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TEN CENTS

Bevan Calls for Negotiation To Avoid Global Conflict

A jammed New Lecture Hall was witness Friday evening to Aneurin Bevan's remarkably successful forensic exercise in making the obvious explicit. Whether or not the Labour Party's "roving ambassador" and aspiring Foreign Minister satisfied the vocal crowd with the sufficiency of his follow-through from premise to policy became increasingly doubtful as the question period neared its untimely and unanimously (barring Moderator Schlesinger's propriety) unwanted end.

After the preliminaries, which saw Mr. Bevan express surprise over his being depicted as anti-American and describe his attitude toward America as "proprietary" because "Welshmen wrote the Declaration of Independence," there began an earnest and forboding prophesy of doom if international attitudes remain changeless.

Impressions gained from his world travels gave him no optimism; rather, he thought the cold war was intensifying and that not much time was left to remedy an explosive and unprecedented situation — the imminence of total human destruction.

In a roughly syllogistic analysis, Mr. Bevan relinquished several facts which he called unchallengeable. These were:

1. Modern warfare has rendered our institutions of democracy obsolete in that the decision to use nuclear weapons will not be taken by representative assemblies either in America or anywhere else. The issues of key importance have passed by deliberative assemblies. Because of the fear of the enemy anticipating, because de-



Aneurin Bevan

bate over whether to war or not may well precipitate the very thing being discussed, the decision will by its very nature be made by one person with little consultation. It would be a decision based on very unreliable information of the secret service. He described this source of information as "by its nature uncheckable, gotten by bribery, wiretapping and other devious methods through channels not accessible to public scrutiny, not

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Explanation Given Of Forum Mix-up

Season subscribers and holders of advance tickets who were unable to obtain a seat at last Friday's Forum were not the victims of a cruel hoax, according to officers of the organization. Saul A. Wolfe, 3L of Newark, N. J., president, asserted that the hall was not oversold, and that a block of seats sufficient to accommodate all subscribers and their guests was reserved.

According to Mr. Wolfe, trouble began when a side door to the New Lecture Hall was opened to permit the speaker, Aneurin Bevan, to enter. A portion of the crowd outside pushed through the door behind Mr. Bevan. By the time police were able to close the portal and restore order, these

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Dance

The Law School Dormitory Association will sponsor an informal dance this Saturday evening in Harkness Commons. The dance will begin at nine and end at midnight.

Music will be furnished by George Graham's Orchestra. Set-ups will be provided as usual. Admission will be by season's ticket or by a fee of one dollar per couple.

Williams Deplores Methods Of Congressional Exposés

Edward Bennet Williams, nationally prominent civil rights-conscious defense attorney, made a dramatic appeal to a responsive audience of five hundred in the James Barr Ames Courtroom last Thursday evening.

The noted Washington, D. C., attorney, speaking under the auspices of the Student Bar Association, lashed out verbally at what he termed Congressional "legislative lynching," wire-tapping by law enforcement officers, "inequitable" rules of criminal procedure, and a newly developed concept of "guilt by silence."

Mr. Williams, in ringing tones, took Congressional committees to task for looking and acting beyond their legislative function and for sitting in judgment upon the reputations of men.

"Congressional committees have a right to pursue any information germane to proposed legislation," Mr. Williams stated, "and to call all witnesses who can help them in this respect." But Congress has no right to make public exposés of unpopular figures and to publicly castigate a man, he declared.

Abuses by a series of headline-hunting committees including crime committees, red-hunting committees and the present Senate "Labor Rackets" committee have dealt a harsh blow to human rights and individual liberties, Mr. Williams stated. "Exposition is not a legitimate constitutional purpose of a legislative committee."

"Time and again the government's power of legislative inquiry has been prostituted," the speaker declared.

In 1956 two "headline-hunting" congressmen, after 11 years, decided to call Aldo Icardi (charged with killing his Commanding Officer in the Italian Alps in 1944) before a committee and hold a coroner's jury. This resulted in Icardi's indictment for perjury which was slapped down by a Federal court.

Last spring Dave Beck was hit by

question after question before the Senate Labor Rackets Committee when it was known all along that the 5th Amendment would be pleaded.

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Head of Raytheon Discusses Defense

Charles Francis Adams, Jr., president of Raytheon Manufacturing Company, will speak to the Bull and Bear Club at 1:30 tomorrow afternoon in the large meeting room of Harkness Commons. His topic will be "Raytheon, Missiles, and National Defense."

A 1932 graduate of Harvard College, Mr. Adams was a partner in the investment banking firm of Paine, Webber, Jackson and Curtis from 1937 until 1947, when he became vice president of Raytheon. He has been president of the company since 1948. The speaker is also a director of New England Enterprises, Inc., and the Bath Iron Works Corporations.

In the electronics industry, Raytheon ranks fifth according to value of manufacturing, with a broad product line running from tubes and towers in the radar division to tubes and transistors for radio and television. The company is prime contractor for the Hawk I and Sparrow III missiles.

Visiting Yale Law School Professor Critically Evaluates Belli's Book

READY FOR THE PLAINTIFF, by Melvin M. Belli; Henry Holt and Company, New York (1957); 300 pp., \$4.95.

By FLEMING JAMES, Jr.

It is not easy to make an objective appraisal of a book like this. Its framework is the life history of a personal injury action. It is an apology for the role of plaintiff-tort lawyers and their organization, The National Association of Claimants' Compensation Attorneys; for the use of demonstrative evidence; for the six-figure award in personal injury cases. It extols the virtues of jury trials and damns judicial restraints upon the jury. It praises, on the whole, the existing pattern of liability in accident cases but sharply criticizes some of its aspects which put a brake on recovery of damages by the plaintiff. These, of course, are controversial subjects today and it is hard for anyone who has an interest in them — even an academic interest — to take a dispassionate, broad-gauge view.

Mr. Belli certainly does not do that. He tells his story and makes his case with many an anecdote, many a graphic illustration, many a pungent and racy comment. He is himself an imaginative, resourceful, and highly



Fleming James, Jr.
Visiting Professor of Law
Harvard Law School

successful plaintiffs' trial lawyer. A true advocate, he is inclined to view his kind as knights in shining armor championing a just cause: the "adequate award" for innocent and wronged accident victims. This crusade has in recent years been a lucrative one for the crusaders; yet for all

'Plaintiff's Attorney' to Talk On Trial Strategy Tonight

Melvin M. Belli, self-styled "King of Torts," will speak this evening in the James Barr Ames Courtroom at 8:00 p.m. under the sponsorship of the Harvard Student Bar Association.

Mr. Belli has moved to national prominence by way of national controversy in the last few years as a member of the plaintiff's bar in the tort field.

Unorthodoxy in the courtroom, particularly in the presentation of visual evidence, has earned for Mr. Belli acclaim in some quarters, derogation in others and envy in all. William Lloyd Prosser, Dean of The University of California School of Law, has accused the flamboyant attorney of making use of Hollywood techniques which convert the judicial atmosphere of the courtroom into a theatrical aura

the United States Supreme Court, the United States Court of Appeals, for the Ninth Circuit, and the United States District Courts for the Northern and Southern Districts of California.

Mr. Belli served as attorney for Maureen Connolly, amateur tennis star and Wimbledon champion, whose knee was injured when the horse she was riding was frightened by a passing truck. The verdict for the plaintiff in that case was \$95,000.

The attorney is currently representing the plaintiffs in their suit against Cutter Laboratories for distributing bad polio vaccine. He is presently serving, also, as general counsel for Japan Airlines.

Was NACCA President

He is a member of the Academy of Forensic Sciences, a past president of the National Association of Claimants' Compensation Attorneys (NACCA) and is presently Dean of the International Academy of Trial Lawyers.

In addition to being an associate editor of the NACCA Law Journal, of which Dean Emeritus Roscoe Pound is Editor Emeritus, Mr. Belli is the author of several recent books: *Modern Trials*, Bobbs-Merrill Co. (1954) and *Ready for the Plaintiff*, Henry Holt & Co. (1956) (reviewed elsewhere on this page).

Mr. Belli, flying from San Francisco to Boston for the sole purpose of speaking before the Student Bar,

(See BELLi on page four)

Scholar Describes Moon's Ownership

The launching of *Sputnik II* last Saturday has touched off a flurry of speculation by scientists on the capabilities of Soviet rocketeers. One American source was quoted as saying that the Russians may get a rocket to the moon within a matter of days. Communist technological advances raise great political and military problems; but a few legal issues may eventually come to the fore.

For example, what will be the requisites for a nation's laying legal claim to the moon? In past centuries, European monarchs claimed the New World by right of discovery. That is, discovery by Europeans; outstanding claims of aboriginal inhabitants were considered of no consequence. But the doctrine of discovery seems inapplicable today, for it would be absurd for any nation now to claim that it has discovered the moon.

One answer has been advanced by Dr. Norman MacKenzie, LL.M., '24, president of the University of British Columbia. He is a former legal adviser to the International Labor Office at Geneva, was chairman of the Research Committee of the Canadian Institute on International Affairs, and taught international law for many years.

Mr. MacKenzie said that not even landing on the moon would, in his opinion, be sufficient to take possession of the earth's oldest satellite. He said that "possession and control" is the only formula under which a nation can lay claim.

The report of Mr. MacKenzie's statement did not discuss the meaning of the phrase "possession and control." The mere act of hitting the moon with an unmanned missile would hardly satisfy the formula. But

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for the presentation of an "Epic of the Supercolossal."

The California attorney states that he is not in favor of large verdicts exclusively, but rather of ample and sufficient ones, which are uniform from one fact situation to the next. There seem to be a number of attorneys who agree that uniformity is characteristic of Mr. Belli's judgments, but some quickly qualify the statement by saying that the only element of uniformity in the verdicts is that they are uniformly large.

Mr. Belli, a 1933 graduate of the University of California Law School, has been admitted to the California, San Francisco and Los Angeles Bar Associations and to practice before

that, I am convinced that the feeling of righteousness on the part of many of them — including Mr. Belli — is sincere (although with a sincerity not tested in the crucible of self-sacrifice). Sincere too is that author's resentment of insurance companies and all their work save the facts that they do provide protection for the insured and financial responsibility for the victim, and can sometimes be made to pay. This partisanship leads to a good deal of sarcasm and vituperation, and also to the taking of some rather silly positions. Since extremity begets extremity, the author's attitude makes objective appraisal still harder. Already the book has been anathematized by one reviewer, and regarded by another as the work of a Solomon come to judgment.

I think neither view is warranted. This book is not written primarily for lawyers. *Modern Trials* in three volumes in 1955, was a much more complete and detailed presentation of the same subject matter and was for the profession. It is, then, fair to assume that one subject of the present volume is to arouse public support for the author's point of view, and to

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Policy Born of Fear

The concessions of the weak
 are the concessions of fear.

—Edmund Burke

Aneurin Bevan, British Labour Party spokesman on foreign policy, on whose broad shoulders the mantle of Foreign Secretary of Great Britain may soon fall, expressed his fear before the Law School Forum last Friday evening (story on page 1) that England, the United States and, indeed, all of mankind are in imminent danger of annihilation. Fear of the dreadful consequences of a nuclear-age World War should guide, determine and dominate the course of Western foreign policy, he declared.

In order to insure its own survival and that of the world, the United States must sit down at the conference table with the Soviet Union and must negotiate, must bargain, must come to some sort of an agreement, Mr. Bevan warned. Now is the time when American attitudes must be changed, he said, when the fear of Communist expansion must yield place to the threat of nuclear annihilation, when it is imperative that a rapprochement be reached between the West and the Communist world.

We must be willing, he continued, we must not hesitate to compromise and to make concessions in order to reach such an understanding. Mr. Bevan implied that an agreement at any cost is a necessity, declaring that it would be better to face a world engulfed by communism than a world destroyed by nuclear warfare.

De Sedes . . .

It is ironic that a foreign policy inspired and dictated by fear should come from the lips of a man representing the proud nation that in 1941, with its back to the wall and its chin held high, fought back with its "blood, sweat and tears" against almost certain defeat by a dreaded Nazi juggernaut.

Mr. Bevan did not say why the West should be more fearful of a destructive nuclear war than the Soviet Union. He did not say what assurances we would have that Russia would keep any agreement she should make. He did not say just what of importance the United States should bargain, negotiate or compromise away.

How well grounded are the fears that trouble Mr. Bevan, and how politic are his means of overcoming them?

In all of recorded history there has never been a time when a region was dominated by two great powers that were not antagonistic. Greece and Persia in the Near East, Rome and Carthage in the Mediterranean, England and France in Western Europe are historical examples. Today the actors have changed and the region has expanded to include the whole world, but the principle of antagonism remains.

History also teaches us a further and an infinitely more disturbing lesson: always the two antagonistic powers have eventually gone to war. Moreover, this result has uniformly been hastened by an armaments race. Agreements and compromises and treaties and bargains have been utilized time and again to prevent this result, but they have never proved

sufficient. Why is there a better chance for their success today than in the past? Mr. Bevan did not say.

Russia itself has been party to numerous agreements for the purpose of staving off threatened conflict and easing tensions and producing more harmonious relations with other nations (the 1939 non-aggression treaty with Germany and the 1945 Yalta agreement with the United States are examples) and has failed to honor them. Why is there a better chance that she would honor any agreement that she should now make? Mr. Bevan did not say.

If paper agreements reached by negotiators at a conference table are not the means by which a lessening of tensions and a reduction of the hostility displayed by the two great world powers are to be brought about, what means can be employed to achieve this result?

The only reason two antagonistic powers have ever drawn together in bonds of friendship in the past has been because of the appearance upon the scene of a common enemy. Napoleon caused the rest of Europe to forget their differences and unite. A powerful and threatening Germany caused England and France to overcome their former enmity and become allies. And so the appearance of the Soviet Union as a common enemy has brought the United States and West Germany into close ties. The United States has been the common foe which forced Russia and China together.

Whence can come, however, a common enemy to force today's two hostile titans into each other's arms? There appears little chance that any third power will arise to challenge either nation in the foreseeable future. Consequently we must face the fact that the present antagonistic attitude exhibited by the United States and the Soviet Union will continue for an indefinite period.

Is there then no hope of preventing what history teaches must follow, eventual war between the two powers, which this time must be so terrible as to threaten the whole of mankind with extinction? There is, and it is more than a hope.

History may not provide us with adequate guidance today, for we tread a path we have never trod before. The war that the world must face in this, the nuclear age, is different to such a degree from war in any previous age that it cannot be thought of or considered in the old context.

War will no longer be used as an instrument of foreign policy when its use can no longer reward its user, when war must result in a worsening, not a bettering, of international position. If we can believe what our scientists have been telling us, the stage of military effectiveness and destructiveness of both the Soviet Union and the United States has reached such a point that a conflict between the two powers can no longer produce a victor and a vanquished, but merely two vanquished. When a means can no longer achieve its end, it will cease to be utilized.

A peaceful world, free from fear of nuclear annihilation will be brought about, not by paper agreements, compromises and concessions, not by the sacrificing of position and principle by the Western nations, as advocated by the naive Mr. Bevan, but instead by the growing realization that war will no longer produce profit, but self-destruction. As this fact gains acceptance by the leaders of both of the Great Powers, peace becomes not a hope, but a necessity.

Letter to the Editor

TO THE EDITOR OF THE RECORD:

Your informative issue of October 23 on the New York Constitutional Convention contains some wise words of caution by Professor Arthur E. Sutherland. It is certainly desirable to avoid further impairing our attenuated sense of history by carelessly discarding valuable clauses of the constitution in a blind fury to simplify. It is also very true that the distribution of political power between densely and sparsely populated areas is a pervasive problem with many facets which should not be sweepingly resettled in terms of short-run political considerations.

On the other hand, the present constitution is excessively laden with minutiae. Without change of substance or loss of a sense of history considerable simplification could be achieved, and the need for a continuous stream of minor, almost trivial amendments, could be eliminated. With respect to the basis of electoral representation, a periodic review of the situation to determine whether the

A decision handed down recently by the United States Court of Appeals for the District of Columbia Circuit has clarified the applicability of the ancient right of habeas corpus to all citizens, even those in military service. The decision, *Day v. Wilson*, 247 F.2d 60 (D.C.Cir. 1957) though brief, comes after six years of litigation.

In 1950 a Korean civilian was murdered. Day, an American soldier stationed in Korea, was charged with the crime. A year later he was found guilty and sentenced to death by a general court-martial. The proceedings were approved by military reviewing authorities and affirmed by the Court of Military Appeals, 2 U.S.C.M.A. 416 (1954). On June 26, 1954 the President of the United States approved the sentence and ordered it executed.

On August 10, 1954, while he was in Japan, Day filed a petition for a writ of habeas corpus in the District Court for the District of Columbia. On September 9, 1954 the court dismissed the petition, "it appearing that the court lacks jurisdiction to issue the writ." (247 F.2d at 61). In its argument before the bench, the Government had contended that the court lacked jurisdiction because "the petitioner is imprisoned in Japan, which is outside the territorial confines of the District of Columbia." (247 F.2d at 61). The Government also argued that Day's petition failed to state a basis upon which relief could be granted, because the proceedings against him were in full conformity with law. The district court did not rule on the second point, however.

Day appealed this decision to the United States Court of Appeals for the District of Columbia Circuit. Meanwhile, he was returned to the United States and confined at Fort Leavenworth, Kansas, where he filed another petition for a writ of habeas corpus in the United States District Court for the District of Kansas. This court first issued a writ, but later discharged it. On appeal, the order discharging the writ was affirmed, *Day v. Davis*, 235 F.2d 379 (10th Cir., 1956), cert. den. 352 U.S. 881 (1956), reh. den. 352 U.S. 913 (1956). The Tenth Circuit court conducted an extensive review of the court-martial record.

It was against this background that the appellate bench in the District of Columbia reversed the lower court's ruling in *Day v. Wilson*, by a 2-1 decision. Chief Judge Henry W. Edgerton, LL.B. '14, who was joined by Judge Charles Fahy, held that the district court had erred in ruling that it lacked jurisdiction to issue a writ.

Ordinarily, there is no appeal to civil courts from a judgment under the Uniform Code of Military Justice or its predecessor, the Articles of War. Congress created the Court of Military Appeals as the last resort for military personnel convicted by courts-martial, and gave to the federal courts no authority to hear appeals, grant certiorari, or accept certifications from military tribunals. But in this case, Day asserted in his petition that he had been denied basic constitutional rights in his court-martial proceedings.

The Burns Case

In meeting this dilemma, Judge Edgerton relied on *Burns v. Wilson*, 346 U.S. 137 (1953). There, some servicemen on Guam had been convicted by a general court-martial of rape and murder, and had been sentenced to death. After exhausting all remedies available under the Articles of War for review by military tribunals, they filed petitions for writs of habeas corpus in the District Court for the District of Columbia, alleging denial of due process during their court-martial proceedings. The district court dismissed after satisfying itself merely that the court-martial had jurisdiction over the accused and the offense. *Dennis v. Lovett*, 104 F.Supp. 310 (D.D.C. 1952).

Judge Edgerton recalled that on appeal, his own court had affirmed the dismissal by

Current Case

the lower court only after expanding the scope of review to include the full record of the proceedings. *Burns v. Lovett*, 202 F.2d 335 (D.C.Cir. 1952). When the case was before the United States Supreme Court, Chief Justice Fred M. Vinson noted that the Court had played no role in the development of military law, that having been left to Congress under the Constitution. But, he said, "The military courts, like the state courts, have the same responsibilities as do the federal courts to protect a person from a violation of his Constitutional rights." (346 U.S. at 142). The Chief Justice found from the record that the military reviewing authorities had given lengthy consideration to the claims then pressed before the Court, and held that this prior review was adequate. He affirmed the dismissal of the petitions.

Justices Hugo L. Black and William O. Douglas dissented, and called for a judicial hearing on whether or not coerced confessions were involved.

The importance of *Burns* seems to have been not in the result it reached — which was the same as in all courts below — but that federal courts must do more than merely satisfy themselves that jurisdiction existed, when an accused asserts a violation of his Constitutional rights. They need not review the record and decide the question for themselves, as Justices Black and Douglas would seem to demand; but they must determine that military reviewing authorities have given these questions adequate consideration.

Court had Jurisdiction

Turning again to the *Day* case, Judge Edgerton noted that subsequent to the district court's dismissal of the soldier's petition for lack of jurisdiction, his own court had decided *Cozart v. Wilson*, 236 F.2d 732 (D.C.Cir., 1956), vacated as moot 352 U.S. 884 (1956). This, he held, meant that the district court did have jurisdiction to issue a writ of habeas corpus for Day. Hence he remanded the case to that court for further proceedings.

Actually, the *Cozart* decision held that the district court had jurisdiction over a petition for writ of habeas corpus by soldiers in Japan awaiting trial by Japanese courts on criminal charges. Thus the case does not seem to foreclose the question absolutely, and Judge Edgerton might have expounded his reasons for holding it applicable to a soldier in Japan who had already been convicted by an American court-martial, and who had exhausted his statutory rights of appeal. There seems to be more involved than the fact that both petitioners in *Day* and *Cozart* happened to be soldiers in Japan.

Judge E. Barrett Prettyman dissented. He felt that the district court had ruled not that it lacked jurisdiction to entertain the petition, but that it lacked power to issue the writ. On this distinction, he felt, the lower court was justified in dismissing Day's petition.

"The papers now before us," Judge Prettyman wrote, "do not suggest any basis upon which the district court had power or authority to issue a writ of habeas corpus. It correctly entertained the petition for the writ, reviewed the record of the military proceedings, and concluded it had no 'jurisdiction' to issue the writ. No point within the compass of civil court jurisdiction is shown. Its judgment ought to be affirmed." (236 F.2d at 63).

Possible Positions

Several points of view emerge from this array of opinions. Even though the military tribunals have exhaustively considered objections raised by an accused, Justices Black and Douglas feel that a federal court should look at these objections for themselves. Judge Prettyman did not spell out his views. Although he believes that a federal court clearly has jurisdiction to consider a soldier's petition for habeas corpus, he seems to think that the circumstances are unusual which would confer upon it power to issue a writ.

The prevailing view, and most likely the best, is that federal courts should entertain a petition, and see whether the complaints of the petitioner have been accorded adequate consideration by the military tribunals. Congress has the power to constitute these military courts, and it included within them an appellate structure to deal with such issues as those raised by Day. To allow a federal court to reach an independent conclusion on the basis of the record would defeat the purpose of Congress when it set up the Court of Military Appeals. Only if this court, which is composed of civilian judges, fails to consider adequately the complaint of an accused that his trial did not meet constitutional standards, or perhaps renders a shockingly erroneous decision, should civil courts have the power to enter the field of military law.

The administration of justice in the lower echelons of the military has often fallen short of that which one expects in civilian life. Much might be said in favor of a complete overhaul of the system. But until this is done by Congress, it is better to leave problems arising from courts-martial primarily in the hands of the civilian judges sitting on the military's court of last resort.

—Oliver

J. D. HYMAN, DEAN
 BUFFALO LAW SCHOOL

BOOK REVIEW

(Continued from page one)

counter what he regards as the propaganda of insurance companies. Perhaps it will be reasonably effective for this purpose. Most of it is well and entertainingly written, especially where the book deals with its central themes — the personal injury claim, its preparation for trial, and the trial itself. The whole presentation is in the nature of a jury argument and not an appellate brief. I defer to Mr. Belli in gauging its persuasiveness as such; but if I were on the jury I would be antagonized by its bursts of intemperance and by the fatuous contention that higher verdicts could be indefinitely absorbed without raising insurance rates.

A Persuasive Book

In spite of these flaws there is much in the book I find persuasive. I am convinced, for example, that responsible segments of the plaintiff-tort bar deplore ambulance chasing and a host of other unethical practices including collusion with unscrupulous doctors and still crasser forms of suborning perjury and faking cases. I take at full face value Mr. Belli's vigorous support of safety campaigns and accident prevention. I think the author makes a good case for the lawyer's advancing of expenses to needy injured persons under conditions as they are at present. There are many other areas in which I have for some time made common cause with NACCA and the author. Together we deplore the plight of the uncompensated accident victim and the law's delays which unduly postpone his compensation. We join in condemning those who take undue advantage of this plight to make unconscionable settlements. We share approval of many rules which expand accident liability and cut down archaic defenses, as well as faith in the role of the jury in the process of expanding liability.

Demonstrative Evidence

What then of demonstrative evidence and what Mr. Belli calls "the adequate award"? Here my doubts and misgivings come in, but they go only to part of the area and need to be stated very carefully.

Demonstrative evidence is not new. It is a broad term which the author uses to cover many devices for bringing home to the jury's senses the facts of the accident, or the factors which bear on damages. These may be photographs, models, blackboard computations. Much of this simply represents a careful and imaginative preparation and presentation of the case. But some of the demonstrations are particularly gruesome, and some of the devices highly inflammatory. This too has played a part (though not an altogether admirable part) in the history of advocacy. What is new here is not so much any of the component parts but the thoroughgoing, concerted, systematic combination of all the devices (ranging from the good to the barely tolerated) for getting the utmost out of the existing system. Dean Prosser has called it the use of Hollywood techniques which make of the trial an "Epic of the Supercolossal."

The results attest the success of the methods. Mr. Belli tells of verdicts (many obtained by him) which range all the way up to \$420,000; and he thinks that for the future "the trend is upward."

Are such verdicts defensible? It is hard to say that they cannot in many cases be defended if the rules of the present system be taken at full face value and pushed to their ultimately logical conclusions; and if allowance is also to be made for the

legal fees currently charged for obtaining such settlements and judgments. Yet the verdicts are enormous, not only in the eyes of insurance companies, but also in the view of a good many disinterested persons (disinterested, that is, except in the sense that any automobile owner is affected by liability insurance rates). The overall impact of Mr. Belli's "adequate award" on the modern scene invites serious appraisal.

The thing that bothers me is that Mr. Belli and others who espouse his



Thomas F. Lambert, Jr.
Editor-in-Chief
NACCA Law Journal

point of view seem, quite unwittingly, to be in the position of men who want to eat their cake and have it too.

The system we have at present theoretically involves liability on the part of wrongdoers and allows recovery only to the innocent. The question of recovery is traditionally left to the jury, but tradition has also accorded to the judge a supervisory power over verdicts, lest the jury transcend the bounds of reasonable judgment in this matter of liability. Damages — being exacted from a wrongdoer — are supposed to compensate his innocent victim fully for all the harms resulting from the wrong; and this includes a great deal more than the economic loss. The jury is to fix the amount of damages and there is no legal ceiling on the amount except that here again tradition accords to the judge a supervisory control to keep verdicts within the bounds of reason.

The system has its weaknesses and shortcomings but it does contain within itself its own checks and balances.

Liability Without Fault

I do not think the existing system is the best solution for our current accident problem. I see a better alternative in a scheme of liability without fault for important segments of our accident law. But if the basis of liability is to be changed, I believe that the substitute system must also be one with reasonable checks and balances, and I should expect the new dispensation to limit somehow the amount of recovery to the minimum needed for adequate care, cure, and rehabilitation of the victim and his dependents from the effect of his accident.

I am not at all sure that these are the only alternatives. I can see the possibility of modifying the present system so that it will meet human needs in more cases. To do this it must expand liability and widen the base of compensation. But to retain its balance, it must also, I think, approach a different, more moderate basis for awards. Mr. Belli parts company with me at this point. He would take all the benefits (to plaintiffs) of the present system and reject practically all its restraints. Not only would he expand liability and cut down defenses (until liability was almost strict) but he would also retain the principle of full awards for all items of damage including not only economic loss but also pain, suffering, humiliation and so on. And to implement this he would retain the jury's

historic role in fixing damages, shorn of the restraints historically put upon the jury by the courts.

Insurance Companies Reply

To this proposal the insurance companies say "... if the combination of liability without fault and awards without restraint continues and expands, then the insurance rates will rise to levels beyond the reach of the average motorist..." and this may well force abandonment of the present system. Mr. Belli answers that the insurance business is now so profitable that it could well absorb the larger verdicts, that premium rates had actually gone down after the trend towards larger awards, and that railroads and steamship lines and their insurers have prospered in spite of FELA and the Jones Act (which come very near to Mr. Belli's ideal).

Mr. Belli's answer does not assuage my doubts and misgivings. The automobile liability insurance business has not on the whole been very profitable; automobile liability insurance rates have risen pretty steadily since the war; rates have again been materially increased since the temporary downward flurry which was so timely for Mr. Belli's argument. And as a matter of common sense, it is hard to see how it could be otherwise in the long run.

Beyond that I wonder whether a continuation of the present trend may not weaken the jury system. The battery of devices and demonstrative evidence told of in this book (and in *Modern Trials*) includes much that is calculated to exploit to the full the very characteristics of the jury that thoughtful men recognize as its greatest weaknesses. I am inclined to think that the present system has within itself the seeds of its own possible destruction, and that its continued existence may well rest on a pretty delicate balance — depending on pragmatic considerations rather than

theoretical consistency. And I suspect that pushing any one of its aspects to its bitterly logical conclusion will upset the balance. Defendants did this a half century ago when their successful manipulation of the logic of fault and dilatory procedural devices pushed things so far in the field of industrial accidents that workmen's compensation was brought forth. The "adequate award," as this book defines it, may generate enough pressure to bring about some such result in the field of automobile accidents — a result which would trouble Mr. Belli a lot more than it would me.

Unanswered Question

There is one other serious inquiry which this book suggests, only to leave largely unanswered. What happens to the clients' share of the large awards the author writes about? We may assume, no doubt, that past bills are usually paid out of them. Beyond what is needed for that, the award is supposed to take care of future bills and future needs. This calls for a prudence in investment and a self-restraint about foolish spending that are not often found among ordinary mortals who have never been trained along such lines. I rather expect that a much smaller sum disbursed in continuing payments to meet continuing needs would in most cases actually do a better job of meeting those needs than some of Mr. Belli's "adequate awards." The only study I know of that sheds any light on this fundamental question concluded that the disposition of lump sum recoveries "is not generally such as to offer assurance of a stable substitute for the loss of wages incurred in the severe and fatal injuries."

Would it not indeed be ironical if the "adequate award," which the motoring public is paying for so dearly, proved to be entirely inadequate after all, not because of its size but because of its nature?

— End

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BEVAN

(Continued from page one)

verifiable and polluted." Thus, he reasoned, "the free world has lost control of its destiny and could be wiped out by a decision of which it was neither consulted nor a part. Present conditions being what they are, if the atmosphere gets much more sultry there is the possibility that the decision will be taken by a few politicians."

2. Given the above picture, Mr. Bevan asserted that "it is no longer an argument about communism, socialism or capitalism; it is an argument about the survival of the human race. We still talk," he continued, "as if the differences between capitalism and communism are so great as to transcend all other considerations. I can not see anything so stupid as harboring animosities that may destroy us all. It is insanity to carry the differences between us so far as to destroy ourselves."

Function of War

3. The techniques of war have been taking us to where we now stand — at the crossroads, he said. "The historical function of war has become irrelevant and this is a situation we aren't prepared for intellectually or emotionally. Historians have no advice for us. Lawyers have even less. Lawyers have learned to accept first principles but very rarely promulgate them. Religious leaders disagree among themselves."

4. "If it is a fact that the differences between nations can't be resolved by traditional techniques of war, then we must appraise the situation and invent other methods of approach. If we can't settle differences by force then we have to discuss in order to agree and for this to happen we have to meet." He denied the absence of any common ground on which the Soviet and Western worlds could negotiate. He capped the common factor as "the imminence of universal extinction unless we can settle our quarrels by negotiation."

5. "By this analysis," he argued, "the policies of nations are condemned . . . Against this background — the survival of the human race and the renewal of the vitality of democratic institutions — it is nonsense," he declared, "to exclude the representatives of 600,000,000 of the human race from the United Nations." He pooh-poohed some reasons for exclusion (irregularly founded? — how about the United States; killed Americans? — so did Germany, and the U. S. has wanted Germany armed since 1951).

Emotional Attitudes

"These emotional attitudes, these patterns of behavior are far too primitive to stand up in the modern world. So terrible and grim are the consequences, the scale of the problem is so huge that the easy way out is escapism. But it must be faced and the question is whether we have the stature." It is no longer a matter of party politics, ideology or ism, he stated.

These were the thoughts which he tried to impress upon Krushchev in their recent Yalta meeting. He told the Soviet chief that the past world wars which were followed by great communist advances are no measure of future conflicts which would see both communism and capitalism go down.

This was 'Nye' Bevan's message to Americans. It repeatedly stressed only one facet of the world problem — that of cultivating a visceral realization of danger along with an attitude of negotiation, of trying to get at differences in order to mitigate or get rid of differences.

He dealt with attitudes and predispositions and not with policies and programs, for as he put it: "You must first believe in the practicability of

negotiation before you get more specific."

Hewing to this theme with persistence, he gave less than direct answers to many of the questions thrown at him in rapid fire succession. Asked for a personality assessment of Krushchev, he likened him to some higher U. S. executives in attitude.

Asked about the limited war concept, he replied that it was a philosophy that was born in a university and would die in a university.

Queried concerning world reaction to our integration problems, he gracefully replied that "civilized people all over the world are happy at the United States attempt at integration."

Peace at Any Price

He strongly denounced one questioner's attempt at summing his talk up as "peace at any price." "Individuals have died so that society might survive but if society itself dies then what is the sacrifice worth," he asserted. "A cause which results in extinction is no cause."

Along with official Labour Party policy, he favors suspending Britain's H-Bomb tests.

One particular question which to many seemed out of context nevertheless led to some instructive inferences. Mr. Bevan was asked whether he would guarantee the western frontiers of Poland. He gave a two-fold reply. First, he would rather guarantee the western frontier than risk fighting about it and second, he favored no shifting of political boundaries which incurred risk of genocide.

Pressed to comment on communism's avowed intention to dominate the world, he sidestepped cleanly and went on to express his belief in the occurrence of deep changes in Soviet social structure which the West should try to encourage. He gave an example: leaders are no longer deposed by judicial murder but by resignation. This, he said, shows Soviet society moving in the right direction.

Although the audience's reception was enthusiastic, there were some disappointments in Mr. Bevan's reluctance to freely discuss questions about policy or what follows "a disposition to negotiate." For others his conceptualization of the present world situation was too general and too simple. There were perhaps more alternatives to be weighed. A position which poses the challenge as "Both sides must want to negotiate" may not be as fruitful for probing the roots of the problems as the assertion in reverse — "Why don't both sides want to negotiate?"

Mr. Bevan did not appear pleased by some of the crowd's reactions and questions. He referred to the former as "adolescent hisses" and the latter as if they had come directly from the headlines of the daily newspapers.

FORUM

(Continued from page one)

persons had dispersed throughout the hall.

Mr. Wolfe declared that "According to the conditions under which we sold season tickets, we assumed no obligation to hold reserved seats for season subscribers beyond ten minutes before the program began. Unreserved spaces were available for such subscribers until the breakthrough which took place after that time."

"Under the circumstances and due to the fact that it would be impossible to determine which of our subscribers obtained admission to the hall, no adjustment can be made."

The Forum has announced that it will honor tickets numbered 019040 through 019421 at its next scheduled program on December 6, when the speaker will be Senator J. Strom Thurmond, Democrat of South Carolina.

"We wish to apologize to all those who were deprived of the places to which they were entitled by the deplorable rudeness of the persons responsible for the disorder," Mr. Wolfe said.

Law Wives

Claud Bayard of Design Research will address the next meeting of the Law Wives on Wednesday, November 13 in the large meeting room of Harkness Commons at 8 p.m. Mr. Bayard will talk on decorating the modern home.

BELLI

(Continued from page one)

has become something of a legend among West Coast attorneys.

Much to the horror of insurance companies and other professional defendants he has spearheaded a drive to spell out for juries and judges the meaning of compensatory damages.

Recognizing the difficulty of vividly depicting pain and suffering and other elements of tort cases in words, Mr. Belli has won a reputation of making highly effective use of empathetic evidence.

A hundred square foot aerial photograph of a street intersection, a drawer full of knives subpoenaed by *duces tecum* with the Captain of the Guard of San Quentin prison and a butchers-paper wrapped artificial leg, all have figured in Belli-directed litigation.

Pictures have been found useful in tort cases by Mr. Belli, who says, "You have a duty to go into the hospital and take a picture of your client as he lies in the hospital bed. If the doctor does not cooperate in taking off the bandages where there is no danger to the patient's well-being, a



Roscoe Pound

court order should force him so to do, so that the jury will see the true picture and not have to speculate."

The jury, a most useful tool in Mr. Belli's trade, is characterized by him as "one of the great institutions left in the world today." Mr. Belli undoubtedly subscribes to the old adage that it is not profitable to look a gift jury in the mouth.

Admission to the program will cost 50c. Members of the Student Bar Association will be admitted free.

—Mulroney

Alumni Notes

LL.B. '33 — Harold B. Gross was married to Virginia Bleh North on October 3 in New York City. Mr. Gross was General Counsel of the Department of the Navy until September 1953, when he resigned to become head of the legal department of the American Cyanamid Company.

LL.B. '50 — Richard J. McNamara is with the legal department of the Food Machinery & Chemical Corporation, 161 East 42d St., New York City.

LL.B. '54 — Anton W. Bigman is now solicitor for the Braddock, Pennsylvania School District. He is also engaged in the general practice of law with offices at 605 Braddock Avenue, Braddock, Pennsylvania, and at 1211 Plaza Building, Pittsburgh.

— Burton N. Bromson is currently associated with the firm of Dwight, Royall, Harris, Koegel & Caskey, at 100 Broadway, New York City.

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WILLIAMS

(Continued from page one)

John Dioguardi was exposed before the nation for four solid hours on television when the questioners all knew he wasn't going to answer their questions.

"I believe the apex of success in 1957 for a congressional committee is to call a witness who will testify absolutely nothing to a series of questions upon which the committee already has the answers," Mr. Williams declared.

Proper Function

A legislative committee has no right to arrogate to itself the function of a court or a grand jury, Mr. Williams warned. Despite the *Watkins* decision of the Supreme Court last spring, he said, many members of congressional committees have honestly come to the conclusion that their function is to expose to public view and to subject to public castigation people they deem worthy of the nation's scorn. However, Mr. Williams pointed out, "It is no more right to lynch a guilty man than an innocent man."

Wire-tapping used as a tool of law-enforcement agencies was characterized by the attorney as a "cancerous threat" to the civil liberties of every individual citizen. It endangers the lawyer-client, the doctor-patient, the husband-wife, the penitent-confessor relationship.

Mr. Williams charged that the FBI uses wire-tapping as a standard procedure in certain types of cases, and has been using it despite a prohibitory Federal statute on the books for 25 years. "The Bar should raise its voice in anger" at the practice, the speaker told his audience.

Mr. Williams focused attention upon the "terrible inequity" in American criminal procedure. The attorney said that in the defense of a corporate bankroll he could take the testimony under oath of the plaintiffs before trial, learn the names and take the testimony of all witnesses and could gain access to all relevant documents. In criminal cases, however, in the defense of a man's liberty, reputation or even his life, these avenues of discovery are not open to him. "Discovery is a one-way street — pro-Government — on the criminal side of the court."

Secrets Withheld

Secret testimony taken before a grand jury and denied to the defendant hands the prosecutor a ready-made case, he said. The defendant, if justice is to be granted him, should have a vehicle of discovery analogous to that of the government. Mr. Williams praised and defended the recent *Jencks* decision of the Supreme Court and attacked the proponents of overriding congressional legislation.

Mr. Williams presented for proof of his contentions figures showing that of 31,811 people accused in Federal courts of crimes in 1956, 90% were convicted. In civil cases, on the contrary, the Government won only 50% of its cases.

"The bar," declared Mr. Williams in measured tones, "has not challenged these evils because it has become obsessed as a profession with property rights to the exclusion of human rights."

The defense of liberty in America, he charged, is losing its prestige while the defense of property is paying off in dollars. He accused the Law Schools of fostering the idea that it is "declassé to stand beside the bar of justice with one accused of crime," and accused them of over-emphasizing property rights in their curricula and ignoring the tremendously important subjects of criminal law and civil rights.

The famed defense attorney de-

plored the rise on the American judicial scene of a new and foreign concept which he termed "guilt by silence."

Organized assaults by congressional committees have helped to overthrow the presumption of innocence of silent defendants, Mr. Williams charged. It is now considered "suicide" for a defendant in a criminal case to refuse to take the stand. In criminal cases Federally prosecuted in 1956 in which the defendant failed to take the witness stand, he pointed out, over 99% were convicted.

The attorney attacked the recent banning from the mails of *Confidential* magazine by Postmaster General Arthur Summerfield, declaring that if the Postmaster General can ban *Confidential* magazine from the mails without a hearing in September, it can ban the *Democratic Digest* in October and the *HARVARD LAW RECORD* in December.

Character Witness

In answer to a question from the audience, Mr. Williams stated that Joe Louis was one of a number of character witnesses he intended to call for the defense in the recent trial of Teamster's President James Hoffa.

After Louis had made the trip to Washington, the decision to call him was reversed. Thereafter Joe came to the trial and sat near the back of the courtroom entirely on his own. Mr. Williams expressed doubt that the jury were even conscious that Louis was there.

In answer to another question he stated that he was opposed to TV cameras in the courtroom. He declared, moreover, that in his experience legislative hearings were conducted in a more legalistic, more judicial and fairer fashion when there was no TV or radio coverage.

Mr. Williams stated that he saw no threat to civil liberties by what has been called "trial by headlines." In his experience, he said, he has found press trial coverage fair.

Mr. Williams was introduced to the audience by Professor Richard H. Field.

—Mulroney

SATELLITE

(Continued from page one)

the establishment of a manned station on the moon by one or more powers might raise serious problems.

However, unless scientific progress exceeds all expectations, valuable precedents for interterrestrial lawyers may be established whenever the conflicting claims in Antarctica are resolved. That is, provided that the analogy between a camp on the polar ice and a station on the moon will be accepted by judges of the future.

—Oliver

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