

Not Paying Taxes in NY & Law Schools Go Woke

What Happens Next – 06.12.2022

Welcome to What Happens Next. My name is Larry Bernstein.

What Happens Next is a podcast where the speaker gets to present his argument in just Six Minutes and that is followed by a question-and-answer period for deeper engagement.

Today's discussion will be on Moving out of NY & Law Schools Go Woke.

Our first speaker is Chris Doyle who is a tax partner with Hodgson Russ who represents wealthy individuals who move to places like the Hamptons or Miami to avoid paying New York City income taxes. The tax authorities will be coming gun blazing to get their money. Chris Doyle will explain the issues and how to plan your life if you want to get out of high tax jurisdictions.

Our second speaker is Professor John McGinnis from Northwestern Law School. Alexander Hamilton expected lawyers to be the first line of defense to defend our constitution, but Hamilton hadn't contemplated the next generation of lawyers educated by today's progressive law professors. John will discuss the implications of introducing woke ideas to all areas of legal education and what that means for students and society.

Buckle up.

If you missed last week's session with Paul Kennedy, check it out. It is the first in a four-part series on the history of WW2. Paul is one of our greatest living historians and he will discuss the battle in the Pacific during WW2 beginning with the surprise attack on Pearl Harbor and ending with the US Navy's victory at Midway.

Every month since the outset of COVID, I have commented on the most important economic statistics of the month. Inflation is the key indicator now. On Friday June 10th, the BLS released May's monthly CPI data.

Inflation is unbelievably high and the rate of change is increasing. Here is the breakdown. In the month of May prices increased by 1% which is 12% annualized. That is up from 0.3% last month. Over the past year, prices have risen by 8.6% which is the largest increase since December 1981 which was during the first year of the Reagan Administration. If you were alive then, you will recall that Paul Volker had to increase interest rates to double digits to tame inflation.

The breadth of the increase in prices across the economy is staggering and dispels the argument that it is related to supply chain disruptions or could be transitory.

Food price inflation for the past 12 months is breathtaking 10%, new cars 13%, energy 34%.

Services inflation is increasing at the rapid annualized rate of 5.2% and signifies labor shortages that is independent of goods supply problems.

Mervyn King, the former head of the Bank of England, said recently that the world's central banks erred by printing too much money during COVID. He said quote "If you simply print lots of money at a time when you are producing less, you've got a classic case of too much money chasing too few goods and the result of that is inflation. It was a mistaken diagnosis. They should not have been printing the extra money, what governments were doing was enough to deal with the consequences of Covid."

I personally suspect that policymakers wasted a very valuable public good which was a belief in long-term stable inflationary expectations.

All right, let's begin today's session.

Some of our listeners live in high state tax jurisdictions and aspire to relocate to low-tax jurisdictions. Today, we will meet with Chris Doyle who is a tax partner at the Hodgson Russ law firm and he will explain the theory and practice of changing your tax residency.

Chris Doyle:

There are a lot of wealthy individuals concentrated in the New York City who don't like to pay taxes. The fine line that they need to walk is what if they've got some living arrangement in New York and spend a significant amount of time there but don't want to pay New York taxes?

In the last five years demand for our services has been fueled by three factors. One is increases in state and local income taxes, particularly on the wealthy. The progressive movement has fueled the increase of high-income taxes on the uber wealthy. I wouldn't deny that states need revenue to perform services that we expect, but the burden for that has increasingly been visited upon the wealthy and the uber wealthy.

The second was the Federal Tax and Jobs Act which curtailed the Federal tax deduction for state and local taxes so that only \$10,000 of those taxes could be deducted each year that took away a federal tax subsidy.

The third was COVID. COVID has been a life changing event for many people. Individuals wanting to accelerate their moves from high to low tax jurisdictions. If you can live anywhere, why would you want to live in a place where you have to pay the most taxes?

Larry Bernstein:

Some taxpayers live and work in different states. Which state receives the income taxes on wage income?

Chris Doyle:

The US Federal Constitution permits state governments to tax businesses and individuals on services performed. The due process clause and the interstate commerce clause of the Federal Constitution require that taxes be fairly apportioned.

For individual taxpayers the resident state is required to give a credit in the home state for taxes paid to the other states in which the income is earned. So, individual taxpayers pay tax on everything but get a credit from the other state in which tax is paid on earned income.

Larry Bernstein:

Let's move onto professional athletes like Derek Jeter who worked for the NY Yankees but live in Florida and play games all over the US. Where does Jeter pay his state income taxes?

Chris Doyle:

Derek Jeter had a residency case in New York State. He was very careful to maintain his Florida tax residency, even as a non-resident of New York, he is required to pay tax to New York on the amount of his compensation that was earned in New York. New York State does that based on a duty-days concept. The days that you spend in New York for mandatory mini camps, game days, practice days are duty days and if you spend those in New York, then you'll have to allocate your salary to New York based on your duty days in New York versus total duty days.

The only New York football team is the Buffalo Bills, and one of the reasons that there will never be a Super Bowl in New York is because of taxes. Most of the time they go to Vegas, Florida, or Texas, all states which do not have income taxes.

Larry Bernstein:

That's funny, I thought the reason they chose the Super Bowl location was due to the weather, and the worst possible place in January to host the Super Bowl would be in Buffalo.

New topic: God forbid, is it possible that a taxpayer could be required to pay state income taxes in two different states on the same income?

Chris Doyle:

Well, if Connecticut is your domicile, you are a tax resident of Connecticut. If you've got a pied-à-terre in New York State, you could be taxed in New York as a resident if you couple that with 183 days or more in New York.

And for purposes of that 183-day rule, any part of a day is a day. So, if you live in Stamford, Connecticut, and go shopping in New York, having nothing to do with your residence in New York, you just go grocery shopping there, that is a day in New York, even if you're only there for 90 minutes to go shopping.

You're taxed as a resident on all of your worldwide income by both states. And you'd only get a credit in both of those resident states for income earned in New York. for a dual state resident

status, you'd be taxed on all of the investment income, the un-earned income, in both states, but only one of the states would be taxing your earned income, because both resident states will give you a credit for the taxes paid in the other state on earnings from the other state.

Larry Bernstein:

Clarifying, your wage income would be taxed only in one state, but your capital gains would be taxed in both states?

Chris Doyle:

Yes.

Larry Bernstein:

You mentioned this concept of a residence test and a domicile test. Could you explain what those terms mean?

Chris Doyle:

A domicile is where, in your heart, you feel your home is, and New York's approach is followed in many different states that very subjective determination using five objective factors: relative time in the state; business connections in the state; location of close family; location of what are called near and dear items; and the final factor is the relative value in use of the homes that you have in both states. Those factors are compared and weighed and a finder of fact will then use those factors to determine whether or not your home is in state A or state B.

The easier determination is, assuming you're a domiciliary of state B, state A can still tax you as a resident if you are a resident under the statute. New York's rule is that permanent place of abode plus more than 183 days in the state. And if those two facts are met, then the bright line rule is you're a resident of New York regardless of whether you're a domiciliary of another state.

Larry Bernstein:

Going back to the Derek Jeter case. He did an advertising campaign for NYC, and the advertisement had Deter saying that his heart was in NYC, and Deter ended up losing his tax domicile case because of that Ad!

A number of our listeners have a place in the Hamptons and a home in NYC. During COVID, they spent most of their time outside the city. Do these Hampton residents still have to pay NYC taxes?

Chris Doyle:

New York City has the same residency rule as New York State, so if you're a domicile in the city, you pay tax there. If you've got a place to live in New York City and are there more than 183 days, then you're a statutory resident of New York City.

Larry Bernstein:

If you live in Larchmont, you commute daily on the Metro-North and work in midtown and you go home at night. You don't have a New York City residence tax. You only pay New York State taxes on your income.

Chris Doyle:

Yes, that's exactly right.

Larry Bernstein:

Now what about the poor guy who has a mansion in East Hampton as well as a penthouse apartment in the city. Is the question, where is his heart and mind? Is it in the Hamptons or is it in the city? Or alternatively, is he spending more than 183 days in the city?

Chris Doyle:

The heart and mind test would go into the calculus to determine whether a person was a New York City domiciliary.

Larry Bernstein:

So, the poor guy has two kids in private school in New York City. And they're spending as many days as they can in the Hamptons, and so they end up spending only 170 days in New York City with those kids at school using remote learning situation like during COVID. Would that be sufficient to get out of New York City?

Chris Doyle:

One of the procedural rules we deal with is the burden of proving is on the person asserting that residency has changed. So, if the person that you described had always lived in the Hamptons, and they spent all of their holidays, family gatherings and every weekend in the Hamptons, and that it was only work and the children's education that brought them into New York City; I would say the burden would be on New York City to prove that the taxpayer is a domiciliary of New York City.

If you told me, however, that the taxpayer you've described had after college, started work, only had an apartment in New York City, lived in New York City for 20 years and then, after they became successful, bought a house out in the Hamptons, and is now trying to establish not being a New York City resident, even after having admitted to being a New York City domiciliary, then the burden of proof would be on the taxpayer. And I would say 90% of these cases are determined based on who bears the burden of proof.

And if the state bears the burden of proof, it's very difficult for the state to withstand that standard. If the taxpayer bears the burden of proof, they control all the facts, so it's a little easier. But it is often the case where the burden of proof is outcome determining.

Larry Bernstein:

Let's change the facts. Let's imagine that you used to have two kids in NYC private schools, and now they go to college. And they're no longer with you. It's just the husband and wife, and they've made the decision to effectively change the way they live. And now they're spending, 200 odd days out in the Hamptons and 100 days in New York City and 65 days outside of NY.

At what point will their behavior be sufficient to get out, even if they have the burden of proof. How can they prove to NYC that they've abandoned their city domiciliary?

Chris Doyle:

It's totally a facts and circumstances test, and they will weigh those five factors I described previously. Auditors like to see two days in your domicile location for every one day that you are in your non domicile location that seems to be a good indicator that you're no longer a domiciliary of New York City.

It would help if one of the spouses had a business connection in the Hamptons that all of the business connections are not in New York City. It would help if when the kids come home, they're coming home to the Hamptons and not to New York City. It would help if all of the major family holidays are spent in the Hamptons.

If you've got artwork, a car collection, you'd want that near your home, and it would be better for that to be in the Hamptons than in New York City.

Larry Bernstein:

Many listeners would prefer to move to Miami than the Hamptons so that they pay zero state income taxes. What are the necessary steps for a taxpayer to prepare?

Chris Doyle:

I would do all the things I mentioned for the New York City versus Hamptons for the New York City versus Florida taxpayer. I might want to see an event that triggers when domicile ended in New York City. So, having a van move your really treasured items from New York City to Florida. I would want you to track your days using an app, so that it was clear where you were every minute of every day during the year.

I would want the person to spend two days in Florida for every day in New York City. I would encourage the person to be more active in social charitable endeavors in Florida than they are in New York City. I would think that consistent with Florida being the domicile, birthdays, holidays would be in Florida and not in New York City.

I think the best approach is the more abrupt event. It's better to have a major lifestyle change when you're asserting that you've moved that makes the auditors more comfortable that you moved out of New York.

In the year that you move to Florida, you actually buy a big place that is equally or more luxurious than the place that you have to live in New York State. And you move all your stuff down there and you change your driver's licenses and the registration on your vehicles and all the other sort of paperwork, details. You could keep your New York place.

That is a much more comfortable place for an auditor than this creeping domiciled situation.

Larry Bernstein:

This state versus state taxation seems crazy to me. The founders never contemplated taxpayers living in multiple states. What is the long-term solution to this problem?

Chris Doyle:

If I were king for a day, I would have congress pass a law that had a bright-line rule that applied to all states. Under the Interstate Commerce Clause, congress has the exclusive authority to govern commerce among the states.

The problem is there are 50 states. They all have what they think is the right way to do things and it is difficult to get all of the states to do anything the same way.

Larry Bernstein:

The state income tax audit letter arrives in the mail, and you say Good God why didn't I keep my records. What should taxpayers from multiple states be doing to get prepared?

Chris Doyle:

There are apps available now that you can download on your phone that keep track of where your phone is. I think that that's a good idea. I think having something as simple as an Excel spreadsheet where you keep track of your whereabouts. If you're prepared for it, it shouldn't be horrible.

Reproducing the records three years after the fact can be difficult and invasive. It doesn't happen very often, but every once in a while, you know somebody swears up and down, "I don't have a place in New York City," and it turns out the girlfriend has a place in New York City that the spouse doesn't know about, and (laughs) and all of a sudden New York State finds out about that and then what do you do? The answer is you just pay.

Larry Bernstein:

There is a special tax for being a sugar daddy.

Thanks Chris, let's now move to our second speaker John McGinnis who is the George C. Dix Constitutional Professor at Northwestern's Pritzker School of law, and I've asked John to speak about wokeness in the legal academy.

John McGinnis:

I'm going to talk about the change in the ideology of lawyers and how that has affected the nation and legal education. At the beginning of our republic, lawyers were an extremely important class. De Tocqueville, the greatest observer of American society, thought that lawyers filled the function of nobles and princes in society. They were talented, a meritocratic class. They were going to be conservers of the Constitution. That's the reason that judicial review was given to the Supreme Court.

Alexander Hamilton, the most famous defender of judicial review, the idea that the court can strike down statutes inconsistent with the Constitution. And his argument was that it would be staffed by lawyers, a few who would be extremely knowledgeable, and would be bound down by rules and precedent and not their own preferences.

For many years, there were restraints on democratic excess up through the New Deal. They also were very much against court packing.

But then, as society changed, lawyers changed. As we had a much larger regulatory state, lawyers changed their interests. They no longer got their income from private law. They got transfer payments for more regulations. Moreover, as the court permitted the declaration of new kinds of rights, lawyers saw another opportunity to be tribunes of the people, the opposite, of what they were thought in Tocqueville's time.

The American Bar Association, the ABA, the guild of lawyers, showed its changing views. They opposed Robert Bork. They said he was unqualified to be on the Supreme Court, this professor at Yale Law School, Solicitor General of the United States, who wrote the most important book on anti-trust law. They endorsed Roe v. Wade, and that was a decision which, a famous supporter of abortion rights, John Hart Ely, said was not Constitutional law, and it showed no sense of an obligation to be so.

Today, ABA resolutions look like a wish list of the Democratic Party, the minimum wage, making sure that biologically male athletes who identify as women can compete in women's sports. Things you might not think lawyers have much expertise in but certainly signal their ideological position.

For a long time, the ABA has had an important part in accrediting law schools. And for the early years, lawyers acted like an economic guild. What they were most interested was making sure they were paid well, so they raised the costs of legal education, so a classic barrier to entry.

The Justice Department prevented this through anti-trust laws. What the ABA has done now is shift its power. No longer can it interfere economically with law schools, so it does so ideologically. Already, law schools, lean to the left. The ABA now requires diversity to hire people of minority races and women.

There's pressure from the ABA to become more left wing than law schools would otherwise be. They also recently required that every law school has to have lectures on race. You have to have, quote, "cross-cultural competency," required lectures at law school.

And here's what a group of senior Yale Law professors said about it. They observed that the new proposed requirements will institutionalize dogma. It'll mandate instructions in matters that are unrelated to any legal skill. One can certainly imagine their effect on legal education. Because legal education are the gatekeepers of lawyers, the class that Tocqueville thought was so important to conserving the republic. And now this gatekeeping function is likely going to shape lawyers to be contrary to the conserving force that Tocqueville imagined.

Larry Bernstein:

Thanks John, for your provocative remarks. My first question is why should we care if lawyers are no longer the first defense for our constitution?

It's a problem insofar as there's no other group that wants to conserve the Constitutional order. Both de Tocqueville and Alexander Hamilton thought the judiciary would conserve the Constitution.

If you think that the Constitution needs to be conserved through judicial review, you need a class that's interested in that. Judges trained by law professors that come up as lawyers.

Larry Bernstein:

Congress is filled with lawyers. How do you compare the role of lawyers in Congress with those in the Judiciary?

John McGinnis:

When Alexander Hamilton talks about those who will staff the federal judiciary, he's talking about the most distinguished lawyers in their communities. That was certainly George Washington's sense. I think he would call the first people he appointed to the Supreme Court, "Continental characters," people who really stood out from the entire nation. And the federal judiciary do not look like your average member of Congress, they went to highly ranked law schools, they performed better, their careers were more distinguished.

Lawyers in Congress perform an important function as well. You wouldn't want the people who rule us who are just graduates of the Harvard and Yale Law Schools. They perform an important function, but I don't think they perform exactly the function that Tocqueville and Alexander Hamilton thought would be performed by those in the federal judiciary.

Larry Bernstein:

Teachers are more liberal than the general population and they teach progressive ideas from kindergarten through graduate school. I would have thought that the brightest kids in law school would be able to think on their own and would be more immune to radical ideas than the undergraduates or younger children.

John McGinnis:

We are more worried about elite law schools because professors have a lot of sway over who gets clerkships. That may now be changing a little with the conservative Supreme Court and the Trump appointees, who don't look to professors at Yale Law School for their recommendations. But I don't discount the power of professors.

The law schools exert influence through their teaching and through their scholarship. If they're uniformly critical of conservative opinions that makes it seem that the court is not legitimate. There's a division of labor between judges who actually have to decide cases, and law professors who are thinking more long-term about the law. If the law professors are thinking in a way that is inconsistent with conserving the Constitution, that's going to make it much harder for judges who don't have the time to do the deep research that law professors do.

Larry Bernstein:

Recently there was opposition to free speech by some Yale law school students. Laurence Silberman, Senior Judge of the DC circuit recommended that judges refrain from hiring clerks who are opposed to free speech. Do you think this will help reestablish previous norms?

John McGinnis:

Any individual judge, certainly, is going to consider the character of their clerk. They don't want him or her to be an extremist.

It's certainly reasonable for a judge to ask students about whether this behavior is correct, if they came from Yale Law School. And if they thought, "Oh, this is just wonderful," that might be a reason not to hire them, because you're giving them a mark of distinction that is going to have them play a very important role in the republic.

Larry Bernstein:

33 years ago, I lived in Brooklyn Heights across the street from Brooklyn Law School. I was not enrolled at the law school, but I snuck into night school classes and took tax and corporations. Unlike constitutional law, these were technical classes and I was unaware of any ideological aspects to the class.

John McGinnis:

First, you went to Brooklyn Law school, I daresay, some years ago.

All law schools now want to be junior varsity Yales. At Yale Law School, you see ideology across all the courses today. They would think that it's a mistake to understand that private law is not as ideologically freighted as public law. It makes tax not just a technical course.

Now, some people just want to pass the bar. They don't want to understand how tax is related to various philosophical theories, or corporations. And that's true, and I think there is some disconnect, particularly at lower-ranked schools, between what people teach and what would

be most beneficial to their students. Now, at Yale, students want to understand the roots of any legal subject, there's necessarily going to be some philosophical political considerations that will make the course more coherent than just a set of rules.

I'm sympathetic to that at high level schools. You've got to figure out the way to match your teaching to both the abilities and to the long-term interests of your students. It's a mistake to think, and I've sort of suggested this by separating out those who go to the federal judiciary and those who go to Congress, to think of the legal profession today as very unified. It's completely different if you're going to be at Sullivan & Cromwell and work on deals from Goldman Sachs, the kind of skills you need than if you're a housing lawyer. There're some skills that are the same; the kind of advocacy skills I hope law schools still try to import. But it's a mistake for all law schools to model themselves on Yale, to have professors who are mostly concerned with the grand structures of laws, at the expense of focusing on the nitty gritty of individual rules. I don't think that's doing a service to many students.

Larry Bernstein:

Judge Posner published a book entitled *Divergent Paths: The Academy and the Judiciary*. In that book, Posner argues that the law professors' scholarship has little relevance to the judiciary and is largely ignored. Do you agree and should we care?

John McGinnis:

I think Judge Posner is largely correct, you can think of law schools as somewhere between the university and the bar. And what are they going to look more like a department of economics or English? Are they going to be teaching you legal skills? And there's no doubt that law schools have moved, even during my career, towards the university. And law schools hiring people with PhDs. And so they identify more with economics or psychology than with the practice of law, so that's not surprising that what they write is not likely to be as interesting to lawyers, let alone judges. So, I think that's right.

Now, the one thing I think Judge Posner, who was very anti-originalist, would be unhappy with, was the growth of a small cadre of originalists at law schools. You see them cite it in the Supreme Court. And that goes back to this division of labor, because if you were trying to figure out what the original meaning of a provision of the constitution is, that's often rather complicated. The original meaning of the constitution is written in lawyer's language of the 18th century. And so that needs to be recovered.

Law professors are very well positioned to do that and law judges and justices of the Supreme Court are avid consumers of legal scholarship.

Larry Bernstein:

In your opening remarks, you talked about how the ABA has become partisan. At the same time, there is a new conservative legal organization called the Federalist Society. Can the Federalist society be seen as a response to the extremism of the ABA and why are conservatives excited about it?

John McGinnis:

The Federalist Society has to be seen as a reaction to the leftward tendencies of the ABA. The Federalist Society, unlike the ABA doesn't rate lawyers as judges. It does create a network in the conservative legal movement. It works less formally, but it is a breeding ground as it were for the judges who are then chosen.

But it also does more than that. The Federalist Society is a counter programming device at law schools. They send law professors to speak at law schools. At some law schools there are very few conservatives who are eager to speak to their students about these issues.

Larry Bernstein:

How does the growth of the regulatory state fit into the Federalist Society's mission?

John McGinnis:

We have a large regulatory state which has really changed the perspective of lawyers to be much more favorable to social change than Tocqueville and Hamilton imagined. The Federalist Society is an essential ideological counterbalancing to lawyers' pecuniary interest.

It's one of the few organized intellectual forces on the right. Not only law schools, but the academia leans heavily to the left. Suddenly there's this group fanned out across the country that's something of a resistance movement.

And I think that explains why Federalist Society gets people on the left extremely excited because it breaks up a monopoly in the intelligentsia.

Larry Bernstein:

Next topic: the Supreme Court. The Warren Court was very liberal in expanding individual rights. And since the Berger was chief justice, the Supreme Court has drifted to be more conservative. Why did this happen?

John McGinnis:

Since Nixon, the timing of Supreme Court retirements has been quite favorable to the Republicans and that's allowed them to move the court to the right. But Roe V. Wade is a Berger Court decision and is written by a Republican appointee, Harry Blackmun. It took a long time, and the work of organizations like the Federalist Society to create a counter legal culture. Judges, like Trump appointed Neil Gorsuch, Brett Kavanaugh, Amy Barrett, certainly knew the Federalist Society. They understood that originalism had become a force, a way of understanding the constitution, that intellectual infrastructure had to be in place for there to be a dramatic change. It's really three things. It's the presidents who are elected by Republicans, timing of Supreme Court retirements and death. And finally. the growth of the Federalist Society and like-minded groups to create a counterculture that's made this possible.

And that's all came together in the Trump appointments that transformed the court. We now have a court that's not only leans to the right, but most importantly leans to an understanding

of the constitution according to its original meaning. There are at least four judges who are very sympathetic to originalism on the court.

Larry Bernstein:

Several Republican Supreme Court appointees turned out to be much more liberal than expected. Eisenhower appointed Brennan and Warren, Nixon Blackmun, Reagan Kennedy, and Bush 41 Souter? What happened?

John McGinnis:

I absolutely think you're right; it was not enough for a Republican president to appoint a justice. There was no legal counterculture. There was so much cultural pressure. These justices drifted to the left. Blackmun migrated to become one of the most left wing justices on the court. White, maybe the one exception that drifted the other way.

Eisenhower said he made two mistakes in his presidency and both of them are sitting on the Supreme Court, meaning Warren and Brennan. George W. Bush had two successes in his presidency, John Roberts and Samuel Alito.

Another, important aspect was the Reagan administration. Few presidents have a constitutional perspective. The people who worked in that administration became very effective advocates for originalism and textualism as they went on to the judiciary.

Larry Bernstein:

George W. Bush appointed his personal lawyer Harriet Miers to the Supreme Court but the Federalist Society was apoplectic because they were worried that she may drift to the left like Souter, and her nomination failed, and she was replaced by Alito.

John McGinnis:

Right. it's important to understand the Federalist Society does not take any positions on judges. The Federalist Society, doesn't take any positions on legislation. It's sort of interesting compared to the ABA, which has all these resolutions on various hot button issues. The Federalist Society never does that. But you're right. the Federalist Society developed standards for conservatives and Harriet Miers didn't meet them.

And one reason she didn't meet them is she had not thought about these issues and conservatives recognized that she was a likely candidate for drift. The evidence from history was that people would drift under the pressure of the predominant legal culture to the left. And it's not surprising that Harriet Miers was withdrawn. It showed the power again of this legal counterculture that had developed, and that helped guide George W. Bush to making a second decision that turned out much better.

Larry Bernstein:

I end each episode on a note of optimism. What are you optimistic about as it relates to the legal academy?

John McGinnis:

(laughs) Ah. (laughs)

Larry Bernstein:

I really didn't mean to stump you.

John McGinnis:

The only way I'm optimistic about the legal academy is there is a sense, even among academics that they want to react against their elders. And while the younger law professors are even more left wing than the older law professors, there could be a group that's behind them, who will have some doubts about the road that they're going down just because each generation of academics wants to slay their elders.

One other thing that might make me optimistic would be the removal of racial and ethnic preferences from the admissions process. I do think that some of the tensions in law schools and demands for things like critical race theory sparked by groups of people who are unhappy, people admitted under different standards who don't do as well. That's the reason we have tests. We use the LSAT's, they're predictors of how well people are going to do and if they don't do as well, they're disgruntlement. This is one reason, not the only reason, for the movement of law schools to institutionalize diversity, equity, inclusion to make the culture of the law schools even more left wing than it would otherwise be.

I predict the court is likely to get rid of affirmative action and force schools to admit people on the basis of merit or at least not on the basis of race, ethnicity. I think this will help create a healthier environment. So that's the one aspect in the short term that I'm somewhat optimistic. But mostly I'm hoping to stick around to see my six-year old's generation get to the legal academy.

Larry Bernstein:

Thanks to Chris and John for joining us today. That ends today's session.

I would like to make a plug for next week's show.

I am very excited that we will have part 2 of the four-part history of WW2 with Yale historian Paul Kennedy. The topics will be the Battle of the Atlantic and the War in the Mediterranean. I want to take you back to 1942 when nobody knew who was going to be defeated. The Nazis had conquered France in a couple of weeks of fighting and the Americans had just been surprised at Pearl Harbor. U-Boats were everywhere in the Atlantic and they were successfully sinking a substantial share of America's Merchant Marine as we tried desperately to feed the British and make prepare our invasion of Normandy. Paul will explain how the Allies successfully beat back the Nazi threat on the American coastline and throughout the Atlantic.

We will also have Sean Berkowitz who successfully defended Michael Sussman of felony charges that he misled the FBI about Trump that spurred an investigation. We'll get the inside perspective on the most important trial of the year.

Our final speaker will be Robert Young, a retired air force pilot will discuss the new blockbuster film Top Gun: Maverick! The original influenced an entire generation of military pilots, and I want to learn from Youngster aka Farmer how the remake will influence our current men and women in uniform.

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Thanks to our audience for your continued engagement with these important issues, good-bye.