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State Permits Jail 'Bugging'

By Michael Hampden

Electronic eavesdropping on prisoners' conversations in Massachusetts jails and detention centers is permissible under state law, Attorney General Edward W. Brooke has said.

The announcement was made in a May letter to all county Sheriffs and city and town Police Chiefs in the Commonwealth, in response to a charge by Dean Erwin N. Griswold that unconstitutional "bugging" of jails is widely practiced in this state. (RECORD, March 28, 1963)

LSAT Record Set

The number of candidates at the November 9 administration of the Law School Admissions Test has broken all previous records, LSAT Program Director John A. Winterbottom reported from Princeton, New Jersey, this week.

With returns still coming in from across
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Chapter 272, section 99 of the Massachusetts General Laws makes it a crime to secretly overhear conversations electronically without the written consent of the local District Attorney or the State Attorney General. But section 101 provides that it shall not be unlawful for such devices to be used by someone "on premises under his exclusive control," the Attorney General noted.

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Placement -- Like Fraternity Rush?

By Charles M. Hamann



Dean Bruce: Not so bad

A general unhappiness marks the attitude of several members of the Law School administration, concerned with Placement in the past or present, toward the increased pressure of interviewing and of early job commitment.

These persons, particularly Placement Director Eleanor R. Appel and the founder of the Placement Office, Vice-Dean Louis A. Toepfer, believe

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Dean Toepfer: Not so good

Big Brother Listens

When Dean Griswold asked for an investigation last spring into charges that police officers were unconstitutionally "bugging" jail cells throughout the Commonwealth, we expected nothing to come of it. "Nobody ever does such a thing," we expected to hear. "They wouldn't even consider it."

We were shocked to learn this week that in Massachusetts it is considered perfectly legal to eavesdrop on any unprivileged conversation in jails or places of detention.

In his opinion letter, Attorney General Brooke notes that the U. S. Supreme Court has "expressed the view" that such clandestine listening is "not constitutionally objectionable." Three justices said so in dictum in *Lanza v. New York*, 370 U. S. 139 (1962). But three others sharply criticized the gratuitous discussion of the constitutional issue. And it is hard to believe that the present Court, which has taken such great strides in protecting the rights of criminal defendants, would uphold such a practice.

But the opinion of Chief Justice Warren in *Lanza* is especially interesting. He reports that when the practice came to light in New York, there was immediate public outrage, from the Governor down to lawyers who had "not previously been concerned [with] . . . efforts to protect people's right of privacy." Even counsel for the legislative committee which used the eavesdrop material called it "repulsive and repugnant." Eavesdropping under these circumstances has since been made a felony.

Mr. Brooke's letter gives no indication how much of this is actually done in Massachusetts. But if there is any at all, we think, it is too much. The potential for abuse is obvious. The world of 1984 should not be imposed on those who are innocent until proved guilty. And even convicted criminals should retain some rights of privacy. Without waiting until the practice can be tested in the Supreme Court, the public and the Bar should seek legislation to prohibit it. Mr. Brooke is about to propose sweeping reforms in the state's criminal law. This reform should be included.

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TONGUE 'N CHEEK

By Fenno

Tom Swift, 3L, was happy. He was cutting Friday and Saturday classes to drive back to Walton, Indiana, with his two friends Sam Stephenson, 2L, and Norma Gretchen, Radcliffe Senior.

As he walked toward the parking lot, Tom was accosted by a recluse. "Hey buddy, 'dis Dane Hall?" the man asked, disdainfully. Tom answered Hastingly: "No, my good fellow, this is Story Hall." The man, enraged, beat Tom to a pulp. "That's a battery!" Tom charged, sluggishly.

Norma arrived as the man was extracting a pistol from his pocket. "Wait! Do you know what you're about?" she petitioned. "I know the exact nature and purpose of what I'm doing. And I know right from wrong, too," he chuckled, M'Naughtilly, giving her a chuck under the chin. Tom then spoke. "Sticks and stones may break my bones, but I'm covered for \$20,000," he said, self-assuredly. "Ah, shaddup," the recluse said, retorting. "Look, you can't try to deny me my First Amendment rights," Tom said, Blackly. Seeing that the man was about to beat Tom to a pulp once again, Norma spoke. "Whatever you say or do to Tom, you'd better do to me too, mister. Women are just as tough as men. We are different, but we are equal," she said, Warreningly. The recluse beat them both to a pulp.

Just then, Stephenson, 2L, appeared. "Hello Stephenson, 2L," Norma said. "I've had to get my parents to sell a piece of land to pay for this trip," Stephenson said. "And I had a hard time trying to convince my mother to agree," he added, dowerly. "I hope you don't feel escheated," Tom said, Swiftly.

As they drove through the night, Tom and Stephenson discussed their courses. "These Federal diversity cases give me the creeps," Stephenson said, Eriely. Tom yawned. "At any rate, when I'm driving on these long trips I certainly do enjoy reflecting about the nature of judicial process," Tom said, Cardozingly.

Forum Airs School Prayer Cases

By Myer J. Sankary

When the Supreme Court struck down the New York Regent's School Prayer last year, it unleashed a pandora's box of criticism, controversy, and praise.

Discussing the topic "Religion and the Constitution" at a Law Forum program, moderated by Prof. Paul Bator, panelists expressed substantial diversity of opinion on the effect of the prayer decisions on American Society, ranging from the partisan positions of William J. Butler, plaintiff's counsel in *Engel v. Vitale* and Philip H. Ward, LL.B. '48, defendant's attorney in *School District of Abington v. Shempp*, to the scholarly views of Professors Paul A. Freund and Mark DeWolfe Howe.

Civil rights attorney Butler insisted that there must be an absolute separation of church and state, even if it meant that religion will be discriminated against. "The New York Regent's prayer," he claimed, "was an attempt of individuals to make society conform to their way of thinking," by using the public schools to indoctrinate sectarian religious views.

If government were allowed to support religion in any manner, especially by economic aid to parochial schools, Butler feared that it would lead to a sectarian school system and result in the eventual fragmentation of our society. He believed the Court's decisions prohibit this type of aid.

Mr. Ward, a Philadelphia attorney, claimed that the Court's decision in *Shempp* was wrong and dangerous. He said, "it creates more problems than it solves." Conceding that religious ceremonies should not be allowed in public schools, Mr. Ward took the position that the Bible reading program was not a religious ceremony: "It was an attempt of the school to bring daily reminders of morality." He argued that if the Supreme Court could hold that Sunday is not a religious holiday in the Blue Law cases, then it follows that the Bible is not necessarily a Christian book.

The effect of the *Shempp* decision, Mr. Ward claimed, would give a minority of misguided people a chance to wipe out all references to the Almighty in public life. It could mean that even Christmas programs would

be banned from schools, he speculated.

According to Professor Freund, the prayer cases have been unfortunately overblown. To say that this takes God out of the school, he said, is to denigrate the Almighty. The only real change, he foresaw, would be the substitution of a period of silent meditation for vocal public prayer. "The shift," he said, "is a small price to pay."

Professor Freund took exception with the Court's view that school prayers violated the "establishment" clause of the First Amendment. He suggested that a better argument could be made for finding that the prayers had violated the "free exercise" clause. To those who question what will fill the vacuum of moral education, Professor Freund suggested that schools might offer courses in ethics or better yet, that teachers should en-

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Wallace Judge Steps Down; Trial Postponed Again

The Virginia trial of Fred L. Wallace, 3L, was postponed again this week when the Circuit Court judge disqualified himself.

Judge Joel Flood stepped out of the case and was replaced by Fourth Circuit Judge Carlton Mayes, a 48-year old graduate of Hampden-Sydney Institute and Washington and Lee Law School, who was appointed by the state Supreme Court.

Wallace, a Negro, was charged with felonious assault of a police officer following an incident in Farmville, Va., July 28.

His attorney, George E. Allen, of Richmond, said Monday he will ask Judge Mayes for a change in venue, a request previously denied by Judge Flood. A hearing was scheduled for Tuesday to set dates for the motion argument and the trial.

Mr. Allen said Judge Mayes will also try the cases of the Negro civil rights demonstrators in whose defense Wallace was working at the time of the incident. He said Judge Mayes "is a fine young man and is well thought of. I know him well enough to know he will be fair and patient."

Jail 'Bugging'

(Continued from page 1)

In *Commonwealth v. Dougherty*, 343 Mass. 299, 178 N. E. 2d 584 (1961), the Supreme Judicial Court interpreted section 101 to cover instances where the person in charge of the jail or detention center himself directs the eavesdropping. The court also held that reading a transcript of a recorded conversation into evidence was not violative of the Fourth Amendment on the theory that a police station is in no relevant respects like a house or office where privacy is constitutionally protected. "That a defendant may expect to be observed and overheard is confirmed by the open front of the cell, blocked only by bars, which made possible the conversation between these defendants."

The Attorney General warned, however, that the court expressly denied the right of police to "bug" privileged conversations, such as between lawyer and client, and further, that it did not pass on the admissibility of evidence obtained illegally, that is, not at the direction of the person "in control of the premises."

Although the statutory question of the propriety of listening devices in jails seems well settled in Massachusetts, the practice has not been conclusively sanctioned as constitutional by the Supreme Court. In the only case directly in point, *Lanza v. New York*, 370 U. S. 139 (1962), the petitioner was convicted of the crime of refusing to answer questions put by a state legislative committee. It was proved that all but two of the questions were asked as a result of knowledge acquired by eavesdropping on a conversation between Lanza and his brother, whom he was visiting in jail.

The Court affirmed on the ground that refusal to answer the two questions not suggested by the conversation was sufficient to sustain the conviction, but in a lengthy dictum also decided the Fourth Amendment issue in favor of constitutionality.

In this decision the opinion of the Court represented the views of only three Justices. Two took no part in the decision, and three concurred, but with strong disagreement that the Court should have reached the constitutional question at all, there being a sufficient state ground for affirmance.

Chief Justice Warren observed in his concurring opinion that the New York courts, officials and public "have uniformly condemned the eavesdropping in this case as deplorable," and that before the case reached the Supreme Court, the practice had been made a felony by the New York legislature. Justices Brennan and Douglas and the Chief Justice argued that the Court should have denied certiorari in the case.

The constitutional issue will remain unsettled until the Supreme Court unequivocally renders a decision on it. Meanwhile, Massachusetts will permit eavesdropping in its jails and New York will not.

The Harvard Law Review, in commenting on the 1963 case of *Lopez v. United States* 373 U. S. 427, suggests in its November issue, page 111, that "the opinions foreshadow possible reversal of permissive electronic eavesdropping decisions."

Women Lawyers Gather

There were colorful hats and stoles to keep out the chill of the Ames Courtroom but the talk was all law as the Massachusetts Association of Women Lawyers met for an all day probate workshop last Saturday.

Over 120 members of MAWL and their guests heard speakers Paul B. Sargent, Boston attorney, Warren F. Fitzgerald, Assistant Register of the Court of Probate and Insolvency for Middlesex County, and Guy J. Rizzotto, associate commissioner of the Massachusetts Department of Corporation and Taxation, discuss wills, probate procedure and tax problems.

The workshop was one in a series of monthly meetings for women lawyers. A trip to Puerto Rico to meet with members of the Bench and Bar is scheduled for the near future.

According to Mrs. Gertrude S. Atwood, President of MAWL, there are about 500 women lawyers in the Commonwealth, about 350 of whom belong to the organization.

Commenting on the workshop, Mrs. Atwood said that many of the older women are in probate practice because it was the only field open to them when they graduated from law school. She felt that there is a greater diversity of practice among the younger female members of the Bar, evidencing the greater opportunities in law now open to women.

Model Jurors Try to Grasp Law

By Elaine M. Kalenevitch

The Model Trial had been concluded and the jurors had gone their respective ways, but in the Ames Courtroom last Friday some rather unusual echoes of their deliberations remained.

Following a post-mortem on the conduct of the case of *Johanson v. Neuhauser*, moderated by Prof. Richard H. Field and conducted by Jerome P. Facher, counsel for the plaintiff and Prof. Robert E. Keeton, counsel for the defendant, an edited tape of the approximately one hour and forty minute deliberations of the jury was played for the first year class.

It was only the second year in which a follow-up of this type has been held after the Model Trial.

The tape proved that the jurors had made a quite successful effort to deal objectively with the law. Definite distinctions were drawn between what had been said by counsel for either side as advocates and by the judge in his instructions.

Only once was there the slip of an I-know-we're-not-supposed-to-consider-this-but remark in connection with actions of the police toward Miss Johanson which had nothing to do with the question of defendant Neuhauser's liability.

There was also some obvious confusion over the law on the question of battery. In the discussion before the tape was played, Prof. Keeton anticipated this difficulty as a possible result of an ambiguity in the judge's charge concerning the intent required for battery. The judge later clarified this matter by giving an additional instruction requested by the defense, but his failure to call the original error to the attention of the jurors may have led to the confusion.

The jury also seemed quite taken with the idea of themselves as the judges of the "reasonableness" of the defendant's actions. They appeared to have been much more impressed by the moderate and scholarly approach to the legal issues taken by the counsel for the defendant than by the hard driving and aggressive approach of counsel for the plaintiff. Not once in their deliberations did they mention the particularly poor impression made by the defendant under cross-examination by

plaintiff's counsel.

The jurors were aware that their deliberations were being taped. However, the heatedness of their discussion at many points indicated that they had perhaps forgotten this fact.

Perhaps they had also forgotten that this was not, after all, "for real." If this were true, those who had the chance to listen to how they arrived at their final verdict for the defendant on both the counts of false imprisonment and that of battery may have gotten a much better idea of the actual working of a jury than might at first have been expected.

Selective Interviewing Urged

Placement Director Eleanor R. Appel has suggested that firms which regard the hiring of second-year students for summer work merely as a recruiting measure should limit their interviewing schedules.

She said that these firms should not interview all students regardless of record if their sole purpose in offering a summer job is to lure an outstanding candidate to the firm. Some firms have no real need for second-year clerks and will only take men at the top of the class.

The effect of indiscriminate interviewing, she said, is that "some of the students whom they might take on a permanent basis tend to write them off if they fail to get a summer job."

Miss Appel said, "From the standpoint of saving the firm and the student time, from a realistic point of view, selective interviewing of second-year students makes sense."

Miss Appel reconfirmed an earlier RECORD report that the third-year class has been directing itself "untraditionally" to other cities than New York. She said that candidates for placement had shown great interest in Atlanta, Richmond and Chicago firms.

Miss Appel ascribed the shifts in interest to the "relentless swing of the pendulum" and suggested they might not be permanent. She also reported that the business of accounting firms and government agencies which have visited the Placement office has improved this year.

Students Assist Legislators

Eighteen Democrats and sixteen Republicans from Law and Graduate School political clubs are engaged in programs of assistance to Massachusetts legislators. Both programs are in their second year.

The object of the Democratic program, according to Edward M. Stadum, 2L, co-ordinator of the Democrat's assistantship effort, "is not only to help the Massachusetts legislators do their job better by equipping them with pertinent facts, but also to give the student experience in dealing with legislation."

Rep. David H. Locke, LL.B. '54, Republican legislator from Wellesley, told the Republican group recently that legislative assistants are particularly needed by the Massachusetts legislator because he has no office, no legislative secretary or other staff assistance.

The co-ordinator of the Republican program is Stuart C. Hall, 3L. The Republican legislative assistants and the legislators are:

Robert L. Clarke, 1L and Robert H. Golden, 3L (Rep. Levin H. Campbell, LL.B. '51, of Cambridge); James W. Spindler, 3L (Rep. A. Cataldo of Franklin); Alan P. Caplan, 2L, (Rep. Chadwick of Winchester); Eugene E. Peckham, 2L, (Rep. De Normandie of Lincoln); Drian S. Meyer, 1L, (Rep. Eaton of Concord); Richard H. Nordahl, 1L, (Rep. Frenning of Boston); J. Michael Freedberg, 2L, James F. Whipple, 2L, (Rep. Hatch of Beverly); Philip C. Olsson, 2L, (Rep. Kirby of Whitman); John R. Verani, 3L, Dan A. Emmett, 3L, (Rep. Locke of Wellesley); Richard R. Mainland, 3L, (Rep. Newman of Cambridge); John E. Milem, 1L, (Rep. Reed of Barnstable); Thomas M. Taggart, 2L, (Rep. Starr of Belmont); Robert M. Goff, 2L, (Rep. Wheeler of Westwood).

Co-ordinator for the Democrats is Edward M. Stadum, 2L. Assistants and their assignments are:

Mark P. Widoff, 1L, Elizabeth Hall, Graduate Student, (Rep. Cavanaugh of Medford); George N. Nichols, 2L, Aaron G. Weintraub, 1L, (Rep. Cohen of Brookline); Kennard R. Weaver, 2L, Eliot J. Halperin, 2L, Edward M. Stadum, 2L, (Rep. Michael S. Dukakis LL.B. '60 of Brookline); Myer J. Sankary, 2L, Gerald L. Chaleff, 1L, (Rep. Fishman of Newton); Sander Lehrer, 1L, (Rep. Harrison of Gloucester); Lewis A. Burleigh, 2L, Samuel A. Bleicher, 1L, (Rep. William P. Homans, Jr., LL.B. '44 of Cambridge); Howard Wilson, 2L, Eric V. Mock, 1L (Rep. McIntyre of Quincy); Ronald D. Gregg, 3L (Rep. Sigourney of Nahant); Richard B. Glickman, 1L, Edwin Martin, 1L (Senator Sullivan of Norwood); David C. Hart, 2L, Daniel Sullivan, 2L, (Sen. Umana of East Boston).

Soviet Planning Studied

Ways in which the Soviet theory of centralized economic planning could be usefully applied in the United States are under examination by a team of Law School researchers here this year.

The question is one of several being considered by the three-man group headed by Professor Harold J. Berman, professor of law and author of the book *Justice in the USSR*. The general subject of investigation is the interaction between the legal system and centralized planning, including its effect on administrative law, contracts, criminal law, and other aspects of the society.

Working with Prof. Berman will be Dr. D. A. Loeber, of Hamburg, Germany, an authority on Soviet law who has studied at the Moscow State University, and Peter Maggs, LL.B. '61, who recently returned from a year's study at the Leningrad State University.

The full extent of the work has not been determined. Dr. Loeber said one topic will be the process of planning, which he described as the organization of governmental agencies and the sources of law by which they are governed.

Maggs said that "although much work has been done on civil law in the Soviet, little has been written about the law of the planned economy. Our object is not only to find out what is going on in the Soviet Union, but also to draw some conclusions about what happens in any society when government has greater control of economic activity."

Maggs noted that this is probably the first time that an American law school has sponsored a Russian study team of this size and that the project indicates a substantial need for advanced studies about the practical aspects of modern Russia.

The group hopes the research will be brought together in several articles — one of which is planned on Soviet construction contracts — and perhaps a book.

Goldwaterites to Meet

The Goldwater-for-President Club will conduct an organizational meeting at 7:30 o'clock Monday evening in Holmes Hall. All Goldwater backers in the University community are invited.

Turkeys' Rights Gobbled Up



By Daniel J. Kucera*

With the approach of the holidays, America once again faces one of its greatest legal controversies—the open and flagrant discrimination against turkeys. Throughout history, few minorities have suffered such deprivation of civil rights as these martyrs of the dinner plate. So far, the protection of the law has been deliciously inadequate.

For example, the exact legal nature of a turkey is far from settled. It is generally accepted that a turkey is an animal. A leading case is *Holcomb v. Van Zylén*, 174 Mich. 274, 140 N.W. 521 (1913), where defendant's dog "raised havoc" with plaintiffs' turkeys. According to the court, the sole issue raised was whether a turkey was an animal within the meaning of a statute dealing with dogs "killing, wounding or worrying" domestic animals.

Justice Bird held that "the question is a new one in this court, and when it was first suggested by one of the briefs in the case that there were animals which grew feathers, it was a severe strain on the writer's credulity to accept it without reserve; but an examination of the question has brought with it the conviction that turkeys are animals under the generally accepted definition of that term as used in the law."

In apparent contradiction, however, *Town of Albion v. Trask*, 256 Wis. 485, 41 N.W. 2d 627 (1950), held that turkeys are not "fur-bearing animals" but "poultry." Moreover, turkeys not shown to have been in a wild state are "poultry," rather than "birds or land fowl." As the court said in *Silz v. United States*, 167 Fed. 686 (C.C.S.D.N.Y. 1909), "some wild blood and wild characteristics do not remove from the classes of poultry what is

known as an ordinary barnyard fowl."

If this be true, then a turkey is the same thing as a pigeon. As *Bartels v. State*, 91 Neb. 575, 136 N.W. 717 (1912), held, pigeons, "if reared for the table," are within the definition of poultry as "domestic fowls raised for the table, or for their eggs or feathers, such as cocks and hens, capons, turkeys, ducks and geese."

Of more immediate concern, perhaps, is the legal status of a dead turkey—such as those found in a freezer or on a plate. It has been held that a dead turkey is really not a turkey at all. *Rex v. Holloway*, 1 Car. & P. 128, 171 Eng. Rep. 1131, 1132 (1823). Defendant was indicted for stealing "two turkies." In evidence, "the turkies appeared to have been dead turkies, stolen from a larder." In finding for defendant, the court ruled that *two turkies* "must be taken to mean live turkies," not dead ones.

This decision has not been supported in the United States. It has been said that "it would seem to be implicit in the definition of the word 'animal' that after a creature has died it ceases to be an animal and becomes a mere mass or carcass." 3 C.J.S. *Animal* sec. 1. However, the leading case of *Commonwealth v. Coleman*, 184 Mass. 198, 68 N.E. 220 (1903), clearly disapproves of *Rex v. Holloway*. Defendant was convicted under a gaming statute for having "knowingly suffered a turkey to be raffled." In affirming, the court held that there was no variance between an allegation that a turkey was raffled and proof that it was the dead body of a dressed turkey. "In common speech, the word 'turkey' is applied to a dead fowl sold in the market, as well as to a living animal." See also, 90 C.J.S. *Turkey*.

Speaking of dead fowl, eviscerated poultry is defined by those in the trade as "poultry with the head,

feet, feathers, and entrails removed and with the liver, heart, and gizzard cleaned, wrapped, and replaced in the carcass." *I.C.C. v. Allen E. Kroblin, Inc.* 113 F. Supp. 599 (N.D. Iowa 1953).

Furthermore, in *James P. Smith & Co. v. United States*, 168 Fed. 462 (C.C.S.D.N.Y. 1909), the court held that "meats of all kinds, prepared or preserved" includes not only the cooked meat of "quail, lark and young chickens," but also *pâté de foie gras*—"goose livers reduced by boiling to a thick mass, flavored with spices and truffles."

Laws concerning kidnapping of turkeys and other fowl deeds are also unclear. In *Rex v. Holloway, supra*, the prisoner was charged for stealing "two turkies." But the court said that the indictment should "have read for stealing two dead turkies" and found him not guilty. "Nothing is so common as for the clearest cases to fail from a mis-description of this kind. I need not mention the well-known [case] of . . . the person acquitted of stealing a duck, because in proof it turned out to be a drake."

Moreover, wild turkeys simply cannot be "stolen." *The King v. Manu*, 4 Hawaii 409 (1881). "Turkeys whose remote parents were brought to this kingdom, running wild on the land of G. S., not being in his custody, control or possession, are not the subjects of larceny."

On the other hand, see *State v. Mary A. Turner*, 66 N.C. 618 (1872). The indictment charged defendant "one turkey of the value of five cents, of the goods and chattels of William Ganis, feloniously did steal, &c." A motion in arrest of conviction was sustained by the lower court on the ground that the "indictment was insufficient, for it failed to state that the turkey stolen was a *tame* turkey." The Supreme Court reversed because "His Honor was mistaken in this case, in

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Turkeys

(Continued from page 7)

supposing that our domestic turkey is a creature *ferae naturae*."

Another danger which turkeys face are railroads. "The rule making it the duty of the engineer to take precautions against injuring animals seen on or near the track has been held applicable to dogs and turkeys but with its rigor relaxed somewhat in the case of dogs in view of their superior intelligence." 74 C. J. S. *Railroads* sec. 605.

In *Lewis v. Norfolk Southern R. Co.*, 163 N. C. 33, 79 S. E. 283 (1913), the railroad was held negligent for failing to sound the alarm whistle when turkeys were on the track, thereby running over six of them. "From the known characteristics of turkeys, a flock of them feeding on or crossing a track might not notice the train was approaching or attempt to fly."

In *Texas & P. Ry. v. Heathington*, 115 S. W. 2d 495 (Tex. Civ. App. 1938), a train ran over 50 turkeys. The court found sufficient allegations that defendant negligently permitted weeds and bushes along its right of way so as to form an attractive nuisance and trap for the fowl—a sort of turkey in the straw. One witness revealed that "grasshoppers frequented such places, and that turkeys were lured there on that account." The court said that if such condition was "an implied invitation to turkeys to visit the place," defendant had a duty of ordinary care "to discover such fowls" and to prevent injury to them.

However, see *Nashville and K. R. Co. v. Davis*, 78 S. W. 1050 (Tenn. 1902), where the court held that a train did not have to stop to avoid a goose on the track. "It would not seem that a goose was such an obstruction as would cause derailment of a train, if run over. . . . Birds have wings to move them quickly from places of danger, and it is presumed that they will use them (a violent presumption, perhaps, in the case of a goose, an animal which

appears to be loath to stoop from its dignity to even escape from a passing train.)"

There is one natural law flavoring the turkeys. If you pull a boner and gobble your drum stick too fast, you may swallow a bone and cook your own goose. *Silva v. F. W. Woolworth Co.*, 28 Cal. App. 2d 649, 83 P. 2d 76 (1938), held that a restaurateur was not liable when a customer swallowed a piece of bone in a serving of roast turkey with dressing. Cited as controlling was *Mix v. Ingersoll Candy Co.*, 6 Cal. 2d 674, 59 P. 2d 144 (1936), which said "bones which are natural to the type of meat served cannot legitimately be called a foreign substance, and a consumer who eats meat dishes ought to anticipate and be on his guard against the presence of such bones."

It is apparent that the law has done little to meat the turkey problem. Apart from the Hatch Act—designed to protect eggs from poachers—and a few cases, turkeys have a lot to crow about. Not only are they discriminated against,

they must suffer the indignity of being dressed in public. Certainly this falls afowl of common decency.

About the turkeys' only hope is to take matters under wing and flock to Washington to protest. Demonstrations may be expected, such as the turkey trot—defined by Webster as "a ragtime dance of the period of the first World War, danced with the feet well apart and with a rise on the ball of the foot, followed by a drop upon the heel." Naturally, it would be danced at a Fowl Ball.

The turkeys definitely have a bone to pick with you. Look for massive sit-ins this holiday season. That is, as you sit in around the dinner table and stuff yourself, think of the wise Turk who said, "a bird in the hand is worth two in the bush."

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Marrieds Sign for New Housing

By Michael Hampden

Applications are being taken for the new Married Student Housing complex at 900 Memorial Drive, the University has announced. Eighty of the 496 units will be ready for occupancy by February; the balance by next September.

Monthly rents, which include all utilities except electricity, will be as follows:

87 efficiency apartments	\$90-\$110
225 one-bedroom apts.	\$105-\$130
162 two-bedroom apts.	\$125-\$150
22 three-bedroom apts.	\$160-\$180

The apartments will be unfurnished, except for electric stoves and refrigerators. Facilities will include coin-operated laundries, a commissary, a common room and ample parking and children's play areas. Driving distance from the Law School is one mile.

Despite an informal *Crimson* poll which suggested a less than enthusiastic response to the new apartments, applications have been heavy, according to Mrs. Charles Kirkpatrick of the Housing Office. Over a hundred have applied in the first week; eleven law students among them.

The buildings in the complex are of gray concrete with red paneling. Three twenty-story towers are grouped with lower buildings around several courts. Many of the apartments face the Charles River and have balconies. The completion of the project will more than double the number of existing Harvard-owned apartments.

Model units will be available for inspection beginning January 1, Mrs. Kirkpatrick reported. Applications are to be made with Harvard's rental agent, Hunneman and Co., 18 Brattle Street, and will be treated on a first come, first served basis.

Nikiforov Lectures Slated

Russian Prof. Boris S. Nikiforov, presently visiting and lecturing at the Law School, will give a series of three public lectures on "Soviet Concepts of Crime and Punishment" in Boylston Hall Auditorium on Dec. 3, 5, and 10 at 8 p. m.



Dorm Phones May Go

The public telephones may be taken out of the Law School dormitories if the losses being suffered by the phone company do not stop, it was disclosed at the Dormitory Council meeting Monday.

A suggestion was made that the old and faulty equipment installed by the company might be part of the reason for the losses. It was further suggested that this explanation be communicated to the company so that it might look into the matter before taking steps to remove all the pay phones, forcing those residents who want phone service to have private phones installed in their rooms at much greater expense.

In addition the Council decided to collect the News-of-the-Week and Magazine sections of the Sunday New York *Times* from dormitory residents for distribution to underprivileged children for use in their classes in Boston area elementary schools. This marks the first time the Council has engaged in a public service project. The chairman and coordinator of the program is James P. McGranery, 2L.

The Council also determined that the old television set from Holmes Hall, which has been replaced by a new color set, will be moved to one of the seminar rooms in Hastings Hall for the use of the residents of that dormitory.

Over 11,000 Take LSAT Exams

(Continued from page 1)

the nation, Mr. Winterbottom estimated that the number of candidates was "between 11,000 and 12,000." This total represents about a 25% increase over last November when a little more than 9,000 took the test.

Mr. Winterbottom attributed the increase in part to a feeling among students that they "can't make the grade professionally unless they have something more than a B.A. degree."

He surmised that some "preliminary ripples" of the population boom may also account for some of the increase, but said that

the "full effect of the increase in college-aged students will probably not be felt until some three or four years hence."

The increase in candidates was fairly balanced across the nation. As is usual, the number of candidates from the Northeast was higher than in other sections of the United States.

The phenomenal increase in LSAT candidates which has occurred in recent years (in November, 1959, only 5400 took the tests) has not been matched by a corresponding increase in law school enrollment.

Forum on Prayer

(Continued from page 3)

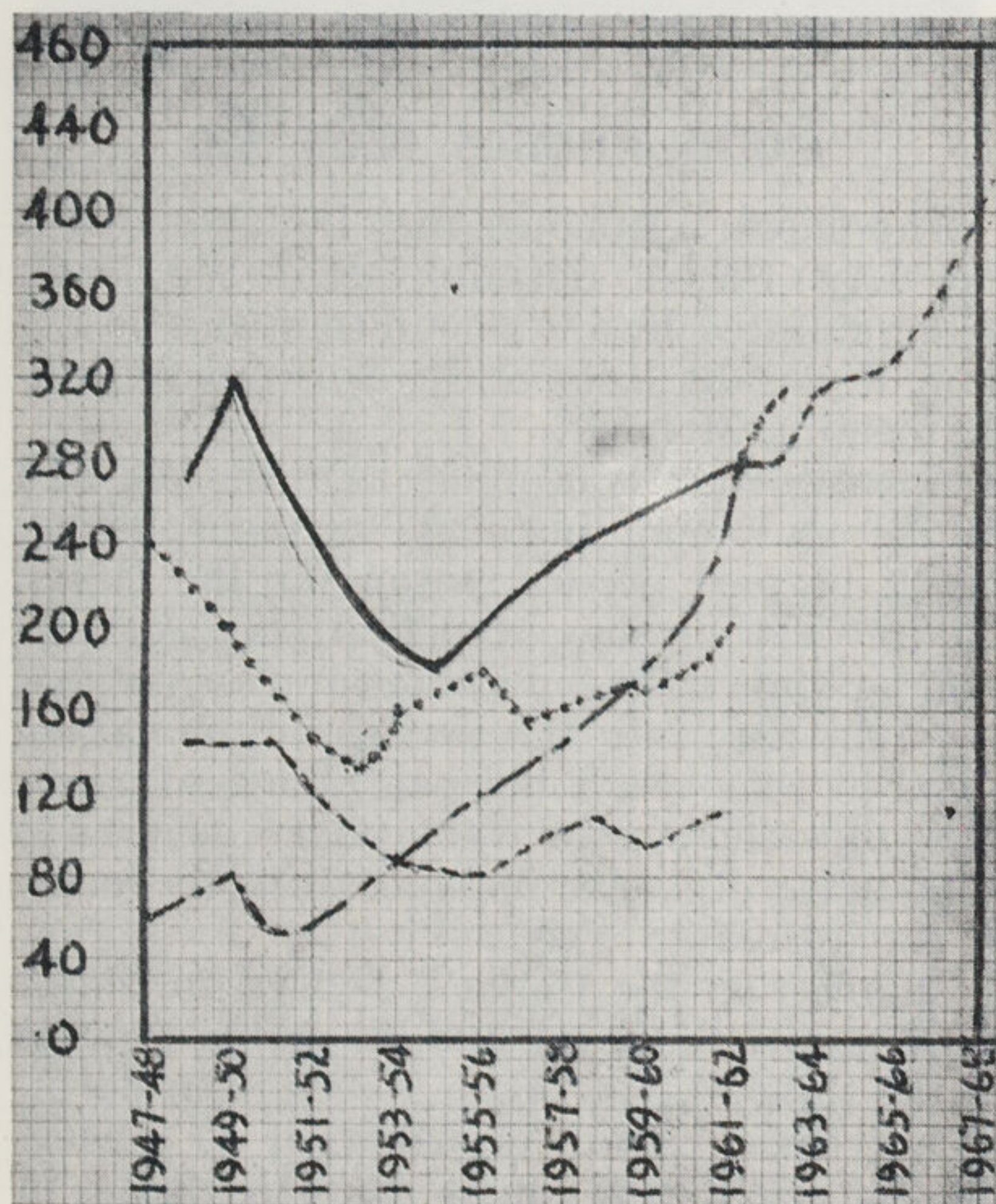
courage a reverence for learning in the classroom. "All that stands in the way is our own indifference," he said.

Professor Howe told the audience that in his opinion "the issues are quite trivial and silly. These colorless exercises are not a serious infringement of anyone's liberty." Mr. Butler later retorted that it was an important issue to Long Island parents whose children "were being kicked in the teeth by the State."

Prof. Howe claimed that an historical reading of the First and Fourteenth Amendment must lead to the conclusion that the States are only prohibited from denying a person his life, liberty, or property without due process, but that they are not expressly prohibited from establishing a religion. "The Court's rule is unworkable and senseless in a country which accepts de facto establishment of religion," he declared.

Replying to Mr. Butler's earlier statements, Professor Howe felt that public aid to denominational schools was not unconstitutional, nor did he believe that public aid would lead to any disastrous results. "It would be inconsistent," he claimed, "to give money to Harvard for physics labs and to deny money to Boston College for the same thing."

Mr. Henry Sawyer, plaintiff's counsel in the *Shempp* case, who was originally scheduled to participate, was unable to come because of illness.



Number of male bachelor and first professional degrees exclusive of degrees in law.
 Number of enrolled first year law students.
 ----- Number of male degrees in law.
 ----- Number of candidates taking the LSAT.
 (Number of enrolled first-year law students, male degrees in law, and LSAT examinees in hundreds; number of male bachelor and first professional degrees in thousands).

The graph shows the great surge in LSAT candidates in the last decade (bottom line on left). On the other hand, the number of first-year law students has merely inched ahead (third line from bottom). Notice also the great disparity between those who enter law school and those who complete it (second line from bottom).

The chart was prepared by the Educational Testing Service in Princeton, New Jersey.

Hiring Too Soon

(Continued from page 1)

that as a result of these pressures third-year students are committing themselves before they have scanned the full prospect of opportunities and are unable to enjoy fully the benefits of the third year at law school.

Dean Toepfer says, "I think that the whole process of interviewing and hiring should slow down. I don't think that students should go through the madhouse atmosphere of fall interviewing which results in interview fatigue. Students should realize that hiring is on a year-round basis. What we have now at the Placement Office is a kind of fraternity rushing season."

Toepfer: Enjoy 3rd Year

Dean Toepfer does not think that the present situation results in wholesale tragedy, with students picking the wrong job and leading the wrong lives, but he does believe that concern with their job future prevents third-year students from appreciating fully their last year at law school. "The student in his third year at the Law School ought to have more time to realize the glories of the third year — the free choice of courses, the seminar, the paper — to place a frosting on the cake of his legal education. His future employment should not be his primary concern at this time."

Secretary Russell H. Peck, a former Placement Office supervisor, supports Dean Toepfer's conclusions with regard to the distorted priorities of third-year students. He says, "I think it's unfortunate that students have to devote so much time to this instead of to their real purpose for being here. Especially unfortunate is the unhappiness of those who don't get hired immediately."

Dissenter, Assistant Dean William L. Bruce, recent supervisor of the Placement Office until succeeded this past spring by Assistant Dean John P. Wilson, counters with the argument that "although it has long been true that the Placement Office has been of most benefit to those people who need it the least, the early commitment of high-ranking students may have side benefits to students whose grades are lower."

Dean Bruce reports that "firms come here with the idea of hiring the best students they

can possibly get — Law Review or high B averages. But more and more frequently they end up hiring students with appealing personalities when they find that these high-ranking students are already committed."

Central to the conclusion of those who regard the interviewing season as too hurried in tone and who think that students make their job decisions too soon is a conviction that the firms who interview in the fall are not truly representative of legal practice in general and a belief that a student who receives an offer in the fall can command one from the same type of firm at any time during the year.

In the words of Miss Appel, "the firms which come through in the fall are pretty much the well-established large-city law firms. They offer a general corporate practice, not very different except in the region from which they come and perhaps the personality of the firm." Dean Toepfer notes that "while these law firms offer splendid opportunities, they represent only one segment of the panorama of practice."

Not heard from until later in the year are numerous government agencies and small firms, who meet their needs as they arise rather than on the basis of long range planning. The type of opportunity which opens up sometime after the fall rush is often "unique and exceptional," according to Miss Appel. The Peace Corps may want a man in Nigeria or a lawyer in Paris may decide he needs additional assistance.

Bruce: Some Can Wait

The man who receives a job offer in the fall is likely to be "the marketable man." Opinion is unanimous that this type of person can always get a job with some firm of the same type. Dean Bruce declares that "a high-ranking student with a 70 average and an agreeable manner can certainly afford to wait. He is assured of placement at almost any time if he is willing to accept a job."

Many students with this sort of average, however, reportedly feel that it is incumbent to land a job by Thanksgiving. Miss Appel thinks that this attitude is not harmful in instances where a student "knows exactly what he is looking for," but she contends that many students who "play into the hands of big firms who wish to settle their plans as

(Continued on page 12)

Hurried Job-Seekers

(Continued from page 11)

early as possible" do so either because they are status-seekers or are insecure. "It's a status thing to have picked up a job early in the year. It's proof that you have competed well." Some of these students, she believes, would find something more to their liking if they would delay their decision.

Dean Bruce reaches a different conclusion. He believes that "the fellow with the adventuresome mind normally does not get stampeded by this process into accepting a job just for the sake of having a job." He also believes that an early decision by someone who is not sure about what he wants to do is ordinarily not detrimental. "The student who doesn't know what he wants to do when he gets out of Law School is probably better off practicing with an outstanding law firm for three to five years until he decides exactly what he wants to do than if he waits for something later."

Assuming that a frenzied interviewing pace and early commitment do represent a real evil, as Dean Toepfer and Miss Appel conclude, then where does the responsibility for the situation lie? Dean Toepfer assigns it to the Law School, the students and the law firms.

Dean Toepfer realizes that the big law firms face a problem of a critical shortage of well-trained young lawyers. He declares, "If I were in a large New York or Chicago firm, I would be here too. But I don't think that makes the situation right." He wonders as well whether the stirring up of high pressure is sound procedure — "even in light of their difficulties." His belief is that "they are making decisions on the basis of hastily

formed impressions," a problem compounded by the fact that "they are dealing with students who feel that they must get a job as quickly as possible, not necessarily the job they want."

No one, however, believes that the law firms, on their own accord, will slow down the process of hiring. As new Placement Dean Wilson observes, the trend is the other way. Firms are setting hiring deadlines earlier each year. According to Secretary Peck, "if all the law firms were sure that none of the other firms would come up here recruiting, the problem might be eliminated; but such a vision is unrealistic."

Any impetus for change must come from the Law School. Dean Toepfer believes that the school should take greater pains to counter the pressure of the big-city law firms. "Some of the small firms at the crossroads, and those which offer the unusual opportunity which does not lend itself to being here in November to be filled in July, ought to have a chance to be heard from."

Because the furious pace of interviewing has supplied the Placement Office with all the work it can handle, Dean Toepfer thinks that it would be inadequate to the task of supplying more information and advice on career opportunities. He adds that at one time, when the pace was more leisurely, it served this function better than it does now.

In searching for a solution, he harks back to a solution of the past. At one time the Law School Forum used to sponsor a two-day career conference, which gave students an opportunity to look beyond the immediate horizon. People came who do not appear in the fall rush. Dean Toepfer suggests that the Forum or the Student Bar Association might work with the Placement Office in re-instituting a similar program.

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Dems Face Rocky Road

A young Negro civil rights worker told the Law School Democrats last week that it may be hard to tell Negroes that President Kennedy "didn't sell us out" if Nelson Rockefeller is the Republican nominee in 1964.

Ben Brown, one of the founders of the Student Nonviolent Coordinating Committee and now a law student at Howard Law School, told about 20 club members that "Bobby Kennedy made a booboo when he let it be known that he was extracting the teeth from the civil rights bill."

On the other hand, the Rockefellers have been identified with Negro education since it came into existence, he said. "The Rockefellers have poured a lot of money into it. The Democrats will have to counter that."

Brown, who said he is "inclined" to be a Democrat, said it was up to Northerners to

paint a national picture for the Southern Negro so that he knows he is better off with the Democratic party. "The only Democrats they see in the South," Brown explained, "are men like Eastland, Griffin, Talmadge and Russell."

Brown said the Democrats will not get the confirmed civil rights fighters to make a commitment to any party. "They would feel they could be taken for granted while the Democrats go off and politic with the conservatives."

He said the civil rights movement had made the Negro aware of his political potential and given him a hope of being able to influence affairs.

Brown refused to be drawn into a controversy about alleged failure of the FBI to protect civil rights workers. "I can't rely on the state," he said. "I have to have faith in somebody."

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Forum Postponed

The Forum appearance of G. Mennen Williams, Assistant Secretary of State for African Affairs, has been postponed indefinitely.

Mr. Williams, who was to speak on "The Anatomy of Apartheid" tomorrow evening, is unable to be in Cambridge because of the death of his mother earlier this week.

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Barristers' Ball

The Barristers' Ball, sponsored by the Harvard Law Wives, is slated for Saturday, Dec. 7, at 8:30 p. m. in Harkness Commons.

Tickets for this annual Christmas dance cost \$2 per couple and may be obtained at the door or from either Elizabeth Reynolds or Barbara Pope.

Dress for the event will be semi-formal.

Leach Speech Slated

Prof. W. Barton Leach will talk to the Republican Club about current issues of defense at 1:30 p. m. today in the Harkness Commons meeting room.

ILC to Hear Nikiforov

Prof. Boris S. Nikiforov of the University of Leningrad will address the International Law Club tonight on "Some Aspects of Soviet Criminal Law" at 8:00 p. m. in the Pound Room.

Mixer Tomorrow

The Dorm Council will hold a mixer tomorrow night in Harkness from 8 to 12 p. m. with women from Brandeis, Boston University, Jackson, Lesley, Simmons, Smith, Radcliffe, and Wellesley.

NO RECORD THURSDAY

Fowl is fair next week. The **RECORD** will not publish on Thanksgiving Day. Next **RECORD** December 5.

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Letters to the Editor

Combat Valuable

(Continued from page 16)

subject of this letter but perhaps worth statement is my reaction to the article on Page 13 of the same issue of the RECORD by Mr. Stewart D. Davis. I suppose young men can never in anticipation appreciate the true value of military experience and will continue to regard it, as Mr. Davis apparently does, as a burden rather than as an opportunity. I have said to many young men who apparently thought my views on the subject worth soliciting that the most productive period of my life was the nearly five years I spent in uniform during World War II and that I have no hesitation in saying that that experience was the most valuable in my life from an overall standpoint. I am completely satisfied that the same generalization would be true today for a young man even though the time period would be shorter and the prospect of actual combat experience less. I feel truly sorry for the people who ducked combat experience when they had the opportunity to get it, and I feel almost equally sorry for those today who fail to appreciate the real worth of an opportunity to serve in a combat type outfit in peace time. . . .

John F. Floberg, LL.B. '39
Akron, Ohio

Two Before Three

To the Editor:

I find it hard to believe that so much serious thought is being given to a tri-semester system for law school while the second year at Harvard has not yet become a two semester program.

At present a second year student takes five year-long courses and two semester courses in the fall and one in the spring.

The suggestion that all second year courses be taught in one semester is not a radical idea. Many law schools use such a system. There is no theory of education that demands that corporations or taxation must be taught twice a week

for a year instead of four times a week for a term or even three times a week with longer class periods.

Reducing the number of courses would not reduce the work load, but it would alleviate the present book juggling situation that exists for many second year students. It would also mean two full examination periods a year. Winter examinations would not be an interruption as they now are, since all courses would be involved. Such a system would also permit flexibility in scheduling and allow professors to teach subjects in which they are interested to two different sections in different terms.

Who knows but that there might even be something resembling enthusiasm in February when the new term begins.

The only reason advanced for the continuation of the present combination of year and semester courses is tradition. There are times when even Harvard must part company with tradition.

Second Year Student.

Rich in Spirit

To the Editor:

Even though in all probability you will not print this letter because of its boastful nature, here goes. The letter is inspired by the item on page 3 of the Oct. 24 issue, showing that HLS grads 15 years out, average annual incomes of \$26,000; and I am sure that is a tribute to the legal acumen of which they are, not boastfully, proud.

My boast is rather different. During my 51 years of continuous independent practice, my income did not exceed \$10,000 for more than 5 years; and never was it over \$13,000. My books are open to anyone to prove this remarkable show-

ing. Yet for some absurd and antique reason, I've ever felt that my career as a lawyer has been a success. And that my family and I have been, oddly enough, happy. . . . Accordingly, I envy no man because of his wealth.

For that matter, I seem to remember that the HLS faculty of 1909-12 exuded an aura encouraging that kind of success. Especially did Dean Ezra R. Thayer, one of the finest men I have ever been advised by, in early years. But also did Profs. Edward Warren, Beale, Williston, Wyman and the others. And please understand, this is not to criticize today's instruction or faculty none of whom I know. Perhaps, had I chosen when 40 or before, to enter the "service" of a big corporation or two in nearby Pittsburgh (contra some general extra-curricular remarks of Prof. Warren) I'd soon have absorbed some of their chumminess to my profit.

. . .

John R. Keister, LL.B. 1912
Greensburg, Pa.

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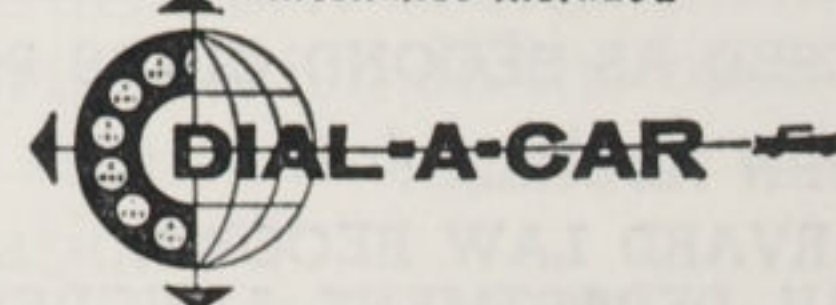
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Letters to the Editor

Alabaman Criticizes How Negroes Vote

To the Editor:

In view of the massive brainwashing to which you have been subjected, I doubt that you will be interested in what I have to say in this letter. Since, however, you are spending time and someone's money to learn to think as lawyers think, you must have learned by now that there are at least two sides to most questions. I give you the "other" side.

I enclose the results of an election just held in Mobile. . . . [The writer explains that the election was held to decide whether to change the city government from a commission form to a mayor-alderman form. He says that in certain "predominantly Negro" wards, "it is obvious that there was 'bloc' voting" against the proposed change.]

One of the most astounding things about this election in Mobile, and especially this bloc vote, is that it would appear that the Negroes should have welcomed this change. . . . In a mayor-alderman form of government they would certainly elect candidates to the Board of Aldermen from these Wards where they are in the majority. . . . But, as you can see, they voted overwhelmingly against the change which would seem to be to their advantage.

Why?

Dr. Handlin in his book, "The Dimensions of Liberty", suggests

that bloc voting is from economic reasons. Many, possibly most, observers in Mobile will agree with this. It has been charged that these votes were bought, not individually, but from their leaders. Certainly the votes were delivered. Why, how, and from whom and for how much have not been publicly disclosed. And this happens in every election now.

We in the South have a way of life which was not developed, nor can it be maintained by bloc voting. We are not going to give up this way of life without exercising what we think is our right to self-defense. Of course, bayonets and bullets may force it on us. We have been occupied by Northern troops before, and those in power today are capable of inflicting them on us again. But if you think that will make us accept it, you don't know the spirit of a proud and independent people. Nor will swarms of Harvard Law School students and others overpower us or intimidate us.

Self-government with the ballot is heady wine for Anglo-Saxons with a thousand years of background, history and tradition. It is too powerful for South and Central America. In fact, it is too rich for European blood. Only the Griswold-Freund Axis thinks Africans can take it.

When, as and if the Negroes in this country learn to drink of it respectably, they will be ready for the ballot. Until then, you can count on us opposing these mass

registrations of Negroes with all resources available to us.

J. Edward Thornton
LL.B. '32 ('33)
Mobile, Ala.

Military Worthwhile

To the Editor:

I noticed an article in the October 24 Harvard Law RECORD by Mr. Hamann entitled "JAG Corps: How Worthwhile Is It?"

I do not know the background for the solicitation of opinions concerning Judge Advocate General experience but, having had more opportunity to observe it than all but very few graduates of the Law School, I would like to make a couple of observations. First of all, JAG experience is no different from any other in that one who goes into it with the right attitude and a determination to get as much value out of it as possible will undoubtedly find the years productive — perhaps not as productive as some other course to which he would have chosen to devote those particular years, but nevertheless a permanent contribution to his total life experience.

More importantly, however, I would like to suggest that a law school graduate will get infinitely more value out of spending equivalent time as a line officer in any one of the military services than he will as a staff officer (including a JAG officer) in any of them. There are very few jobs in any walk of life which have a human experience value remotely approaching that of captain of a company of infantry, captain of a small naval vessel, or commander of an aircraft squadron.

I have had the experience of originally entering the military service as a lawyer, of serving for several months in that capacity, and of subsequently transferring to the duties of a line officer and thereafter of having my own command.

...
Slightly unrelated to the main

(Continued on page 15)

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