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Cases of Communist Leaders Near Supreme Court Decision

Arguments on several cases of national importance are now being heard by the United States Supreme Court in the third week of its Fall Term.

In its first major decision, the Court last week granted new trials to Steve Nelson and four other Pennsylvania Communist Party leaders. Convictions of the five under the Smith Act were obtained with the aid of testimony by Joseph D. Mazzei in 1953. The Justice Department recently asked the Court to remand the cases to a District Court for hearings on Mazzei's credibility.

The Chief Justice, together with Justices Black, Clark, Douglas, Minton and Reed, voted to remand with instructions to grant the defendants a new trial. Dissenting Justices Burton, Frankfurter and Harlan would have remanded for hearings on Mazzei's credibility. Formal opinions will be issued shortly.

Nelson's conviction under a Pennsylvania state sedition law was vacated earlier in the year by the high court in *Pennsylvania v. Nelson*, 350 U.S. 497.

Scales Case Coming Up

Several other cases now pending also involve the Smith Act. Typical of these is *Scales v. United States*, reported below at 227 F.2d 581 (4th Cir. 1955). A uni-



Earl Warren

amous opinion written by Chief Judge John J. Parker upheld conviction of Junius Scales, State Chairman of the Communist Party in North Carolina. Scales has challenged the constitutionality of the Act's "membership clause" (18 U.S.C. §2385), claiming that it violates the First Amendment's guarantees of free speech and assembly, and the Due Process clause of the Fifth Amendment.

In *Butler v. State of Michigan*, the constitutionality of a Michigan "obscenity statute" has been challenged. The law in-

question bans sale or distribution of books "containing obscene, immoral, lewd or lascivious language . . . or descriptions tending to incite minors to violent or depraved or immoral acts, manifestly tending to the corruption of the morals of youth." (Mich. Stat. Ann. § 28.575.)

The Recorder's Court for the City of Detroit convicted Butler under the statute, and the Michigan Supreme Court refused to hear his appeal. Appellant asserts that the law is either void as being too vague, or else void as placing unconstitutional limitations upon freedom of the press.

Deportation Case

Evidence of an alien's past membership in the Communist Party will be scrutinized in *Rowoldt v. Perfetto*, reported below as 228 F.2d 109 (8th Cir. 1955). Charles Rowoldt, a citizen of Germany, entered the United States about 1924, and was a member of the Communist Party in 1935, according to findings made by a Hearing Officer of the Immigration and Naturalization Service of the Department of Justice. The Government claims this warrants Rowoldt's deportation under that portion of the 1952 Immigration and Nationality Act authorizing deportation for past membership in the Communist Party (8 U.S.C. § 1251 [a]).

If the Supreme Court finds that the evidence does satisfy requirements of the Act, it may find it necessary to pass upon the constitutionality of the section providing for such deportations.

In *United States v. Louisiana*, an original case filed by the Government last March (350 U.S. 990), plaintiff claims that Louisiana has jurisdiction extending no more than three miles out on the continental shelf, while defendant maintains that it owns sub-surface oil deposits within nine miles of its shoreline. Outcome of the controversy will involve several hundred million dollars in royalties.

Likes Ike . . .



Livingston Hall

The Republican ticket of Dwight D. Eisenhower and Richard M. Nixon won hearty endorsement Tuesday at an "Ike Rally" conducted in Harkness.

Vice Dean Livingston Hall, speaking at the rally, praised the judicial reform that was undertaken in New Jersey and Massachusetts under Republican state administrations. Professor A. James Casner spoke of General Eisenhower's prestige in Europe and throughout the world.

A former Law Review president, Elliot L. Richardson, LL.B. '44 ('47) told the rally that young intellectuals were swinging to the GOP. President Eisenhower described the Republican party last August as "the party of the future".

Professor Robert Braucher served as master of ceremonies.

Uniform Securities Act To Simplify State Laws

A new Uniform Securities Act has been approved by the National Conference of Commissioners on Uniform State Laws for adoption by the states. Endorsement of the proposed legislation has also been given by the American Bar Association and the National Association of Securities Administrators.

The Act is the result of a two-year Study of State Securities Regulation conducted by Professor Louis Loss of the Law School in association with Edward M. Cowett, LL.B. '54, who was appointed Research Associate in Law for the project.

Marking the culmination of a long history of efforts to achieve some uniformity in regulating the sale of securities, the study was financed by the Merrill Foundation for Advancement of Financial Knowledge, Inc. Rhode Island passed the first "blue sky" law in 1910, and since that time a total of forty-six states and Hawaii have enacted such legislation in one form or another. Only Delaware and Nevada have no legislation on the subject.

Three Approaches

Although these enactments vary widely from one state to another, they take three basic approaches toward the subject. The "fraud" approach authorizes a state official to make investigations, and institute injunctive or criminal proceedings against offenders. The second approach requires registration of brokers, salesmen, and more recently investment advisers. The third requires registration of the securities themselves. Most of the laws actually combine all three approaches.

Though Congress passed a Securities



Louis Loss

Act in 1933, it preserved the applicability of state "blue sky" laws even to interstate offerings. Thus an attorney today who is preparing an issue for national distribution must register not only with the Securities and Exchange Commission, but also under several dozen diverse state statutes. As an illustration of the difficulty he may face, the forty-seven statutes use some 2,800 different phrases in their exemption provisions alone.

A Uniform Sale of Securities Act was approved by the Commissioners and the ABA in 1929, but adoption of the Federal statute four years later raised problems of federal-state coordination which rendered the Uniform Act obsolete. In 1944 the (See *SECURITIES* on page six)

St. Clair to Challenge Field Before 500 at Model Trial

Five hundred first year men will fill the James Barr Ames Courtroom this afternoon at 5:00 to watch the annual Model Trial. John V. Spalding, LL.B. '23, Associate Justice of the Massachusetts Supreme Judicial Court, will judge the case of *Brumbaugh v. Artcraft Pictures, Inc.*

For the eighth consecutive year, Professor Richard H. Field will serve as counsel in proceedings before the Superior Court of the Commonwealth of Ames. He will represent a Hollywood firm in a \$100,000 action brought by William R. Brumbaugh, who has retained James D. St. Clair, LL.B. '47. Mr. St. Clair will teach a section of Trial Practice in the spring.

In preparation for the trial, first year students have spent several sessions in the Group Work Program drafting pleadings,

hearing depositions, and discussing possible courses of action by each side. For instructional purposes the groups were divided so each could concentrate on one side of the controversy.

The action arose from a newspaper advertisement published by the defendant as part of its publicity campaign for a spectacular production. Text of the advertisement was as follows: "Artcraft Pictures, Inc., will pay \$100,000 to anyone who can prove Craig Bilder is not the one who performed all the daring feats of heroic Jack Lawson in the magnificent production *Son of the Midway*."

The plaintiff claims that during a telephone conversation with a vice president



Richard H. Field

of Artcraft Pictures, he tendered proof that Craig Bilder did not do all the daring feats shown in the film, and demanded (See *TRIAL* on page five)

Recent Comparative Negligence Statutes Present Difficult Construction Questions

By ROBERT A. LEFLAR

Administration of a system of comparative negligence in Puerto Rico presents problems to some extent different from those in the mainland states, partly because of the brevity of Puerto Rico's comparative negligence statute and partly because of the method of trial by judge sitting without juries in negligence cases here.

The 1956 Puerto Rican statute is shorter than any adopted in the states. My translation of it reads: "The concurring carelessness of the claimant does not eliminate liability, but shall bring about a reduction in the amount awarded." Every one of the American state statutes goes into greater detail than this.

The background of Puerto Rico's whole negligence law is also different from ours. It rests on section 1802 of your Code, derived indirectly from the Napoleonic Code and directly from Spanish law. From section 1802 your courts have developed an entire body of negligence law, including contributory negligence, last clear chance,

Professor Robert A. Leflar recently gave a series of talks to the Bar of Puerto Rico discussing the newly-enacted comparative negligence statute in that Commonwealth. Drawing on comparable statutes of state jurisdictions, he comments on important aspects of comparative negligence and the problems posed by adoption of that principle.

assumption of risk, proximate causation, and most of the other variations in the law of negligence found in the United States. Needless to say, you have done this by the application of American precedents to your basically Spanish law.

Your Supreme Court in *Irizarry v. People*, 75 P. R. R. 740, decided in 1954, strongly favored the adoption of a system of comparative negligence in Puerto Rico. It there pointed out the unfairness and harshness of a rigorous rule of contributory negligence, that many common law jurisdictions including England and several

of our states have by statute enacted a rule of comparative negligence, and that the civil law countries had never generally accepted the rule of contributory negligence.

The *Irizarry* case was undoubtedly a major factor in inducing your legislature to adopt your new statute earlier this year. Coupled with that case was the apparent tendency in Puerto Rico to go back to Spanish law and to break away from the trend of the last half century which brought so much of the common law into Puerto Rico's jurisprudence.

Puerto Rico's new enactment raises several specific problems which your courts will have to decide in the years ahead. Some of them have already been dealt with in the states and some have not.

Some of our state comparative negligence statutes, like Wisconsin's, provide that a negligent plaintiff may recover proportionately from a negligent defendant only if the plaintiff's negligence was less than the defendant's.

Other statutes, like those of Nebraska (See *NEGLIGENCE* on page two)

Court Rejects Rule Of Durham Case

The Ninth Circuit has rejected the "Durham Rule" as a test of insanity in criminal proceedings. In *Andersen v. United States*, decided on September 21st and reported in 25 U.S. Law Week at page 2150, the defendant requested instructions similar to those approved by the Court of Appeals for the District of Columbia Circuit in *Durham v. United States*, 214 F.2d 862 (1954).

The "Durham Rule" requires only that the criminal act of a defendant be the product of mental illness. This is a departure from the classic rule enunciated in *M'Naghten's Case*, 10 Clark & Fennelly 200 (1843), which necessitates a showing that the defendant was unable to distinguish right from wrong at the time of his offense.

Judge Dal M. Lemmon, writing in *Andersen*, declared: "This court has no desire to join the courts of New Hampshire and the District of Columbia in their 'magnificent isolation' of rebellion against *M'Naghten*, even though New Hampshire has been traveling down that lonesome road since 1870. See *State v. Pike*, 49 N.H. 399. Rather than stumble along with *Pike*, we prefer to trudge along the now well-traveled pike blazed more than a century ago by *M'Naghten*."

Since there is now a conflict of decisions between two circuits on this point, it is not unlikely that the United States Supreme Court would grant certiorari in this case.

Freedom of the Lens

The place of radio microphones, television cameras and news photographers in judicial proceedings has been the subject of a recently intensified *pro* and *con* discussion within the Bench and Bar, and a forceful campaign by the news media to secure easier entrance.

Canon 35 of the Canons of Judicial Ethics condemns the presence of broadcasters (including televisers) and photographers in the courtroom "as calculated to detract from the essential dignity of the proceedings, distract the witnesses . . . [and] degrade the court. . . ."

It should be stated that broadcasters can and do gather the news in the courtroom. No one is barred from any courtroom. The complaint is that they cannot gather the news in the ways they prefer—with cameras and microphones.

The fundamental propositions to which the media are committed would be more impressive if there could be substantial certainty that these standards would be adhered to in practice.

The purpose of Canon 35 does not stem from a judicial preference for exclusiveness, but rather from a legitimate desire to protect the administration of justice. The disorderly and objectionable conduct of some media representatives and the unwillingness or unawareness of some judges to preserve the dignity of court proceedings caused serious concern among the drafters of the Canon.

The question is not essentially a constitutional one, though some would disagree, for free speech (including broadcasting) and fair trial are of equal stature under the law and neither can transgress upon the other.

What is at issue, however, is whether still photography and broadcasting of court proceedings will interfere with the orderly procedure required by the due process clause. Both the Bar and the media concur in the belief that if they do interfere, they should not be permitted. The disagreement comes over the evaluation of the impact of the media's activities of the courtroom.

Tendency to Sensationalize

Though there is a great need for additional studies on this aspect, the following tentative points are offered:

1. Exposure to radio and television broadcasting as well as flash photography makes people change their behavior, whether reflected by increased inhibition, exhibition, distraction, fright or sheer nervousness. This is the opinion of Judge Harold Medina and also that of seasoned professionals in the field such as Ed Sullivan, Jack Gould, and Sydney Andorn. The witness stand is sufficiently terrifying for the many reluctant and inexperienced lay witnesses without an additional emotional burden.

2. Judges will be harassed by the necessity of policing the number and location of media reporters and prohibiting their activities in sensitive portions of the trial or where the defendant or witness objects to being pictured. The temptation of elected judges to use photographing and broadcasting for personal and political reasons is one to be avoided. The increased sway of popular emotion may find a way of enforcing its own verdict to replace fair and unpressured jury deliberation and judicial discretion. The practice of selecting only sensational portions of the trial serves to increase the difficulty of exerting the dictates of individual conscience.

3. This brings us to the crux of the problem—that of media responsibility. It would seem that no suit to quiet title would be a center of attraction for broadcasters. Instead, the belief can be advanced that coverage of sensational cases would be the dominating pattern.

Impact on Participants

Consider such recent examples as the Roosevelt divorce case (1954), the Sach murder trial at Portland, Oregon (1954) and the Washburn murder trial at Waco, Texas (1955) which were photographed and broadcast. Because of the high costs involved in telecasting, it is likely that only celebrated cases, which would insure a profitable return, will be broadcast. In these cases, satisfaction of the public curiosity and not education and justice to the individuals concerned becomes determinant.

These are some of the problems deserving serious thought before the Bar decides to amend Canon 35. Further study and further evidence from actual courtroom tests are needed to develop a dispassionate and empirical basis for treating the problem as a whole. Otherwise, the traditional arguments on both sides will continue on an excessively general and not too meaningful level.

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Comparative Negligence

(Continued from page one)

and South Dakota, say that a plaintiff who was himself negligent can recover only in the case that his negligence was slight and the negligence of the defendant was gross. Still others, as in Arkansas and Mississippi, permit a negligent plaintiff to recover regardless of the proportion of his negligence to the defendant's, and by the same token in these two states a negligent defendant who was himself injured can counterclaim against the negligent plaintiff, again regardless of the proportions of fault. The Arkansas statute is in fact an exact copy of a model statute drafted by Dean William L. Prosser of the University of California Law School, appearing in an article by Dean Prosser which is printed in 51 Michigan Law Review 465 and 41 California Law Review 1.

The Puerto Rican statute is sufficiently brief and inexact that it can probably be interpreted as having the same meaning as any of the various state statutes just mentioned. We, of course, do not yet know how it will be interpreted. Most of the state statutes contemplate the awarding of damages in terms of percentages of fault, but the history of your statute shows that your judges would prefer to have awards based altogether on judicial discretion and not on mathematical percentages. Whether you can avoid the use of percentages is doubtful.

Arkansas Avoids General Verdict

Many of our state statutes permit comparative negligence cases to be given to the jury with in-

structions to return a general verdict only. Under that practice it is often impossible to know what the jury really found. The jury returns a verdict for a flat sum, say \$10,000, and there is no way to tell whether this represents a verdict that the plaintiff was not negligent at all and suffered \$10,000 of damage, that the plaintiff was guilty of 25% of the negligence and suffered \$13,333.33 of damage, that the plaintiff was guilty of 49% of the negligence and suffered approximately \$19,600 of damage, or that the jury simply disregarded the court's instructions on contributory negligence altogether.

The Wisconsin and Arkansas statutes seek to avoid this difficulty by requiring the jury to return special verdicts, or answer short interrogatories, fixing the total damage and the percentage or amount of reduction for the plaintiff's fault.

In Puerto Rico since you do not have jury trials you avoid part of these problems. You nevertheless would like to know the bases on which your trial judges decide particular cases. It is for that reason that you require your trial judges to return conclusions of law and findings of fact separately. If a trial judge returns intelligible findings of fact in a comparative negligence case it seems that he will have indicated the total of damage suffered by a claimant and the amount of reduction therefrom on account of his contributory negligence. If this sort of finding of fact be returned by the judge, then you have, for all practical purposes, a system under which proportions or percentages of fault are ultimately controlling, or at least identifiable, in fixing the amount of awards.

Last Clear Chance Out

Another interesting problem is as to the last clear chance rule, which Puerto Rico in the past has followed. Your statute reads as though it were intended altogether to expand liability and not to restrict liability. If your statute takes over the area formerly covered by the last clear chance rule, however, it will restrict liability, permitting only a reduced recovery where formerly a full recovery was allowed. The Arkansas-Prosser statute avoids this difficulty by providing expressly that last clear chance cases come under the comparative negligence rule. Other states have been less explicit in their enactments, and divergent results have ensued. The better view seems to be that the last clear chance doctrine should be dropped from the law when comparative negligence is brought in, but that is something you have yet to decide.

Assumption of Risk

Another interesting problem is as to the effect of assumption of risk. Contributory negligence is a different defense than assumption of risk, and the comparative negligence rule eliminates only the contributory negligence defense and not the assumption of risk defense. Still, assumption of risk often is spelled out as a defense on facts that essentially involve contributory negligence. Assumption



Robert A. Leflar, S.J.D. '32, is Distinguished Professor of Law, University of Arkansas. He was formerly Associate Justice of the Arkansas Supreme Court (1949-1951) and Dean of the University of Arkansas Law School (1943-1954).

of risk is sometimes purely a matter of actual consent to bear a risk, in which case the defense is really different from the defense of contributory negligence.

In other cases, however, assumption of risk is discovered from negligent conduct by the plaintiff, by reason of which his consent to bear the risk is implied. It would be logical to say that assumption of risk of the latter sort is merely a form of contributory negligence to which the new comparative negligence rule will apply. At any rate, it is clear that from now on claimants will seek to classify their below-par conduct as contributory negligence so that it will not bar recovery completely, whereas defendants will seek to classify the same conduct by plaintiffs as assumption of risk so as to keep it outside the comparative negligence rule.

It would appear that the Puerto Rico statute is broad enough to cover counterclaims for negligent injuries as well as the original plaintiff's claim for injuries. In other words, if a plaintiff and defendant are both negligent and are both injured in the same accident each can presumably recover against the other.

To work this out, it will be necessary to determine the total injuries suffered by each and the percentage of fault of each. Then taking the claim of each by itself you can determine the amount owed to the plaintiff by diminishing his recovery proportionately to his fault, and the amount due to the counterclaimant by diminishing his recovery proportionately to his fault. The two amounts can then be set off against each other, and a net recovery of the difference only awarded. It is difficult to see how a trial judge's findings of fact in this situation can be intelligibly stated without specifying the respective proportions of fault used in reducing the respective recoveries. At least the amount of each reduction will need to be stated.

Insurer's Responsibility

Closely related to this situation is the extent of a liability insurer's responsibility under an insurance policy. The question is whether the liability insurer must take each claimant's case separately, and be liable for all of his insured's liability, or will be allowed to take advantage of the setoff which the other party has against the insured.

Suppose that P sues D and D counterclaims against P, both for injuries suffered in the same accident. Both were negligent. The decision is that P has a good claim for \$5000 against D and that D has a good claim for \$2500 against P. This is after each claim has been reduced in proportion to fault. P can actually recover only \$2500 from D after setoff. In other words D can discharge P's entire \$5000 claim by paying \$2500 in cash and giving up his own claim for \$2500 against P.

If the liability insurance policy binds the insurer to make D whole for all that he has put out in discharging his liability to P, cannot D recover from the insurer not only the \$2500 cash payment but also the other \$2500 represented by relinquishment of his own claim? This is an interesting problem which perhaps turns on interpretation of the insurance policy. At any rate it is a problem that you will have to decide here.

Special Problems

These are by no means all the special problems that can arise under your comparative negligence statute, but they are typical. The decisions from American states as well as from England can be used by analogy to suggest answers for your problems. So can the decision from the Canadian and Australian provinces.

I am not sure that the decisions from France, Spain and the South American countries can be very helpful to you, even though the original background of their law is more like yours than is the background of common law countries generally. The reason for this doubt is that on the specific problem of comparative negligence your legal development is more like that of common law countries, since you did have the doctrine of contributory negligence and are shifting from it to comparative negligence, whereas the Civilian countries have never had to make that shift.

Gallery

ever curious about life in the United States. They are all disappointed that their father isn't living in a skyscraper. In a recent letter, one of the Professor's sons asked whether "your students come to lectures wearing Davy Crockett hats and shoot at you with Davy Crockett bows and arrows, or isn't that the craze now in America?"

Socratic Method

Asked about the Socratic method of teaching, Professor Hart, though hesitant to express an opinion after only a short time at the Law School, feels that it is admirable when well done and tempered with a little lecturing. Success along these lines, he says, depends on a high level of students with a prerequisite college degree. In England, however, where law is taught as an undergraduate course he doesn't think the method would work if it were used as the sole means of instruction.

At the moment, beside writing a book on causation in the law and teaching jurisprudence, Professor Hart's particular interest lies in the field of criminal law. England is at present in the midst of a complex legislative process to abolish capital punishment. Professor Hart feels that the old system of capital punishment in Great Britain is virtually dead: "It is extremely unlikely that there will be any more executions in England, though possibly murder of a police officer will still be a capital offense."

Professor Hart seemed astonished at the lack of issues dividing the political parties in this country. In England, of course, there is a much greater gap between the two. He is surprised at the lack of emphasis the Democratic Party places upon the education issue in the Presidential campaign, even though Adlai Stevenson has mentioned it in a few of his speeches.

Noting that jurisprudence is a subject very much alive in the United States today, Professor Hart feels that very important books may soon be written by Americans which will make contributions to the subject. It would be a good thing, he feels, if more philosophers among this country's university population would get interested in the law. He thinks that good work will come out of a "marriage" or at least a temporary union between the two disciplines.

—Siegel



HERBERT L. A. HART

Visiting Professor

"I have never enjoyed myself as much as in the past month," Visiting Professor of Jurisprudence Herbert L. A. Hart said in speaking of his initial teaching experience at the Harvard Law School. He is greatly pleased with this form of legal education and would certainly recommend it to English law students who intend to practice in their own country. Professor Hart does not employ the case method in teaching but lectures with interruptions which he welcomes: "There's little point for me to come here and do badly what you do superbly well."

Professor Hart is on leave from Oxford University where he is Professor of Jurisprudence. After three years at a private boarding school he was educated at a day school in Bradford, Yorkshire and then at New College, Oxford. He studied primarily philosophy and ancient history and then practiced for ten years at the Chancery Bar until the outbreak of the war. After service in the War Office he returned to Oxford to teach philosophy and became Professor of Jurisprudence in 1952.

The Professor's wife and three children are in England at present. Mrs. Hart teaches history at St. Anne's College, Oxford. Their children are for-

Negro Educational Capacity - A Scientist's View

By M. F. Ashley Montagu

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The scope of public discussion provoked by the decisions of the United States Supreme Court in the school segregation cases has ranged beyond the predominantly legal issues involved. One such subject which is being given increasing publicity by segregationists and their supporters is racial inferiority. These groups allege (1) that Negroes are racially and innately inferior to whites in intellectual capacity for education; (2) that improvements in the social and economic condition of Negroes do not reduce differences in capacity for education between Negroes and whites; and (3) therefore, school integration represents an imposed system of equality unsupported by "biological fact."

Recently, an article along these lines by Professor F. C. J. McGurk of Villanova University appeared in U. S. News & World Report. It is this report which Professor Montagu uses as a focus for his critical analysis of psychological tests and their interpreters.

The author does not present an opposing viewpoint, for as he states, "the truly scientific attitude is neither the will to believe, nor the will to disbelieve, but the will dispassionately to investigate." Indeed, he examines the value of psychological tests in measuring educability and native intelligence and then discusses what the assembled data reveal and do not reveal about the existence of innate psychological differences between Negroes and whites.

Professor Montagu's remarks constitute a most effective commentary on the manipulation and distortion of evidence in an effort to clothe in scientific dress basically emotional involvements.

Professor McGurk's article "Psychological Tests—A Scientist's Report on Race Differences" published in U. S. News & World Report in the issue of 21 September 1956, pp. 92-96, represents the latest of a long line of undisciplined attempts to prove that the intelligence of the American Negro is inferior to that of the white.

I say "attempts to prove" because that is exactly what Professor McGurk does. He clearly believes in the inferiority of the Negro. Upon any other assumption it would be difficult to explain his unaccountable selection of the evidence and his significant omission of any reference to the many scientific studies which are opposed to his conclusions. A genuflection in the direction of Professor Otto Klineberg and myself is all that Professor McGurk permits himself.

The worst danger of theory is that it often renders one insensitive to facts. Professor McGurk is a case in point; he cites facts but is insensitive to their multi-colored phosphorescence, their many possible meanings. He plumbs for the obvious ones. I should like to point out that in the presence of emotional attitudes or of prejudiced views, the truly scientific attitude is neither the will to believe, nor the will to disbelieve, but the will dispassionately to investigate. The genuine scientist doesn't try to prove that anything is one way or the other, but tries to find out which way it really is.

Meaning of McGurk

Let us, in this spirit, examine Professor McGurk's claims in the cold light of science. The clue to the meaning of Professor McGurk's whole article is his second paragraph.

"As far as psychological differences between Negroes and whites are concerned, we have wished—and dreamed—that there were no such differences. We have identified this wish with reality, and on it we have established a race-relations policy that was so clearly a failure that we had to appeal to distorting propaganda for its support. When that, too, failed, we appealed to the legal machinery to do what nature was not content to do."

In other words, all the evidence of science and experience which is contrary to Professor McGurk's view represents "distorting propaganda." Somehow this "distorting propaganda" failed to eliminate the differences between Negroes and whites, and now we have been forced to resort to the law to enforce upon society what nature itself has been unable to achieve.

Opportunity Not Equalization

Apart from the misstatements of fact contained in this extraordinary paragraph, this is a most specious argument. Perhaps Professor McGurk's phrasing is at fault. But what he is in fact saying is that the law has been called in to force an equalization of intelligence, as between whites and Negroes, in the United States. This is simply not true. What the law is calculated to do is to give Negroes everywhere in the United States opportunities for education equal to those of whites. Should such equal opportunities result in greater differences in intelligence between Negroes and whites the law, I am sure, will maintain its judicial balance and will make no attempt to handicap the more intelligent—be they white or Negro—by instituting socially repressive measures.

But, says Professor McGurk, the psychological tests show that the Negroes do not possess as much capacity for education as the whites—that is, if "psychological-test performance is a measure of capacity for education."

The implication, then, is that Negroes ought to be separately educated from whites.

Negroes ought to receive an education of a kind and at a rate consonant with their capacity. This is, presumably, what Professor McGurk means when he says that, "we are approaching the race-difference problem from the wrong direction."

Separate Because Unequal?

There are two points which require to be made in connexion with these statements. The first is that equal opportunities for education should in no way depend upon the alleged characteristics of the innate endowments of any group or groups. The important element in every group is the individual, and the principle involved is equality of educational opportunity for every individual, so that every individual will be afforded the optimum opportunity to develop his potentialities, whatever they may be. De-segregation in education is a forward step in that direction.

The fact is that if there do exist any significant biologically determined psychological differences between Negro and white, the only way in which we could possibly discover them would be in an environment in which Negroes and whites were afforded precisely the same rights as human beings and as citizens.

What Do Tests Actually Measure?

The second point is the if in "if psychological-test performance is a measure of capacity for education." Professor McGurk obviously thinks that it is, and upon this belief bases all his inferences, implications, and conclusions. Most knowledgeable students of the value of psychological tests agree that in so far as educability and intelligence are concerned, psychological tests are of limited value. I know of no reputable psychologist who would be willing to assert that any known psychological test is capable of predicting the educability of any individual (unless he be an imbecile or idiot) or group.

Psychological tests do not measure native intelligence, but the expression of intelligence as a function of the total past history of the individual. It is for this reason that one can only wonder at the naivete of Professor McGurk when he tells us that "when Negroes are given the same social and economic opportunities as whites, and when these socio-economic factors are good, the test-score differences between Negroes and whites actually increase."

Meaning Too Restricted

Clearly Professor McGurk has his own private understanding of the meaning of "socio-economic factors." His "14 socio-economic factors"—which in his 1953 paper, but not in his 1956 paper, he refers to as including "age, school attendance, school curriculum, and eleven selected items from the Sims Record Card"—do not in fact, add up to what is generally understood by "socio-economic factors" in the context of race differences. By "socio-economic factors" is to be understood not merely such largely economic factors which Professor McGurk utilized as his criteria of socio-economic equivalence, but traditional background, immediate social background, opportunities for horizontal and social mobility, previous schooling and religious background, neighborhood influences, image of one's self and of one's group, aspiration level, and the like.

Does Professor McGurk really believe that anywhere in the United States Negroes have ever enjoyed equal status with whites in these respects? Whatever Professor McGurk may think, the fact is that Negroes never have.

And it may be just these conditions that are known to be of the greatest importance in producing the differences which are obtained on psychological tests. (For a detailed discussion see A. Anastasi & J. P. Foley, *Differential Psychology*, New York: Macmillan, 1949).

Of course innate factors play a part in every psychological test, but so do those factors which have been a part of the individual's social (not to mention his physical) history. The problem has always been, and will always remain, to determine to what extent the tests reflect innate factors and to what extent they reflect the history of the individual's social experience. Professor McGurk may feel that he has satisfactorily solved this problem, but in that feeling, among scientists, he is strictly alone.

Method Yet to be Devised

No one on earth can state that no psychological differences of an innate nature exist between Negroes and whites, perhaps such differences do exist, but if they do no one has yet devised a satisfactory method of demonstrating them, and this in spite of hundreds of attempts to do so. Surely, the best way to discover whether such differences do exist is to equalize all social opportunities for the Negro with the white—and then see what happens.

Let us now deal with the psychological test results which Professor McGurk cites. The first of the studies to which Professor McGurk refers is the famous report by Professor R. M. Yerkes, "Psychological Examining in the United States Army," *Memoirs of the National Academy of Sciences*, vol. 15, 1921.

What is Professor McGurk's conclusion as to the findings on the 25,575 Negroes drawn from 23 States and the District of Columbia, and 55,838 whites drawn from all the States



M. F. Ashley Montagu is a leading authority in the fields of general ethnology, physical anthropology and human paleontology. He is the author of a definitive work and numerous articles on the subject of "race and racism."

Formerly Professor of Anthropology at Rutgers University, Dr. Montagu presently devotes himself to writing and lecturing in addition to conducting courses at the New School for Social Research in New York City.

of the Union and the District of Columbia? That "the psychological test scores of the Negroes, during the World War I period, bore a clearly inferior relationship to the psychological-test scores of the whites, and many writers have pointed this out in the past." Quite. But many writers in the past have also pointed out that there are vastly more significant conclusions to be drawn from the World War I study than this. Since Professor McGurk does not even indicate that such studies exist, and omits reference to my own study ("Intelligence of Northern Negroes and Southern Whites in the First World War," *American Journal of Psychology*, vol. 58, 1945, pp. 161-188) I had better state the facts (these are also set out at length in the edition of my book to which Professor McGurk does not refer, namely, *Man's Most Dangerous Myth: The Fallacy of Race*, 3rd edition, New York: Harper & Bros., 1952, pp. 160-162).

Samples Unequal

It should at once be said that these Army data were by no means ideally suited for the purposes of comparing Negroes and whites with respect to their achievements on the test. There existed very real differences in the size of the groups tested, and there were undoubtedly selective and other differences involved in the subjects tested not only from state to state but within each state. The data being what it is, any analysis of it could only yield results of suggestive value, and no more is claimed than that.

What I sought to discover was whether any of the Negro groups examined did better on any of the test than any white groups

tested, irrespective of the fact that some of the tests were administered in different ways at different times and in different groups. I assumed that the tests given to all the varying groups would, as tests, prove roughly comparable. If I found that some Negro groups did better than some white groups, the problem would then be to determine with what possible significant factors such scores might be associated.

Negro Scores

A statistical analysis carried out at Harvard University of the raw data (supplied by myself) upon further analysis yielded the surprising fact that on the Beta tests for illiterates the Negroes of Ohio, for example, made higher median scores than the whites of 27 other states. On the Alpha tests they did better than the whites from 9 states. The lowest test scores made by both Negroes and whites were invariably found to occur in the southern states—the deeper the South the lower the score.

For the colored draft, Beta score medians

Table 2. Rank-Order Correlations Between Median Beta Scores for the Various States and Median Alpha Scores, Annual Educational Expenditures (1910) and Per Capita Incomes (1919)

	Educational Expenditures Per Capita Population 5-17 Years	Per Capita Income	Alpha (White)	Alpha (Negro)
Beta (white)	.64 (.81)*	.50 (.64)*	.67	
Beta (Negro)	.72 (.76)*	.67 (.72)*		.65

*Figures in parentheses are comparable correlations with median Alpha scores

were available only for the District of Columbia, 14 southern and 9 northern states. The lowest scores were invariably made by Negroes from the southern states, their average median Beta score being 17.58, with a median range of 8.95 to 23.90.

On the other hand, the colored draft from 9 northern states invariably achieved a significantly higher median Beta score than the Negroes from the South, the average median Beta score being 32.72 with a range from 27.60 to 39.65.

A similar pattern characterizes the median Beta scores of the whites. In Kentucky the 188 white draftees achieved a significantly lower score, 12.30, than the 330 colored draftees from the same State, the median Beta score of the latter being 17.20. Among the northern states it was in Ohio that 77 Negroes obtained a median Beta score of 39.56 as compared with the score of 35.45 made by 68 white draftees from the same state.

The average median Beta score of Negroes from 6 northern States (Ohio, Kansas, New York, Missouri, Indiana, and Illinois) was 34.63, while that of the whites from 14 southern states (Kentucky, Virginia, Alabama, North Carolina, Louisiana, Florida, Mississippi, West Virginia, Arkansas, South Carolina, Tennessee, Maryland, Georgia, and Texas) was only 31.11, a difference of 3.52 points in favor of the Negroes.

On the tests for literates, the Alpha tests, as may be seen from Table 1, the Negroes from Ohio with a median score of 43.35 did better than the whites of eleven states, all of which happen to be southern. The Negroes of Illinois with a score of 42.25 and the Negroes from Indiana with a score of 41.55 did better than the whites from seven southern states, while the Negroes from New York with a score of 38.60 did better than the whites from three southern states.

Table 1. Army Comprehensive Alpha Tests: White Recruits from Eleven Southern States Compared with Negro Recruits from four Northern States. (Computed from R. M. Yerkes (ed.), "Psychological Examining in the United States Army," *Memoirs of the National Academy of Science*, vol. 15, 1921, tables 205-206.

WHITES	
State	Median Score
Arkansas	35.60
Mississippi	37.65
North Carolina	38.20
Georgia	39.35
Louisiana	41.10
Alabama	41.35
Kentucky	41.50
Oklahoma	43.00
Texas	43.45
Tennessee	44.00
South Carolina	45.05
NEGROES	
State	Median Score
Ohio	45.35
Illinois	42.25
Indiana	41.55
New York	38.60

Cultural Factors Influence Scores

What do these findings mean? In view of the unsatisfactory nature of the original data I don't know that they mean really much, but, for what they are worth, they do suggest that there is probably a significant relation between test performance and environmental habitus or background. In other words, that socio-economic factors are in some way related to test performance.

That this is a likely explanation of these test findings has been further shown by Marcuse and Bitterman (F. L. Marcuse & M. E. Bitterman, "Notes on the Results of Army Intelligence Testing in World War I," *Science*, vol. 104, 1946, pp. 231-232), who correlated the World War I test score with the yearly educational expenditures of the states from which the subjects were drawn as well as with the per capita income prevailing in those states. These facts are brought out in Table 2, and as Marcus and Bitterman re-

mark, "It is probably most warranted to conclude from the correlations presented here that Beta scores, like Alpha scores, are strongly influenced by cultural factors concomitant with the socio-economic levels of the states."

This, I believe, is the principal conclusion which one may draw from the World War I Army test.

The "overlapping" of 27 per cent by the Negro recruits in which they achieved psychological-test scores that equaled or exceeded the average test score of the whites, was not, as Professor McGurk states "for the country as a whole," since Negroes from only 23 States and the District of Columbia were tested by World War I Army testers.

But this 27 per cent of overlapping is a significant figure. Why did it occur at all? Does it mean that only 27 per cent of Negroes were as bright as 100 or 73 per cent of whites? Or what? The answer is that in view of the fact that Negroes from 23 States and the District of Columbia were being compared with whites from 48 States and the District of Columbia, the 27 per cent figure is almost certainly an underestimate.

But let us assume that it is a correct figure: what does it mean? Does it mean that it expresses a difference in innate capacity for education or intelligence? Or does it mean that it expresses a difference in socio-economic opportunity or perhaps both?

No Racial Differences

The analyses of numerous researchers bearing on this question are ably summed up by Professors Anne Anastasi and John P. Foley, Jr. in their standard and widely used work, *Differential Psychology*, New York: Macmillan, 1949, pp. 782-783. They write, "It would be premature, of course, to hazard any conclusive statements on so complex a problem, but the bulk of the evidence is definitely against the existence of behavioral differences among 'races' in the biological sense. It is misleading to conclude that to date investigators have merely failed to prove race differences in behavior. The present state of our knowledge on this question is not a complete blank; nor is the evidence perfectly balanced, with half of the data favoring a racial hypothesis and half a cultural hypothesis."

Evidence Is Against McGurk's Conclusions

"It is a fact that there are group differences in behavior, but not that such differences are racial or biological in origin. There is a considerable body of data, both in the racial studies and in other more general investigations on the origins of individual differences in behavior, to show the influences of environmental factors in behavior development. But no study has conclusively demonstrated a necessary association between behavior characteristics and race as such."

Nevertheless, Professor McGurk is interested in discovering whether there is anything at all in such claims, and he proceeds to cite six studies which show that in spite of improved socio-economic conditions for the Negro there could "be found no factual evidence that this improvement had increased the Negro's relative ability to perform on psychological tests. . . ." And Professor McGurk goes on to say, "There is, of course, a great deal of opinion about this

(Continued on page four)

(Continued from page three)
matter, but let it be said again that the factual evidence completely denies the theory that improving the social and economic status of the Negro improves his capacity for education, as we have defined the latter term" (p. 95).

Term Undefined

Now, Professor McGurk may somewhere have "defined the latter term" but not hitherto having been acquainted with his writings I am limited to the paper under discussion, and nowhere in it can I find a definition of "education." The nearest approach to a definition is not a definition but a statement on p. 93 that capacity for education is measured by psychological-test scores.

As I have already stated, there are few competent workers in this field who would agree with Professor McGurk that psycho-

logical tests provide one with anything more than the roughest measures of an individual's capacity for education. Anyone who relies upon them for such a measure leans upon a reed rather than a rod.

I refer the critical reader to Dr. Ralph W. Tyler's contribution, "Can Intelligence Tests Be Used to Predict Educability?" in Kenneth Fells, et al., *Intelligence and Cultural Differences*, Chicago: University of Chicago Press, 1951, where the difficulties are fully set out of making such predictions on children of the same ethnic group. Indeed, the whole volume should be read by all who wish to understand the difficulties and dangers involved in psychological testing.

Tests Reflect Cultural Bias

As Professor Allison Davis says in his paper "What are Some of the Basic Issues in the Relation of Intelligence Tests to Cultural Background?" in the same volume,

"The crucial problem raised by the attempt to compare scientifically the capacity of any two individuals to learn is that of finding situations with which the two individuals have had equal experience." This is the great difficulty among individuals of the same ethnic and socio-economic background, but where two ethnic groups of dissimilar socio-economic background are concerned it must be categorically stated in the strongest possible terms that valid inferences of any sort as to the nature of the educability of such groups cannot be drawn from any psychological tests which have thus far been devised.

There are no psychological tests which cut across cultural and socio-economic boundaries. And no matter what any number of tests show as between one ethnic group and another who have not enjoyed the same background of experience, no reliability whatever can be placed on the results of such tests

insofar as innate mental differences and educability are concerned. Hence, the test results cited by Professor McGurk are valueless. All that those tests show is that there are differences between Negroes and whites on the test performances, but they tell us nothing whatever concerning the innate mental potentialities or true capacities for educability of either Negroes or whites.

Disregards Important Studies

It is interesting that Professor McGurk does not refer to the studies of Professor A. R. Gilliland and his students on the I.Q.'s of Negro and white infants, in which it was found that the Negro infants achieved an I.Q. that was as high or slightly higher than that achieved by white infants. Professor Gilliland suggests that the difference in favor of the Negro infants may be explained on the ground that "in the typical Negro home with more people living in small

quarters, the child receives more social contacts. These contacts, like the effects of home vs. institutional care, result in more social-intellectual development and higher test scores" (A. R. Gilliland, "Socio-Economic Status and Race as Factors in Infant Intelligence Test Scores," *Child Development*, vol. 22, 1951, pp. 271-273.)

Such findings do not agree with Professor McGurk's decision that psychological differences between Negroes and whites with respect to educability "are not the result of differences in social and economic opportunities . . ." that "will not disappear as the social and economic opportunities of Negroes and whites are equalized." And so, of course, all studies contrary to his decision may be disregarded.

On this very subject of educability it so happens that one of the world's leading

(Continued on page six)

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Here's all you do. Study the descriptions (at right) of the articles in the October Reader's Digest—or, better still, read the complete articles in the issue itself. (But you are not required to buy The Reader's Digest to enter the contest.) Then simply list the six articles—in order of preference—that you think readers of the magazine will like best. This will be compared with a nationwide survey conducted among a cross section of Digest subscribers.

Follow the directions given below. Fill in the entry blank, paste it on a post card, and get it into the mail before the deadline. Additional blanks are obtainable at your college bookstore.

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Reader's Digest

Its popularity and influence are world-wide

Which six articles will readers of the October Digest like best?

1. Norfolk's friend to troubled teen-agers. Story of the arthritic cripple to whom youngsters flock for advice.
2. The great Piltdown hoax. How this famed "missing link" in human evolution has been proved a fraud from the start.
3. How to sharpen your judgment. Famed author Bertrand Russell offers six rules to help you form sounder opinions.
4. My most unforgettable character. Fond memories of Connie Mack—who led the Athletics for 50 years.
5. How to make peace at the Pentagon. Steps to end ruinous rivalry between our Army, Navy and Air Force.
6. Book condensation: "High, Wide and Lonesome." Hal Borland's exciting story of his adventurous boyhood on a Colorado prairie.
7. Medicine's animal pioneers. How medical researchers learn from animals new ways to save human lives.
8. What the mess in Moscow means. Evidence that the Communist system is as unworkable as it is unnatural.
9. Master bridge builder. Introducing David Steinman, world leader in bridge design and construction.
10. College two years sooner. Here's how extensive experiments proved a bright 10th-grader is ready for college.
11. Laughter the best medicine. Amusing experiences from everyday life.
12. What happens when we pray for others? Too often we pray only for ourselves. Here's how we gain true rewards of prayer when we pray for others.
13. European vs. U. S. beauties. Why European women are more glamorous to men.
14. Trading stamps—bonus or bunkum? How much of their cost is included in the price you pay?
15. Living memorials instead of flowers. A way to honor the dead by serving the living.
16. It pays to increase your word power. An entertaining quiz to build your vocabulary.
17. Are we too soft on young criminals? Why the best way to cure juvenile delinquency is to punish first offenders.
18. Medicine man on the Amazon. How two devoted missionaries bring medical aid to jungle natives.
19. Creatures in the night. The fascinating drama of nature that is enacted between dusk and dawn.
20. What your sense of humor tells about you. What the jokes you like, the way you laugh reveal about you.
21. The sub that wouldn't stay down. Stirring saga of the U.S.S. *Squalus*' rescue from a depth of 40 fathoms.
22. Madame Butterfly in bobby sox. How new freedoms have changed life for Japanese women; what the men think.
23. Doctors should tell patients the truth. When the doctor operated, exactly what did he do? Why a written record of your medical history may someday save your life.
24. "How wonderful you are . . ." Here's why affection and admiration aren't much good unless expressed; why locked-up emotions eventually wither.
25. Harry Holt and a heartful of children. Story of a farmer who singlehandedly finds homes for hundreds of Korean war orphans.
26. Our tax laws make us dishonest. How unfair tax laws are causing a serious moral deterioration.
27. Venereal disease now a threat to youth. How V.D. is spreading among teen-agers—and sane advice to victims.
28. Secy. Benson's faith in the American farmer. Why he feels farmers, left alone, can often solve their own problems better than Washington.
29. Your brain's unrealized powers. Seven new findings to help you use your brain more efficiently.
30. Britain's indestructible "Old Man." What Sir Winston Churchill is doing in retirement.
31. Are juries giving away too much money? Fantastic awards juries hand out because they confuse compassion with common sense.
32. My last best days on earth. In her own words a young mother, learning she had cancer, tells how she decided to make this the "best year of her life."
33. Foreign-aid mania. How the billions we've given have brought mainly disappointment and higher taxes.
34. Out where jet planes are born. Story of Edward Air Force Base, where 10,000 men battle wind, sand and speed barriers to keep us supreme in the sky.
35. Life in these United States. Humorous anecdotes revealing quirks of human nature.
36. Man's most playful friend: the Land Otter. Interesting facts about this amusing animal.
37. Why not a foreign-service career? How our State Department is making foreign service attractive to young men.
38. A new deal in the old firehouse. How one town got lower taxes, greater protection combining fire and police.
39. Crazy man on Crazy Horse. Meet the man whose statue of an Indian will be the largest in history.
40. Their business is dynamite. How the manufacture of this explosive has been made one of the safest industries.
41. His best customers are babies. How a kitchen strainer and a pint of mashed peas became the Gerber Products Co.
42. Smoky Mountain magic. Why this, our most ancient mountain range, has more visitors than any other.
43. Call for Mr. Emergency. Meet the Emergency Police, who get 8 million New Yorkers out of trouble.
44. Beauty by the mile. How landscape engineers prove roadside planting is lifesaving as well as beautiful.
45. Humor in uniform. True stories of the funny side of life in our Armed Forces.
46. Seven economic fallacies. The American Economic Foundation explodes misconceptions about our economy.
47. Admiral of the Greek Oil Fleet. Story of Stavros Niarchos, who has won a fortune betting on—and carrying—oil.

Adversary Proceedings Require Lawyers With Understanding of Medical Problems

In recent years increased recognition and interest have been given to the lawyer's need for knowledge in other academic areas. One aspect of this heartening trend is the subject of legal medicine, exemplified by the Law School's Medico-Legal Problems Seminar, conducted by Dr. Robert H. Hamlin, LL.B. '53, Assistant Professor of Legal Medicine, and W. J. Curran, Lecturer in Legal Medicine.

The concept of legal medicine, while by no means new, has been brought more forcibly to the attention of practicing attorneys, legal educators, and medical practitioners. The last few years of rising prosperity, high employment levels, and increased national mobility have raised the national personal injury statistics past the 9,000,000 per year mark.

The effect that this figure has had upon the numbers of personal injury litigations need hardly be mentioned—a glance at the bulging court dockets across the country should suffice. As corollary, it has become increasingly important that lawyers in the field of tort liability become familiar with at least a modicum of medical learning. This litigation has precipitated a limited alliance of the professions—an unholy alliance in some eyes—to insure a more nearly equitable settlement between personal injury litigants.

The necessity of familiarity with pertinent medical thought and terminology by counsel is evident to anyone familiar with personal injury proceedings. Attorneys in the field estimate that seven out of ten courtroom questions in personal injury cases involve medical rather than legal determinants.

In a broad sense, the lawyer's responsibility is to advise and represent his client as efficiently and as competently as possible. Some question does seem to arise as to whether this idea imparts a responsibility for a significant amount of non-legal knowledge on the part of the advocate. In recent times the question has been answered with a resounding "yes," especially when applied to the realm of medical litigation.

Better Relations with Experts

In a somewhat more limited sense, one of the most important benefits accruing to counsel from effective legal medicine orientation is the enhanced ability to deal intelligently, articulately, and sympathetically with medical experts before, during, and after court and litigation sessions.

That this in itself is an important consideration is sustained in a recent article by Dr. Manfred S. Guttmacher, Chief Medical Officer of the Supreme Court, Baltimore, Maryland. Dr. Guttmacher, writing under the title "Why Psychiatrists Do Not Like to Testify in Court," (*Prac-*

ing Lawyer, May, 1955, p. 50) indicates that: "Recent polls of psychiatrists have indicated that more than ten percent refuse all court employment and twenty percent will accept such employment only if they are to be cast in the role of a neutral adviser to the court. . . ."

"Second only to being used as a partisan is the psychiatrist's objection to the way in which he is generally forced to present his opinion testimony. He is dependent almost entirely on the knowledge and skill of the lawyer who employs him."

Our adversary system of justice presents several unique problems that serve to emphasize the importance of legal medi-



Robert H. Hamlin

cine. As Dr. Guttmacher points out, "I believe that most conscientious experts, anticipating that the opposing expert will do as much for his side, testify in the way that is most favorable to their side without doing real violence to the truth. As a consequence, the jury only rarely gets an expert's truly objective opinion."

Medical Diplomacy

Some 85% of all personal injury litigation concerns, directly or indirectly, "habitual defendants," insurance companies, municipalities, corporations, the large employers who bear the brunt of the irreparable law of injury averages. Because of this the counsel, advisers, and claim adjusters who oppose each other across the sick bed must be thoroughly familiar with the medico-legal matter with which they deal. They must also be conversant with the fine arts of medical diplomacy and the graphic courtroom presentation of such imponderables as pain and discomfort and the manner in which they can be converted to dollar terms.

That the desideratum of a thorough grounding in legal medicine is receiving increasing recognition since the end of World War II can best be evidenced by the recently drafted preamble to the "Standards of Practice Governing Lawyers and Doctors" of the Cleveland Bar Association. This document begins with the

acknowledgment that "... a substantial part of the practice of law and medicine is concerned with the problems of persons who are in need of the combined services of a lawyer [and] a doctor. . . ."

Programs designed to awaken medico-legal awareness are being carried out at local, regional, and national levels in a variety of ways. Law schools across the country have begun, with the full amount of traditional caution, to work legal medicine into their already bulging curricula. Tulane University is generally given credit for the first formal step in this direction, taken nearly six years ago, and since then about nine other institutions have added courses on both under- and post-graduate levels.

Harvard's Program

Harvard's legal medicine seminar, conducted by Prof. Hamlin and Mr. Curran is indicative of experimental progress in this field. The undergraduate program attempts, in the words of the sponsors, "to acquaint the law student with the doctor's work—to evaluate training and capacity of medical people and to know where to find and effectively use good medical advice."

The aim of this course is to present special short-term instruction geared to specifically oriented issues. It is designed to allow students a glimpse of the doctors' world, to furnish them with an insight into medical proximate causation, and to equip them with a vocabulary of medical terminology within the limits of their need.

The seminar covers four areas in the course of a year: (1) orientation of medical practice; (2) litigative medical evidence; (3) legal psychiatry, and (4) medicine and government. Courses at other universities even include attendance at autopsies and demonstrations of pertinent operative techniques.

Other Sources of Instruction

But formal, institutionalized courses are not the only means to medico-legal information. Legal medicine institutes sponsored by local or regional groups, utilizing personnel from universities with established courses or drawing on the immediate area for participants, are rapidly becoming a popular and effective method of graphic presentation of principles and ideas in capsule or topical form. Several national organizations have sprung up to meet the need for clarified thinking and procedure in this area.

Chief among them is the National Association of Claimants' Compensation Attorneys (NACCA) which consists of more than 6000 lawyers interested in the representation of claimants in personal injury actions. This association, through institute sponsorship, periodic publication, and advisory committees, provides factual information, pertinent examples and advice in the realm of medico-legal relationships.

Art of Advocacy

Another worthwhile but relatively difficult source, in the words of Thomas Lambert, editor of the *NACCA Law Journal*, is to "buy the books and sweat out the terminology." But he hastens to add that even a vast fund of absolute objective knowledge is not in itself a suffi-

TRIAL

(Continued from page one)

payment of the \$100,000. Defendant admits there was a telephone conversation, but denies that any proof was tendered, and contends that the vice president revoked the alleged offer at that time.

The defendant claims by way of defense that the plaintiff wrongfully induced Lockwood Heath, one of its employees, to divulge information to the plaintiff regarding performance of the feats, thus violating a confidential relationship between Heath and the defendant and barring any recovery. Brumbaugh admits receiving this information from Heath, but denies that he wrongfully induced Heath to furnish it.

Whatever may be the verdict, the losing side will appeal to the Supreme Court of the Commonwealth of Ames, which is expected to consider the case on Monday evening, November 19th. Dean Erwin N. Griswold and Professor Henry M. Hart will argue the appeal.

Financier to Talk At Bull and Bear

Dorsey Richardson, vice president of the Lehman Corporation and a director of Black & Decker Manufacturing Company, will be guest speaker at the Bull and Bear Club's second meeting tomorrow at 1:40 P.M. in Harkness Commons.

Mr. Richardson will discuss "Investment Companies and Mutual Funds" from an institutional and investment point of view. An ex-director of the Columbia Broadcasting System, he is also a former chairman of the National Association of Investment Companies.

cient background to sustain the lawyer in the personal injury court situation. He indicates that a large measure of the effectiveness of the court presentation is dependent upon the personality, presence, and imagination of the counsel in his graphic presentation of visual evidence ("the more the better") and in his diplomatic yet strategic handling of medical experts' testimony.

Medical men and practicing attorneys have almost without exception been willing to participate freely in the legal medicine projects, often with little or no compensation. There are those who hold that the medicists are willing to extend themselves to a greater degree than would otherwise be the case in aiding newly established legal medicine efforts, because it is one of the few times they can give play to feelings of superiority over an advocate of the law.

Whether this is the real motive is problematical, but their cooperative spirit is not a novel phenomenon. The first medical law courses in medical schools were begun 145 years ago.

—Mulroney

Stipends Available For Study Abroad

Deadlines in submitting applications for study abroad under several programs are approaching, according to John A. King, Jr., Secretary of the Law School's International Legal Studies Program.

October 31st is the closing date for applications under the Fulbright Program, which offers a year's study in any of seventeen nations. The scholarship covers tuition, living allowance for a single student, and travel expenses. In nations where English is not the official language, familiarity with the local idiom is required.

The Marshall Scholarships, given by the British government in appreciation of aid under the Marshall Plan, require a commitment of two years for study in the United Kingdom. Deadline for applications is also October 31st.

The last day of October also terminates chances to apply for scholarships given by the North Atlantic Treaty Organization and the Buenos Aires Convention for study in Europe and Latin America respectively.

New York University Law School and the University of Chicago Law School have recently announced two-year opportunities for the study of foreign law. The first year would be spent at either NYU or Chicago, followed by a year in France or Germany.

Students interested in any of the foreign study programs may obtain further information from Mr. King at his office in Langdell Hall.

Subcommittee Assigned To Edit Student Guide

Revision of the Student Guide, a booklet prepared over the summer by a committee of third-year men, has been undertaken by a subcommittee of two.

The subcommittee intends to put the booklet into final form for publication. When this is done, the decision as to how to publish will be made by a six-man group of contributors to the Guide.

The booklet's editors still expect that the Administration will subsidize the printing of the Guide. If the School decides not to aid in publication, however, student organizations involved will consider whether they should assist to finance the booklet.

The sixty-page Guide is intended to aid first year students to become oriented to the Law School. A key section of the book is a discussion of the grading system.

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MONTAGU

(Continued from page four)

geneticists, Professor The. Dobzhansky of Columbia University, and myself, an anthropologist, have published a joint paper entitled "Natural Selection and the Mental Capacities of Mankind." This appeared in the weekly journal *Science* (vol. 105, 1947, pp. 587-590), published by the American Association for the Advancement of Science. No reference is made to this article which, I believe, is generally regarded among workers in the field of social biology as fundamental.

Traits and Natural Selection

Very briefly, the point we attempted to make was that in the course of man's evolution those traits would be at a high premium, and would thus be naturally and socially selected in every human group, which enabled the individual to adjust to rapidly changing conditions, to know when to say "no" and when to say "yes" and when to say nothing. In the ordinary course of events in all societies those persons are likely to be favored who show wisdom, maturity or judgment, and ability to get along with people—qualities which may assume different forms in different cultures. This is the quality of plasticity, of adaptability, of educability, and it is the quality or complex of qualities which appear to have been at a premium in all human societies—if we judge correctly from the condition prevailing in historic societies.

As two other geneticists have put it, "flexibility of behavioral adjustment to different situations is likely to have had a selective advantage over any tendency toward stereotyped reactions. For it is difficult to conceive of any human social organization in which plasticity of response, as reflected by ability to profit from experience (that is, by intelligence) and by emotional and temperamental resilience, would not be at a premium and therefore favored by natural selection. It therefore seems to us highly improbable that any significant genetic differentiation in respect to particular response patterns, personality types, temperaments, or intellectual capacities among different populations or races has occurred in the history of human evolution" (Paul R. David & Laurence S. Snyder, "Genetic Variability and Human Behavior," in J. H. Rohrer & M. Sherif (editors), *Psychology at the Crossroads*, New York: Harper & Bros., 1951, pp. 52-82).

Plasticity Prevails

The effect, in short, of natural selection in man has probably been to render innate differences in personality traits, in mental traits, in genetic potentialities, as between individuals and particularly as between ethnic groups or "races," relatively unimportant compared to their innate plasticity.

Man's innate, genetic character is such that it makes it possible for him to develop the widest range of behavioral adjustments and adaptations. Instead of having his responses genetically fixed as in other animal species, man is the species that invents its own responses, and it is out of this unique

ability to invent, to improvise his responses that his cultures are born.

There is every good reason to believe that natural selection has been operative upon traits making for educability in much the same way from the earliest beginnings of man's history, and in all human groups, no matter how long isolated they may have been from one another. Hence, it would appear to us very unlikely that any significant differences in mental capacity remain between the existing varieties of man.

This is a line of argument which Professor McGurk completely neglects, though I venture to suggest that it has at least as much cogency as the dubious psychological tests which he cites.

Omits UNESCO Study

It is also somewhat surprising to find Professor McGurk omitting any reference to the considered conclusion of world experts in the social, behavioral, and biological sciences, assembled in two committees by UNESCO and published in 1950 and 1952 (See M. F. Ashley Montagu, *Statement on Race*, New York: Abelard-Schuman, 1952). Let me quote one passage from the 1952 UNESCO Statement on Race: "The normal individual, irrespective of race, is essentially educable. It follows that his intellectual and moral life is largely conditioned by his training and by his physical and social environment. It often happens that a national group may appear to be characterized by particular social attributes. The superficial view would be that this is due to race. Scientifically, however, we realize that any common psychological

SECURITIES

(Continued from page one)

Commissioners removed it from the list of approved acts.

Believing that an attempt to impose a single uniform act on states with such differing regulatory philosophies would be unrealistic, the Commissioners decided that a careful study should precede preparation of any new draft. Professor Loss, who teaches a course in Securities Regulation, was selected for this enterprise. He was assisted by Mr. Cowett and a substantial number of third year students.

The Act, which is now ready for consideration by the various state legislatures, is divided into four parts. The first three, each of which is designed to stand alone, reflect the three approaches taken by existing state legislation: fraudulent practices, registration of dealers, and registration of securities. The final part deals with definitions, exemptions, judicial review, and other details necessary in varying degrees under any of the first three parts.

"It is the theory of this approach," Professor Loss says, "that it is impractical to expect complete uniformity among states with basically different regulatory philosophies, but that there is some likelihood of achieving a substantial degree of uniformity among those states which follow a particular philosophy."

The final report of the study, including the text of the Act with detailed annotations, will be published by Little, Brown & Co. as *Loss and Cowett on Blue Sky Law*. The 500-page volume will be printed by spring. —Oliver

attribute is more likely to be due to a common historical and social background, and such attributes may obscure the fact that, within different populations consisting of many human types, one will find approximately the same range of temperament and intelligence."

If Professor McGurk can produce any evidence which challenges the essential truth of that statement we should all be most interested in seeing it. In his paper he has most certainly failed to do so.

When Professor McGurk writes that the studies described in his article "are not a

selection of studies intended to emphasize a point of view. They are the *only* existing studies that relate to the problem," we can only apply his own words to himself, namely, emotional involvements being what they are "speculations and distortions will appear." END



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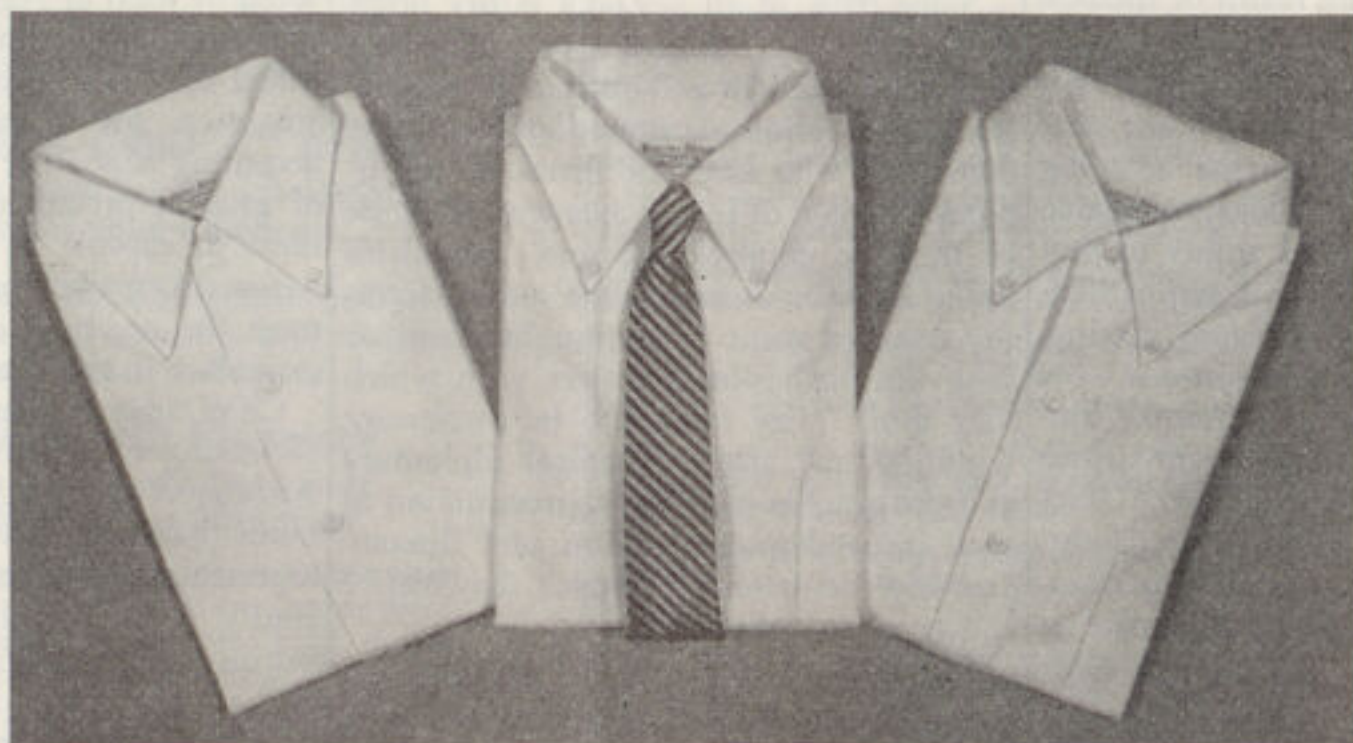
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