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CLUB OF MICHIGAN

R E S

G E S T A E

The Weekly Newspaper of the U-M Lawyers Club

February 7, 1966
Vol. ~~19~~²⁰, No. 4

ALL THE NEWS THAT'S
FIT TO PRINT, PLUS
A LITTLE MORE

BISHOP INDICATES I-LAW FAVORS U.S. STAND IN VIET NAM. HOWEVER, APPEAL TO THE UN IS "BELATED." SEE STORY, PAGE 6.

NEWSBEAT: Gideon Revisited

January 21, the case of People v. (withheld by request) was decided in the Ann Arbor Municipal Court of Judge Francis O'Brien. The case serves to point up the impact of the various legal aid services that have formed to provide the indigent with counsel.

This case involved a senior at the U-M, charged with shoplifting articles from a local food store. Like most undergrads, the student met the indigency standards of the Washtenaw County Legal Aid Clinic and was given the services of Dan Carpenter, a senior in the Law School, to defend his case.

The case appeared to be open and shut against the student. He had been apprehended by the store manager after passing through the first set of two doors leading to the outside--the article allegedly taken still on his person. The attorney who was assigned to oversee the case recommended the student plead guilty and hope for leniency. The student attorney, not troubled by the lack of any financial rewards, persisted in his efforts to try some defense and, with the help of Judge O'Brien who refused to accept the guilty plea, the student attorney finally prevailed.

The prosecution argued that obviously there was a taking, since in Michigan that requires only physical control of the goods. There the prosecution left the case, having found that enough to convict in previous cases of this sort. The defense, however, claimed that the student had no specific intent to steal, that in fact he misunderstood the law and thought he had not stolen anything until he left the store (mistake of law is a defense only in so far as it goes to negative the intent to steal), and finally that when he turned around, he intended to put the item back but was apprehended before doing so.

The jury of four women and two men agreed with the defense and returned a verdict of acquittal after deliberating ninety minutes. Thus for one indigent, legal aid has meant the difference between pleading guilty on advice of an attorney and being found not guilty by a jury after a trial defense conducted by free student counsel. In terms of the effect conviction would have had on employment opportunities in industries requiring security clearance (the student is in Physics), the presence of student counsel cannot be valued in terms of money alone.

While it may be going too far to condemn attorneys who refrain from doing their best where the prospect on monetary return is zero, irrespective of what the ethics of the profession require, yet the case above indicates dramatically that legal aid services staffed by volunteers possessing some competence in the law can be and are effective in providing at least minimal protection for the rights of the indigent. Perhaps such programs, expanded with time, improved with experience and subsidized according to need, provide the best means of meeting the double problem of aid to those unable to pay and salve for the conscience of the legal profession.

Newsbeat, cont.

Carpenter, incidentally, plans to work for the other side when he graduates. The experience that ended January 21 will doubtless remain indelible when he undertakes to prosecute instead of defend.

A ceremony honoring the graduating seniors will be held Thursday, May 12. It is not a substitute for the University of Michigan spring commencement and seniors are encouraged to attend the University commencement, Saturday, April 30. The Law School ceremony will feature a prominent speaker and will be followed by a reception at which there will be a receiving line comprised of members of the Law School faculty. Parents and friends are welcome and a questionnaire will be circulated in the near future in an effort to determine how many guests each senior is expecting. The time for the ceremony is tentatively set at 10 AM. Details will be announced at a later date. Seniors with questions or suggestions can contact Frank Hill, Sid Brockley, or Mike Mehr.

A food committee has been established by the Board of Directors comprising the following persons: Jim Klancnik, Hurst Groves, Bob Becker, Ken Stein and Don Nelson. Any comments should be directed to those gentlemen. The committee will study the meal situation and present its findings and recommendations to the Board of Directors.

ATTENTION: ALL LAWYERS WHO LOVE PARTIES!

HEAR YE THE SCHEDULE OF COMING EVENTS!

THE SEMI-FORMAL DANCE WHICH HAD BEEN SCHEDULED FOR SATURDAY, FEBRUARY 12 HAS BEEN POSTPONED. ALL LAWYERS WHO LOVE ROAST BEEF, WINE, WOMEN AND SONG! HEAR YE THE NEWS OF THE ROAST BEEF DINNER-DANCE COMING UP ON FEBRUARY 26, SATURDAY EVENING. THIS WILL BE A SEMI-FORMAL AFFAIR ... BUFFET DINNER FOLLOWED BY DANCING IN THE LAWYERS CLUB LOUNGE. PLAN NOW! WATCH FOR FURTHER NOTICE!

--Wm. H. Conner and Steve Petix

LEGAL AID BRIEFS:

Blessed is he that considereth the poor.

Psalms XLI:1

A judge is a law student who marks his own examination papers.

H. L. Mencken

Welcome to a new department in the RES GESTAE. By carefully observing these pages each week, one and all may be informed upon doings at 201 North 4th Avenue.

This column will be used as a channel of communication from the members of the clinic to the executive board and from the executive board to the student body. Any information in the form of announcements, complaints, or commendations may be directed to me in person, by phone 662-9612, in the clinic mailbox, by carrier pigeon, smoke signal or Pony Express.

On Thursday, January 27, the local poverty committee (Washtenaw County Citizens Committee for Economic Opportunity) gathered in the Washtenaw Probate Court Room to listen to discussion by citizens, and a proposal from the clinic law students to reconsider their January 4 vote, which approved our program, by requesting a change in the composition of the Board of Directors. The Board is now made up of 6 attorneys and 2 citizens. What did the citizens and the law students want? Simply more representation of the "community to be served" (i.e. the poor), and some relaxation in the standards of eligibility and types of cases allowed. Student proposals included enlargement of the Board from 8 to 11 and a change in its composition as outlined: a) 3 members of the local bar, b) 2 law professors, c) 2 "poor" people, d) 2 from local welfare agencies, e) 1 student, f) 1 clinic attorney. After much discussion the poverty committee decided to have 2 representatives from each of the first 5 groups above "come and reason together" prior to a vote at the next poverty committee meeting on February 10, 1966. This vote will reconsider the 8-man Board which was approved only 4 days after this year began. All students,

Legal Aid Briefs, cont.

members and non-members are urged to attend. The powwow will tentatively be held in the County Teepee at Main and Huron at "about" 8:00 PM on Thursday, February 10.

An important election of nine new members of the student executive board will be held this week on Wednesday, February 9.

As was announced in a general meeting on February 2, 18 nominees will be running for these positions. The persons elected will take office 3 weeks after the election at which time they will elect their own officers. Today a list of the candidates and their positions should be available in Hutchins Hall. All Legal Aid members are urged to vote on Wednesday evening at a time and place yet to be announced.

ANNOUNCEMENTS:

1. Students are not to collect the ill-fated \$1.00 registration fee from their clients.
2. February 7--Boy Scout Week begins.
3. February 9--Legal Aid elections at evening meeting.
4. February 10--Washtenaw County Citizens Committee for Economic Opportunity meets at 8:00 in the County Building. (Place may change.)
5. February 12--Lincoln's Birthday.
6. February 13--National Crime Prevention Week begins. Purpose: "To alert America to growing menace and cost of crime, and stimulate public interest in year-round crime prevention activities." (Take a hood to lunch?)
7. Any junior or senior student interested in joining Legal Aid, please contact Charles Patterson at 662-5032.
8. Any member who would like a case to work on please contact Ron Glotta at 665-6229.

STATISTICS:

1. Presently 61 students are signed up for 2-hour tours of duty once a week at the clinic.
2. Total cases opened in January - 28
3. Total cases refused in January - 13
4. Total cases opened from September to January - 128
5. Total cases refused from September to January - 106

A TIP OF THE HAT TO:

1. Luch Marsh for the new drapes in the clinic.
2. David Croysdale, George Newman and Professor White for their presentation before the W.C.C.C.E.O. (poverty committee) on January 27.
3. James Boskey for his assistance in compiling a domestic relations file.
4. Jack Zulack for his "Pinckney Party."

A CLENCHED CLINIC FIST TO:

1. Students who discard cancer sticks on the clinic floor.
2. Student attorneys who don't read our 2d floor bulletin board.
3. Student attorneys who fail to keep their clients informed.
4. Students who remove files or books from 201 North 4th Avenue
5. Members who are often heard but seldom seen.
6. Supervisors who don't.
7. Supervisors who forget to take messages to the Hutchins Hall bulletin board.

--John L. Chamberlain

COHEN'S CORNER: Kauper on the Viet Nam Demonstrators

PROF. PAUL G. KAUPER is our law school's senior faculty member, having begun his teaching career here 30 years ago. After receiving a BA from Earlham College (class of '29) in his hometown of Richmond, Indiana, and a J.D. from the U.M. in 1932, he spent two years as research assistant to Prof. (later Dean) Edwin Stason who preceded Allan Smith. Following two years of private practice with the New York firm of White & Case, he returned to Michigan's Law School with its new physical plant to begin an exceptional career as teacher and scholar. Last summer he was designated

Cohen's Corner, cont.

Henry M. Butzel Professor of Law. Presently, Prof. Kauper has completed work on the new third edition of the Con Law text familiar to all upper-classmen and expects it to be out in March of this year. Also, early in March, he will be leaving for 16 weeks at the Max Planck Institute for Public and International Law at Heidelberg, Germany, where he hopes to do research, study, and writing in the area of comparative constitutional law.

But before he could make his getaway (almost a perfect crime) the RES GESTAE cornered Prof. Kauper for a few comments on a legal topic of current interest especially in Ann Arbor, viz., the legal entanglements of the anti-Viet Nam policy demonstrators. "As to the trespass convictions in Washtenaw County Circuit Court last week, I fail to see any problem," he said. "The defendants violated a state trespass statute and were convicted as they knew they would be. Judge Breakey was correct in ruling that the demonstrators' motive was irrelevant to the question of whether the prohibited act was committed. I fail to see as applicable the Nuremberg trial concept that a man must respect his conscience, because here the U.S. government wasn't asking for anyone to do anything against his conscience. Although First Amendment freedoms are important, they are not an issue in this case since there were other lawful avenues present for protest including picketing, letters to the editor, and other forms of expression.

"THE RECLASSIFICATION QUESTION is much more difficult, though. There is a federal statute making it unlawful to interfere with or obstruct the administration of the Selective Service System. This criminal offense carries its own penalties of fine and/or imprisonment. Professor Kauper feels that the press "has a tendency to overstate the issue, which is not whether a man may be reclassified because of his views." To approach the problem in First Amendment terms is to becloud the issue. These students were being reclassified for violating the federal law. The question boils down to whether a determination by Selective Service officials that these people violated criminal provisions of a federal statute furnishes a basis for reclassification. The case raises several questions of law. First, was this 'interference' or 'obstruction' within the meaning of the statute? Was this action what Congress intended to prohibit by passing the law? Second, is this a kind of determination within the competence of Selective Service officials to make or is this to be determined in a criminal proceeding in a federal court? Third, a related question is whether under the statute, Congress intended a criminal sanction to be the only consequence, as distinguished from the civil sanction of change in draft status. To put it another way, a very important issue is whether there is statutory authority for the Selective Service Boards making a determination that these students violated the federal statute and the subsequent reclassification on that basis.

"I would suppose," Prof. Kauper continues, "that a very good argument could be made along lines that the Selective Service System should not be used as a tool for enforcing criminal provisions of federal statutes by adding new sanctions not provided for by statute. We have to recognize that the Selective Service authorities do enjoy a wide discretionary power in the classification of persons. It seems to me, though, that when these authorities say that violation of the statute is itself grounds for reclassification, they are relying on a questionable rule of law in the interpretation of the statute and this should be subject to judicial review.

"ONE OTHER ASPECT is that the authorities may take the position that while engaging in these forbidden acts is not in itself grounds for reclassification, it does furnish grounds for reopening the question of whether a student's conduct is compatible with the educational purpose for which his deferment has been granted. But if this is the case, then the inquiry should be directed toward that whole issue. The focus of the inquiry should shift to whether this violation in and of itself gives ground for saying there is no longer a basis for educational deferment."

Prof. Kauper feels that not only is reclassification by the Selective Service officials subject to attack on substantial legal grounds, but it is also unwise as a matter of public policy. He comments that "This power, if it exists, could be extended and used as a vehicle for attaching a

Cohen's Corner, cont.

particular kind of sanction to a person expressing views thought to interfere with or obstruct the Selective Service program. Power of this kind should not be vested in an administrative agency. An even more important consideration policy-wise is that, in my opinion, it really detracts from the whole concept of military service to force people into it as a kind of penalty for unlawful conduct. I have a high respect and admiration for the men who are fighting in South Viet Nam and do not think we ought to cheapen and debase military service by treating it as a kind of penalty for those who are critical of current governmental policy and whose criticism takes the form of illegal acts. I do not see how this aids our efforts in South Viet Nam or sustains the strength and morale of our men fighting there.

THE FIRST AMENDMENT is not brought into the picture, Prof. Kauper thinks, unless it could be demonstrated that the students were being sanctioned for their particular views, but these are not the facts on the record. "The sanction attaches to their actions in obstructing the operation of the local Selective Service office. The first and strongest line of attack would be on grounds of statutory interpretation in the sense of lack of statutory authority to deal with this matter in this particular way." Nor does our scholar see a double jeopardy issue of a criminal penalty and an additional civil consequence by way of reclassification because "there are cases to indicate that the double jeopardy limitation applies only to a second criminal proceeding."

REPORT FROM THE BOARD:

Gerry Skoning, chairman of the student library committee, reported that Prof. Pooley, director of the law library, is soon to inaugurate a pilot project in which 100 new copies of the treatises and hornbooks in greatest demand will be placed on the shelves of the reading room, rather than in the stacks. Prof. Pooley said that this project is being adopted in the realization that research materials are not readily enough available for immediate use. Delays in securing materials from the stacks is a discouragement to academic initiative and spontaneous scholarship.

The project is being adopted in view of the fact that a certain minority of students seeking vengeance on their colleagues do remove works from the library at critical times, though many of the works are later returned. Feeling that guards posted at the exits would be inappropriate and expensive, the pilot project will attempt to ascertain the degree of self-control that will be exhibited when treatises are freely available on the shelves. If successful, the goal will be to buy an additional 30,000 hornbooks, treatises and Restatements at a cost of \$30,000.

If this project is successful, Prof. Pooley indicated that the third level stacks may be opened up. This will probably not include other levels where materials are more difficult to find, and consequently their accessibility to the students would present no practical advantage.

Prof. Pooley indicated that in an effort to secure materials more quickly from the desk, additional trained personnel have been hired and more will probably be hired in the coming year.

Recognizing the serious lighting problem, the Law School administration has contacted a New York lighting designer and engineer, who has made a preliminary analysis of the problem. Prof. Pooley indicated that realistically it will still be some time before the problem can be met. This is the second year that funds are to be requested for the project from the Regents. If the funds are provided, it will still be a considerable time before plans can be completed and equipment installed.

No effort will be made to prohibit non-law students from use of the law library as sufficient numbers of them do have legitimate reasons for being there--such as study dates!

Prof. Pooley said that if students have complaints or suggestions concerning the library he would be happy to discuss them through the student library committee.

WEEKENDER:

The local film scene once again offers a diversified selection for the weekend.

The Campus features "The Loved One," a satire on the American way of death starring Jonathan Winters, Liberace, and various and sundry others. The film is directed by the able Tony Richardson, whose outstanding credits include "Tom Jones," "The Loneliness of the Long Distance Runner," and the play "Luther" on Broadway. Nevertheless, the critics' consensus is not very impressive; the picture has been dubbed occasionally funny, but spotty and on the whole immature (i.e. in bad taste). It might be a good idea to wait until local public reaction gives the word on this one.

The State takes a "nosedive" and "bombs" with "Boeing Boeing," a comedy of sorts which relates to the hilarious romantic adventures of those two kinds of the bachelor suite, Tony Curtis and Jerry Lewis (how's that for brilliant casting?) It seems that these two forty-ish roués go out with stewardesses all the time and, well, you know. The word on this one: Boring Boring; advice: wait for Sir Laurence Olivier's "Othello," which plays a special engagement at the State the 16th and 17th.

The Cinema Guild on Saturday and Sunday will present "Triumph of the Will," a documentary of Nazi Germany's Nuremberg Congress directed by Leni Riefenstahl. This is the same director who filmed the excellent "Olympia," which was shown by the Guild earlier this year. The publicity man says this is the greatest propaganda film ever made. This may be true, but the greatest propagandist has to be the guy who writes the advances for the Guild flicks. He, after all, was the one who emphasized how the last seven minutes of Antonioni's "Eclipse" were to be "unexpurgated." Unfortunately, many of those people who saw that film felt they should've left the seven minutes out because they were, quite frankly, boring!

Cinema II, the rival outfit which opened for business last weekend at Angell Hall, is scheduled, as of press time, to show "David and Lisa" this Saturday eve. This marvelous low-budget motion picture portrays the relationship of two emotionally troubled young people who find the beginning of the long road to recovery in one another. The highly talented cast is headed by Keir Dullea, Janet Margolin, and Howard DaSilva. If you haven't seen it, take advantage of this opportunity without fail. Few films as sensitively and beautifully made as this one will come to Ann Arbor during the year.

Finally, the Michigan continues with Lerner and Loewe's incomparable "My Fair Lady," which we noted last week. According to the box office, this Academy Award winner will be in town for at least another two weeks.

--Jay Witkin

SPECIAL

On Thursday evening Prof. Bishop, speaking on behalf of the International Law Society, indicated that were the U.S. to defend its position in South Viet Nam, before an International Law tribunal, it would very likely receive a favorable decision based on international law principles derived from custom and treaties. Before presenting various legal positions Prof. Bishop was careful to eschew any policy considerations. He made the further observation that "law plays a subordinate but intertwined position in the Viet Nam dispute."

The so-called "collective self-defense argument" is the cornerstone of the American position in terms of international law. "Under the U.N. Charter any force is forbidden unless it is specifically permitted." Thus under international law the victim of armed aggression would be permitted to defend itself and to organize a collective self-defense effort in which others who are willing may join. This right is specifically recognized in Article 51 of the U.N. Charter. According to determinations of the International Control Commission set up by the 1954 Geneva accord, and on the basis of empirical observations it can be asserted that South Viet Nam has been open to attack within the meaning of Article 51. This argument assumes that South Viet Nam is a "de facto" sovereign state on the basis of custom, in that it currently has diplomatic relations and

dealings with 52 countries. Thus the U.S. is legally involved in a collective self-defense effort of an independent state, at that state's request.

It is objected that the U.S. and South Viet Nam are in violation of Article 2, (4) of the charter which specifies that "All members shall refrain in their international relations from the threat of use of force against the territorial integrity or political independence of any state..." In the first place, our position is that the use of force against territorial integrity or political independence has been initiated by North Viet Nam. Secondly, this article does not place an absolute prohibition on the use of force. It permits the use of force in a manner consistent with the purposes and principles of the charter. Moreover, the charter itself specifically provides for the use of force in certain circumstances through the U.N. itself, action through regional arrangements and action in self-defense.

It is claimed that this is a civil war, and that foreign states are forbidden to interfere in such a conflict. Prof. Bishop asserted that the evidence of custom does not seem to point clearly in one direction or the other on this point. There does seem to be some precedent for "intervention by invitation" on behalf of the "lawful" government involved in such a civil war, using examples of the U.S. in Lebanon and Great Britain's coming to the aid of Jordan.

It is asserted that our present concentration of troops and military supplies is in violation of explicit prohibitions of the 1954 Geneva accords. However international law recognizes the principle that a material breach of a treaty by one party entitles other parties at least to withhold compliance with an equivalent, corresponding or related provision until the other party is prepared to observe its obligations.

As a final observation Prof. Bishop said legal institutions that may be helpful in the solution of this conflict would be the International Commission set up by the 1962 Geneva agreement, whose co-chairmen are Great Britain and the Soviet Union, the other legal body being the U.N., which Bishop feels is being appealed to "quite belatedly by the U.S."

--Lynn Bartlett

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