1959 Vol. 8 No. 3

Cleveland-Marshall College of Law

Follow this and additional works at: https://engagedscholarship.csuohio.edu/lawpublications_gavel1950s

How does access to this work benefit you? Let us know!

Recommended Citation
https://engagedscholarship.csuohio.edu/lawpublications_gavel1950s/13

This Book is brought to you for free and open access by the The Gavel at EngagedScholarship@CSU. It has been accepted for inclusion in 1950s by an authorized administrator of EngagedScholarship@CSU. For more information, please contact library.es@csuohio.edu.
THE PARADOX

On the same day President Eisenhower was in India telling the people that the United States is prepared to back a large scale exchange of students (and no doubt teachers) between our country and the countries of Asia, our Professor Oleck received word from the State Department that no funds are available to help on just such an exchange.

You see, Professor Oleck recently received a signal honor. The Malayan people have adopted a constitution strikingly similar to our own. The Asia Foundation asked Professor Oleck to be their first professor of Constitutional Law. He declined because he has two young daughters and does not feel he can take them to Singapore for a period of probably five years.

The University of Malaya then asked Professor Oleck to come to Singapore this Summer to teach Torts and Corporation Law. The salary, although astronomical by Malayan standards, is, of course, still small by our standards and far too small to meet all expenses such a trip would entail, especially the travel expenses.

That is how this paradox arose. He contacted Representative Minshall, who asked the State Department for funds to aid in this teacher exchange. The answer -- no money -- anything else, but no money.

Previously, Professor Oleck had contacted most of the major foundations in the country. They all assured him that his taking this trip would do much toward cementing good relations with the Asian peoples, but none of them came up with any financial aid.

One can't help but marvel at the blundering of the State Department. It establishes a special department to expedite and aid in the exchange of students and professors, and yet has no funds to carry out the program.

Professor Oleck wonders, as do a great many of us, just how the people of the world are going to react when they find that this so-called exchange program of top educational personnel is a myth, a mere promise with very little to support it. (The Fulbright System is separate.)

But, regardless of the world-wide implications in the present lack of funds, (Continued on page 7, Column 2)

A Patch Job in '60 Congress?

Count on Congress to build some fires in the Taft-Hartley area in January, when the second session convenes.

The only thing that will change their minds: Settlement of the steel strike by the industry and the union before a vote is required at the end of the 60 day cooling off period. If the last offer of the industry goes to a vote at the end of the first 60 days of the injunction, as it must under T-H, you can expect fireworks in Congress.

The point: The government went into court for the injunction last week. A vote by the United Steelworkers in 60 days to accept or reject the last offer of the industry would come about the last week of December, just before Congress returns in January. If the result of a vote tends to confuse the situation, then Congress is certain to seek more stable remedies to the sort of impasse in collective bargaining we are experiencing.

A Chat with Fred Hartley

After receiving opinions on the legality of certain sections of the Taft-Hartley Act (see Page 91), STEEL went to one of the authors of the law, former Rep. Fred A. Hartley Jr. of New Jersey, to get his thinking.

About the legality of the vote by the union membership, Mr. Hartley said: "If the law is as weak as your sources at the National Labor Relations Board and Justice Department describe it, then it is much weaker than I intended." NLRB and Justice sources say the vote has no legal standing. They contend: Union leadership is under no legal obligation to follow the mandate of the majority of the union membership, whichever way the membership chooses to vote. Of course, (Continued on page 8, Column 1)
ARE YOU A CANNED BRIEF ADDICT?

By Fred O. Burkhalter

A PERNICIOUS AND contagious disease seems to have attacked the student body - an addiction to the use of canned briefs. Among other known consequences it causes atrophy of legal thought, over-stimulation of the vocal chords and induces grandiose illusions that the unhappy victim is getting a legal education.

If by chance you are one of the unfortunate so sadly afflicted, our best advice to you is to make appropriate arrangements for your early demise as a student of the law, unless you clear your head and do some straight thinking without delay. It's later than you think.

While science has invented ways of making easier many chores of man, we have heard of no reliable short-cut in getting first-rate legal training. There are those so gullible as to actually believe that canned briefs are time savers and a welcome relief from arduous reading and mastery of cases. It is easier and a time saver all right - you can flunk easier and in less time.

The course of study at Cleveland-Marshall is based on the case method because, in the opinion of a vast majority of educators based on long experience, this method is most effective in imparting knowledge of the law and at the same time developing the mental processes of the student essential to the application of such knowledge. To the extent the student achieves both of these objectives, he attains the goal toward which he started when he enrolled in law school.

Each case in a case book is a true portrayal of an actual situation in which the parties became involved, it presents the problem to be solved, and the solution of it by the court. More important, each case discusses step by step how and why the conclusion was reached. Thus the student has the opportunity not (Continued on page 7, column 1)

FROM PAPER TO POWER
Part II
by Albert Oberst

Since we left off last month several events have occurred that have certainly given this article added motivation. Last month we ended using the quotation by James A. Garfield which stated: "Marshall found the Constitution paper, and he made it power. He found a skeleton and clothed it with flesh and blood."

Before we get too involved in providing evidence to justify this quotation, it seems proper to mention the circumstances that have altered and illuminated the purpose for which this article was inaugurated. The events which include seeing the quotation, "This is a government of laws not of men," above the judge's bench in a courtroom and hearing the inspiring talk of Judge Arthur Day in which he included the concept that we are a "government of laws" basically made me more aware of the tremendous influence of John Marshall in molding the legal strength of our great "Nation." What was a "way out" type of article now becomes proximate.

Again getting back to the pithy quotation of Garfield, we will proceed from where we left off in the last issue. To fully appreciate the essence of this quotation it is necessary to go back in history to the time of John Marshall. As most of us know our nation was having quite a bit of trouble in its infancy in fact many foreign countries, no doubt, had placed bets on the chances of it surviving. This can (Continued on page 9, column 1)
"The time has come the Walrus said
To talk of many things:
Of shoes and ships and sealing wax,
Of cabbages and kings."

(Rather than any lengthy treatise, and
in honor of the Christmas season, Wally
feels that it is time you hear the story
that is read on Christmas Eve to the
struggling young fledglings at the
English Inns of Court. So cuddle up
tight and Wally will read you the story.)

I.
'Twas the night before Christmas and all
through the school
Not a creature was stirring, not even a
fool.
The stockings had been hung beside Corpus
Juris with care,
But law isn't easy, so some would stay
bare.
The scholars had been tucked so safely
in bed,
To dream of cases they had not yet read:
Of Contracts and Torts and Property Real;
And possibly of great cases they might
someday steal;
Of Marshall and Cardozo and Learned Hand
too,
But Murad and Oleck and Samore would do.
(To give any young law student night-
mares for two.)

II.
But such are not thoughts to be had for
tonight
When every good law student is trying to
get tight.
(Continued next column)

It's a time for rejoicing and general
cheer
For half a year's passed and we are
still here.
To those who have left us and are gone
in the night
Maybe they wish they had not been so
bright,
For cheating and cans and things of that
kind
Give a disagreeable feeling when brought
into mind.
To those that are left we leave this
reminder
That teachers with age do not often
get kinder.

III.
But while we've been talking and carry-
ning on
Someone has filled up the stockings
and gone.
Suddenly the room is filled with good
cheer,
For jolly St. Nicholas must have been
here.
He'd come and he'd gone without os-
tentation,
Knowing he needed no real presentation.
The spirit would linger long after he'd
been here
Wishing all who would enter good health
and good cheer.
And Wally too shouts out loud and clear
Extending best wishes for a year full
of cheer.

(And so with their black robes and wigs
tucked neatly way, we leave our sleep-
ing scholars; wishing one and all A
MERRY CHRISTMAS AND A HAPPY NEW YEAR.)

* * * * * *
FRATERNITY NEWS
by
Don Harrington

As most of you probably know, the
election of officers for the coming year
will be held on Friday, December 18th,
1959 at the Dokey Club. The campaigning
has been hot and heavy as in past years
and of course, you the members will make
the final decision. Dean Pat Moran and
all the officers urge everyone to be
present and cast their ballot for the
men of their choice.
(Continued on page 6, column 2)
CASE IN POINT

THE BIG PAYOFF: When Raymond P. Vinzant of Downey, California, lost small claims court judgment of $88.19 to Anthony J. Rivera he tried to pay off in pennies, but Rivera refused, saying the coppers aren't legal tender.

Vinzant dumped the 8,819 pennies from a bucket onto a sidewalk saying, "Here's your money." A crowd gathered as the men disputed the question of legal tender and sidewalk lawyers popped up all around with free advice.

Municipal Judge A. Daniel Boone was consulted and he expressed the opinion Vinzant had not paid in legal tender, so sheriff's deputies ordered Vinzant to clear the sidewalk. He had to scoop up his coppers and put them back in his bucket.

Defiant, he shouted at Rivera as he departed, "Fort Knox says these are legal tender. I'm going to a federal judge and get a stay of execution."

Vinzant, however, would find scant support in the United States Code Annotated, Title 31, Money and Finance, 1954 edition, Chapter 9, Section 460 reads:

"The minor coins of the United States shall be legal tender, at their nominal value for any amount not exceeding 25 cents in any one payment."

By minor coins, the code says it means pennies and nickels.

Chapter 9, Section 459, specifies that all silver coins of denominations smaller than a dollar are legal tender for all sums not exceeding $10.

******

Student, explaining in class how he spent the money collected to buy a gift for an ailing classmate: "So we got him a rather nice flower arrangement."

Another Student: "What was it?"

First Student: "Four Roses."

******

Student (briefing a case): "Now that her husband was dead, they were no longer living together."
LEXICON

by
Peter Roper

(Today's feature is "Loose Latin" on the order of Fractured French)

MENS LEGIS (Of course they're not as pretty!) Actually, it means "the mind of the law" or today, more appropriately, "the spirit of the law."

MENS REA "Doesn't mean Rea's an all-round gal) is a criminal intent, or a guilty or wrongful purpose.

LOCO PARENTIS (Not "crazy, dat!") is defined as "in the place of a parent." In law this means that a person who stands "in loco parentis" with a minor has assumed a parent's rights, duties, and responsibilities.

CANDIDATE We all know what it means today, but in Latin, candidus means "white" or "glittering." In ancient Rome a political office-seeker wore a white toga, and was called candidatus.

The word "candid" (frank, straightforward, clear) also has its root in candidus, as did the original intent behind "candid camera" (a small camera taking unposed pictures, often without the subject's knowledge.)

LONG-LIVED If you pronounce this one correctly, you're unusual! It's supposed to rhyme with "long-knived." You're talking about "life" which is a noun, and follows the same rules as knife and wife (as "many-wived Tommy Manville"). Most often, it's mispronounced as though the person were using the verb "to live."

When used correctly, the word becomes an adjective (lived) meaning "having life."

FRATERNITY NEWS (Cont'd from page 4, col 2)

Social Committee co-chairmen, Russ Sherman and Pete Roper have announced January 30th, 1960 as the long-awaited dinner dance. Through the splendid efforts of Russ and Pete, Governor DiSalle, a brother Delta Thet, will be our guest speaker for the evening. The committee is working closely with the Alumni Group and the advance word is an enthusiastic response to say the least. Many distinguished members of the bench and bar have promised to attend as well as many other prominent citizens of Cleveland including the mayor.

This gala affair is scheduled to begin at 7:30 P.M. and the Governor's address will be followed by dancing. The music will be supplied by Marty Conn and his seven piece band. As a special treat for young and old alike, Miss Carol, a former Miss America contestant will be singing with the band. The cost of a ticket to the affair will be $5.50 per person, which of course, includes the cost of the dinner.

The annual fraternity award to the Man of the Year will be made during the affair as will the awards for the man in each class that has made the most improvement in grades over the preceding year. All members are urged to bring their friends and Peter Roper will be glad to make up a special table for your group. More details will be forthcoming in the mail shortly.

Once again the fraternity was honored in having one of our alumni brothers give an excellent talk at a social meeting. Brother Dana Brooks, Director of Domestic Relations Bureau of the Common Pleas Court gave us all an added insight into the working of the Domestic Relations Bureau. Brother Brooks explained the importance of his department's work in attempting to rehabilitate marriages and, if this fails, to make thorough investigations as to custody of the children. Brother Brooks also gave some examples of the difficult and tragic situations that develop when a family begins to break up. The fraternity heartily thanks Brother Brooks for giving so freely of his time and in so doing providing us with a pleasant and stimulating evening.

REMEMBER THE DINNER-DANCE JANUARY 30TH!!
PROFESSORS TRAVEL TO ST. LOUIS

Professors Oleck and Samore are going to the 1959 Annual Meeting of the Association of American Law Schools which will be held in St. Louis, Missouri, at the end of December. The highlight of the convention will be the proposed amendment to the Association's constitution. The amendment is intended to give aid to professors in legal research. Another part of the program will include various group seminars on such topics as commercial law, local government law, foreign exchange, labor law, etc.

Upon their return, Professors Oleck and Samore will report all items covered which are pertinent to the night law school.

* * * * * * *

ARE YOU A CANNED BRIEF ADDICT (Cont'd from page 3, column 1)

only of profiting from the costly experience of the litigants, but also to observe and participate in the thinking of the court in arriving at the announced result. It has been demonstrated that conscientious study of cases develops the mental faculties of the student to do the same thing as the court when the student has a problem and must find his own solution upon which he and his client may rely. Such training can never be acquired by reading canned briefs, even if supplemented by competent instruction. There is no substitute for doing all the work yourself.

True, reading of canned briefs enables a student, with a minimum of effort to recite with apparent glibness (too glib at times) but ask him a question striking at the heart of the principle involved and he is lost. This must be the inevitable result. The use of canned briefs is like trying to master a mathematics course by reading the answers in the back of the book, instead of working the problems. You get the right answer that way to the problem in the book, but what are you going to do when the factors in that problem are changed and the answer isn't to be found in any book? If you haven't mastered the method of solution you are completely baffled and will stay that way until someone shows you how. The same thing will happen in the solution of legal problems. It is the mastery of the technique and method of solving legal problems that should concern you most during your student days. If you don't learn it then you never will.

Certainly the careful and analytical reading of cases is hard and time consuming work. But long experience has proved beyond doubt that the effort will be handsomely rewarded. Whenever another and easier method is devised which will produce the same results it will no doubt be adopted at once.

One thing is certain, canned briefs aren't the answer. If you are really serious about getting first-rate legal training you will be well advised to avoid their use entirely.

* * * * * * *

LETTER TO THE EDITOR:

There's one in every class: Ladies and gentlemen - we are being hit where it hurts most, the pocketbook.

Each student of this venerable institution pays approximately one dollar per clock hour to sit in rapt attention while the professor expounds. Perhaps this would be brought home more graphically if, after each hour, the class members would file past the instructor's desk and deposit thereon one bill. Painful, ain't it?

I bring this to your attention to explain my feelings about the characters among us who monopolize the class time with question after question - most legitimate, many inane - but either way Mr. What If is taking much more than his share of the class time.

(My name is withheld. I might have a question or two.)

* * * * * * *

PARADOX (Continued from page 2, column 1)

governmental support for the very program which the United States Government professes to encourage, we, at Cleveland-Marshall should be very proud that one of our professors received such an honor.

All of us agree that Professor Oleck is an excellent professor. It is gratifying to know that people in a country as distant as Malaya agree also.

Since such an honor to one of our professors enhances the prestige of the
PARADOX (Continued from page 7, col. 2) school. It will be of positive benefit to all of us if Professor Oleck is enabled to accept this invitation. Therefore, the Gavel Staff wishes to suggest that any member of the student body who knows anyone who could help obtain funds, or who has an idea as to how such funds may be obtained, should contact Professor Oleck.

THE WORLD IN ACTION (Continued from page 2, column 2.)

this part of the law has never been fully tested in court.

Queried on what he thought the law meant about the force of the vote by the union membership, Mr. Hartley replied: "It would be a direct violation of the law for the union leadership to call out the strikers even if the vote were only 51 per cent in favor of continuing work." He thought it significant that the union has paid so much attention to "majority rule," yet it is conceivable that Mr. McDonald would not obey the mandate of the voters (his own membership).

What Can Congress Do?

Mr. Hartley and other labor experts in Washington seem to agree: Despite the representatives and senators who owe their allegiance to the labor movement (on the basis of the November, 1958, elections), the next session of Congress will seek some revision of the Taft-Hartley Act. Reason: To protect the country from the type of emergency created by the steel strike.

Compulsory arbitration has been mentioned by more than one resident of Capitol Hill since the breakdown in negotiations. A compulsory fact finding board with the power to make recommendations is another easy solution, suggested several congressmen.

The President's Requirements

One aspect of the situation, which some analysts tend to forget, says Mr. Hartley, is that the President is required under the law to make recommendations to the Congress if the workers do not accept the last offer of the industry and strike again. In a Presidential election year, the requirement puts the Republican administration in a tight spot. The administration may feel that the law has been violated in one way or another, yet it may choose to avoid court action and take its case to the public, through the Congress, by suggesting new legislation.

If the administration agrees with the Presidential board of inquiry members that this situation should never have been allowed to develop, as Dr. Taylor has implied in some of his public statements, then some form of compulsory negotiation will be requested. To do otherwise is to risk the force of public opinion in an election year - something no politician would do even if he were operating on the other side of the moon.

Antitrust Laws for Unions

Mr. Hartley raises this point. If a lockout by a group of employers is to be considered a violation of our antitrust laws, then why isn't an industry strike, as initiated by the powerful steel union, considered an equal violation of the antitrust laws? "There is no equity in the situation," he says.

The possibility of such action is not to be overlooked, he points out. Under the Truman administration, the House passed a law to draft the railroad workers into the Army if they persisted in their strike.

Crux: Congress, under the fire of political motivations next January, can react in a manner which will serve neither industry nor the unions.

SUPERIOR JUDGMENT: "Are you acquainted with any of the jurymen?" the District Attorney asked the elderly witness.

"More than half," answered the old gentleman.

"Are you willing to swear that you know more than half of them?" persisted the D.A.

"If you want to put it that way," drawled the old man, "I\', willing to swear I know more than all of them put together."
be attributed to many things but more specifically was the interpretation of the Constitution. With the exception of the Federalists the majority of the people had hardly any use for it. And, the Federalists, during John Marshall's incubation stage in the Supreme Court, were losing to the group who preferred a weak central government.

Some of our readers have already expressed the opinion that the role Marshall played in making the Constitution a real power was not as prominent as has been indicated in this article. These views and others you desire to express will be considered in future issues. The next issue will be based on the significance of Chief Justice Marshall's decision to the Marbury v. Madison Case.

(This of course was not what the framers of the law of the land had intended.) The government was beginning to return to those disastrous features which were prevalent under the Articles of Confederation. This was characterized by the weak and ineffectual legislative and executive branches of government. The judicial branch (before Marshall) had no power at all. Hence, as the quotation states, our Constitution was a trifling piece of "paper" and our country was a "skeleton."

The Supreme Court, when John Marshall was accidentally appointed to it, was classified by Max Lerner as a "straggling group of lawyers." Previous to Marshall three Chief Justices, Iredell, James Wilson and John Jay, all resigned because the Supreme Court, as conducted and considered, had little power and less dignity. But, as John Marshall acted and his opinions began to gain strength, that whole aspect of the legal system began to give our "Nation" the firm foundation it needed.

Enough of this dicta, let us use an historian and a judge to provide the decision (stare decisis) of the case at hand. Albert Beveridge, an historian, referred to J. Marshall as "giving forth those immortal opinions which breathed into the Constitution the breach of life and made our nation a possibility." Justice Harold H. Burton said of Marshall: "Best known today for his creative opinions interpreting the Constitution of the United States as endowing the federal government with powers adequate for its effective operation."

* * * * * * *

* * * * * *

* * * *

*