leningrad University are the chess and photography clubs.

But there is only limited time for organized play. Professor Kerimov estimated that

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Kerimov

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in addition to six hours of classes a day, a reasonably conscientious law student puts into his studies a minimum of three or four hours a day. Some of this time is devoted to writing term papers, required in most courses; some, to preparation for oral exams, held twice a year. All regular examinations at the Law School are oral. Professor Kerimov, who must listen to the recitation of each of his students individually, described the examination period as "the hardest time of the year" — for professor, as well as for student.

Examinations are not conducted on a "sudden death" basis: every student has three opportunities to pass his exams. If a student fails the first time, his professor hears him a second time two weeks later. If he fails again, a panel of three professors, including his own, hears a third recitation. But after three failures a student is out.

Professor Kerimov is not entirely happy with the present examination system. He said, "As we do it now in our oral examinations, each student is given two or three questions on cards and ten or fifteen minutes to think them over. I'd like to put the exams on a straight discussion basis."

The final steps in a Soviet legal education are the senior paper and the government exam. During his fifth year the Soviet law student spends four months working in the field outside of school. Following this practical experience, he returns to school to write his paper, which he must defend upon completion before members of the faculty or a government commission. A successful defense entitles him to take the government examination, equivalent to a bar examination but preceding graduation. This examination, also oral, tests the student's knowledge of dialectical materialism, government (constitutional) law, and criminal law, as well as his understanding of his specialty.

Success entitles a student to a diploma and a lapel pin. "The diploma," Professor Kerimov noted, "is the formal evidence of a legal education." But the lapel pin—each faculty has its own—is important because it shows where, in the classless Soviet Union, you went to school. Professor Kerimov, who studied law by correspondence during the war, is not the graduate of a standard university. Only after 10 years of service on

the Leningrad law faculty (he has taught for fifteen years) did he finally acquire a pin, awarded honorarily.

Grades, desires, and character determine the placement of a law graduate. Although the withering away of the state and law is a fundamental tenet of Communist orthodoxy, the professor was not concerned about the prospect of future unemployment for his proteges. Even after the state has disappeared, there will be moral rules and the need for administrators, he said. And furthermore, "the tempo of the withering away of the state depends upon the state of international relations."

In that regard, he said a bit formally, he hopes that his visit to Harvard will help to promote "friendly relations between our two law schools and the cause of peace."

Admissions Applications Rise

By Walter V. McLaughlin, Jr.

A continuing surge of admissions applications is expected to push the Law School applicant total to around 2,300 this year, as compared to last year's final tally of 2,003, Admissions Director Louis A. Toepfer said this week.

As of last Friday 2,201 applications had already been received by the Admissions Office. The deadline is next Wednesday, May 1.

Dean Toepfer expressed surprise at the size of the increase, but said that the School had been anticipating some rise in applications.

He pointed out that if there was no other cause, there are simply more college seniors every year. Beyond that, he felt that there was a growing appreciation of the need for graduate study among today's college students. The law, as a growing and exciting field, is attracting more than its proportionate share, while other areas, such as the medical schools, are remaining almost static in student number, he said.

The increase will put a great burden on the Admissions Committee, he stated, because almost all of these applicants are well qualified and there are just so many places to fill. Next year's class will remain somewhere in the neighborhood of 535 to 550.

He predicted that there would be a continuing upward trend in applications, but hoped that the increase would not be 300 a year.

Cox Evaluates Oral Argument

Special To The RECORD

Law Review editors and their guests heard Solicitor General Archibald Cox answer the question "Does oral argument have any value or is it just part of a mummer's show?" at the *Review's* 76th annual banquet Saturday night at the Harvard Club of Boston. Other speakers introduced by toastmaster Richard H. Field included Lady Barbard Ward Jackson, Dean Erwin N. Griswold, and John G. Kester, outgoing president.

Solicitor General Cox maintained first that oral argument gives the lawyer much the best chance to influence the Supreme Court. The prime reason for the "considerable impact" of oral argument in the Court is that it is the time for "very lively dialectic," he said.

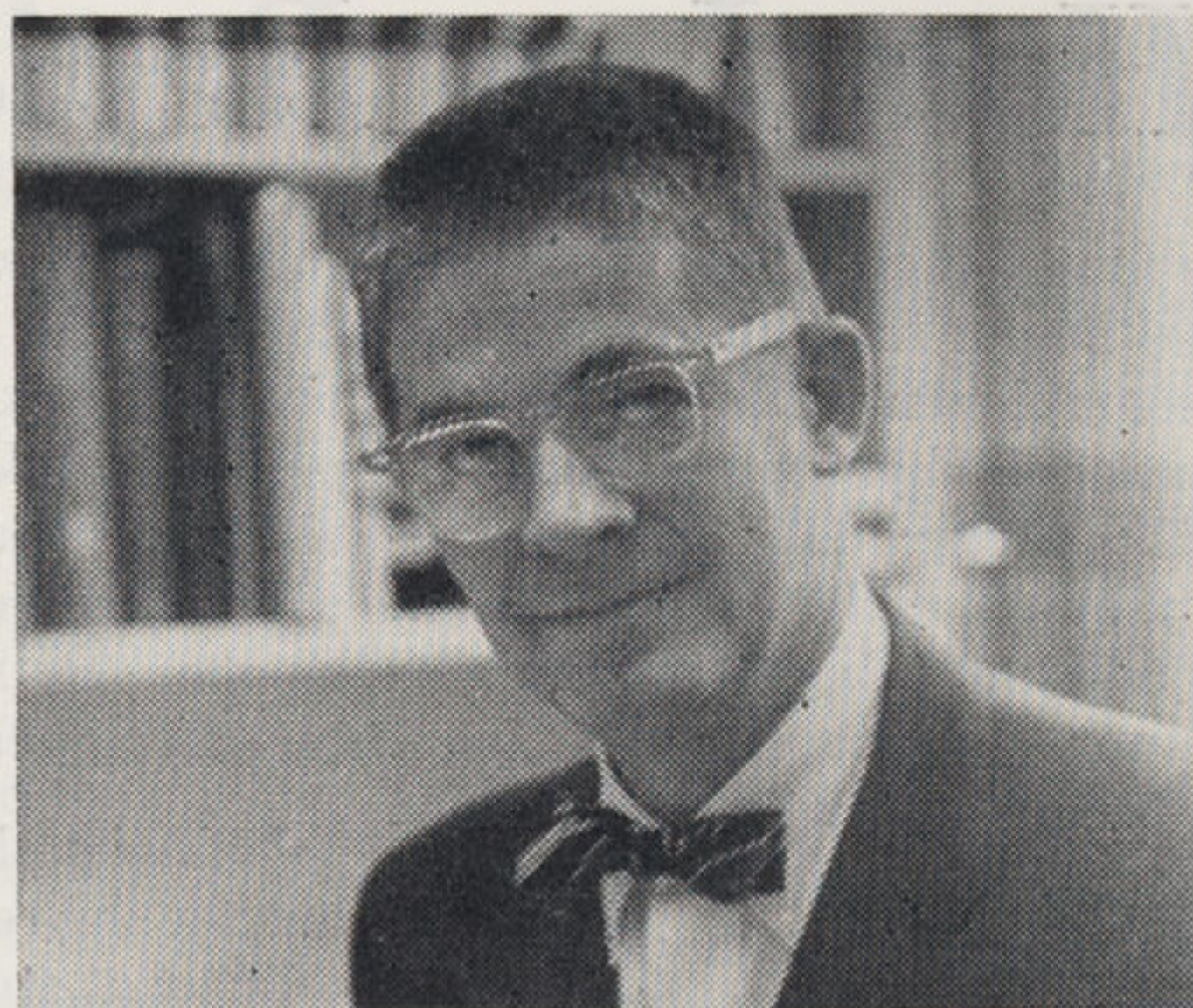
Even the law clerks, who are skeptical about the significance of oral argument, concede that counsel can lose a case on oral argument, Cox remarked. He noted that one of the central problems of the oralist is to make sure that he remains in control. Such control is not achieved by remaining steadfast to the planned line of argument. Sometimes, Cox conceded, oral argument is simply an opportunity to avoid a very damaging opinion, but frequently when representing the Government "how you lose is more important than whether you lose."

Argument Significant

Second, oral argument may be significant because certain ideas, information, and feelings can be better communicated orally than through a brief, the Solicitor General maintained.

Finally, oral argument is the time of decision. Frequently, in the Supreme Court oral argument is the only time when the justices have time to think about the case. "The psychological process of reaching a judge when he is making up his mind is very different from reaching him by writing when he is not making up his mind," he noted.

Cox qualified this argument by pointing out that in the major cases, as compared to the run-of-the-mill cases, oral argument plays a smaller role. He doubted whether *Gideon v. Cochran* (overruling *Betts v. Brady*), *Mapp v. Ohio*, or *Engel v. Vitale* could have been lost on the oral argument.



Solicitor General Cox

Cox noted several factors which limit the effect of oral argument. Certain judges may feel they can resolve difficult problems by study at their own pace in their chambers, rather than under the influence of the dogmatic views of an oralist. Also, counsel's voice may be overborne by the many voices participating in a decision—on the Supreme Court by the views of 9 justices and 18 clerks. Finally, the Court is sometimes so badly splintered that the decisive element is the necessity of the justices agreeing on some solution.

Lady Jackson, who thought she would never again have a chance "to speak to so many possible presidents," asked whether the Western economies can learn the pragmatic lessons necessary to keep demand steadily expanding to absorb increasing productivity.

Problem Not Insoluble

She noted the possibility of a failure of demand and a squeeze on profits because post war reconstruction is over, the consumer durable goods boom is past, the income of primary producers has fallen, and elements of potential deflation are in the air. But the noted British economist contended that the number of pragmatic expedients being worked out show that the problem of achieving effective demand is not insoluble.

Dean Griswold, speaking with some irony, congratulated the editors of Volume 76 for producing 8 per cent more footnotes than last year, "footnotes more technical, more esoteric, and less useful than in previous years."

How Law Review Staff is Chosen

The first volume of the *Yale Law Journal* began in 1891. From then until some eleven years ago, editors were selected by competition.

In the earlier days, the competition required only the submission of an essay on almost anything—it did not have to be on a legal topic, because selection was made on the basis of writing ability exclusively. Through the years, the scholarship of the *Journal* grew, but the method of membership selection remained as one based on competition (presumably with more rigid standards), not rank in class.

About a decade ago, the competition idea was abolished. Membership was extended only to the top students measured in terms of grades. The new “grades only” standard lasted about four years. In 1956 the *Journal* returned to an open competition—although within the framework of an initial “grades only” selection.

Editor Explains Change

Stephen N. Shulman, Editor-in-Chief of Volume 67 of the *Journal*, described in 1958 the change in procedure:

“Perhaps the greatest function of the *Law Journal* lies in the training it gives its members. Experience in legal research and writing is, of course, a valuable facet of any legal education. Recently, the Law School has estab-

lished a new curriculum designed, through the media of seminars and theses, to expand the student’s exposure to such training. Similarly, the *Law Journal* has adopted an additional method of selection developed to make membership attainable by all students.

“Membership on the *Law Journal* has, in the recent past, been offered only to students whose grades ranked them in the top of their class. Capable students with poor

topics become drafts, and the numbers replace names to identify the authors. From the drafts submitted, the Officers select those which illustrate superior legal talent. No quota is prearranged. The number of drafts selected is determined only by the quality of the drafts submitted. All or none may be chosen.

“After this initial selection, numbers are translated into names, and the authors of the surviving drafts become competitors. With the exception of masthead recognition, a competitor’s status is identical to that of a member. Both must perform identical duties, and both are held to the same standards.

“A competitor becomes a member upon the completion of a Note and the submission of an acceptable first draft of a Comment. Often the draft submitted in the initial step of competition develops into the required Note.

“The result of the competition is two-fold. On the one hand, the experience of *Journal* membership is made available to all students, regardless of grades. On the other, the ranks of the *Journal* are swelled with capable students. By eliminating the affects of a ‘bad’ semester, the competition thus benefits both the student body and the *Journal*.

Some Become Officers

“This mutual benefit is not a mere theory; it is a factual pattern characterizing as well as justifying the competition. In the last academic year, for example, when the competition entered its second year, four drafts survived the initial selection. At present, their authors are all members of the *Journal*. But even more significant, three of them are Officers. Thus, three students who would not have been eligible for the *Journal* before the competition was instituted

The Harvard Plan

Membership on the *Review’s* editorial board in most cases begins in mid-August of the summer following a student’s first year at the law school. Editors are selected according to the wholly objective criterion of examination performance, the normal contingent being the twenty-five highest ranking students in the first-year class. An additional group, normally of eight students, is selected from the second-year class on the basis of cumulative scholastic standing.

From “With the Editors . . .,” *Harvard Law Review*, Vol. 74, No. 5, p. vii.

grades were overlooked, perhaps because no objective basis for judging their talents could be found. Two years ago, this gap was filled with a system of competition similar to that once employed for selecting all members.

“Actually, the system is a competition within a competition. In the beginning of their third semester, all students whose grades did not entitle them to membership on the *Journal* are invited to compete. Interested students are assigned note topics and numbers. The

Mr. Shulman’s comments are reprinted, by special permission, from “From the Editor” by Stephen N. Shulman which originally appeared in Vol. 4, No. 2 of the *Yale Law Report*, at page 9. Mr. Shulman, son of the late Henry Shulman, former dean of the Yale Law School, is now an Assistant Secretary of Defense for Manpower.

are now helping to furnish other students with training they will utilize throughout their professional careers.

"The interaction of the new curriculum and the *Law Journal* does not end with the competition. Students who choose not to compete or who submit drafts which do not survive the initial selection may still publish in the *Journal*. With their degrees dependent on satisfaction of seminar and theses requirements, all students will do extensive legal research and writing. Exceptional papers growing out of this endeavor may be published in the *Journal*. The student work appearing in the *Yale Law Journal* will then truly be the best in the Yale Law School."

Two Or Three Accepted

This method of selection was used until 1962. Peter L. Strauss, present Editor-in-Chief of the *Journal* told the RECORD:

"Until last year, the system remained much as Mr. Shulman described it; the competition was open to the entire second year class and to all transfer students. About 25 students (out of approximately 140 who were eligible) would start the competition, and an average of 15 would submit drafts. Two or three of these were usually accepted for membership. Once accepted, their status was the same as that of members who had been accepted on the basis of class standing." [The RECORD was told by an unofficial source that recently a student who ranked 147th in his class of about 160 won in the competition.]

Having run a cycle from "competition only" to "grades only," and back in the direction of "competition," the *Journal* retreated again in 1962 toward "grades." As Mr. Strauss explains:

"This system was modified in the past year. Eligibility for the competition was limited to the top one-third of the second-year class plus transfers—or about 40 students, in addition to 23 who had already been accepted on the basis of grades. A concurrent decision was

Commentary: Which Plan is Better?

"Let every man be respected as an individual." — Albert Einstein.

We do not question the merits of the *Harvard Law Review* or of its editors. Both are outstanding.

However, we do question the method of selection of membership on the *Review*. We wonder about the merits of those who do not "make" *Review*. Why don't they "make" it?

Read carefully the description of the *Yale Law Journal's* method of selection: grades plus competition. Compare it to that of the *Harvard Law Review*: grades only. Note the differences in policy as well as in procedure.

We do not think that Yale's method is the best; but we think that it is fairer than Harvard's.

"Performance at the School," says the Law School catalogue, determines *Review* membership. But this is not true—unless we admit that the only measure of the worth of an individual student is his grade average based on six pressure-packed, one-shot exams at the end of his first year of law study.

In fact, we are sure that grades are not the *only* measure. Others include the ability to write, to do legal research, and to do law review work. Moreover, we think that law school grades may not be the *best* measure of a man. As said in the *Dean's Report* for 1961-62, "Some students with modest averages produce substantial papers of high quality, working better when they have more time to think, to organize, and to polish than they have on examinations." It is unfair to deny an opportunity to attain membership to such students who otherwise may be capable of fulfilling the obligations and responsibilities of law review work.

We only ask that a student be given a chance to prove himself. That is why we think that the Yale method of selection, as described by Mr. Shulman, is a step in a more fair direction. However we go further. We propose selection based *entirely* on an open competition, free of any basis on grades. Only then can "every man be respected as an individual."

What do you think?

made to accept five to seven people from the competition, if enough drafts of sufficient quality were submitted. It was felt that by limiting the number of competitors accepted for membership, a greater number of the people who "just missed" *Journal* would compete. It was hoped that a larger number of talented people would become members in this manner. It was also hoped that people who made *Journal* through the competition would be more highly motivated in regard to *Journal* work than those selected on the basis of grades. Additionally, as competition members are selected through the number system described in Mr. Shulman's article,

the board of officers believed that limiting the competition to the top third of the class would minimize the possibility of accepting a man who wrote well but who would be incapable of fulfilling his other *Journal* obligations.

"All people eligible to compete received a letter from the *Journal* in the middle of the summer informing them of their eligibility and of the increased number of competitors who would be accepted for membership. A meeting was held during the first week of the fall semester, and was attended by about 25 people. They were assigned numbers, and were inform-

(Continued on page 15)

Reactionary Rules Viet Nam Says Former Press Official

By Michael J. Henry

Nguyen Thai, Director General of the Viet Nam Press until October 1961, condemned the present Diem regime in Viet Nam as reactionary, in a speech before the Law-Graduate Democratic Club last week. He said that people who disagree with Diem are thrown into "re-education" camps without trial, that it is a law that meetings of more than three people have to be declared to the police, and that the mail is censored.

Thai charged that although Diem was a revolutionary against the French 20 years ago, "political survival of the Diem family is now his first goal," and the anti-communist campaign is often used as camouflage to achieve this goal. He said that although the official image is of mass support for the regime and popularity of the Diem family, in fact the situation is the opposite.

The primary problem this creates for American policy, Thai pointed out, is that many Vietnamese refuse to put out much

effort to fight for self-perpetuation of an unpopular regime. He said that in spite of the \$2 billion which has been invested by the U. S. in Viet Nam since 1945, this will not do the trick without reorganization of Vietnamese society to eliminate the authoritarian features of the regime and motivate the population to fight for freedom.

"At best the present operation is a delaying action with no end in sight," he said, "and the precious time bought with American blood should be used to advantage to get development going." Thai pointed out that American power over the situation cannot be debated, and that Vietnamese democratic reformers cannot make progress until they get support from Washington.

Thai charged that Diem's failure to launch progressive reforms before 1960, when he was popular and did not have such great security problems, is clear evidence that he will not now undertake such reforms. He said that although there is a risk in any change of government resulting in an unstable situation, this is still the lesser of two evils since the present course will lead to inevitable collapse by deterioration of the status quo.

LEGAL CAUSE IN THE LAW OF TORTS

BY ROBERT E. KEETON

This closely reasoned study seeks an understanding of the guidelines to decision and prediction in cases involving problems of legal cause. Prof. Keeton develops the Risk Rule as the prevailing and preferred rule of legal cause in negligence cases, and analyzes other formulations as well.

Just Published — \$3.75



Literary Property Explored

By Daniel J. Kucera

FROM RITUAL TO ROYALTIES: An Anatomy of Literary Property. By Richard Wincor. New York: Walker and Company. 1962. Pp. 153. \$3.50

"Laws generally are very much of this world; literature comes from the world of imagination; and the two tend to go flying apart just when you think you have brought them together."

That is the problem that Richard Wincor tackles in a novel, fresh approach to the frontier regions of literary property. A Harvard LL.B. '48 and an expert on copyright law, he examines exactly why literature and law go flying apart and some of the attempts to bring them together.

Mr. Wincor has undertaken no easy task. As he says, "Literature and law make uneasy bedfellows." The law has difficulties with literary property. "It deals very well indeed with land and stray cows, but the realm of imagination is not so easily divided into estates."

This book is no treatise on copyright law or casebook on literary property. Rather, it is an exploration into the many questions that the law has not answered or possibly cannot answer.

Who should read this book? It is a must, certainly, for any student or lawyer working in the field of copyrights and literary property. In addition, authors, publishers, producers, and the like should read it. How about the general reader? Yes! The book is written for him as well as for the technician. The most important thing about the book is not merely its utility, but that it is just plain fun to read.

Mr. Wincor begins at the beginning—with the origins of literary property. He looks way

back to long before the copyright laws. "From the beginning of mankind there has always been theatre. There were plays, there were literary materials performed for an audience, thousands of years before anyone printed books." Thus, he begins with the exclusive rights in ancient days to perform certain rituals and ceremonies.

He then traces the growth of these early concepts of literary property. He discusses the British Druids who took twenty years to memorize certain verses to keep them from being written and entering the public domain. He describes the alchemists who disguised, not hid, literature to protect their private ownership. Finally, he reaches the era of Queen Anne and the beginning of statutory recognition of literary property with the copyright laws. Later, he brings the reader to modern times with a discussion of the development of copyright laws in the United States.

What Is It?

Having traced the history of literary property, Mr. Wincor asks the hard question: What exactly is literary property? What is an exclusive right to a work of literature? Here he raises the frontier questions that are not solved by a mere © 1963.

Who, for example, owns the character of Sherlock Holmes? Are characters of a book or play a form of property? Who knows! "The seller has no real idea what he is selling, the buyer has no real idea what he is buying" when a contract is signed.

At this point, Mr. Wincor engages in a brief anatomy of fictional characters from *Macbeth*, *Pickwick*, and other works. He finds that "extricable elements such as

fictional characters and locales may be separate assets. Under the present law they are not independent copyrights. Therefore they must be either nothing at all or some other form of property. I do not see how they can be nothing at all if they have independent value and originality. Logically, it would seem to follow, they comprise new forms of property."

His next chapter illustrates this point. He has written a play—"A Case of Spirits"—whose characters are "borrowed" in part from famous works.

Contract Settles Issues

Finally, Mr. Wincor deals with contracts. Here is where all of the riddles he has raised come to focus. Most of them will never be settled by courts. Rather, they will be determined by the private ordering of the parties to a literary contract.

Both parties must view a manuscript as "an unending chain." It may become a play, a musical, or a television spectacular. A main character itself may inspire a book, a television serial, a new style of clothes, or a toy.

Mr. Wincor considers some of the elements of a literary contract, such as grant of rights, warranties, billing credit, right to assign, options, etc. Finally, he sets forth the texts of three actual contracts, to point out that "ownership of literary property is determined generally by contract. Cases and statutes are good things to know, but the negotiation of agreements is what divides the world of imagination into estates and marks off the boundaries."

Mr. Wincor has explored the "outer space" of literary property with imagination and ingenuity. His ideas and conclusions are original and fresh. Read them.

The Future of The Cinema

The Harvard Law School Forum will sponsor a round table discussion on "The American Cinema as an Art Form" tomorrow evening at 8:30 in Sanders Theatre. David Susskind will serve as moderator. Other participants will be actress Shelley Winters, Newsweek critic David Slavitt, Mr. Robert Gardner, a teacher in movie production at Harvard College, and the director-writer team of "David and Lisa," Frank and Eleanor Perry.

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Republican Aides Named

Seven members of the Law-Graduate Republican Club have been appointed legislative assistants to Republican members of the Massachusetts House of Representatives.

They are: Robert H. Golden, 2L (Rep. Campbell, Cambridge); Alan P. Caplan, 1L (Rep. Chadwick, Winchester); J. Michael Freedberg, 1L (Rep. Hatch, Beverly); Philip C. Olsson, 1L (Rep. Kirby, Whitman); John R. Verani, 2L (Rep. Locke, Wellesley); Richard R. Mainland, 2L (Rep. Newman, Cambridge); and Robert M. Goff, 1L (Rep. Randall, Framingham).

The seven students are volunteers in a project which is a "pilot" for a larger program next fall, according to Stuart C. Hall, 2L, coordinator of the project.

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ILC To Discuss S. E. Asia

The International Law Club will present Mr. Charles Gamba, President of the International Arbitration Board of Singapore at 12:30 tomorrow in the Mallory-Smith room. He will speak on the "Problems of International Relations in Southeast Asia."

James E. Beardsley, 2L, editor of the Club's Journal, announced plans to expand its staff next fall in an effort to provide more opportunities for student legal writing.

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Law Review

(Continued from page 11)

ed that there were six topics available as subjects for Note drafts. "Prelims" were made available, competitors made a choice of which topics they preferred, and topics were assigned. All competitors received their first or second choices. Fifteen drafts were submitted, and six men were chosen for membership. Five of them have now published, while the sixth has almost completed his Note. Two of the competitors were elected officers on the new board of officers.

"Two caveats remain. First, the *Journal* has also announced a policy of offering membership to any student who submits a draft of preeminent quality during his second year. We expect two or three such drafts submitted this spring. Second, a word on the status of the *Journal* in relation to the Law School. *Journal* membership is of great importance here, but it exists in concert with a variety of other activities at the Law School. The *Law Journal* is the only Law School activity in which membership is conditioned on the basis of grades. Four people in this year's second-year class declined membership on the *Journal* shortly after it was offered to them. Members receive no special privileges or grades in classes and are expected — by the faculty, if not by the board of officers — to be prepared in class. As such, we pursue our busy existence."

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Elections

Accounting Society

A newly formed organization, the Student Accounting Society, designed to promote a better understanding of the relationship between law and accounting and to provide a wider acquaintance with legal opportunities in accounting, has elected officers for the first full year of its existence. Charles R. Hesser, 2L, is President of the new society. Also elected were Vice-President, Arthur L. Rebell, 1L; Treasurer, Robert H. Golden, 2L; and Secretary, Leonard Kopelman, 1L. Interested students should contact the society's president.

Civil Liberties

The Civil Liberties Research Service has elected as officers for next year: Chairman — Elliott C. Lichtman, 2L; Vice-Chairman — Stuart A. Smith, 2L; Secretary-Treasurer — Robert J. Sugarman, 2L.

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Placement Opportunities

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 OPPORTUNITIES

Alexandria: Defense Supply Agency, Cameron Station, Alexandria, Va. Contact William P. Weston, Esq., Assistant Counsel, Headquarters.

Boston: Law Offices of James C. Gahan, 15 State St., Boston, Mass. (Tax training desirable).

Dayton: Coolidge, Wall & Wood, Gem City Savings Building, Dayton 2, Ohio. Contact Mr. Wood.

Kansas City: Latgrop, Righter, Gordon & Parker, 15 W. 10th St., Kansas City 5, Mo. Contact Mr. Righter.

Louisville: Skaggs, Hays & Fahey, Kentucky Home Life Building, Louisville 2, Kentucky. Contact Mr. Hays.

Springfield: Law Office of Herbert Murphy, 115 State St., Springfield, Mass.

That's All, Folks!

The RECORD editors plan to gambol in the fields during the flowery month of May. The RECORD will resume publication next September.

Washington D. C.: Semmes & Semmes, 10000 Connecticut Ave., Washington 6, D. C. (Technical background for patent law required). Contact David H. Semmes, Esq.

SUMMER OPPORTUNITY

Massachusetts: Job on yacht cruising New England Coast. Contact Asa E. Phillips, Jr., RI 2-2590, Boston.

MARRIAGE PLANS

Cambridge: Invitation to annual buffet supper of the Harvard Law Wives next fall. All first and second year students who plan to get married during the summer are kindly asked to send summer and/or prospective Cambridge addresses in order that their wives may receive an invitation. Contact Mrs. David O'Hearne, 32 Irving St., Cambridge 38, Mass.

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