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TEN CENTS

Board Revises Ames Cases, Prepares Williston Problems

The second round of first year Ames arguments this spring is featuring fewer cases laid in the Commonwealth of Ames than in previous years, according to Berton B. Subrin, 3L of Akron, Ohio, chairman of the First Year Facts Committee of the Board of Student Advisers. In the past, most participants have had almost unlimited latitude in citing authorities and presenting policy arguments, since all cases in Ames courts were of first impression.

Now more fact situations have been set in actual state jurisdictions. For the convenience of counsel, a number of state digests were brought up from the stacks of Langdell Library at Mr. Subrin's request and were placed on the tables in the main reading room near their respective state reporters.

Of the cases to be argued, slightly over half are single jurisdiction cases supposedly pending in either Federal District or state courts. State jurisdictions to be used are Ohio, Oklahoma, Wisconsin, New York, Massachusetts and Michigan.

Improves Techniques

The philosophy of the Board is that by changing the jurisdictions in most cases from the mythical jurisdiction of Ames to the corporeal settings of actual state substantive and procedural surroundings, the first year counsel are encouraged toward more intensive research to develop fine points of law in relation to the existing tradition and practice.

The new cases for the most part are in the property field and included are two "right of privacy" cases. The Board attempts to maintain a relatively constant ratio among the various fields of first year law. Tort and property cases at present are somewhat in the majority with seven agency cases and several more each of criminal and procedural emphasis.

This year for the first time in the history of the competition an interpleader case has been docketed. Some-

thing of an experiment, it grew out of a comment last year that an existing fact situation would readily lend itself to interpleader procedure. John Merow, 2L of Little Valley, N. Y., took it under advisement and has developed a contract fact situation arising within the jurisdiction of the District Court of Ames.

The problems raised are a diversity question and the procedural aspects of a bill in the nature of interpleader. There will be three two-counsel teams arguing this case instead of the usual two. It will be argued on February 27, 28 and March 4. Counsel will be allowed only 15 minutes of argument each instead of the usual 20; thus it will not be appreciably lengthened in relation to the other arguments.

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Baltimore's Mayor Is Not Art Critic

Referring to the work of an artist as obscene may well be a reflection upon the character of the artist, in the view of the Maryland Court of Appeals. Deciding *Walker v. D'Alesandro* on February 1 (25 U.S. LAW WEEK 2346) the court also decided that the mayor of Baltimore is not by reason of his office privileged from an action for slander for such references.

The case arose after Mayor Thomas D'Alesandro, Jr., had removed a painting from the Peale Municipal Museum in Baltimore on the grounds that it was obscene. Chief Judge Frederick W. Brune, LL.B., '20, remarked "Though we think the question a close one, we cannot say as a matter of law that it does not constitute a reflection on the character of an artist, and not merely on his work, to say that he has painted an obscene picture."

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Peril Prerequisite To Jail Hoarders

The United States Court of Appeals for the Ninth Circuit on January 29 reversed a conviction for hoarding gold bullion under the 1934 Gold Reserve Act, on the grounds that there was no finding by the trial court that a national economic emergency still exists.

Judge James Alger Fee, delivering the opinion in *Bauer v. United States*, 25 U. S. LAW WEEK 2343, noted that the defendant had been convicted under the penal provisions of Executive Order 6260. This order, promulgated by President Franklin D. Roosevelt in 1933, imposed a fine of up to \$10,000 dollars, imprisonment of up to ten years, or both, for hoarding gold bullion. The order was issued by authority of 12 U.S.C. § 95a, a World War I measure.

The Gold Reserve Act of 1934, 31 U.S.C. §§ 440-446, provided for forfeiture of the gold and imposition of a penalty equal to twice the value of the gold involved, for violation of any statute or regulation concerning the precious metal antedating the Act.

The defendant in the *Bauer* case claimed that Executive Order 6260 was no longer in force, since the national economic emergency which prompted its issuance came to an end long ago. The government argued that it was necessary only to show violation of the regulation to justify conviction, since the regulation was incorporated into statutory criminal law by the 1934 Act.

The court did not agree with the government's contentions, "inasmuch as Congress deemed it necessary to enact a statute setting out the national policy as to gold and include civil forfeiture but not criminal penalties therein."

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Milton Katz

Obtain Extension To Match Grant

The Ford Foundation has given the Law School another year to match a \$500,000 grant to the International Legal Studies program, according to Milton Katz, Henry L. Stimson Professor of Law and director of the program.

The grant was first offered by the Foundation in January, 1955, upon condition that the Law School raise an equivalent amount within two years. Last month the Law School had not met this goal, but Professor Katz is optimistic in appraising the chances of raising the funds by January, 1958.

Dean Says Private Industry Has Vital Role In Atom Age

Using the atomic submarine as an illustration, Gordon Dean, former chairman of the United States Atomic Energy Commission, emphasized that atomic energy as a practical source of power is no longer just a dream of the future.

Mr. Dean's talk to the Bull and Bear Club last Friday primarily covered the present status of atomic energy development and the prospects for the future. He said the AEC's policy of leasing projects to private companies by contract has meant that private industry has been in on the ground level in the development so far, and possesses the basic knowledge required to continue development. He stressed that private industry must play an increasingly prominent role in the future.

Mr. Dean pointed out that the trend from rural to urban in living habits means that new fountains of energy and power will soon be needed. This is the reason, he said, that England is already building a modern atomic power plant which will produce 2,000,000 kilowatts of electricity. He also saw in this trend the origin of Euratom. Voicing opposition to proposals which advocate government construction of large central atomic power plants in the United States, he said he favored increased government experimentation with new methods, new ideas, and new nuclear developments of all kinds.

In the ensuing question and answer period, Mr. Dean discussed the possibility of a new atomic energy act.

Louis Jaffe to Edit British Magazine

Louis L. Jaffe, Byrne Professor of Law, has been appointed to the editorial board of *Public Law*, an English legal periodical. The only American member of the eighteen-man board, Professor Jaffe explains that his function is to present the American approach to administrative law.

Public Law and a parallel periodical, the *British Journal of Administrative Law*, which also has Professor Jaffe as an editorial staff member, are the results of an awakening interest in the field of administrative law in Britain. The movement, headed by Sir John Franks, is intent upon examining the theoretical and actual functions of public law within the limits of the common law system.

An article by Professor Jaffe, "The American Administrative Procedure Act," recently appeared in *Public Law*.

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Marshall Sees Inactivity As Aid to Racial Bigotry

"Desegregation is a problem to be worked out, county by county throughout the South," Thurgood Marshall told an audience of six hundred persons in the James Barr Ames Courtroom last week. "Both sides must sit down around a table and work it out according to their own local problems and conditions," he said.

Introduced by Professor Benjamin Kaplan as "A man with a whole string of LL.B.'s — five of them," Mr. Marshall spoke under the sponsorship of the Student Bar Association. His subject was the implementation of the segregation decisions of the United States Supreme Court.

Active Advocate

General Counsel for the National Association for the Advancement of Colored People since 1936, Mr. Marshall has figured prominently as a counsel in most of the segregation test cases in federal courts. He argued the landmark case of *Brown v. Board of Education* before the Supreme Court.

Speaking without notes, Mr. Marshall set out to "think through with you" some of the current legal problems with which he and his organization have to deal.

Of first priority, he declared, was inaction. "Two groups," said Mr. Marshall, "are sitting down on the job. Those who say it will work, and those who say it won't. The only ones not sitting down are the bigots."

The New York lawyer presented his argument in terms of time. In his



Thurgood Marshall

view the main determinant of the general acceptance of segregation in the South is dependent upon how long the thinking citizens of the South will allow themselves to be "pushed around and imposed upon." The motivation of the impositions, according to Mr. Marshall, is the White Citizens' Councils of the Southern states which he claimed are composed of good but misled persons.

In Mr. Marshall's view, a feeling of unrest permeates the south. The minorities there are not the only ones who feel insecure. At present even the majority feels uneasy. "Why, in eastern Georgia they've even got a group called the Society for the Protection of the Majority of White People."

Mr. Marshall indicated that a source of disappointment to him and to his organization is "the Executive of the government, sitting reasonably quiet about it all."

Parkers Cautioned By State Decision

The parking problem which has been constantly plaguing the University may well be further complicated by a recent decision handed down by the Supreme Judicial Court of Massachusetts. In *Loosian v. Goudreau*, — Mass. —, 139 N.E. 2d 403 (1957), the court held that a landowner might enjoin a stranger from parking for an unreasonable length of time on the street in front of the landowner's adjoining premises. The opinion indicated that not even legislative action could protect an unreasonable parker from protest by the owner of property abutting on the street.

Associate Justice James J. Ronan, writing the opinion, declared that since an abutting landowner has title to that portion of the public highway in front of his premises as far out as the center of the street, the general public has merely an easement of passage over this land, with certain incidental powers and privileges. He concluded that the "test of the use of the way by a stranger against an abutter is reasonableness."

What effect this decision will have on the Cambridge parking problem remains to be seen. However, landowners in a litigious frame of mind might cause even more headaches for student automobile owners.



Robert M. Hutchins

Education Problems Discussed By Experts on Forum Panel

A trio of noted educators attacked the problems of "The Changing University" at the Law School Forum last Friday evening. Henry Steele Commager, Robert Maynard Hutchins, and Nathan Marsh Pusey not only provided multifarious ideas on how to cope with the current troubles of higher education, as each sees them, but also provided in their discussion an example of the atmosphere of intellectual stimulation which is the "heart of the true university."

Mr. Hutchins, currently president of the Fund for the Republic, was

dubbed the "untamed force of the Western world" by moderator Erwin D. Canham, editor of *The Christian Science Monitor*. Mr. Hutchins assumed his favorite role of the fiery and outspoken critic of American education. The latter, he claimed, is today in the worst crisis of its history. Universities should be purified, and pruned of narrowly specialized training functions, then cater only to an intellectual aristocracy, he argued. The purpose of education is enlightenment, but inertia and a lack of courage and imagination prevent today's educators from fulfilling their function, he continued, adding that self-criticism and the discussion of goals is inadequate now. "Should Harvard continue to have a Law School?" was posed as an example of such self-examination. This, of course, drew a loud reaction from the Law School audience.

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The Right to Report

Last week William Worthy of the Baltimore *Afro-American*, and two other journalists, returned to this country from a visit to Communist China. Mr. Worthy, who is now studying at Harvard as a Nieman Fellow, went in spite of a ban which had been placed by the State Department on visits of newspapermen to China. This ban, the Department has announced, will remain in effect as long as the Americans are imprisoned in China.

The American Newspaper Publishers Association last week protested the restrictions which have been placed on such trips, in a resolution forwarded to President Eisenhower. American citizens, said the ANPA, should be given freedom to travel to any country in the world with which the United States is not at war.

It is true that freedom to travel abroad has found no precise expression in American constitutional documents. Law upon the subject has not reached the stage of development where it has become a right as fully protected as the right to travel within the United States. But there is a long tradition in Anglo-American law that a citizen can travel abroad, subject only to reasonable regulation.

Reasonable Restrictions

But what is "reasonable regulation?" Certainly persons under indictment should be forbidden to leave the country until their guilt or innocence has been ascertained. It may be that impecunious persons should be restrained if their presence abroad is likely to harass or embarrass American diplomatic representatives. And perhaps there is good reason to forbid exit to those whose purpose in going abroad is to discredit this country, or to participate in activities inimical to the United States.

Granted the necessity for the above restrictions, it is difficult to see how the ban on Mr. Worthy's trip was a "reasonable regulation." He is a newspaperman, whose purpose was to secure information about a foreign nation. This country is not on the best of terms with China; the imprisonment of our citizens there is one of the main causes of friction. But if this ban was intended as a sanction against the Peiping government, one wonders how effective it really is in speeding up the return of the incarcerated persons. Which nation, after all, will be harmed more by this ban?

Writing in the *RECORD* last November 29, Professor Louis L. Jaffe declared that travel abroad is a right, which "attests to the community of nations; brings its people together; enriches and diversifies our science and culture. Even where the object of the visit is criticism, it promotes that continuous human dialogue whose aim is mutual adjustment and toleration."

Insulation

That the liberation of American citizens in China must be pressed, need not be said. But it should be remembered that little has ever been accomplished through isolation. And that is what the effect of this ban will inevitably be: insulation of the American people from contact through reporters of the press with the Chinese mainland. It is not enough to say that the Chinese people do not get accurate reporting on the United States; what matters is whether the American people and their press are to be reduced to a similar state of ignorance through a restriction on travel imposed by the State Department.

Mr. Worthy at last report still had possession of his passport, and no action had been initiated against him or the other two journalists. True, they have violated a regulation. But is this a reasonable regulation, which has the ultimate effect of preventing the American press from informing its readers about one of the most important countries in the world?

William L. Prosser Discusses Negligence, Career Insecurity, Curricular Crowding



William L. Prosser

It is almost inevitable that a conversation with William L. Prosser begin with the *Palsgraf* Case. Dean Prosser has probably outlasted hundreds of such beginnings. But while visiting the Law School on Wednesday, January 30, the Dean of the School of Jurisprudence, University of California (Berkeley) and nationally-recognized authority on the law of torts, discussed three general areas of the law and of legal education in response to questions from the *RECORD*.

Dean Prosser stated that the rule in *Palsgraf v. Long Island Ry.*, 248 N. Y. 339, 162 N. E. 99 (1928), had been misapplied "to all sorts of situations beyond Cardozo's intentions," and elaborated on a particular line of misapplication with the hypothetical case of a wife, who, looking out of her window, sees her husband negligently killed in an automobile accident and suffers mental and physical shock therefrom. The negligent driver's liability for the shock to the wife ought not, he declared, be denied on the ground that her harm was not within the foreseeable risk which made the driver's behavior negligent.

"That kind of reasoning, which most courts have used in such situations, won't hold up," he remarked. "I have always refused to believe that, if I drive along a street and hit a child, it is unforeseeable that its mother will be nearby and will likely be severely shocked, with consequences of physical harm to her, by the accident to her child."

"If relief is to be denied," he continued, "it must be denied on better grounds. One such ground is that there might not be any limit to liability. Suppose, for example, that the mother did not find out about the accident until an hour later. Or a close friend found out about it a week later? Or a year later? Would we always grant relief? What about an assassination of the President, involving thousands of people around the country in various suffering stages of trauma? With such repercussions in theory, no wonder courts refuse to allow recovery."

"I do think, however," he concluded, "that the principle of liability for such injuries to third persons should be recognized, and I would be in favor of extending recovery to near relatives who were witnesses of the accident, providing, of course, that the necessary proof of cause and effect could be made. I think that that is a safe place to draw the line."

Haphazard Practice

Dean Prosser said the relatively low status accorded to lawyers in criminal, negligence, and domestic relations practice should be viewed rather as a result of the inherent nature of those areas of law than as an original cause of haphazard presentation and administration of cases in those fields.

"The element of security-in-practice," he commented, "draws most of the best men into legal regions where the clients are steady and do not have to be found anew every week. Such are, typically, business clients, such as corporations and other habitual defendants. Poorer lawyers, on the other hand, tend to congregate around the 'one-case client,' the criminal, or the individual patient."

"Domestic relations, negligence, and crim-

inal cases involve, typically, one-case parties, who are constantly shifting in number and neighborhood location, and who are hard to get. This nature of the practice encourages the aggressive lawyer who is able to become perfect in the art of getting clients. He may cultivate political connections and connections with the criminal underworld to keep from being hard pressed for cases. And well he may, for even the divorce business, except in certain areas, has not built up into anything steady."

"So the problem in these areas of the law is not one of personnel, to begin with," he suggested, "but one of the very nature of such disputes as are likely to come to litigation. The top men in these fields are likely to be exemplary in both ability and character. But the vast majority cannot be at the top, and the pressures they encounter tend to shape men of the profession who will become perhaps too good, rather than not good enough, at dealing with juries and putting cases to them."

"The expense and precariousness of such practice deter most large firms from engaging in it," Dean Prosser claimed. He cited the example of one firm which willingly lost the corporate business of a railroad in order to rid itself of handling the large volume of personal injury cases in which the railroad became involved. "It may be interesting to note," he added, "that, because of this situation, many large corporations have their personal injury liabilities handled by small law firms or by individual lawyers, while their corporation counsel handle only commercial involvements."

Squeeze on the Schools

The Dean noted that some leading schools are considering the abandonment of a few non-technical legal course offerings because of curricular pressure. "We are already teaching four years' work in three," he averred. "You may not realize it, but we have seen the pace of legal education speed up tremendously in the last twenty or thirty years. It's a lot tougher for the student now than it was then, and it's a lot tougher for us who run the schools."

"It would be nice to put in twenty more

subjects, such as mining law, oil and gas law, water law, the legal profession, Roman law, jurisprudence, comparative law, criminology, and patent law—you have some of these extras here, where there are enough faculty members to give them even if every student can't study them all—but, as a whole, most schools have reached the point where, for everything we put into the curriculum, something must go out.

"One result is that we cannot emphasize the critical broadening of spiritual values that the study of law affords. To be entrusted by clients with their fortunes and their futures—and sometimes their lives—the technical material you must command very nearly fills three years of study. Then there is the additional aspect that most law schools are tied to the requirements of their local bar examination, which are set by the particular bar association in the area. Here, if you like, is the profession asserting itself in determining the quality of its educational development. It is a vigorous sign that is to be defended even if it does cost us a liberal course on occasion."

"The ideal teacher under these circumstances would be the rare man for whom the technical, though presented thoroughly, would be but a springboard into the significances which it implies. Even with such a teacher, nevertheless, I fear that the sheer quantity of technical material which must be mastered would prohibit much philosophizing. We have decided of necessity therefore, to trust to the educative effects of practice itself to familiarize the beginning lawyer with the large issues he will begin to struggle with within a short time."

Specialization Can Be Dull

"Most lawyers get a pretty wide acquaintance with diversified areas of life," continued Dean Prosser. "Few of us specialize. This is a good and healthy thing. I don't like to see a man sit and draw boilerplate instruments for years and years, turning a phrase at the beginning and one at the end to fit the case at hand, and putting sixty feet of set language in between. Doubtless such a man may be a useful servant of society, but it must be about as inspiring as turning a single nut on an assembly line for fifty years."

"Nothing in your past stays out of your practice," added the Dean. "College work in colloid chemistry helped me understand the testimony of courtroom experts once when my client, a breakfast food company, faced charges of defective packaging. I do not say that the testimony was unclear to the judge or jury, but it would certainly have been unintelligible to me without those courses!"

"I had a friend who studied music with aspirations of becoming a concert violinist. When he found he was no Heifetz, he went to law school, and his musical training has now made him an excellent musical copyright specialist, in analyzing the elements of supposedly pirated compositions."

"It's not a narrow life by any means. Whatever I ever knew that never came up in a case of mine almost assuredly would have if I'd stayed around for twenty years more. The lawyer enjoys intimately an infinity of varieties of human experience."

— Moss

Note: Legal Education in the U.S.S.R. - Res Ipsa Loquitur

The present day popularity of travel and study abroad has reached an unprecedented peak. In response to this current trend, the *RECORD* has procured the most recent "Annual Bulletin and List of Courses Offered at the Moscow Law School." This pamphlet not only lists the courses which may be studied, but in addition presents some highlights of the law on each subject. Herein are some of the highlights of the MLS curriculum.

TORTS: This course features a study of the Soviet Risk-Within-the-Result Theory. The general premise here is that since mere existence in the Soviet Union is the greatest of all possible risks, no one can be liable to anyone else for negligence, because it would be impossible to create new and greater risks than those already in existence. For example, the explosion of bombs in subway stations is considered commonplace and foreseeable. Thus in the case of *Palsgraffsky v. Trans-Siberian Ry. Co.*, 248 Moskva 339 (1934), the judge of the People's Court was considered absolutely correct when he directed a verdict for the defendants, who carried a package of explosives into a railway station. The detonation which occurred when the package was accidentally dropped caused a large portrait of Lenin to fall on plaintiff's head. Said Justice Ogpu of the Supreme Judicial Tribunal in a now-famous dictum: "The fact that plaintiff was framed is irrelevant and immaterial. If she had been at work in the mines as she was supposed to be, this might not have happened at all."

Recently a new branch of the law of torts has become very popular in the Soviet Union as a result of an article appearing in the Sept.

1, 1957, issue of the *Vladivostok Law Review*. Viceta Versovich and Janus Reverski, in their "Right of Publicity: Defamation, Anti-Defamation and Re-Defamation" (21 *Vlad. L.Rev.* 513), argued for a doctrine of absolute nonliability for official treatment of public figures which was later adopted by the Supreme Judicial Tribunal in the case of *Stalin's Estate v. Khrushchev*, 43 Moskva 2d 111 (1956). Use of this doctrine is popularly referred to as the Last Clear Chance.

PROPERTY I: The interesting feature of this course is the Doctrine of the Eradicability of Contingent Remainders, sometimes called the Rule in Vassilevskovich's Case. A contingent remainder is defined as a kulak who has fallen into the error of thinking that he owns something. Such persons are subjected to the remedy of the "Strict Settlement," which entails a vacation in Northern Siberia.

Materials for this course are taken from two casebooks. The first is a general work entitled *Bona Fide Purchasing with Maps and Binoculars* (5th Edition), by Kuznetsky and Lochofsky. The second, dealing with estates in land and the lack thereof, is *The Four Seisins* by Vivaldsky.

CONTRACTS: The principle case of Soviet contract law is the famous *Hawkinsovich v. McGheesky*, 2 Nihzni Novgorod 161 (1923). There the rule was stated, which has been followed ever since, that the effort is to put the injured party in just about as poor a position as he could have been put if he had not made any contract at all.

A crucial point in the development of Soviet contract law was May 2, 1947, when the Ministry of Shipping was thrown into con-

fusion upon learning that all cargo vessels in the Soviet Union were named "Peerlessnikoff." Immediately an emergency meeting of the Politburo was called, known as the "Meeting of the Minds." The net result was the passage of the famous Statute for Frauds, which set out certain basic principles. Among these is the Parole Evidence Rule, which governs the testimony of ex-convicts.

EQUITY: The major difference between the Anglo-Saxon and the Soviet concept of equity is that the latter allows specific performance in every instance. Thus where American text writers and law professors point to the recalcitrant opera singer as the prime example of the inapplicability of specific performance, the Soviet courts have taken a much sterner view. Cf. *Bingski v. Callavich*, 21 Bolshoi 432 (1930), where a balking soprano was forced to sing, or else. The principle here is that *aequitas vacuum* abhorret.

Another unique feature of Soviet equity is that it always aids the career volunteer, especially in cases of international sorties. This exemption also lifts the "clean hands" requirement, and the whole procedure is known as "following the res without spes."

PRIZES AND SCHOLARSHIPS: The highest honor to be obtained by a Moscow Law Student is the Order of the Non-Assignable Chose in Action, awarded annually for the best translation into Inner Mongolian of the Statute of Uses. A Stakhanovite Medal is also awarded for the most prolix law review note. It was awarded last year to Boris Lavioris for his breathtakingly emotional article on the Soviet transportation system called *Stoppage in Transitu*.

— Pagevsky

St. Louis Alumnus Tells Role In Midwest Corporate Action

By J. RAYMOND DYER

J. Raymond Dyer, LL.B. '28, is an attorney practicing in St. Louis, Missouri. Last December, Mr. Dyer brought suit against the Union Electric Company of Missouri on behalf of himself and other common stockholders in the commercial utility. He claimed that the company had paid a \$35,000 lobbying fee to obtain passage of favorable legislation in Illinois, and that this money eventually found its way into the hands of former State Auditor Orville Hodge, now serving a prison term for embezzling state funds.

Mr. Dyer further alleged that Union Electric had spent several thousand dollars distributing a misleading statement about the fee among its stockholders. The author argued that this statement was preliminary to an impending solicitation of proxies by the company for the 1957 annual stockholders' meeting, and was "part and parcel of the same thing."

Last month Mr. Dyer won access to the names and addresses of the company's stockholders, and is now engaged in a proxy battle with the intention of ousting the present management of Union Electric.

It used to be considered bad form for an attorney who had engaged in some particular case to write a law review article about it. It was not thought he could have an objective view if he had lost, and for him to write about how he had won would be most immodest. No reputable law review editor would countenance such shameless braggadocio. And as for publishing anything while the case was pending—well, that was considered a cardinal sin.

But times change, and with the times morals. For example, the *Missouri Law Review* published a note two years ago, explaining a rather hard-to-understand decision of the Supreme Court of Missouri in a case I had won,* but explaining it quite differently than I would have done. That was all right, of course—lawyers are always differing—but what seemed a little untimely about the note was the fact that the lower court, to which the case had been remanded, had interpreted the decision the same way the note writer had interpreted it. And I had sought mandamus, which was pending.

I knew, of course, that there was such a thing as manufactured evidence. But this was the first instance of manufactured authority I had come across. When the lower court judge cited the note in his opinion I realized that something new had loomed on the legal horizon. . . .

Pending Cases

But to write about your own case while it is pending is not advisable. Not only would you be sticking your neck out, but your less charitable colleagues might, conceivably, think you were seeking to influence the court. Or the jury. And that, of course, would be unpardonable.

However, when you have a case that is not before a judicial tribunal, but before a sort of administrative tribunal like a stockholders' annual meeting, maybe the moral restraint should be lifted. If, instead of 12 jurors you have 59,778 stockholders, scattered over the 48 states, and indeed all over the world, how can you possibly be charged with trying to influence them? You don't even speak some of their languages. And how many stockholders read law review articles anyway?

Some vulgar journalists, describing the Union Electric Company of Missouri proxy contest have referred to that highly complex game of legal chess as a "proxy fight", but I stick to the more dignified term "proxy contest". Knowing your readers would not be interested in a blow-by-blow account I shall confine my remarks to the "rules of the game", i.e. the SEC's amended proxy rules X-14A, as interpreted by the courts and by the commission.

These Marquis of Queensbury rules of procedure for the fascinating game of proxy contesting are astonishing

*See *Wells v. Kuhs Realty Co.*, — Mo. —, 281 S.W.2d 9 (1955), and Note, 20 Mo. L. Rev. 101 (1955). In the subsequent jury trial plaintiffs recovered judgment, which defendant, after withdrawing its motion for a new trial, satisfied.

in their clarity. All were promulgated under that very wholesome section 14 of the Securities Exchange Act of 1934 (15 U.S.C. § 78n) which, in a nutshell, says that all proxy contests must be conducted in accordance with the rules.

That, of course, is just as it should be. Divorce must proceed in accordance with rules, and a proxy contest is a species of divorce. The insurgent stockholders are seeking to divorce the management. (I am only qualified to write about the divorce kind of proxy contests, not the "raider" kind, about which I know nothing. Maybe the "raider" kind are conducted under different rules. Or, as I have sometimes suspected, under no rules at all.)

Claims Cards Stacked

The remarkable thing about the new Marquis of Queensbury rules for proxy contesting is that the cards are all stacked in favor of the stockholders. How that could happen during the Eisenhower Administration (or should I say in a capitalistic society?) is not clear. Maybe it is because New Republicanism is based on going New Dealism one better.

However that may be, most vested interests protect themselves, legislatively and rule-wise, when they are in power. Why did corporate managements (as a class the most vested of all vested interests) ever permit the January 30, 1956 amended proxy rules of the SEC—the new Marquis of Queensbury rules—to become vested right along side of them? Were they caught napping? If not, who converted them to "stockholder democracy"?

I do not know the answer to that but I do know this: The new rules vest all stockholders with an interest that permits them, with just a little intelligence and some cooperative action (and some money, of course) to nudge their vested interest managements right out of the corporate nest. If they have a good cause, of course. You must have a good cause.

Good Cause Defined

The best good cause, naturally, is bad management. And by bad I mean a management that steals the stockholders' money. Or that does not pay dividends. Or inadequate dividends. Stockholders as a class are motivated only by money. If they get what they consider a fair return on their investment they care little how bad morally the management may be. Thus, it is very hard to rally stockholders to insurgency on a moral issue. Morals are for the reformers, not stockholders.

But even a reformer can make do with a moral issue if it involves money. The Union Electric insurgents are trying it on with "truth". "TRUTH IN UNION ELECTRIC" is their slogan. They caught the management out in some fibs, some fibs that cost the stockholders money.

Truth goes right to the core of things. Managements that do not tell the truth to the stockholders are courting trouble. Indeed, they are courting disaster. They are courting evic-

tion, which to management is the worst form of disaster. No smart management should ever lay itself open to that charge. It is like leading with your chin.

But managements do. It is a prevailing custom. They stray a bit from the straight and narrow in advertising the company's product, on the theory that it is every merchant's privilege to puff his wares. That is traditional. There can be nothing wrong with that grand old American practice. But when they employ the same technique with the stockholders (the Madison Avenue technique, it is called) they lead with their chin. That is what happened at Union Electric. The stockholder relations machinery was thrown out of gear from an overslop of oil from the public relations machinery.

Stockholders do not like being treated like the public. They want to be treated as owners. They go along with caveat emptor, but not when applied to them. Not at their expense, at least. They just don't like it, and they can become very indignant about it, because their pocketbooks are involved.

When Management Errs

The management that thinks that stockholders and the public are one and the same thing is grievously mistaken. Managements that act on that erroneous conception bend over, literally, and invite some indignant group of stockholders to kick them, and kick them hard, right in the seat of the pants—right out of their jobs.

But, of course, this business of being treated like the public only offends stockholders when it costs them money. They can become morally indignant over moral issues, and write letters to the editor protesting lobbying and other little corporate sins like that, but come election time they vote their pocketbooks every time.

There is no such thing in this country as "stockholder responsibility". You have a cat, and you take care of it. But the corporation in which you own stock? No. That is management's job. All you want is your dividends. If you don't get them you sell your stock and buy into some other corporation that does pay dividends. Reform the management on some moral issue like lobbying or false advertising that brings in money? Don't be silly.

Cannon's Letter

How is the moral issue working out in the Union Electric contest? Well, it is working out fine. Why? Well, it's just like Congressman Clarence Cannon, the venerable Missouri statesman who is chairman of the House Appropriations Committee, said when he wrote me not long ago, on February 4 to be exact. I had written him about the untruthful Union Electric ads and he replied:

"You touch on one of the crying needs of the time—'Truth-in-Advertising'. Vast sums of money are being spent to mislead the American people."

So there you have the money tie-in. Whose money? The stockholders' money, being spent to kid them as consumers. Union Electric has spent an admitted \$8,100, and perhaps more, on consumer-kidding ads that we have charged to the SEC are false. And at least another \$15,000, I estimate, on stockholder-kidding letters-from-the-president that we have charged to the SEC are false.

The Marquis of Queensbury rules? They are wonderful. They present

fascinating legal questions like how exhaustive need be the exhaustion of administrative remedy under Rule X-14A-9? When is a solicitation not a solicitation under Rule X-14A-6, when "solicitation", as defined in Rule X-14A-1, is interpreted as recited in SEC Release No. 5276? (Or, to put that one more clearly, how many meanings, in a single set of rules, can a single word have?) Why is a "story" exempt from Rule X-14A-6(c) when told by management, but not when told by anybody else? (That's a very subtle pun).

Poses Problems

Or, to pursue the subject further, what do you do when the right hand of the SEC doesn't tell the left hand of the SEC what it's doing, or what it's got in it? Should you suggest they stop playing puss-in-the-corner, or is that unmannerly? Or, to put a really hard one, can the SEC really pass on the law of Missouri (it has done so, without jurisdiction, in my opinion, in the Union Electric case) and if so, what happens when a Missouri court of initial jurisdiction rules otherwise? I am filing suit to find out, but what happens when I win? Does *Eric v. Tompkins*, 304 U. S. 64 (1938), apply? And if so, when have I won? Considering the speed with which appellate court judicial justice is accomplished in these parts, can you wrest the laurel wreath of victory from the brow of the voted-in victor and place it on the brow of the vanquished when, by court order, he is judicially declared the real victor, and if so, how long after the event? Could the Supreme Court of the United States declare Firpo the real victor over Dempsey, on a technical foul, long after Joe Louis had retired? If so, who picks up what marbles?

Yes, proxy contesting is a fascinating game. Much food for thought. Much opportunity for conjecture. No wonder the game is becoming more and more popular. It is a gamble, of course, but if you win it can be highly lucrative. Much more lucrative than the average contingent fee damage suit. For, just as in political contests, to the victor belong the spoils.

PAINTING

(Continued from page one)

The painting in question was "The Inner Room" by Baltimore artist Glen Walker. The canvas was a prize-winning entry in last year's "Life in Baltimore" art competition.

The court stated that the mayor should not be permitted to inject his personal tastes into his official actions with respect to a public display.

"And even if the picture were objectionable," Judge Brune wrote, "we do not regard the censorship by the mayor of pictures publicly exhibited in a city-owned building and the removal of such as he may deem objectionable, or his making adverse public comments thereon, as being either within the scope of his duties as mayor, or so closely related thereto as to be entitled to an absolute privilege by reason of his important public office."

The opinion also alluded to the reluctance of the court to "stretch the field in which an absolute privilege may be invoked by adopting a very broad view of what may be deemed closely related to the general matters committed to the control or supervision of a public officer."

Alumni Notes

LL.B. '26 — *Louis I. Bunis* was guest of honor at a testimonial dinner on February 17 at The Hillel School, Rochester, New York. He has been associated with the school since its establishment and is presently secretary of the school's board of trustees.

LL.B. '27 — *William P. Fowler* has announced the removal of his Boston office for the general practice of law to 10 State Street, Room 414, Boston 9, Massachusetts.

LL.B. '42 ('46) — *James M. DeLoreto* recently was elected president of the Santa Barbara County Bar Association.

LL.B. '48 — The law firm of Powell, Wirtz, Rauhut & McGinnis has announced that *Thomas M. Reavley*, formerly Secretary of State of Texas, has become a partner of that firm and that the firm name has been changed to Powell, Rauhut, McGinnis & Reavley. The offices are located at 702 Brown Building, Austin, Texas.

LL.B. '53 — *Lawrence B. Rossbach, Jr.*, has become a member of the firm of Friedman & Bareford, 11 West 42nd Street, New York 36, New York.

BOARD

(Continued from page one)

The Williston Competition is organized on much the same lines as the Ames Competition, and is administered by the Board of Student Advisers. It is conducted in three eliminations rounds, the qualifying round being in the spring of the student's second year, the semi-final round in the fall of the third year, and the final round in the spring of the third year. This spring the three teams competing in the final round are faced with the problem of drawing up an estate plan.

The Board writes the qualifying problems, while the final round problem is written by the Faculty Assistant in Charge of the Ames Competition. The problems are judged by attorneys practicing in the jurisdiction in which the problem is laid.

Problems in drafting statutes, contracts, wills, trust instruments, and estate plans have been used in the various rounds of the Competition. Further, semi-finalists have worked on problems in deciding upon and pursuing a legal course of action, embodied in the drafting of legal memoranda and letters.

The Williston Competition is open to all second-year students who are not members of the *Harvard Law Review* or Board of Student Advisers, and who have not qualified for the quarter-final round of the Ames Competition. The participants compete in teams of four, although students may enter as individuals and be assigned to a team.

Maurice S. Binkow, 3L of Miami Beach, Fla., who is chairman of the competition, announced last week that the deadline for registration of individual entries has been set for today at 5 p.m. The competition will commence on March 1 when problems will be issued.

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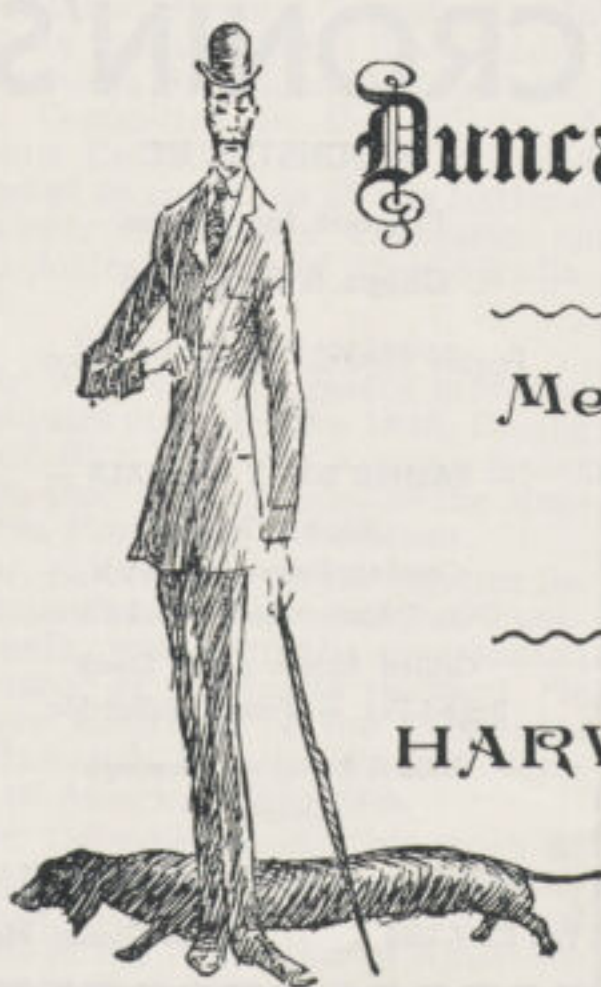
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NEWS IN BRIEF

LAW WIVES

The Law Wives have announced their fifth annual fashion show will be held March 5 at 8 p.m. in Harkness Commons. Clothes will be by Gertrude Singer's Fashion Studio and Miss Cannon's Children's Shop. The latest spring fashions will be modeled with the theme of "Mardi Gras." Tickets at 75c are on sale at the Coop and at Gertrude Singer's. There will be door prizes and refreshments.

BRIDGE

The Law School Duplicate Bridge Club has changed the time of its meetings to Saturday afternoons at 1:45. Matches will be held in the Wheeler Room of Holmes Hall. The Club has invited all members of the Law School community to play. Spare players are usually available for those who do not have a regular partner, the organization has reported.

FORUM

(Continued from page one)

President Pusey disagreed as to the degree of failure of higher education today. Many universities are more than "separate schools held together by a common allegiance to a central heating plant," he maintained. In these institutions, said Mr. Pusey, one can sense a common loyalty to true intellectual achievement. And the steady growth of knowledge prevents any pruning of the varied undertakings of today's universities.

Mr. Pusey then enumerated some of his present problems as president of Harvard: the shortage of qualified teachers and the curse of inflation, with operating costs rising from 14 million dollars in 1941 to 45 million in 1956, without a prorata rise in endowment income or tuition. However, he stated, one change of recent years has definitely been for the better: before World War II, Harvard accepted most of those applying for admission, but today's flood of applications allows the college to choose only the best. But Mr. Pusey scored the wide divergence in preparatory school training, and cited the need for special provision for the better-prepared freshmen.

Amherst's Henry Steele Commager noted that "Americans, beset by the flood of college-age youngsters, have reacted typically with quantitative solutions." But proposals to "litter the landscape with campuses" have one fatal defect, he continued: "the lack of qualified teachers to create the necessary scholarly atmosphere." And referring to the growing junior-college system, he stated that their job might just as well be done by the high-schools.

Seven Recommendations

Mr. Commager feels that the influx of students in universities today could be accommodated by cutting away the useless fabric in today's educational system. Some of his concrete suggestions were: (1) stop the waste of time and money in recruiting students; (2) de-emphasize competitive athletics; (3) put less stress on grades, attendance-keeping, and periodic tests, adopting instead an end-of-college comprehensive exam; (4) accelerate college, and even high-school, as was done in wartime.

Mr. Commager devoted the rest of his catalog of recommendations to outlining teaching changes. They were: (5) forego attempts to teach everything in one university. Let one college have one specialty, another college a different one; (6) do not try to teach "values" and "citizenship"—it cannot be done; (7) spread out, but do not spread thin, faculty talent. Lectures are out-of-date, Mr. Commager claimed, saying that they "are to discussion as massage is to exercise."

As to the teacher shortage, Mr. Commager feels that more freedom and better treatment by the public must accompany higher salaries to entice more qualified people into the profession. Answering a question from the audience concerning state education and control, he said the educator should seek to influence such control, but not to fight it. — Wethly

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Family Law Problem Areas
Demand Service, Not Profit

By JACK J. RAPPEPORT
(Professor of Law,
Stetson University Law School)

The low professional stature and lack of esteem accorded to family law from the standpoints both of legal scholarship in the law schools and the rough-and-tumble of legal practice have so become the norm that the effective determination and administration of justice in this field of the law are being seriously impaired to an ever-increasing extent.

This low stature has also had repercussions in the legislative branch, resulting in statutes on family law frequently carelessly or hastily written, and betraying a lack of full comprehension of the factors involved. For example, we sometimes find the grounds for annulment in a divorce statute and vice versa. In the former case, this may lead, at most, to inartistic and illogical legal expression. However, in a few states, a really bad situation has sprung up, as a result of the grounds for dissolution being inserted in the annulment statute.

It is, of course, anomalous to speak of annulment for reasons wholly post-nuptial, because in an annulment, a valid marriage upon which the award of a decree of alimony can be based is not deemed to have ever existed;



William E. McCurdy

whereas in divorce, although the dissolution of the marriage ends the duty to support, alimony is given in lieu of the duty to support. In some states, such as New York, statutes provide that alimony may be granted in certain cases of annulment, but unfortunately, apart from such an express statute, no alimony can be awarded on an annulment.

Professor W. E. McCurdy, in his recent article on divorce in the *Vanderbilt Law Review*, has pointed up the widespread non-recognition of the distinction between the suspension of cohabitation and the termination of a status, which non-recognition is often reflected in unrealistic grounds for divorce; another result is the all-too-common confusion of living-separate-and-apart statutes, based on marital failure without regard to guilt, and the tenuous doctrine of constructive desertion, in which the fault concept is inherent.

No Solution Yet

No satisfactory solution has as yet been set forth for the especially troublesome problems on the practical side of alimony law which still confront us: the vindictive ex-wife and the stubbornly recalcitrant ex-husband. We are also wallowing in a mire of difficulty presented by a comparative newcomer — the juvenile delinquent.

A failure to distinguish between the incorrigible child situation, to which the general principles of custody are properly applied, and what amounts to crimes committed by legal infants (often bearded), has led to a statutory lumping together of

the incorrigible, wayward and uncontrollable child with the infant criminal. Are we not just deceiving ourselves by the use of words, where the legal draftsman, in drawing up juvenile delinquency statutes, groups together the notions of parental neglect and incorrigibility with acts which would otherwise constitute criminal offenses? Clearly, the legal principles, as well as the community reaction involved, are different in each of these cases.

As a result, misguided attempts have been made to socialize the trial of juveniles for what would otherwise be criminal offenses; following this over-protectiveness at the fact-finding level, in many instances, a denial of Constitutional guarantees results! If the Constitution guarantees a privilege against self-incrimination, a trial by jury, and an indictment in the case of criminal offenses, upon what legal principle are these safeguards withheld from juvenile offenders in a purely socialized trial?

Burdens of Precedent

Another very real difficulty confronting all lawyers is the heavy burden, under the Anglo-American system of *stare decisis*, created by a superficial decision. Once a decision is rendered, the effectiveness of a thorough presentation of a subsequent case in a substantially similar fact situation by a more conscientious attorney may be seriously impaired or even foreclosed, although the earlier determination would seem to be analytically unsound and out of step with social progress. Moreover, the prior decision may not even have alluded to the view of the case now sought to be presented. Such may often be the situation because a mediocre decision is rendered, for want of a full understanding of the fundamental legal principles involved. The viciousness of this chain of events may be appreciated when it is realized that in many cases where decisional law appears to be inadequate, this very inadequacy often stems from the attorneys' failure to properly research and present their cases.

Here, we attorneys like to consider ourselves blameless, for it is generally accepted that the more capable and outstanding lawyers shun the practice of family law, because, among other factors, this field of the law is thought to have less intellectual content and to present less of a challenge than do other areas of law. Actually, however, family law often encompasses many other matters, including equity, conflict of laws, agency, constitutional law, contracts, suretyship, torts, property, etc., challenging the ingenuity of even the finest legal minds. Yet, it is to be doubted whether other legal fields which call forth as wide a range of views and emotions, receive less attention from the law schools and the bar. It can safely be said that few other branches of the law are actually of more importance to the community, or entail more specialized enforcement activities.

Finally, in the law schools themselves, where the attitudes of attorneys are often formed, family law courses are treated as a sort of "football," often being passed to the junior member of the faculty, rather than

being kept in the bailiwick of more mature scholars. Both faculty and students consider it a snap course, or a "barroom course." In many schools, family law — which, after all, treats with one of the most basic of all social institutions, the home — is assigned to first-year students, whose understanding of the legal principles relative to this important field of the law is, at best, limited. Are such ingrained attitudes calculated to engender in the lawyer-to-be the proper respect for the ramifications of family law?

Emphasis on Research

Such family law research as has been done at the graduate level, has, for the most part, been focussed on the conflict-of-laws aspects of family law, with emphasis on jurisdictional bases and choice-of-law rules. Though of value in its own right (in the enforcement of foreign alimony decrees and divorces of sister states by reason of the full-faith-and-credit clause, and in the determination of marital status for property reasons where the persons involved have moved to other jurisdictions) this preoccupation with conflicts problems has tended to obscure the underlying substantive issues.

Placing the blame for a widespread misunderstanding would serve no constructive purpose. Certain it is that family law is less remunerative than other types of practice; yet, the same holds true of constitutional law. Nevertheless, paradoxically enough, practitioners of constitutional law are, by and large, considered to be great thinkers, while practitioners of family law are usually classified in the minds of the bar generally, as well as the public, as inferior, ethically and otherwise, to lawyers engaged in corporation and other types of civil practice.

Perhaps this attitude of the public stems from the fact that the average man has more contact with the field of family law than with any other, and his perception, though not necessarily appreciation, of the law is derived from its dramatic, rather than its analytical aspects.

Stabilizes Society

In dealing with the human side of family law, therefore, we should be concerned more with its importance, not only to the individuals, but to the interest of a stable society in a basic institution; with its impact on the administration of justice generally and not simply in the particular field. Toward this end, a better liaison should exist between teachers of law and specialists in closely related but non-legal disciplines, such as sociology, psychology and psychiatry, to aid in the establishment of standards for both bench and bar.

Perhaps it is not enough to suggest to the bar that the way to approach family law is from the standpoint of service, rather than remuneration; the more practical way is to instill embryonic lawyers with a feeling of respect for this field. If this be so, a greater appreciation of and emphasis upon family law should be forthcoming at all levels — those of the law school, the bar, the bench, and the legislature.

Once the fundamentals are mastered and placed in their proper perspective, we would be in a position to make a more meaningful survey of our present domestic relations laws, both substantively and administratively, and to suggest changes and perhaps even new approaches wherever indicated.

Nancy H. Goldring
Honored by Fund

Efforts to institute a Nancy Goldring Scholarship Fund have to date resulted in contributions of more than \$14,000. Miss Goldring, a member of the class of 1956, died last November as a result of injuries received in an automobile accident. A number of her classmates and friends are raising money for an endowed full tuition scholarship as a memorial to her. Miss Goldring was a member of the Board of Student Advisors and the *Law Review* while at the Law School.

HOARDING

(Continued from page one)

"It seems vital," Judge Fee continued, "as a matter of national policy that emergency regulations and almost dictatorial powers granted or conceded in the turmoil of war, cold war, economic revolution and the struggle to preserve a balanced democratic way of life, should be discarded upon return to normal conditions, lest we grow used to them as the fittings of ordinary existence. Executive regulations drafted and confirmed for an emergency should expire with the emergency."

The court, however, declined to declare as a matter of law that the national economic emergency which gave rise to the 1933 order is ended. Instead, the case was remanded to the trial court to ascertain this fact.

DEAN

(Continued from page one)

bility that atomic fusion may replace fission in the near future. He warned that this could mean that all of the work that has gone into the development of the fission process may go for naught, but added there are advantages of the fusion process over fission. A cheap raw material (deuterium, or "heavy water") may be used instead of uranium. No radioactive disposal problem is involved, and a direct conversion to electricity may be accomplished. Mr. Dean stated that many countries are now working on the fusion process, (most notably, the Soviet Union), and expressed the opinion that the fusion dream may be a reality well within the 20 years period which some have predicted for its fruition.

As a summary for his presentation, Mr. Dean added his voice to the multitude on the contemporary scene in calling for increased numbers of students to approach the physical sciences. He felt that the secondary educators were not fulfilling their duty to their cultural heritage unless they were able to inspire, cajole or coerce the budding generation into active participation in mushrooming field of applied science.

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