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Southern Methodist University School of Law

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THE ADVERSARY

SOUTHERN METHODIST UNIVERSITY SCHOOL OF LAW

Vol. 4, No. 3

DALLAS, TEXAS

October, 1971

★ ★ ★ ★ Number Four Recites Palsgraf ★ ★ ★ ★

Prologue: Last week our hero had received joyous tidings assuring his continued success in the legal profession - he had made The Journal. The rejoicing, celebrating and sacrificing of vestal virgins which followed was very distracting to our fledgling legal scholar. However he did manage to attend classes; happily rationalizing that his superior intellect would pull him through any tight spots.

Little did he know that the insidious Prof. Burnsting lay in wait to work his evil sorcery on the supple mind of Number Four. That's right, the same Burnsting who at the age of eleven was drilled between the eyes by a blistering line drive off the bat of his childhood friend and idol, Rascal Baker. To this very day, a strange fascination with baseball seems to pervade every facet of his being. Indeed rumor has it that he was the real brains behind bringing the Washington Senators to Dallas (with the intention of naming them the Texas Tortfeasors).

- That Friday Afternoon
in Torts Class -

Confident in his newly found intelligence Number Four casually chatted while awaiting the arrival of Prof. Burnsting. "Hah," thought he, "when one is on The Journal one doesn't need to continually examine his briefs."

Suddenly, an eery calm came over the class; the door swung open and in walked the professor loosening up with his weighted warm-up bat. As Burnsting stepped up to the podium he snapped his shaded visors to their "up" position and lightly rolled the **chaw** of tobacco in

his mouth before speaking.

"Awright team, today we'll go into proximate cause with the four-bagger case of Palsgraf v Long Island Railroad. Just let me check my roster and see who's on deck for this one."

Meanwhile our hero, Number Four was basking in a warm glow of confidence. He had lately developed a swagger in his walk, a twinkle in his eye . . .

"Mr. Four."
And a load in his pants.

"Ahem, ah, did you say Mr. Four, 87 grade point average?"

"That's right rookie," said Burnsting. With a sinister snap, the shades came down and jaw muscles tightened over the wad of tobacco.

Number Four frantically searched his notes for the case, realizing that he had to stall for time.

"Ah, that's a Torts case, isn't it?" he cleverly queried, beads of sweat beginning to burst on his forehead.

Not to be outdone by Number Four's shrewdness, Burnsting gave a sharp tug on his time-worn Senator's cap and replied, "No, rookie, its antitrust."

Just when the laughter subsided and Number Four had resigned himself to his humiliating fate, his neighbor slipped him the Palsgraf "can"! Should he take a chance? He'd always heard "cans" make you go blind (as well as give you warts). He was in no position for moral judgments.

"The facts of the Palsgraf case", he read in a shaky voice, "illustrate the dichotomy of views concerning foreseeable harm. Under the Andrews approach, defendant's duty was

owed not merely to the passenger but to anyone in the world who might be injured. Whereas Cardozo would limit the liability to that which a reasonable man would have foreseen," his voice gaining strength and building to a crescendo,"that is since plaintiff was not in Cardozo's 'zone of danger' no duty was owed her."

A wild burst of applause followed Number Four's recitation.

Burnsting, with great composure, slowly pushed the bill of his cap to a jaunty upward rake; tapped his cleats lightly with his bat; shot a long string of tobacco over his shoulder; took a good wide stance and countered:

"Is that what this case really says?"

Bewildered, the students began filing through their Gilberts, Zionitg and Prosser. Burnsting scoured the bleachers for an answer. One, two, three attempts and Burnie fanned them all with sliders, change-ups, curve balls and knucklers to retire the side.

After seeing that there would be no more takers that day, Burnsting resolutely threw his resin bag to the floor and fed them the high fast ball, "Aren't we really concerned here with the division of views between Andrew's idea of foreseeable harm, with its seemingly infinite concept of duty as opposed to Cardozo's limited concept of duty; i.e. a foreseeable 'zone of danger' or a foreseeable plaintiff?"

All that could be heard from the bleachers was the scratching of pens and heads. Burnsting having outclassed his opponent,

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Letters to the Editor

EDITORIAL...

Dear Sir:

I appreciate the comments you made in your editorial in the October issue of the Adversary. When the members of the National Commission on Marihuana and Drug Abuse created under the Comprehensive Drug Act of 1970 were appointed by President Nixon, we were advised that in the President's estimation the two most divisive elements between the generations in our society today were the war in Vietnam and the increasing use of drugs among the young.

So far as the former is concerned, he has moved as effectively as he possibly could to wind down the war and to remove the troop strength in Vietnam at the greatest possible rate consistent with the exigencies of the situation and with due regard for the safety of the civilian force, contractor force, military personnel and the co-operating Vietnamese personnel in South Vietnam.

So far as the drug abuse is concerned, the situation is much more ominous. The greater increase in the use of drugs in our own society, which is spreading to other parts of the world, has indeed created not only a generation gap but a cultural and psychological gap between those who use drugs and those who do not.

If I can be of any assistance in bringing us even a few steps closer to some kind of resolution of this nagging problem which besets our national life, then I will feel that the time which I have contributed to it would be well worth while. In the balancing of interests, it is quite true that the members of my class make a contribution to this effort to the extent that they may have been deprived of more effective teaching. As you have pointed out, I am offering a second "repeater" section of the course to give the greatest attention possible to the class, and by this action and informal review sessions to be offered near the final examination period. I hope that I can faithfully discharge my instructional obligations. Contd. page 3

A governing body must be representative of and responsive to the electorate. On any crucial issue affecting the functioning of the political system it should return to the electorate. This is a necessity to make that decision legitimate.

Any system of government no matter where it appears on the political decision-making spectrum (one man rule to a pure democracy) has legitimacy as long as the people who chose this system allow it to exist. What makes illegitimacy, what cuts the people off from their governing body is exploitation by vested interests. It is no more than society's political system.

The resignation of the Vice President of the SBA created a vacancy in a crucial position. Under the SBA Constitution the President has the authority to select the manner in which a vacancy will be filled with a two-thirds approval vote by the Executive Council. Accordingly, the President rightly chose to turn to the people to fill the vacancy. However, the Executive Council refused to grant the President the necessary two-thirds vote. Instead the Council chose to keep the election among the existing power structure. To achieve this end a meeting was scheduled for the following night to choose the successor.

The President called for nominations from the Executive Council. Two persons on the council indicated their interest. A third name was presented from the floor. At the meeting the following night, although the president had indicated that other names would be accepted, in fact only the three previously, submitted names were considered.

After an hour and forty-five minutes of an obvious power struggle, the meeting stalemated. It was fortunate for the law school community that the vested interest present were unable to keep the decision-making process within the Executive Council. At this point some legitimacy returned to the SBA because the group had no other alternative than to return to the people.

Should the people be dependent upon such a fortuitous event to protect their rightful role in the decision-making process?

Although it is the opinion of some that the hour and forty-five minutes was wasted, we think not!

Editor's Note: Due to the number of questions as to the authors of recent editorials, perhaps a word of explanation is necessary for those who are not familiar with standard editorial policies. Adversary editorials are written on a rotation basis by one or more members of the editorial board and endorsed by the entire board. Dissenting editorials may be written by any board member.

THE ADVERSARY

SOUTHERN METHODIST UNIVERSITY SCHOOL OF LAW

Editor-in-Chief

F. Burns Vick

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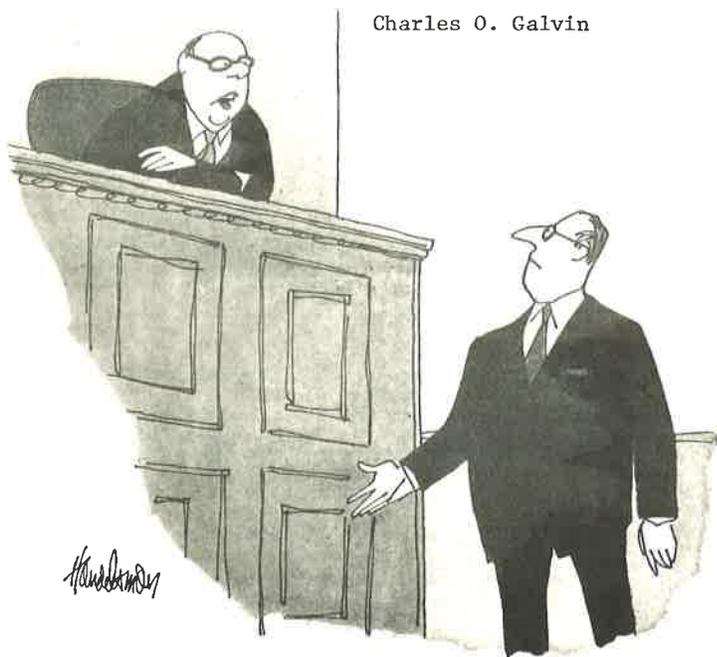
Contd. from page 2-LETTER

Mine is not the only such commitment, of course. In an excellent law school, such as we have, other members of the faculty make contributions of time and talent to legislative and procedural reform, in consultations on professional committees of the bar and the Association of American Law Schools, and the like. The greater the contribution our faculty make in these particulars, the greater the sacrifice the students make in not having available at all times and under all circumstances the continuous attention of all faculty members. All of us should maintain a proper perspective so that we do not neglect the primary obligation which we have to our students, but at the same time, as part of our outreach to the professional community and the larger community around us, we should continue to exercise our best efforts commensurate with the total talents we have to offer.

You make another point worthy of comment. You have correctly said that tax law is an extraordinarily intricate exercise in critical analysis, for there is much of politics and economics combined with the ordinary components of law study which must be mastered in order to understand fully the impact of the Federal tax system. You have also quite properly noted that many students must necessarily resort to self-induced education. When talking with a group of Harvard Law School faculty some years back, one of the giants of that faculty, Henry M. Hart, now deceased, made the comment that the good law students can do fairly well for themselves; in fact, if the faculty will get out of the way, most of them can do better for themselves than with too much direction. There is a good deal of merit in this point. Professors and students cannot abdicate the classroom encounter, yet much of law study is the process of one's own reflective thinking and critical analysis. In short, much more may often be learned by arduous lucubrating rather than by classroom explication or dialogue. This is especially true in the more intricate fields of the law where reflection tends to hone the mind to a more incisive analysis of whatever the particular problem may be.

Yours very sincerely,

Charles O. Galvin



"Learned counsel should use shorter words. Learned counsel is forgetting that this Court was not an 'A' student."

FORUM:

As a concerned student member of the Admissions Committee, I feel compelled to reply to Mr. Stuart Anderson's bludgeoning attack on minority recruitment. The views presented are mine alone and do not necessarily reflect those of other members of the committee.

Mr. Anderson's two years in law school have failed to teach him what most learn in the first year -- one can rarely, if ever, make a valid generalization. With sweeping generalities Mr. Anderson attributes progress in minority recruitment (the lack of it to him) to "liberals." Suffice it to say, one can't neatly wrap package and brand in such a manner.

What of investigative facts? A quick check with the Office of Admissions would reveal that other factors besides LSAT scores and GPA are weighed e.g. undergraduate school attended, previous experience prior to application, etc. No one but the Admissions Committee would be qualified to comment on an individual case. For all we know, Mr. Anderson or myself may be "exceptions."

The greatest deficit of Mr. Anderson's attack is his use of polished rhetoric to smother basic issues. One might give him an "85" for use of the English language but a "65" for comprehension and delineation of the issues. Any reasonable man knows there is an obvious need for minority group lawyers to serve their own communities. Likewise there is the imperative necessity for the S.M.U. legal community to be exposed to all types of individuals. The all white environment formerly prevalent at the SMU law school has deprived students of an educational opportunity to communicate and exchange ideas with those who represent minority groups.

The trend toward two societies, one Black and one White -- separate and unequal -- is becoming increasingly evident. It is understandable and only fair that not only Blacks but Browns, Reds and whatever be

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From the SBA Desk...

added the coup de grace, "O.K. rookies for Monday's work-out we'll take the next 75 pages, now, hit the showers."

Of course, after class Burnsting was immediately inundated with the usual well-wishers, fans, and autograph hounds. But our Number Four could only slink out dejectedly with his friends; each of them shaking their heads and cursing their own stupidity for not realizing the answer.

"There was no joy in Muddville. . . ."

Name withheld by request.

(Ed. Note: for students who are still in left field - references are to torts exam that took place entirely in a Ball Park.)

NIXON:

Promise vs. Performance

by Burns Vick

Mr. Nixon waited 31 months before taking decisive action on the economy, but at least he did something--which is more than one can say for a lot of other domestic concerns. How fairs his record of promise vs. performance with environmental protection?

"We must have action to meet the needs of today if we would have the kind of environment the nation demands for tomorrow." Message to Congress, February 8, 1971.

During his first year in office, President Nixon requested only \$214 million for construction of sewage treatment plants: a Democratic Congress appropriated \$800 million out of an authorized \$1 billion. In his 1970 State of the Union Message, the President promised the "most comprehensive and costly program in this field ever in America's history" but his \$10 billion nationwide clean waters program was actually a \$4 billion federal contribution with the states and cities paying the balance. Both Interior Secretary

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It is difficult for people that have not served on the Executive Council of the Bar to realize just how much time and energy goes into developing an organization that "hopefully" is respected within the Law School and outside of it. Often, the real reason for the members of the Council being here, to become educated lawyers, must take a backseat for matters considered urgent to the students. This was expected last Spring when the members ran for office - and it has been an enjoyable experience since that time.

When the Council is looked at by the students, you should remember that the elected representatives are at the Law School for reasons other than to just sit on the Bar. During the last week this fact has been well illustrated. The Vice President of the SBA, Pete Bird, resigned. Pete told me in his letter of resignation that he was resigning for personal reasons. This I of course respect. Pete is a person who takes his many jobs seriously. The SBA was beginning to eat into the time he considered of utmost importance - aiding the first-year students in Lawyers Inn to become oriented to Law School life. The Executive Council wishes Pete continued success in his work at Lawyers Inn.

The resignation has left the SBA with a vacancy at Vice President. The Constitution of the SBA gives to the President the power to determine what method should be used to fill a vacancy on the Council. This method then must receive two-thirds approval of the Executive Council. The Council ultimately agreed last week that a school wide election should be held. The election will be on Wednesday, October 20. This method of selection is by far the best. As mentioned earlier, the members of the Council work hard in order to develop an organization which all of you can be proud. An election instead of some other means of selection, retains for the Council the respect it needs to be an effective organization.

Before ending this article I would like to add one other point. As President of the SBA, I am proud of the organization and its Executive Council. You too should be proud of it and stand behind it. Maybe now some of the negativism from the student body will cease. All students of the Law School are members of the SBA and we should act as a unit. It is easy to criticize but why not do something constructive to help the situation instead of merely turning thumbs-down at every suggestion. Maybe the election will finally bring the participation of the students that I have been requesting.

John Pitts

Calendar of Events

OCTOBER

| | |
|-------|--|
| 21-22 | SwLF - 2nd Institute on Planning, Zoning, & Eminent Domain |
| 23 | SMU vs. Texas Tech. at Dallas |
| 25 | SBA Meeting |
| 26 | Wes Wise - Speakers Forum - Lawyers Inn |
| 28 | Pigskin Revue - Homecoming Event |
| 28-29 | SwLF - 18th Institute on Labor Law |
| 28-29 | PLI Estate Planning and Will Drafting |
| 29 | Pigskin Revue - Homecoming Events |
| 30 | SMU vs. Texas at Dallas - HOMECOMING |
| 31 | HALLOWEEN |

28 Days 'til Thanksgiving Recess!

SBA COMMITTEE REPORT #1

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In Re: Irving Brilliant

Law schools as institutions enjoy certain conveniences not available to individuals. They develop continuity and establish patterns of conduct that are perpetuated over generations. They can also act pragmatically unhampered by moral sensibilities or pangs of conscience that might ordinarily influence the conduct of an individual. Institutions are handy because responsibility can be diffused.

At SMU such institutional independence has led to a pragmatic technique of recruiting promising law students. One might loosely term it "fraud in the inducement." The technique varies from case to case but the following fact situation is typical:

Irving Brilliant elected to attend SMU Law School over the University of Texas solely because SMU promised full funding throughout his three years. The only proviso was that his G.P.A. remain "adequate." Confident of his abilities to perform at least adequately, Irving came to SMU on a full scholarship.

At the end of his first year, Irving ranked in the top 20% of his class. Concerned about his financial status with the School and considering his acceptances for transfer at UT and Vanderbilt, Irving inquired as to the meaning of "adequate." Irving was informed that "adequate" meant within the top 20% of his class and was promised full funding so long as he remained in that category. Irving decided to stay.

Now Irving is irrevocably committed to finishing his days at SMU; he is the proud if financially strained father of a new baby; and Irving's funding has been cut by 35% in his 2nd year.

Will Irving Make it?

Will SMU make it? Or will subsequent Irvings make that transfer to Texas or Vanderbilt?

Or will SMU Law School learn that there is such a quality as institutional integrity as well as institutional independence?

The grievance Committee of the SBA is determined to investigate, assess, and act upon abuses of the sort described above.

There will be an informal meeting THURSDAY, Oct. 21, 12:30 p.m. LAWYERS INN. Students and faculty are invited. Since both share a common concern for the integrity of the law school in all its activities, the grievance Committee believes that once such practices are identified and substantiated, a common effort will quickly remedy what appears to be an intolerable situation.

If unable to attend, contact either Scott Campbell, Bill Neal, or Tony Patterson for comments and suggestions.

Scott Campbell

** NOTICE **

THE OBJECTIVE OF ALL DEDICATED LAW STUDENTS SHOULD BE TO THOROUGHLY ANALYZE ALL SITUATIONS, ANTICIPATE ALL PROBLEMS PRIOR TO THEIR OCCURRENCE, HAVE ANSWERS FOR THESE PROBLEMS, AND MOVE SWIFTLY TO SOLVE THESE PROBLEMS WHEN CALLED UPON . HOWEVER . . . WHEN YOU ARE UP TO YOUR ASS IN ALLIGATORS, IT IS DIFFICULT TO REMIND YOURSELF THAT YOUR INITIAL OBJECTIVE WAS TO DRAIN THE SWAMP.

Hickel and Governor Nelson Rockefeller had estimated that it would cost \$30 billion for this treatment program -- not \$10 billion.

A total of almost \$700 million has been impounded for fiscal 1971 environmental protection programs. Mr. Nixon has impounded \$56 million for rural water and waste disposal grants, \$200 million for basic water and sewer facilities grants, and \$11 million for the Environmental Protection Agency.

For fiscal year 1972, Mr. Nixon has asked for only \$129 million for air pollution control --less than one-third of the \$380 million authorized by Congress. He has asked for only \$19.2 million for recycling industrial products and waste materials under the Resource Recovery Act of 1970-- \$152 million was authorized by Congress.

The Nixon Administration was opposed to Democratic legislation in 1970 which provided for statutory national deadlines for abating air pollution caused by auto emissions. The Clean Air Amendments of 1970, signed into law in December, require car manufacturers to reduce emissions of carbon monoxide and hydrocarbons-- two chief pollutants in car exhaust --by 90 per cent for all 1975 models. An extension of only one year is allowed. The bill also requires compliance with national air quality standards by stationary sources of pollution such as factories, refineries, and power plants. The standards are to be met within a three-year time frame with extensions of up to three years allowed.

The Nixon Administration had talked of goals for clean air at some future time, but Senator Muskie put fixed dates in the bill. Two weeks after the 1970 elections were over, the Administration sent a letter to Congress, signed by hNW Secretary Richardson asking them to relax the Senate deadlines for automobiles and stationary sources and to soften several other provisions of the Senate bill.

During December hearings on his confirmation as director of the Environmental Protection Agency, William Ruckelhaus said

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he wanted the agency to be able to postpone the 1975 deadline beyond the year extension provided in the Senate bill if the auto industry was unable to meet it.

The "progressive" record by no means ends here. Surely the President isn't mistaken once again that private enterprise will correct the problems on their own initiative. The long-range problems that are recognized cannot be solved at the bargain basement rates proposed by Mr. Nixon and entourage.

Burns Vick

STUDY GROUP LUNCHES

First year students have a new opportunity to get to know their professors this year. The Orientation Committee, chaired by Duke DeWare, has organized a series of lunches for first year study groups and professors. Dean Galvin has supplied funds for the Lawyer Inn lunches. So far, half of the study groups have had lunch with a professor, and attendance has been high. Topics of conversation have ranged from course work and legal education to the quality of the Inn's food. Professors Flittie, Kennedy, Surratt, Taubenfeld, Thomas and Wingo have participated and others will before the program is completed. This is the second phase of the orientation program. The first was registration and the study group meetings prior to registration. Luncheon scheduling is the responsibility of John Hove.

SBA COMMITTEE REPORT #2

JOIN THE REVOLUTION

There's a social revolution a brewin' in America today and according to Ralph Nader the example of the bright young lawyer will set the trend. He will set this example, says Nader, through sacrifice and self denial. Where else to begin this tradition of sacrifice but in the law school. The introduction to this service to society, or pro bono work, should come early in one's career; thus making the law school the logical starting point. Spurred on with these lofty goals in mind the present SBA organized a committee on Student Involvement with Bill Ruhe (2nd year class rep.) as its director. The main committee has been broken down into several sub-committees. Dallas Legal Services Project, students working with lawyers of the project providing legal services to the poor. Pre-trial Release: providing for the release of qualified prisoners on a personal bond. High School Speakers: Students speaking to various High School groups on legal subjects. Judicial Internship: First hand introduction into the process of judicial decision and the workings of a law suit. Dallas Bar Association: participation of students on Bar committees, furthering closer ties with Bar and students. Tuatara: Drug counselling service in conjunction with Southwestern Medical School. Juvenile Program: Counselling to juvenile offenders and big brother aid. All the sub-committees except the last two are in full swing. The last two have the vehicle within which to operate but at the time are lacking staffing and participation. No revolution was ever a success without participants; all those interested in becoming involved with what's going on contact your student Bar representative or Bill Ruhe.

Bill Ruhe

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Contd. from page 3 - FORUM

given a piece of the action. If the legal community is going to represent the legal interests of society, it must reflect the racial and sexual composite of society itself. To neglect this goal will only complicate if not render impossible substantial progress toward "law and justice."

Al Ellis

Believe It Or Not!

August 27, 1971

Minutes of Law Journal Board Meeting.

Proposal 2. Increased faculty-student cooperation and contact on an intellectual level via discussions open to all students.

Burk Bishop moved to accept; seconded by Ron Grant. Discussion.

Vote: Failed. 0 in favor; 9 opposed.

Paul Schoonover then moved for an amended proposal in the same spirit, but limiting the students to be involved only to those associated with the law journals. Dennis Lutes seconded. Vote: Passed. 9 in favor; 0 opposed.