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Gavel Raps, v. 5, n. 4 (November 1972)

University of South Carolina School of Law Student Bar Association

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GAVEL RAPS

Vol. 5 No. 4

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Experimental Approach to Tax Course Offered

The utility of a problem-solving approach to legal education as opposed to the more traditional case method has been a subject of dispute among legal educators for a number of years. One advocate of the former methodology has offered the following observation:

The problem method is by no means a pedagogic panacea, but it is a methodology in the right direction. Fundamentally, a case in a law casebook has as much right to being considered a scientific experiment as a recipe in a kitchen cookbook has a claim to being an experiment in chemistry. They are both only the results of scientific experimentation. The case per se in the casebook cheats the law student of the valuable scientific thinking process. On the other hand, the virtue of the recipe in the cookbook lies in the fact that housewives are deprived of the experimental thinking process for the greater good of the fraternity of husbands!*

This thesis is presently being tested by Professor Custy in Section B of Federal Income Tax. To discuss problems prepared during the summer, the class had been divided into four sections, each of which is presided over by a student instructor. Professor Custy circulates among the various classrooms, channeling discussion and seeking to answer questions that have been raised. The problems with which the groups deal are designed to illustrate and expand upon the textbook material and to necessitate a thorough reading of the Internal Revenue Code and Regulations.

(Continued on Page 5)

* J.H. Landmon, "The Problem Method of Studying Law." 5 J. of Leg. Ed. 500 at 506 (1953).

Prisoners' Rights

NEW BOOK BY LAW PROF'S

BY JIM BOGLE



Eldon Wedlock



William McAninch

It has long been the attitude of society and an accepted fact by the incarcerated that once an individual is imprisoned for a violation of the law, he forfeits many basic rights and privileges. Today, however, this attitude is changing nationwide. The basic constitutional rights of the prison inmates are being recognized by the courts; this recognition is being facilitated by the inmates' access to counsel and the courts.

These developments are set out in great detail in a recent book, *The Emerging Rights of the Confined*, by law school professors Eldon Wedlock and William McAninch. McAninch and Wedlock wrote the entire book, with the exception of three short chapters, the appendix and introductory materials. The book was written in what was termed an "institutionalized" manner — materials were reviewed and discussed with a large number of qualified consultants from all aspects of the nation's penal systems. Their recommendations and views were absorbed into the book so as to result in a balanced, accurate text.

CHANGE IN ATTITUDE

Basically, there has been a change in recent years in the attitude of the court system toward the rights of prisoners. The old attitude was a "hands-off" policy: the burden of proof was on the inmate; he first had to establish he had an asserted right, and then had to establish that exercise of it

would not cause problems in prison security and discipline. As a result infringements of many constitutional rights of inmates were justifiable on the grounds of prison security. The recent trend, however, has been toward an acknowledgement of the constitutional rights of inmates. The burden is shifting — the state or prison administration is required to justify any infringements of these rights. Unsupported opinion — e.g., of potential disruption — is no longer sufficient.

Professor Wedlock and McAninch noted that the Supreme Court's attitude in this area has been more or less consistent over the years. The problem for the prisoner has been in the lower courts, where lies the bulk of the caseload. The change there — away from the "hands-off" policy — has occurred throughout the country, both professors said.

When questioned about a possible effect on the Supreme Court in this area due to the Nixon appointees, Professor McAninch mentioned Chief Justice Burger's position. The Chief Justice has made it known that he is really interested in what happens to the individual after confinement. Although the Nixon Court has yet to focus on hard-core First Amendment prison rights cases, a number of recent memorandum decisions have been favorable. Wedlock cited *Younger v. Gilmore*, 30 L. Ed. 2d 142 (1971), affirming a California court's recognition of the right to access to a law library, and See "Prisons" Page 4

Editorial

New School in an Old Shell?

The new South Carolina Law Center will rank as one of the finest legal education facilities in the nation upon its completion next summer. Its location, in one of the fastest growing governmental, industrial and population centers in the United States, gives it great potential. The physical structure of the Law Center will be second to none.

The most serious problem, indeed one that may jeopardize the future of this promising institution, lies in the law library — currently one of the weakest in the nation, and one that almost cost the Law School its accreditation. Less than two years ago, the then law librarian remarked in *Gavel Raps*, "We have ceased to be any type of research library, and have begun to concentrate our efforts on simply

retaining a working student library."

Physical problems with the library, such as lack of student seating space and no additional stack area for new acquisitions, will vanish as we move into the new facility. The new library will cover five floors, each of which will be comparable in size to the present library. The new library has room for over 200,000 volumes, compared with the 65,000-volume capacity in Petigru.

Financial problems, however, will not disappear. A "working student library" is not enough at any law school, especially at one which has as a long-term goal the establishment of excellence in legal education. There is even a serious question whether the law school library is now a "working student library."

If we are to continue to attract outstanding faculty members to the Law Center, if we are to get members of the Bar more involved in continuing legal education projects at the Law Center, then we must offer research facilities that are equal to the task.

For a more informed discussion of these problems, which lie at the heart of the threat to the Law Center's future, we commend the reader to Dean Foster's column elsewhere in this issue.

If the Bar and Legislature combine with the University to guarantee a library that is not just "adequate for students", but outstanding for scholars and practitioners, then South Carolina will have a true Law Center. If not, we will remain the same old school in a new shell.

O.A.J.

S. B. A. President Disappointed

by Ray Williams

The progress of the student representatives sitting on the faculty has been very disappointing, to make a huge understatement. Our three student representatives — Mike Cole, Bill Schachte, and Dan Speights — have been present at each of the faculty meetings since the beginning of the fall semester. The major portion of these faculty meetings has been consumed with the adoption of by-laws by the faculty. It is under these by-laws that the faculty, with student representatives sitting, will function. The original by-laws as they came out of the By-Laws Committee had no mention of the student representatives having the opportunity to vote on any substantial matter. The student representatives presented an amendment to the by-laws to allow these representatives to vote on all matters except those concerning faculty discipline and faculty recruitment. This amendment was defeated by the faculty by a substantial margin.

CONSISTENT DEFEATS

Since that time, the faculty has defeated every measure of substance that the student representatives have proposed concerning the right to vote. The student representatives have won the concession from the faculty that our representatives can remain and debate matters that concern the student body, even though they have no vote on these matters.

DISAPPOINTED

As President of the Student Bar Association, I was extremely disappointed with these developments. The reason behind this disappointment is the simple fact that the Student Body has three extremely capable student representatives sitting with the faculty and these representatives have no opportunity to express, by the privilege of voting, our views on important matters that directly concern us.

BRIGHT FUTURE?

The one bright spot is that we do have student representation on the standing committees, as prescribed by the faculty by-laws. The committees have been given the discretion, through the faculty by-laws, to vote and to designate the matters on which the students may debate and have a vote. The committees have responded by giving our representatives equality with the faculty members on all matters that may be presented to these committees. Hopefully, by the student representatives demonstrating our maturity through working within these committees, a positive influence will be established with the faculty. While the benefits of the student representatives being on these committees will be recognized this academic year, hopefully these activities will also have a positive influence as to student voice and vote on the faculty in succeeding years.

ASHLEY WHO.....?

by Jim Mason

In the spring of 1972 a new position was created in the administration of the Law School. That position is called Assistant to the Dean, and the first person to hold that job is Ashley O. Thrift, a 1972 graduate of the University of South Carolina School of Law.

With the building of a new school, supervision and administration of the faculty, academic standards and affairs, and myriad other appointments and duties, Dean Foster just can't meet each of the more than 800 students in the school. Thus, the creation of the new position, Assistant to the Dean. Ashley Thrift was thereby appointed to deal with student affairs and problems.

One of those student affairs is that of financial aid counsel. Students seeking financial aid should contact Ashley, who will try to develop a financial program to solve their needs. Interviews with applicants for loans and scholarships are the basis for his recommendations for scholarship and loan assistance. Too often, Ashley feels, the applicant does not know of the various ways to obtain scholarships, loans, or jobs which will solve financial need. Ashley does not maintain that he will provide a solution for every case of financial need, but he will work with a student to locate solutions.

Placement Director

Due to the efforts of Professor Haynsworth in recent years, a placement program has gotten well off the ground. Ashley Thrift, however, has been designated placement director, and is determined to strive for a strong, well-known and respected placement directory at USC. Placement, Ashley says, is bound to take on greater importance with the rapidly increasing number of law graduates competing for jobs. There are three ways in which Ashley sees possible immediate improvement in the placement program. First is that of developing a current and extensive file on possible employers; second is increased correspondence with employers presently known to USC, and widespread correspondence to new employers and geographical areas. Third is publicity of this effort throughout the school so that Ashley will receive student feedback regarding types of work and areas desired. This will enable Ashley and his staff of Bill Taylor, Assistant Director of Placement, and Tony Hill to provide files on those employers of actual interest to USC law students.

"Common Denominator"

Ashley Thrift is sincerely interested in the job of dealing with students, and placement and financial aid are not the only areas where this is evident. He acts as sometimes counselor to student organizations, helping them with program scheduling and financing. Not only organizations receive his assistance, though, since Ashley considers it his job to be available to each

student. "Dean Foster has a real commitment to each student," says Ashley, but time isn't available for the Dean to exhibit this interest continually. So Ashley is here to assist — not to "spoon-feed," but to assist, he reminds. "There's no common denominator in the present set-up," Ashley says. First-, second-, and third-year students don't communicate with each other, and the students don't seem to be communicating with the faculty. Ashley feels he can act as somewhat of a common denominator, a bridge in the communications and confidence gap between the students and faculty until good communication and trust are rebuilt. The student body, especially because of the recent expansion of the school, has not received the attention it needs to feel like an integral part of the law school; this is an important cause of the communications and confidence gap. Ashley doesn't guarantee success in this area, but he's ever willing to try. He likes this part of the job and feels he has an obligation to students to make them feel part of the school.

Thrift's Background

Ashley Thrift received the A.B. degree from the University of North Carolina in 1968 in history and political science. At UNC Ashley was on the staffs of the student newspaper and a city newspaper, was involved in numerous campus government organizations, participated on athletic teams, and directed the UNC intramural program during his senior year. In his senior year also, Ashley was one of the founders of Information Research Associates, Inc., an organization which researches National Debate Topics and publishes three debate books each year which are sold throughout the U.S. This association has provided numerous other informative publications. In 1969 Ashley spent six months on active duty in the U.S. Army Reserve.

While attending law school at USC, Ashley worked in the University's Student Affairs Department. He was Assistant Dean for Campus Relations during his last year of law school. Presently Ashley is editor of the South Carolina State Bar Association magazine, "The Transcript." He remains active in Information Research Associates.

GAVEL RAPS



GAVEL RAPS

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If you have ideas or suggestions, or want to investigate, write, or help produce the paper, let us know — call 254-0986, or leave a message in Room 106.

Part 2 "Profiles" Professors Schultz & Lightsey

by Norma Autrey

Professor Jon Schultz is one of the very few individuals in the United States who holds a Master in Law Librarianship degree. This unique degree was earned at the University of Washington, the only school in the nation offering such a program. He served his apprenticeship at the Yale Law Library.

From Nebraska

As a youth Professor Schultz lived in Nebraska and he completed his undergraduate work at Kearney State College there, majoring in both French and English. He has also studied at the Sorbonne in Paris. His J.D. degree was earned at the University of Denver, where he also met his wife, Suzette. Prior to coming to South Carolina, Professor Schultz taught for three years in the graduate business school at Oregon State University, and later held the position of assistant professor and assistant law librarian at Indiana University at Indianapolis. He and Mrs. Schultz, a native of Los Angeles, have two sons, aged four and one.

New Law Library

Professor Schultz is eagerly anticipating the move into the new Law Center. The majority of law libraries throughout the country are overcrowded, he says, because of the tremendous information explosion, particularly in the fields of environmental and criminal law, which has taken place over the past decade. The USC Law Library is no exception. The impressive new facilities will enable the University of South Carolina Law School Library to greatly broaden the scope of its services. Increased enrollment has emphasized the need for duplication of many of the volumes now in the library as well as the addition of other materials. Professor Schultz says that the South Carolina State College collection will significantly augment the number of volumes currently in use. He hopes, too, to initiate the use of micro-forms in the storage of older and little-used materials.

Bar Exam Conflict?

The library is scheduled for occupancy by July, 1973. Professor Schultz has expressed concern that the move into the new quarters may coincide with the Bar exam, although he hopes to avoid any conflict which might arise.

Harry M. Lightsey, Jr. has become a full-time professor, although he is no new-comer to the USC Law School. He has lectured here intermittently since 1962 in addition to pursuing a varied and distinguished career.

Professor Lightsey received his B.S., cum laude, from Clemson University in 1952, majoring in agriculture. He then received his D.V.M., also cum laude, from the University of Georgia in 1956 and practiced veterinary medicine for two and one half years. In 1961 he graduated summa cum laude from the University of South Carolina Law School.

Legal Experience

A specialist in appellate and administrative law, he teaches Regulated Industries, Administrative Law, and Insurance. As a member of the firm of Berry, Lightsey and Gibbs, he has practiced in Columbia and has participated in a number of important state cases, including the re-apportionment and school desegregation cases. He has served as General Counsel to the South Carolina Public Service Commission and as Legal Aide to the South Carolina Senate.

Politics

Active politically, Professor Lightsey served in 1970-71 as State Chairman of the South Carolina Democratic Party. He managed Governor John West's campaign for Lieutenant Governor and previously managed one of Senator Olin Johnston's campaigns. He now serves as Chairman of the Human Affairs Commission.

Married to the former Kathleen Kay, Professor Lightsey has four children, 16-year-old Harry III; Wallace, aged 14; Kathleen, 11; and Glenn, 8. In his limited leisure time, Professor Lightsey enjoys golf and hunting and fishing.

PRISONS

(Continued from Page 1)

Haines v. Kerner, 30 L. Ed. 2d 819 (1972), which instructed that prisoners' complaints be read in the broadest possible light.

ENFORCEMENT PROBLEMS

Both professors pointed out a significant effect of many recent lower court decisions. A problem that has long existed has been the financing of court-ordered reforms, such as in the improvement of prison physical facilities. Now, many decisions have had significant weight in state budget hearings; an Arkansas decision ordered the state to run a **constitutional** penal system or shut it down. Similar decisions are affecting the relatively smaller county and city jails in many areas.

BOOK WELL-RECEIVED

The Emerging Rights of the Confined in seventeen of its eighteen chapters examines specific rights the incarcerated and aspects of the penal system. These topics range from the basic constitutional rights of access to courts and freedom of religion, to physical aspects such as facilities and inmate safety. Each chapter sets out in detail the developments in an area among the courts.

Reception of the book by its intended audience has been very good, both professors said. The book was supported by a grant from the National Institute of Law Enforcement and Criminal Justice to the South Carolina Department of Corrections. It took two years to complete.

PROGRESS IN S.C.?

When asked about progress in South Carolina, the authors observed that local prison authorities are making efforts to do the best job with what is available. Professor McAninch spoke favorably of two programs at CCI — the work release and job-training systems — although he noted that the latter has a capacity of less than fifty out of an inmate population of 1,700. Professor Wedlock stressed the educational programs which upgrade the prisoner's level of education before release. College-level courses are also available.

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Crisis in the Law Library

by Dean Robert W. Foster

Over the past decade the Law School Library has been faced with an increasingly critical situation of an inadequate book collection. Maximum capacity in the existing building was reached several years ago so that funds for additional acquisitions could not be justified. The result has been that in comparison with other state law schools, our law library now ranks at or near the bottom in almost every statistical category. We spend less per student on library books than any other accredited law school in the United States, and our total collection is substantially less than any other southeastern state law school.

The move into the new building in the summer of 1973 with approximately five times greater capacity for the library will solve the space problem that has inhibited the opportunity for development. We now look forward to the use of these facilities to begin a catch-up program aimed toward the development of an advanced

research library at least comparable with the book collection and staff personnel of the average of other southeastern state law schools. The price tag for this plan is in the neighborhood of \$400,000 to \$500,000 a year for the next five years.

In recognition of this critical need, the base for the funding in the amount of \$300,000 has been approved by the University's Board of Trustees and recommended by the South Carolina Commission on Higher Education to the State Budget and Control Board as a line item request to the General Assembly of South Carolina. If these funds are made available as part of the formula for funding the University for the next fiscal year, the balance could be obtained from the University's general budget supplemented by private contributions.

Given the obvious fact that adequate library resources form the nucleus of everything we envision for the future, the direction of legal education and improvement in the administration of justice in this state will be largely determined by the legislative decision to provide the \$300,000 additional base for the development of the law library. Without this support, the unique opportunity of becoming a great state law center will be seriously impaired.

TAX COURSE

(Continued from Page 1)

"To understand the general principles of taxation," explains Professor Custy, "the student must, in effect, learn a new vocabulary. By verbalizing these concepts on a daily basis and applying them to a variety of factual situations, the student acquires a facility for dealing with these materials that case reading alone does not impart. By the time he reaches the second year of law school, a student should be able to read and dissect a case. What we are asking him to do is apply what he has read."

Reactions to this new format, predictably, are mixed. A heavy reading load and the late hour of class meetings are the most generally articulated complaints. On the positive side, many participants appear to prefer the give-and-take between themselves and the instructors as a respite from the usual fifty-minute lecture. The efficacy of this approach will, in the last analysis, stand or fall with student performance on the final exam. If the results are favorable, the new methodology will have a permanent place in the tax curriculum.



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Registration Problems?

BY JIM BOGLE

A number of problems occurred during Fall registration, and the Student Bar is planning to take steps to correct the situation. The goal is a speedier, more efficient, and less time-consuming registration process.

Some of the problems with registration apparently had their origin last spring, when students were suddenly instructed to preregister on the last day of final exams. Preregistration is essential to law school registration, so that schedules can be ironed out before everyone returns in the Fall. Registration officials said that because of this late preregistration, and the size limit placed on seminars, many upperclassmen's schedules had to be altered on registration day. The resulting backup was compounded when it was discovered that the computer center had failed to print registration forms for a large part of the freshman class; this too had to be resolved in the registration line.

As in all registrations, there were mistakes made by the students themselves, such as arriving at other than their scheduled times, losing registration forms and passes, and the like.

One complaint from just about everyone was the lateness of registration. It did not start until around one in the afternoon, and lasted until eight in the evening. The late start was at the direction of the University Registrar's office: the law school was given half a day. But according to complaints from some students and officials, the lateness was caused by a number of bottlenecks in the registration process. One was the first station where course cards were handed out; however, all cards were out by 4:30. Other bottlenecks included the PAD Directory, the Student Bar dues and receipts station, and the Dean's Signature Station.

P. A. D.

On Saturday, October 21, 1972, P.A.D. held its Fall Activation Ceremony and is proud to announce the names of its new members: Joe Lumpkin, Sally Walker, James Lockemy, Ron Hallsten, Allen Strait, Steve Solomon, Jack Swerling, Vic Rawl and Ren Blanks (activated into the Alumni Chapter.) The Annual Alumni Cocktail Party, which followed the activation ceremony, was held at Brother David Bloom's Woodland Village Apartments Clubhouse and a good time was had by all who attended. Election of officers for 1972-1973 school year will be held at the November dinner meeting. Watch for the date and place of this meeting which will be posted on the P.A.D. bulletin board in the near future.

The American Bar Foundation announces the twelfth annual

SAMUEL POOLWEAVER

Constitutional Law Essay Contest

Conducted by the American Bar Foundation pursuant to the terms of the "Statement of Purpose for the Samuel Pool Weaver Constitutional Law Essay Program," dated January 1961.

Subject The scope of Congress' power under the enforcement clauses of the thirteenth, fourteenth, and fifteenth amendments to "expand" or "dilute" the interpretations of those amendments by the United States Supreme Court.

In the past half dozen years, the Supreme Court has decided a number of important cases dealing with the extent of congressional power under each of the three enforcement clauses to secure civil rights. To illustrate, in one decision, *Katzenbach v. Morgan*, 384 U.S. 641 (1966), the Court held that § 5 of the Fourteenth Amendment authorized Congress to exercise discretion to "expand" judicial definitions of Fourteenth Amendment rights, but stated, in footnote 10, that "§ 5 grants Congress no power to restrict, abrogate, or dilute these guarantees." In another of the decisions, *Oregon v. Mitchell*, 400 U.S. 112 (1970), the Court held that Congress had exceeded its power to "expand" under § 5. The subject of the essay calls for consideration of the varied and complex issues raised by the entire series of decisions.

Prizes

First Prize: \$5,000

Honorable Mention Prizes totaling: \$1,500

Final date for submission of essays: January 1, 1973

Purpose: The purpose of the Program shall be to invite and judge on a competitive basis essays dealing with (a) the constitutional government of the United States of America; (b) its powers, principles, and limitations; (c) those studies and statements that will promote and maintain the philosophy of our present government as represented under recognized constitutional principles; and (d) those studies and statements that will inspire greater loyalty and interest in our existing constitutional institutions.

Eligibility: The Competition is open to all regular and associate (student) members of the American Bar Association in good standing as of January 1, 1973, except members of the Board of Governors of the American Bar Association and officers and employees of the American Bar Foundation and the American Bar Association. Participants will be required to assign to the Foundation all rights in essays prepared for and entered in this Competition. With regard to those essays not selected for publication by the Foundation, it is the policy of the Foundation to encourage the authors to seek individual arrangements for publication. To that end appropriate arrangements, such as license to publish or waiver of Foundation rights in the essays, will be made.

Only essays prepared for this Competition will be considered for the \$5,000 prize. Essays on the subject, published during 1972, may be submitted for consideration for honorable mention prizes.

While the American Bar Foundation reserves the right to defer the award, it is hoped that the Program will arouse substantial interest among American lawyers, practitioners, judges, law teachers, and law students. Selection will be made by a committee composed of Dean Charles P. Light, Chairman, Washington and Lee Law School; Jesse H. Choper, University of California Law School, Berkeley; and John D. French, Esq., Minneapolis, Minnesota. The Foundation is making tentative plans to publish the winning essay and possibly others which are of superior quality.

Instructions: All necessary instructions and complete information about the number of words, copies, footnotes, and citations may be secured upon request to:

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