



Harvard Law School Record



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PRICE TEN CENTS

U. of Chicago Jury Study Is Discussed at Forum

The tape recording of jury deliberations by investigators of the decision-making process was defended Friday night at the Harvard Law School Forum by Dr. Karl N. Llewellyn of the University of Chicago. The speaker Llewellyn was questioned by a panel of three Law School faculty members, Professors Albert M. Sacks and Abram J. Chayes, and Norval R. Morris, who is Ezra Ripley Thayer Teaching Fellow. Dr. Llewellyn's two-hour speech proved lively and provocative.

Llewellyn, who is not director of the jury project itself but who has been studying the decisional process of appellate courts and arbitration tribunals since 1928, explained how jurors waiting to be impaneled for real cases were entertained by deliberating on recordings of mock trial transcripts played to them. In turn the mock deliberations were recorded and studied.

Kept Adequate Safeguards

"We learned a good deal about how the jury system operates from hearing mock deliberations," argued Llewellyn. "But how do you know this is how real jurors act, you Ivory Tower sociologist? We had to have a sampling of how a jury deliberates in an actual case where the jurors do not know their discussion is being recorded. This was the only way to avoid untrustworthy guesses. We did not record the deliberations of criminal juries; only those of six juries in civil cases were made subjects of the study. The judge and both counsel consented in each case. The chief judge of the circuit okayed the project. The trial judge was the sole person in charge of the recording device, and he did not hear the deliberations until all post-trial motions were disposed of. Counsel were never allowed to hear these recordings. All identifying names were changed. No publicity was given until these recordings were completed, which was more than a year ago."

Challenged from the Floor

When the discussion was thrown open to the audience, Mr. Robert Wolfe, a Teaching Fellow in Philosophy, arose to challenge Prof. Llewellyn: "When the jurors in those six cases walked into the jury room they assumed that no one would ever hear their deliberations. The court in effect lied to them by letting



Albert M. Sacks

them deliberate without knowledge that their words were being recorded. This was a breach of faith."

"A reasonable person could hold your view," replied Llewellyn, "but I cannot agree. This is no different from letting medical men hear recordings of psychiatric patients' conversations with their doctors."

Cites Kinsey Report

"Then ought not Dr. Kinsey be allowed to substantiate his study with observations of the actual thing?" queried Wolfe.

"That would, at least, be indelicate," admitted Llewellyn.

"Moral rights, such as privacy in the jury room, are even more subject to indelicacies," Wolfe argued.

"Not at all," concluded Llewellyn. "There is a difference between rights

(See FORUM on page four)

Young Democrats Will Conduct Poll To Pick President

The Harvard Law School Democratic Club has announced plans to conduct a presidential preference poll of law students on November 29. Balloting will take place from 9 a.m. until 1:30 p.m. at four locations: Austin Hall, Langdell South, Langdell North and Harkness Commons.

Voters will have a chance to indicate their choice for chief executive from among a list of the six top contenders in the two major parties: Stevenson, Kefauver and Harriman for Democrats; Nixon, Warren and Knowland for the Republicans. In addition, these major candidates will be paired off against each other so that the student can express an opinion on each of the possible combinations of presidential opponents that might arise out of the conventions.

Assume Ike Won't Run

The hypothesis upon which the questions are framed is that President Eisenhower will not run. Provision has been made for writing in candidates not listed on the ballot.

Ralph Pagter, president of the Law School Democrats stated that the geographically representative character of the student body would make the poll an excellent index of national opinion. He estimated that probably between seven and nine hundred students would take part in the balloting.

Thanksgiving Dance

Another in the series of informal dances under the sponsorship of the Law School Dormitory Council will take place in the main lounge of the Harkness Commons tomorrow night.

Bob Norris, whose band has provided the music at most of the Dormitory Council functions this fall, will play from 8 p.m. until midnight. Intermission entertainment is also planned.

The dance will be to all students, even those not holders of Dorm Council activities cards. Non-residents of the dormitories may obtain guest tickets from members of the Council.

Lawyer Cites Demand For Trial Counsel

James D. St. Clair, LL.B. '47, a counsel for the Army in last year's Army-McCarthy Senate hearings, told the Student Bar Association Tuesday that the trial bar is "reluctant" these days to represent unpopular clients.

Speaking at a luncheon meeting of the SBA in the Mallory Smith Room of the Harkness Commons, Mr. St. Clair decried this tendency and declared the right of even the guilty to a competent defense is an important bulwark against arbitrary government.

In the course of a talk on the "Trial Advocate", Mr. St. Clair said this "reluctance" is less common among the younger members of the bar, and he expressed the hope that Harvard's present law students will avoid it, when they graduate and enter practice.

Why should a lawyer refuse, Mr. St. Clair asked, to represent a client who comes to him in good faith and is prepared to offer an adequate fee? To represent a person who may be, or even is, guilty is not to say that the attorney will resort to perjured testimony or to other unethical practices.

"There is," he said, "of course, no excuse for such techniques. But if a lawyer, in

(See ST. CLAIR on page three)

Trial Decision Affirmed In Mock Defamation Case

Dean Erwin N. Griswold's string of model appeal victories was broken Tuesday evening when the Ames Supreme Court affirmed the lower-court decision in the case of *Thompson v. White*.

Professor Archibald Cox, attorney for the plaintiff-appellee, was the man who made Dean Griswold's appellate record 5 and 1. But it was the instructions of Federal District Judge Francis J. W. Ford, who presided at the model trial, which withstood all attempts at reversal.



Calvert Magruder

The hearing, which took three hours to complete, was held before a three judge tribunal. Sitting on the bench were Judge Calvert Magruder, Chief Judge of the U. S. Court of Appeals, First Circuit, Dean George F. Curtis, Dean of the British Columbia Law School (Canada) and visiting professor of law, and Stuart C. Rand, LL.B. '12, of the Boston Bar.

The appeal, held before a capacity audience of 500 first year men, marked the end of a two month course of instruction on trial practices and procedure given by the teaching fellows. The hearing Tuesday evening was also intended as a model for first year men who started to argue their Ames cases last Monday evening.

The case concerned the publication of a news story about the fact that the plaintiff had confessed to being a participant in germ warfare in Korea. The defendant, a newspaper editor, overheard several politically prominent persons in the community offer the plaintiff the opportunity to run for civil office. The editor called the plaintiff into his office and suggested that if he did not withdraw from seeking public office it would be his duty to print the story about his confession. During an altercation between the two, the plaintiff tried to take the editor's story away with him. In attempting to recover the story, the defendant tripped and hit his eyeglasses against a piled stack of news volumes near his desk. The blow broke the defendant's glasses and a splinter of glass entered his eye. The defendant's eye had later to be removed. The story was published several days later.

Jury Instructed

In the charge that he gave during the trial, Judge Ford told the jury that a newspaper has a right and duty to publish the facts of a news story about persons in public life. This right, however, in a case such as this, is waived if it was motivated solely by malice. The jury found for the plaintiff in the sum of \$550. At the trial the plaintiff was represented by Prof. Richard H. Field, and the defendant by Prof. Arthur E. Sutherland.

The appeal revolved about several issues. They were: Does invasion of privacy constitute a cause of action in the Commonwealth; even if a right of privacy should be recognized in Ames, does it extend against newspaper publication of matters of public interest; does the presence of malice limit the right to publish and is it an issue for presentation to the jury; is a tort-feasor or wrongdoer liable for damages resulting from injury to the party against whom the tort was committed, when such injury is a result of that party's reasonable efforts to prevent commission of the wrong; or when such injury occurs during the course of the commission of the wrong?

Braucher Bows

Professor Robert Braucher did well, but not quite well enough, in his bid for the Republican nomination to the Massachusetts House of Representatives.

Running in his home town of Belmont, Mr. Braucher polled some 1200 votes. Walter Anderson, the winner, received 1800 votes, while a third candidate, William Haseltine, ran a poor third with 700 votes.

Mr. Anderson will compete in the general election with Boston University law student Paul J. Redmond, the Democratic nominee.

Foreign Policy and Our Law Schools

Earth Appalls Martian Guest With "United" Nations Concept

By LOUIS B. WEHLE

(The article below is taken from Louis B. Wehle's remarks last June to a panel discussion of "International Law and the United States" at the annual Institute of the University of Michigan Law School. Mr. Wehle has had long experience both in private practice in Kentucky and New York and in government service during the two World Wars.)

On a bench in the park a few weeks ago, I was sitting alone reading an early Latin edition of Grotius; and then I had the following experience which I shall recount from my *precis* made immediately afterwards.

A pleasant, eager-faced gentleman of middle age, unconventionally dressed, strolled over from where he had left a mechanical device. He sat down, after engagingly asking me whether he might, and said, "I have just this moment landed here from another planet; and I hope I am so fortunate as to find a man who can answer this question: I see that some of your islands and continents are thickly inhabited, which means that there must be a tendency to disorder and destruction, both among individuals and among peoples. Have you methods for preventing this?"

"I assume, sir, that you come from the planet we call Mars," said I. "I shall with pleasure try to answer your inquiry. In the first place, down here on the Earth, we have two chief instincts and two abiding and recurrent passions. First, there is the instinct of self-preservation." He nodded. "Then, you perhaps know, there is the sex instinct." "Yes, yes, quite," said he. "Then we have the passion for beauty

and the passion for justice. In addition, we have, and sometimes apply, religion as the spiritual influence for guiding, reconciling and controlling these four pervasive emotional forces amid our inner and external conflicts.

"So much for the background, Mr. Mars, if I may so address you. Now to answer your question, whether we have methods for preventing disorder and destruction: Some nations have achieved internal order through systematized rules called laws. An individual violating them, either will be punished by the State; or he may, on private complaint, be enjoined from, or have to atone for, such violation. Those nations we call civilized. In the majority of these, that is,—in what we call the Roman-Civil law nations,—the rules have, in the

(See FOREIGN POLICY on page four)

Evidence was received at the hearing that the Attorney General's list has been misapplied in loyalty cases in many parts of the country. The Chief Counsel of the Senate group, Lon Hocker, pointed out that although thirteen states, the District of Columbia, Hawaii and four cities had decreed that members of the listed organizations were subject to suspicion as non-loyal citizens, court decisions had definitely indicated that such membership did not provide an absolute ground for bearing or dismissing a person from a job.

However, Mr. Gambrell asserted that the list was not for the sole factor considered by the Bar Association, and that knowledge of an applicant's membership in one of the organizations was only a "flag" to show that the individual's integrity needed further checking. This checking is done primarily through state delegates of the A.B.A., and a decision on the application is made on the basis of all the testimony.

Officers of the Court

While pointing out that some applicants who had formerly belonged to a listed organization had been accepted into the Bar Association, Mr. Gambrell stated that it was proper to require such information because attorneys were "officers of the court" and the A.B.A. wants "no member whose purpose it is to destroy our laws and our country."

At the hearing, Mr. Gambrell also was questioned about the recommendation by an A.B.A. committee that attorneys who invoked the fifth amendment be disbarred. "Any man who seeks to be an officer of the court," Mr. Gambrell declared in defense of the suggestion, "comes with bad

(See GAMBRELL on page four)

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Our Principles

This week marks the first of twelve issues to be published by the newly elected Board of the RECORD. We believe that a real need is fulfilled by a publication such as ours. It is appropriate for us at this time to restate briefly some of the principles upon which our newspaper is based.

Our news and features are geared to serve both the Law School community and our alumni in all parts of the world. It is our purpose not only to inform but also to entertain and inspire the readers of our columns.

In the belief that our opinions have some impact, we continue to adhere to an editorial policy which is at once vigorous and constructive. Our columns remain open to the comments alike of those who agree with us and those who disagree.

We uphold those ideals of free thought, free speech, fair play, and integrity which characterize Harvard Law School and the legal profession.

Something of Value

The RECORD is glad to have had the opportunity to hear Professor Llewellyn defend the University of Chicago's research on the operation of the jury system and explain the constructive achievement of that research project.

It is unfortunate if the distressing reaction to the "jury tapping" aspects of that program has embarrassed it in an undoubtedly valuable study.

We should like to reiterate: the RECORD believes a study of this kind is valuable and needed; its results and activities should be intelligently discussed; such discussion will not be furthered by blithering references to dark and sinister Communist influences working toward the destruction of a great and revered institution; finally that there may be dangers in the introduction of microphones into jury rooms, and that these dangers should be dispassionately analyzed. Professor Llewellyn has made no small contribution to that analysis, and we are grateful to him.

We hope the University of Chicago's investigation continues. We are sure it will produce constructive results. We are not sure whether the introduction of microphones into jury rooms is free of danger; but if it is, and the information thus gained is of value, then we are not opposed to it under adequate safeguards.

We ask only one thing: that the patient be examined, not dissected.

Gallery

GEORGE F. CURTIS
Visiting Professor of Law



In our midst this school year as Visiting Professor of Law is George Curtis, the personable Dean of the Faculty of Law of the University of British Columbia, Vancouver, and one of the foremost law educators of Canada. He is teaching a section in contracts and taking part in one of the seminars on Income Tax Law.

He was born in England in 1906 and came to Canada as an infant. He received all his schooling in Saskatchewan, including the LL.B. degree in 1927 from the University of Saskatchewan. In 1928 Mr. Curtis went to Oxford University in England on a Rhodes Scholarship; there he received the degrees of B. A. in Jurisprudence and B. C. L.

At the completion of his studies at Oxford he returned to Saskatchewan, where he practiced law for a short time and then performed what he called "some chore jobs" in the provincial government. In 1934 Mr. Curtis began his career of teaching law by joining the faculty of the Dalhousie Law School in Halifax, Nova Scotia.

The really exciting event in Mr. Curtis's legal life was his founding of the University of British Columbia Law School. The decision to start a law school at U. of B. C. was made in August, 1945, and Mr. Curtis was immediately secured for the task. It was expected that the war with Japan would go on for some time and that he would have at least a year in which to set up the new law school. Happily and unexpectedly the war ended that very month, and he had but three weeks in which to get the school open.

There were no books and no buildings, and practically no teachers were available. For a law faculty Professor Curtis had to rely on local judges and members of the bar. When the school first opened, twenty students were expected; eighty-six enrolled, almost all of them veterans.

The enrollment stood at over 400 for several years after World War II. Now there are about 225 students in the school, with the number gradually rising each year. There are seven full-time faculty members, a law librarian, and a part-time faculty of two judges and ten practicing lawyers. The library, which now has 40,000 volumes, is probably the most remarkable aspect of the school's ten-year growth.

From 1950 to 1952 Prof. Curtis served on the four-man Minister's Committee on Combines Legislation in Canada, appointed to study the Anti-trust laws of Canada and the problem of resale price maintenance. The Committee brought in a report in 1951 calling for the outlawing of resale price maintenance and a report in 1952 advising revisions in the anti-trust law of Canada.

From time to time he has acted as legal adviser to the Department of External Affairs, which is equivalent to our State Department. He was one of the founders and was first president, in 1951, of the Association of Canadian Law Professors. Professor Curtis takes an active part in Canadian Bar Association affairs and is a member of the CBA Council, which corresponds to the American Bar Association House of Delegates. He holds the honorary degrees of LL.D. from the University of Saskatchewan and Dalhousie University and D. C. L. from the University of New Brunswick.

Professor Curtis married the former Doris Mageston of Halifax, Nova Scotia in 1940. They have three sons and a daughter.

—Friedman

Off the Record

Prof. Scott: Oh, no. To do that, A would have leaving all of his property to B in trust for C. If the testamentary disposition is held invalid, does B keep the property?

Student: No, I think it goes back to A.

Prof. Scott: Oh, no. To do that, A would have to be resurrected, and even a Court of Equity can't do that.

Current Case

INCOMPETENT COUNSEL

Can a criminal defendant get a new trial on grounds of incompetent counsel? *People v. Morris*, 3 Ill.2 437 (Sept. 1954), sheds some light on the question. Defendant Morris, convicted of assault with intent to commit murder, was granted a new trial under the Illinois Post-Conviction Act.

"The conduct of counsel in a criminal trial in a State court may be such as to amount to the defendant being deprived of due process of law in violation of the fourteenth amendment of the Federal Constitution. It has been established that the assistance of counsel may, under certain circumstances, be an essential element of due process. (Citing cases)..."

"There are many Illinois cases where alleged incompetency of counsel has been urged on writ of error as a reason for setting aside a conviction. There are two broad categories of these cases: (1) cases wherein the defendant was represented by counsel of his own choice, and (2) cases wherein the defendant was represented by counsel appointed by the court. A different rule has evolved for each type of case.

"Where the defendant selects his own attorney the court has held, almost without exception, that the failure to exercise care and skill in the trial of the case does not afford a basis for reversing a judgment of conviction. (Citing cases)..."

"A different view is taken, however, in those cases where the defendant is represented by court-appointed counsel. In general, this court has held it to be the duty of the trial court to see that counsel is assigned who has sufficient ability and experience to fairly represent the defendant, present his defense and protect him from undue oppression. *People v. Blevens*, 251 Ill. 381. Convictions were reversed in the following cases based at least in part upon incompetency of trial counsel appointed by the court: *People v. Blevins*, 251 Ill. 381, (attorneys failed to object to improper evidence); *People v. Gardiner*, 303 Ill. 204, (attorney failed to object to improper cross-examination and argument); *People v. Winchester*, 352 Ill. 237, (attorney failed to object to prejudicial hearsay evidence); *People v. Schulman*, 299 Ill. 125, (attorney failed to lay proper foundation for the introduction of valuable impeachment evidence)..."

"... However, based both on precedent and reason, we believe that in order to sustain his position here the defendant must clearly establish: (1) actual incompetency of counsel, as reflected by the manner of carrying out his duties as a trial attorney; and (2) substantial prejudice resulting therefrom, without which the outcome would probably have been different. Due to the nature of the inquiry it is hardly possible to be more definite, and each case will have to be judged on its own particular facts as they appear in the context of the proceeding under consideration.

"Nor do we perceive any justification for counsel here not checking records or otherwise making an investigation in order to determine if the defendant could avail himself of rights under the statute. Assuredly, a competent attorney might, due to his concentration of efforts or otherwise, overlook the statute's applicability to a particular factual situation or be mistaken regarding said application. However, where the omission is coupled with meagre preparation and scant attention to the case, as shown here by the attorney's own testimony at the hearing, such failure cannot be written off as a mere error in judgment. This is particularly true of an attorney acting as public defender, for in such capacity he is presumed to possess a degree of expertise in the field of criminal law and is expected to be zealous in defending the rights of those whom he is assigned to defend.

"Moreover, there is no doubt but that the defendant has been prejudiced by reason of said incompetency. For it seems to be conceded that had

a timely motion been made the defendant would have been entitled to his release. Significantly, his co-defendant was released pursuant to the statute. "We reiterate that our decision rests upon a consideration of the particular facts of this case. We do not mean to criticize generally the public defender of Cook County, whose office unquestionably is staffed by able and conscientious attorneys who day after day perform valuable, and usually unsung, services for those whom they are assigned to represent. We simply hold that in this specific instance the convictions were obtained in proceedings which infringe the constitutional rights of the defendant, and, therefore, they must, in accordance with prevailing law, be set aside."

—Olson

Letters to the Editors

DUE PROCESS OF LAW

TO THE EDITOR OF THE RECORD:

When in the States a few months ago I had often the displeasure to hear people saying that my country could not be trusted since Frenchmen refused to pay taxes thus showing their lack of interest in *la chose publique*.

I tried to demonstrate how inaccurate was that opinion, thus working for a better understanding between our two people.

Tomorrow I am afraid that I shall be helpless to explain to my friends how in a so-called democratic country two men can slaughter a youngster and even confess it without even being found guilty.

I hope that the American people will be indignant at such a shocking sentence but I am afraid that no foreign aid programs, no goodwill ambassadors will make Frenchmen of any political shade forget that an innocent has been killed and that an American Court has refused to punish his murderers.

Poor Emmett Till: he perhaps still believed that "nor shall any person be deprived of life... without due process of law."

ROGER J. BENRUBI, LL.M. '50

A SOVEREIGN STATE

TO THE EDITOR OF THE RECORD:

Correction in your issue of October 20.

Judge J. Harold Brennan of Wheeling, West "By God" Virginia, is beginning his 32nd year not "as Judge of the Hancock County Circuit Court in Ohio", but his 32nd year as Judge of the First Circuit of the State of West Virginia which comprises the counties of Ohio, Brooke and Hancock, all in West "By God" Virginia.

And for your information, Wheeling, and the three panhandle counties are not in Ohio, not in Pennsylvania, not in Virginia, but in West "By God" Virginia.

J. CAMPBELL PALMER III, LL.B. '29

NOT UNDER MAN...

TO THE EDITOR OF THE RECORD:

Fascinated by the account of the Langdell Hall flood in your October 6th issue—"Non sub homine sed sub Diane et aqua."

PALMER SMITH, LL.B. '50

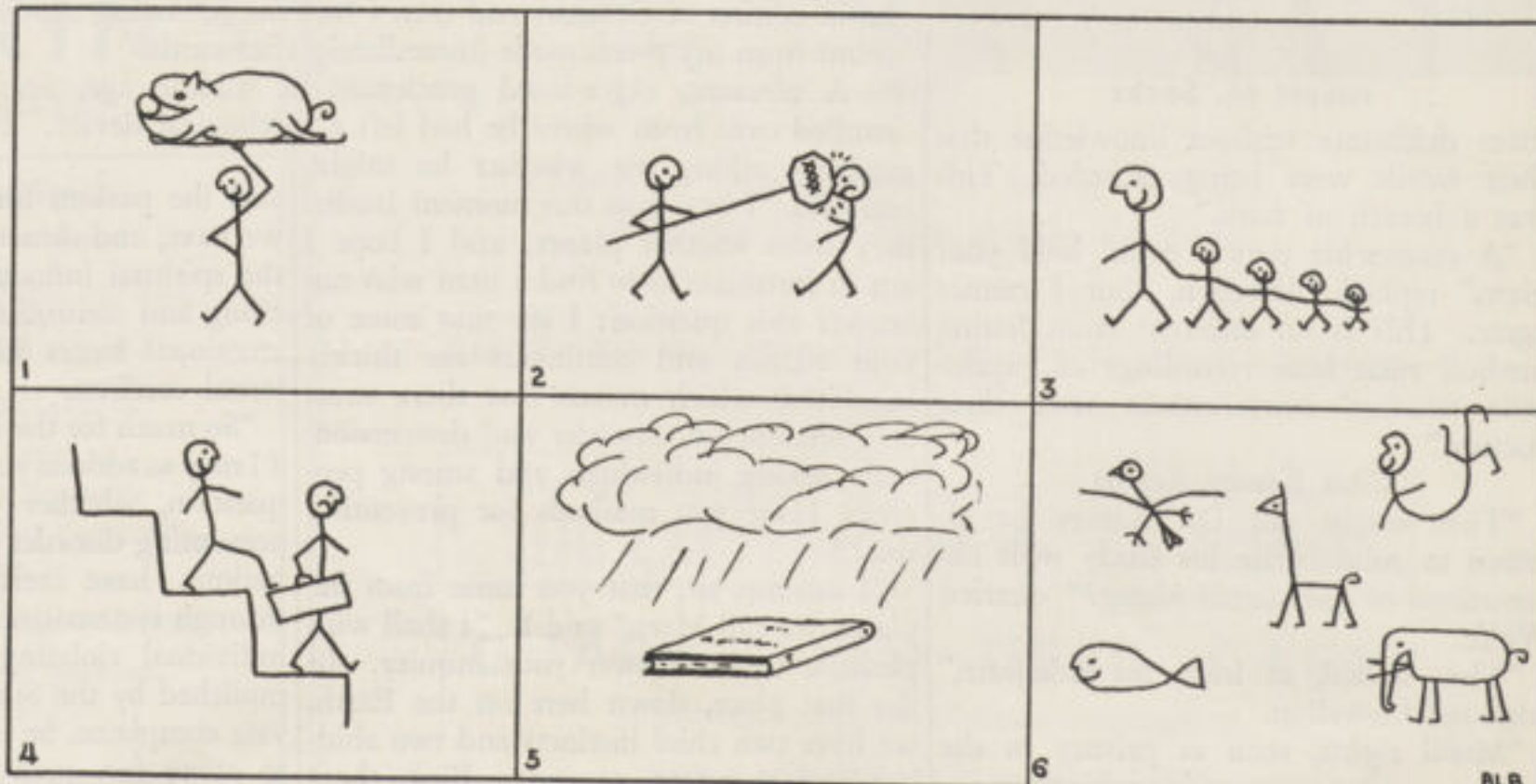
Recently Published

ANTI-SUBVERSIVE LAWS TESTED

Alan Reeve Hunt, "Federal Supremacy and State Anti-subversive Legislation," 53 Mich. L.R. 407 (1955).

The constitutionality of state anti-subversive statutes is open to question in light of federal legislation. One view is that protection of federal and state governments is an exclusive federal function, thereby disabling the states to enact sedition laws. If the question is considered in terms of occupation of the field by federal legislation it will be necessary to determine whether the entire field has been occupied or a residuum left to the states.

Legal Terminology Problems II



4. Trespass on the case
5. Cloud on title
6. Feme naturae

1. Bringing in the verdict
2. Estoppel
3. A and his heirs

HARVARD LAW SCHOOL FACULTY, 1955-56



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Sixth Row: Assistant Dean Wesley E. Bevins; William S. Barnes, Director, World Tax Series.

On Leave: Professors Robert R. Bowie, Sheldon Glueck.

Missing: Professors Charles M. Haar; Mark De Wolfe Howe, Teaching Fellow Richard E. Heath.

Dorm Council Sponsors Hoop, Hockey Leagues

The Dormitory Council will sponsor intramural competition for Law School students in both basketball and hockey, it was announced by Council President Michael McNulty, 3L of Niagara Falls, N.Y.

Students interested in basketball should sign up before tomorrow night by adding their names to the list posted in the Gymnasium or by contacting League Director Michael Harris, 3L, at UNiversity 4-4376.

The Hockey League is under the direction of Frederick S. Paulsen, 2L. Prospective hockey players may sign up by contacting Paulsen in person at 205 Dane or by phone at UNiversity 4-0033.

TRIAL COUNSEL

(Continued from page one)

handling such cases, acts as a professional, he will be treated as one. I don't think he need worry about sharing in the unpopularity or official disfavor of his client."

Mr. St. Clair's remarks on the representation of unpopular clients concluded a talk in which he outlined the work of the contemporary trial advocate. This work is divided, he said, into four parts.

They are advocates before juries, before appellate courts, and before administra-

tive and other non-judicial tribunals and some general legal practice. "To eat between trials," Mr. St. Clair said, "a trial lawyer will have to draw up an occasional will or contract."

The Student Bar Association will present its next speaker on Wednesday, December 14. Governor Theodore Roosevelt McKeldin of Maryland will tell the group about the "Lawyer in State Politics."

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Foreign Policy and Law Schools — A Dialogue

(Continued from page one)

main, been arbitrarily imposed by men who have won control over the people by force. In other nations, especially the Anglo-American law ones, such as this, the rules have been chiefly developed by the people themselves or through their judges. In civilized nations generally, the laws have been so improved that a public penalty or a private remedy is provided for most types of injury done either to the State or to an individual."

"But, Mr. Earth, how do you prevent disorder between nations?" "We don't, Mr. Mars. For centuries they have been reduced by international contracts, called treaties. But many of the nations are still suffering from a war ended about ten years ago; and they are now drifting toward another which may wipe out some entirely. In fact, if you were to stay here for some time, you might have to make a sudden departure in your little space-ship." "But this is absurd!" protested my benchmate. "Surely, if the nations have evolved laws to preserve order among individuals, they can control and reconcile their own collective instincts and passions by international laws."

"Now, Mr. Mars, I am ashamed to say that we haven't got very far on this. There are many reasons. I shall begin with a curious one which is rather indirect; but it is deep-seated and can give you some idea of the immobility of the obstructions to ordered world peace. Although most nations have up-to-date domestic laws, the majority treasure in foreign relations a quaint set of rules imposed by a great imperialist nation on its subjects about 2,000 years ago. These rules dealt with such things as could happen in a world without our sciences of physics, chemistry, biology, bacteriology, and so forth,—without even gunpowder, steel or applied steam and electricity. This legal relic of the pre-scientific era is called Roman Law. The nations adopted a so-called 'collective security' agreement, or Charter of the United Nations, after their latest war. Through their majority, they chose judges, most of whom are disinclined to apply any law other than Roman Law to today's international controversies."

"But, Mr. Earth, how about your instinct for self-preservation and your passion for justice? Can your judges, or what I would call high priests, ignore them?" "Perhaps not, Mr. Mars, but the majority judges are from Roman-Civil law countries. Having been trained in international law which is so inflexibly Roman Law, they seem either unable or unwilling to free their minds from its limitations."

"Do you mean to say," he exclaimed, "that these priests are allowed to ignore a modern principle of justice which could settle an international dispute and perhaps avert another war? Why didn't the nations require the priests, when necessary for justice, to use the modern law principles developed in the nations?" "Again you embarrass me, Mr. Mars. The nations did require that very thing in their charter that I've just mentioned, but the judges have rather disregarded the requirement."

"Now, really," he replied, with an uneasy smile that had a twist of suspicion, "I see you are jesting; so I will reciprocate by asking you why the priests are allowed by the nations to adjudicate any international dispute at all which might lead to war?" "They simply aren't allowed, Mr. Mars; and this is no jest, either. This is how it happened: The United Nations Council is the body charged with maintaining and enforcing peace. It has eleven members. Of these, the five most powerful nations (called 'the Big Five') are 'permanent' members, the other six memberships being temporary and held in rotation. The Charter says that one permanent member alone can veto any proposal in the Council which is non-procedural,—that is, any which has to do with maintenance or enforcement of peace; but that action by

the Council, merely procedural, like submitting a dispute to the Court, can be by any seven votes out of the eleven. This means, for instance, that, under the terms of the Charter, four smaller nations, with the help of three big ones, could submit a dispute to the Court against dissents of two big and two small nations.

"Before the Conference adopted the Charter, the Big Five made an outside agreement that any one of them, by its sole dissent, can prevent the Council's referring a dispute to the Court. Although the agreement was never approved by the Conference, it has been fully effective. The present chief of our foreign office was one of its foremost representatives at the Conference and presumably helped formulate the Big Five's agreement."

"Then, Mr. Earth, this means that the nations of your planet really want war." "No, Mr. Mars, I see your point, but it isn't so. A very powerful nation in the Big Five induced the other four to agree that one dissent could prevent submission to the Court, by promising that it would never so employ its dissent as willfully to obstruct the operation of the Council."

"Then I ask you: Has the powerful nation kept its promise?" "No, Mr. Mars, that nation, although one of the organizers of the United Nations, has been working for over thirty years avowedly and openly toward undermining from within, conquering from without, and permanently subjecting most of the other nations, including this one. With the aid of some other nations, allied with it through conquest of fear, it continuously strives in and outside of the United Nations Organization to foment international controversies and to prevent the peaceful settlement of any. It has consistently violated its promise by using its own dissent, or threat of one, in the Council to prevent submission of any controversy whatever by the Council to the Court. I hasten to confess before you ask me, that, first, none of the other nations, not even ours, has repudiated the agreement through which we were defrauded of the major service which the Court was to perform for the Council; and secondly, the fraudulent, hostile, powerful nation is still a member."

"Then the title, 'United Nations' is hardly—" "Mr. Mars, actualities do sometimes have a way of stultifying our words." His hand went abruptly to his forehead. "My mind reels," he said, "before such colossal confusion and suicidal make-believe in an international arrangement for peace." After a silence, he ventured weakly, "You doubtless have a class of distinguished scholars in your nation who teach the law of nations or who are foreign office officials. Do these scholars explain this gigantic frustration of Peace to the people and suggest means to end it? If not, are they not apt to be abolished when the people realize the slaughter that is impending?"

"Mr. Mars, there seems to be no sign of such resentment. This may be partly due to the speech barrier. The vocabulary of that learned, disinterested class of persons is so incomprehensible to the average man as to isolate him from that class, and he probably could not understand the reasons for present conditions even if some specially frank member of it should try to explain them."

"Mistakes, neglected in a coincidence of silence, could become nationally destructive," he said, "but your apparently short memories here must be comforting to some of your public men. Then, ambitious scholars may be influenced by the power of the Court priests and other dignitaries in the United Nations Organization; while more patriotic, but static, scholars may be paralyzed by the incredible political complex." "Be that as it may as to perhaps a small proportion of scholars, there is hope in our professional law schools," I declare, "Some of them are now becoming definitely dual schools, teaching, on the one hand, domestic law for the legal profession, and on the other, international law and relations to those

headed for public service in foreign affairs, and to those relatively few who will practice the legal profession in the field of international law.

"Our law schools," I went on, "will, we hope, become an important agency for transforming international law into an adequate, vital system of justice, and also for constructively promoting international cooperation on the levels both of politics and of the people's life. They should insist on the application of modern domestic law principles throughout our law of nations. They should, by analysis of that fraudulent agreement of ten years ago, indirectly bring about its nullification and a restoration of the International Court's true function. They should, by expansion and projection of existing legal norms in the future, lead the way toward collaboration among friendly nations in large-scale international enterprises. These should be organized regionally either as joint administrative Authorities or as corporations for engineering, construction, operation, and research; and the interests of the participating nations might thus become so merged that international disputes would seldom arise. A few schools are already alive to some of these ideas."

Law School Progress

"If this change has begun," said my guest, "it seems that your law schools are becoming a force in the dynamics of international politics and business. Does not this new rôle of theirs expose national policy to new forms of manipulation by designing domestic or foreign influences? If so, can the schools preserve the disinterestedness you mentioned? Would they not have to exercise vigilance to identify and prevent unfriendly action from outside, aimed at reaching the minds and motives of students and of teachers?"

"You have perhaps touched on a vital spot, Mr. Mars. Designing interests could try secretly to predispose or embarrass national policy through financial support of professorships and of special research or teaching projects, or by retainers of teachers as counsel. This danger, familiar to university departments of political science, could indeed appear in a new and even sharper form. It would be first, the responsibility of the law school teachers and administrators to handle; otherwise it might come publicly to concern our national law-makers. A school training for public service in the foreign affairs of a nation must be conditioned by its foreign policy. So long as the nations resort to war, and to commercial and other rivalries that can lead to war, no nation, Mr. Mars, could tolerate the presence of law schools which embarrass, or impair the effectiveness of, its policies in international relations. This—"

"But," he interrupted, "even if the law schools throughout your nation should now come to perform the new rôle you have described, you must admit that, at least, they could serve only as an indirect cure for the conditions you have recounted. Could the cure operate in time?" "Mr. Mars, I don't know. Terrible mistakes have to be remedied. Conflicts contrived in many parts of the world by the fraudulent and destructive nation I spoke of, are rapidly becoming more acute. I have not mentioned how some established safeguards against aggression, deeply implanted in the law of nations by a century or two of international observance, have been impaired in recent years. Take the principle of domestic jurisdiction in connection with—"

"No, pardon me, I would rather not hear about it," said the Martian rising suddenly, yet courteously, "I long looked forward to visiting your planet, but I have already heard as much as I can bear about its instincts, passions, religion, and, above all, its international law. I prefer my own. If you can ever get away from here, come up and see me some time." And with that he quickly disappeared in his machine.

FORUM

(Continued from page one)

stemming from our legal system and those which are derived from man as a human being. I cannot agree with those who would use human rights or good faith as grounds for not studying actual jury deliberations under appropriate safeguards."

Attacks Press Coverage

Citing the RECORD as one example, Llewellyn lamented that he is "having a terrible press." When Charles Beard's *Economic Interpretation of the Constitution* (an analysis of the economic interests of the farmers) appeared in 1913, the legal profession and all respectable citizens were "shocked", according to Llewellyn. "It was an awful revelation to put in a book. But the Constitution is still a grand old document. I don't shock easily. I knew the framers could pay their way to the convention hall."

Pointing to his own tape recordings of the deliberations of arbitrators in commercial cases, Llewellyn argued that studies of the decisional process of arbitrators and appellate judges are no longer considered "shocking". Now, however, that six jury deliberations have been recorded, Attorney General Brownell and the press "are having kittens. In fact, the RECORD had a whole litter of them."

Llewellyn made some interesting observations on the jury system itself. He exploded two myths: that jurors are largely irresponsible persons and that one juror can "hang" a jury. In practice it takes three or four to deadlock a jury. It is also rare for a minority of even as many as four to persuade the majority to its point of view as to what the verdict should be.

Should Improve Jury Conditions

A poll of 609 jurors showed that 40% of them thought that judges were better triers of fact than juries. This Llewellyn deplored. Something must be done to improve conditions for jurors. They, like students, should be allowed to take notes and should not be required to sit more than an hour without a break for exercise and a change of subject. He also felt that the shroud of secrecy around the judge's rulings at a conference at the bench is a discouraging experience for jurors.

Concluding, Dr. Llewellyn stated, "The Chicago project is helping us to understand an institution we've played around with for centuries without learning much about it. This research will lead to a stronger, more satisfactory, more joyous jury system."

GAMBRELL

(Continued from page one)

grace if he will not say whether he has been a member of an organization that seeks to destroy the law he is pledged to uphold."

The Senators also heard testimony on a Delaware law requiring Communists or members of the 200 listed organizations who reside in or pass through the state to register. Non-compliance makes one subject to maximum penalties of ten years in prison and/or \$10,000 fine.

Justice David W. Peck, head of the Appellate Division of New York's Supreme Court, appeared before the subcommittee and stated that the court's quizzing of prospective jurors as to membership in the alleged subversive organizations was a justified practice.

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Judge Hudson Speaks To St. Thomas More

Judge Eugene Hudson of the Massachusetts Superior Court for Boston will speak at the St. Thomas More Society's second communion breakfast of the school year this coming Sunday morning. The breakfast will be held in the Mallory Smith Room of Harkness Commons immediately after the nine o'clock mass at St. Paul's Church, Bow and Arrow Streets, which members of the Society will attend in a body.

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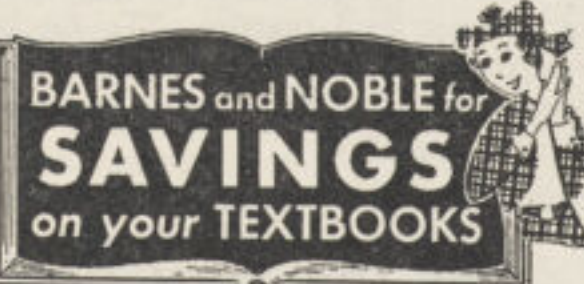
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