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UNIVERSITY OF SAN DIEGO SCHOOL OF LAW

The WOOLSACK

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☆☆☆☆☆ INAUGURAL ISSUE ☆☆☆☆☆

Excessive Juvenile Detention

By RICHARD L. VAUGHN
Judge of the Juvenile Court
of San Diego County

Since I do not consider myself an expert on the problems of the juvenile, I have elected to write about one small phase of the entire subject, excessive detention. It is, however, a most vital facet of which many people are totally unaware.

For the purpose of this article "Detention" is defined as the

'temporary care of children who require secure custody in a physically restricted facility pending investigation and disposition.'

This is a period of time that a minor is held in a juvenile hall by a probation department officer, who has received him from a police officer, parents, a private citizen or the juvenile, himself.

In most instances, a detention hearing is held before a judge or referee within three days of the time of the minor's arrival in juvenile hall. The hearing is to determine whether or not the juvenile should be detained, or released to the custody of his parents, relatives, or otherwise placed, pending his regular hearing.

A juvenile cannot post bail in juvenile court. Therefore, if he is not released by the investigating probation officer, he must appear for the determination of his placement, pending the regular hearing. In such case he may appear either with or without legal counsel or his parents. The time elapsing between the detention and regular hearing is about three weeks, and therefore it is important to a juvenile whether he is detained or not, because if detained, he is removed from his home, school, and friends.

The detention hearing should be of great significance and lasting impression to the minor, since usually it is his first appearance in a court of law.

In past years I have detained juveniles who should not have been detained. Perhaps in the future I will do the same in my court. My hope is that I will not.

The tendency of courts throughout the land is to OVER-DETAIN; the State of California is one of the worst offenders. This problem was first brought to my attention when Judge James Carter told me, he knew of a juvenile judge in another state who had requested a larger detentional facility,

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BAMBIC ALSA PRESIDENT

Gene Bambic, 4th year night student, was elected--on August 15th--National President of the American Law Student Association at its 15th Annual Conference in Chicago. A.L.S.A.'s 40,000 members are students from the 134 Law Schools which are accredited by the American Association of Law Schools, a branch of the American Bar Association.

Gene was chosen as the first A.L.S.A. Representative from the University of San Diego in the May, 1962 elections for Student Bar Association officers. One of his initial official acts was to attend the 14th Annual Conference in San Francisco. Gene was extremely impressed by the organization and the friendly atmosphere of the conference and volunteered for one of the committees that formed the nucleus of the conference. He also gave the nominating speech for Dick Block of U.S.C., who subsequently won the office of A.L.S.A. National Executive Vice-President. Block subsequently placed Bambic's name among the nominations for chairman of one of the eighteen National Committees. Bambic presented himself before the Executive Council for an interview and was appointed Chairman of the Committee on Student Bar Administration.

On March 5th, 1963, Gene presented a two-hour program on Student Bar Administration at the 9th Circuit Conference (there are twelve circuits in the A.L.S.A.). The program consisted of information on publishing a newspaper, on Student Bar financing, on orientation of new students.

At this conference, Gene also nominated Fred Tschoff--another 4th year night student--for the office of Circuit President, which he won by a substantial vote.

Gene next attended the Annual Conference in Chicago, which was to be held from August 11th through August 16th. He had no serious thought of running for National President until 1:30 A.M., Monday, August 13th, when the Executive Council invited him in for a "closed door" session and requested him to run.

Gene was nominated by the 8th Circuit President, Tom Heitz; and by the 10th Circuit President, Ned Oldham. The vote by the representatives was 68-34 in favor of Bambic over Chris Ditz of Rutgers. In his acceptance speech, Gene outlined a program of stronger unification, of more debate and discussion in the House of Delegates on matters of national prominence, and of a loan fund for individual members.

Gene's duties include addressing the American Student Medical Association, the A.L.S.A. at their annual meeting in Los Angeles, the American Bar Association in New York, the Canadian Student Bar Association and various State Bar Associations. Also, Gene writes the editorial for each issue of the Student Lawyer, official A.L.S.A. magazine.

GENERAL HICKMAN

Some Points About Studying Law

The profession of law has been labelled (perhaps even libelled) a jealous mistress. But back of this flippant, but serious figure of speech, lurk some cogent and fundamental truths. The profession of law requires undeviating fidelity to its pursuit; the lawyer must devote his full time and attention and loyalty to his clients and to an unremitting search for the answer to his clients' needs. The profession of law demands of a lawyer both competence and skill, born of a desire to take all legal knowledge as the lawyer's province and developed with the utilitarian objective of finding all proper and practicable means of successfully handling his clients' cases.

It follows, then, that the thoughtful law student must fashion his habits and orient his thought processes so as to produce in himself the characteristics of the able lawyer. What are a few of these factors that are essential to both the law student and the attorney?

A primary ingredient, vital from the beginning of legal studies and a prerequisite throughout the lawyer's active career, is motivation. With it, even some major educational shortcomings may be overcome; without it, the Phi Beta Kappa or the top-scorer in the Law School Admission Test may flounder. Motivation in the law, though it includes the strong desire to become legally learned, encompasses much more than wishful thinking and hopeful ambition; it embodies the willingness, yes, and the physical and mental and

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COMMON LAW RAMBLE
Brigadier W. J. MILLER

"The Woolsack" conjures up the very spirit of legal history. True, a sack of English wool was not provided for the Lord Chancellor's posterior comfort until as recently as 1535, a gift from the merchants to remind him to be prudent when wool, then the country's greatest source of wealth, was up for debate. Despite this comparative modernity it reminds lawyers of the long line of men who played the role of Chancellor, always the star performer on the legal stage, right back to, and ante-dating 1215, the year of Magna Carta. Until the rise of Parliament in the 15th century every Chancellor was Earl Warren, Bob Kennedy, plus all cabinet ministers rolled into one mighty personage. Nothing great or small affecting the government could be done without his seal. Literally, he was "the keys of the kingdom."

This early period witnessed the transition from local barbarisms to the common law. It saw Judges administering the dictates of conscience, the natural law, as readily as they enforced their own brand new system. But no plaintiff could be heard unless armed with a writ from the King commanding the appropriate court to do justice, or else! These early writs embraced every known cause of action; yet it was never the King's intention to set up courts of elastic jurisdiction rivalling his own. So his writs very soon excluded disputes of conscience, thus compelling the Judges to quit the field of equity. The result was that the Chancellor, the "keeper of the King's conscience," was beseiged by oppressed persons appealing "for the love of God and by way of charity" to the King, the fountain of justice, to redress their unconscionable wrongs no longer recognized in the courts. These cases in equity were heard by the Chancellor and his senior officials (members of the Curia Regis) long before the Court of Chancery came into existence around the year 1400.

From a very humble origin, at a period when even the word "law" was unknown in the English tongue, the common law grew and prospered. Like a river with many sources and tributaries it overflowed its banks from time to time and journeyed into far places. Today, much of the Free World drinks of its waters. Without it our American laws and customs would have developed along very different lines; as would those of Canada, Aus-

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☆☆ ☆☆ EDITORIAL ☆☆ ☆☆

One may assume that the editorial staffs of most modern publications, except those that are overtly political in nature, consciously attempt to maintain at least a modicum of objectivity in the non-editorial material of their literary works. But every endeavor, which is not totally automated, is subject to the vagaries of human frailty. As a result, though an editor may consciously strive for objectivity, the very definition of objectivity is, perforce, coloured by his personal opinion, bias, environment and a myriad of other conscious and subconscious factors. The depredations of this subjective kobold of the Fourth Estate obviates the possibility that any publication can be totally objective in the absolute, scientific sense, the honest effort of the editor notwithstanding.

Despite this intrinsic barrier to complete, editorial objectivity, it is intended that this publication shall preserve as extensive a quantum of freedom from the personal bias of its editorial staff as conscious honesty and human weakness permit. Only two criteria will be applied by the staff in selecting articles for this paper; i.e., they must be of interest to members of and aspirants to the legal profession and they must also be non-libelous, since the publication fund cannot support a large, adverse judgment in tort. The application of even these simple standards is replete with subjective judgments and therefore, the editors can reasonably promise only that they will be consciously motivated by an honest intent to be fair to all in the employment of these selection criteria. It is hoped that the reader will forgive any lapses of the editors which he may detect, remembering the old adage that "the flesh is weak." The editors in turn promise to be constantly aware of the equally old adage that "the road to Hell is paved with good intentions."

As may be seen from the content of this issue, one need not necessarily be a law student or a practicing attorney to contribute an article to this publication. Interest to the legal profession of submitted articles and comments is the factor controlling acceptability. It is hoped that many of the recipients of The Woolsack, who have a literary itch, will scratch it vigorously in these pages.

Articles chosen for publication will be printed verbatim unless the prior permission of the author has been obtained for any changed deemed necessary. Editorial comments other than citations of legal precedents will not be appended to the statements of any author. However, the editors reserve the right to comment on any article but overt, subjective tub-thumping by the staff will be clearly labeled "Editorial."

The editors extend their warm appreciation to all those persons who have so graciously contributed articles to this issue and/or have promised participation in the future. The hope is that many other talented persons will do the same.

STUDENT BAR PRESIDENT'S CORNER

The Student Bar Association of the University of San Diego School of Law is a non-profit association, incorporated under the laws of the State of California. The SBA is young and growing rapidly, as is the school itself. Its purpose is to provide the student body with a voice in academic affairs through the medium of a student government and to enhance the study of law by fostering various social and professional programs for the students. These programs draw participants from beyond as well as within the boundaries of More Hall.

Your Student Bar exists to serve the student, but its degree of success in that endeavor is

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GENERAL HICKMAN
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moral drive, to subordinate time, sports, hobbies, avocations, and temporarily, normal family life to the learning process. Motivation in this sense looms almost as an obsession, an indefatigable and relentless pursuit of legal knowledge and know-how. The motivated law student might be likened, in part, to the Medal of Honor Marine who performed his mission far above and beyond the call of normal duty. If the students in this School of Law instill in themselves this concept of motivation (and it must be self-instilled), this School will soon become famous and its graduates will lead the bar in the communities wherein they practice. Classes filled with highly motivated students present constant professional challenges to professors and increasingly joyful experiences to the students. An outsider or a visitor at the School instantly catches the aura of serious purpose that pervades the halls; he knows that professional men are being developed for key performances in tomorrow's legal arena.

Another important need of both the lawyer and the law student is fact perception. The ability to assess, diagnose, and analyze facts is a fundamental. No matter how well one might know the principles of law involved in a complex factual situation, he will be lost if he is unable to get the feel of the facts about which the legal principles are entwined. Litigated cases that lawyers handle and hypothetical cases with which law students work in examinations both involve facts and law; neither appears without the other. Perhaps the earliest point a law student should learn (and forever after keep fresh in his mind) is that the knowledge and perception of the facts involved in a particular case will make or break him when "he fires for record."

The final point (and there are many others) I shall discuss involves the concept of steady preparation. Rapid spurts and periodic slow-downs in studying will breed erratic results. The student who goes into a class unprepared for the day's assignment will be in a partial fog throughout the discussions in the classroom; he will be unable to follow well the nuances of the professor's comments and the colloquies between professor and student or between student and student. He will be deprived of the fun and the learning that will result from being an actual or mental participant in the fine points of the problems discussed during the coffee break following the class. Furthermore, the student, on his own or preferably with a small group, should find the time and the opportunity periodically to tie together the loose ends of individual cases. The need arises, now and then, to explore by intensive research and thus to exhaust some point left up in the air during the classroom session. The need also arises early to synthesize the principles developable from small but relatively whole units of a subject. Later in more general reviews these units can be correlated into larger segments of the course, but the student who keeps the content of the course well in mind as he goes along will find the big picture emerging fairly clearly. All he needs is motivation and time; the former comes from his will power; the latter sometimes takes a Houdini!

PHI DELTA PHI

Many learned administrators and educators (not necessarily in the legal field) look upon law school - with relation to the new student - as the threshold for mental maturity. This being so, then the appearance of fraternities on the horizon might be classified as an "unidentified object," i.e., foreign to the legal educational system.

Since this article is directed primarily toward the entering student, we will attempt - without being too verbose - to explain the significance of a legal fraternity which will assist you in identifying the fraternity as a basic element of a law school. Despite frequent denials, a professional fraternity is still basically a social gathering; maybe because it's more fun to be with many of your friends at once instead of being with each one at isolated points of time. But the group doesn't wear tennis shoes and sweat shirts on campus, or have weekly orgies or pitch pennies in the "quad." Instead, its energies are diverted to performing services of true value to the school and the community. Two concrete examples of this worthwhile service are the Senior Award presented by Phi Alpha Delta to the outstanding graduating student each year and the legal aid program set up by Phi Delta Phi which assists the Legal Aid Division of the San Diego County Bar Association in handling its numerous cases. Fraternities are also in a position to organize beneficial luncheons (whereby prominent speakers may be heard), since they can guarantee a substantial and organized turnout.

We hope that this short introduction has justified legal fraternities in your mind because the crux of this article is to talk to you (figuratively speaking) about Phi Delta Phi. The scholastic year of 1962-1963, though the first for Phi Delta Phi at the U.S.D. School of Law, was quite productive. All five of the Student Bar Association officers were members of Phi Delta Phi, while this year four of its members are among the five S.B.A. officers. Gene Bambic is National President of the American Law Student Association, a remarkable achievement since U.S.D. has been a member of the Association for only a year and the past three Presidents were from three prominent eastern colleges: Harvard, Columbia, and Boston College. Law students throughout the United States (A.L.S.A. has approximately 97% of all U.S. law schools' student bodies as its members) will be looking to Gene for advice and guidance. Other widely known members of Phi Delta Phi are Fred Tschopp, Regional President of the A.L.S.A. and Chuck Renshaw, editor-in-chief of the school's initial Law Review. Scholastically, the fraternity has captured 85% of the "top grade" awards.

But facts are facts and words are

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PHI ALPHA DELTA

After a grueling nine months of prolonged study, most law students look forward to the summer months as a period of rest and relaxation and a welcomed respite from the day-to-day pressure of their legal endeavors. The Brothers of Phi Alpha Delta are no exception.

New members were initiated in a solemn ceremony held in the courtroom of the Honorable James A. Carter, District Judge, a staunch member of PAD. Afterwards, a reception was held in the U.S. Grant Hotel for new and old PAD's, their wives and guests.

The summer social season was quickly launched with a gigantic "blast" held at the bachelor haven of Dick Livett in La Jolla. The party had a dual purpose, in that it was both a celebration of the completion of exams and also served as a final send-off for the graduating seniors. Hors d'oeuvres were supplied by the wives and during all the uproar a brief business meeting was held.

Crown Point Shores was the site of the next social function, a beach party. Again the wives furnished food, consisting of frankfurters, baked beans and potato salad. Soft drinks were available for the kids, while the older folks consumed minute quantities of beer. Hats were off to Luigi Odorico, social chairman, and all the others who made the gathering possible!

Spurred on by his earlier success, Luigi helped PAD close the summer season by scheduling a cocktail party at his home. Numerous alumni attended and, as was expected, the prime topic of conversation was the recent bar exam. Those who had recently undergone this harrowing experience were only too happy to relate the high and low points of their ordeal and to provide helpful hints to their younger brothers, soon to enter the arena themselves.

In addition to providing social events for its members, the officers of PAD were busily engaged in preparing plans for rush functions during the approaching semester, as well as engaging speakers for luncheons and other school affairs. A semester send-off dance was scheduled for September 7 at the University Club in order to better acquaint the incoming students with fraternity members. Some time was spent in calming the novel fears of the "new boys" which had arisen full-grown from the orientation lecture given earlier in the day.

You, the new students, now have a brief idea of what PAD has accom-

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PRESIDENT'S CORNER
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determined to a large extent by the degree of support offered by its membership, its only strength. Your SBA officers can serve you well, only if your thoughts are made apparent to acquaint your SBA officers and class representatives with your suggestions and problems, since the SBA can reflect the desires of the students only if it is aware of those desires.

The SBA officers for the 1963-1964 academic year are: President - Jon Gudmunds (4-N); Vice President - Dave Huarte (2-D); Secretary - Jim Boone (2-N); and Treasurer - Jim Floyd (2-N).

Class representatives are: Dave Pitkin (2-D); Bob Baxley (3-D); Robin Goodenough (2-N); Jim Brannigan (3-N); and John Duddy (4-N). Representatives for the entering class will be elected soon after the semester begins.

Your participation in SBA activities and service on one or more of its various committees will be greatly appreciated by all members of the student body and will be of great personal benefit to you in the experience gained, thereby. If you are interested in serving on one of the various committees, please contact your class representative or one of the SBA officers.

The best of good wishes to you in your law studies this year.

JON GUDMUNDS

COMMON LAW RAMBLE
(Continued)

tralia, New Zealand and also numerous states whose primitive notions of justice shrivelled on contact with "colonialism."

What word will suitably describe the achievements of the early Common Law Judges who succeeded, despite immense obstacles and conflicts not short of civil war, in separating the individual from the group, giving to lords and serfs the same law, the same justice? This equality before the law was unknown before the common law insisted that every human being had rights endowed, and duties imposed, by God. This new, shining conception was indelibly stamped on the common law by priests and monks who fashioned and administered its infancy, when scarcely any other persons could read or write. Due to their benign influence the accidents of birth, the status of privilege or subjection, could not breathe the air of the common law whose sharp edge beheaded even a King who believed himself above it.

Yes, the emergence of the individual from the group with rights and duties equal to those of all other individuals has proved to be the most enduring contribution made by the common law to human progress. It is a striking fact that in no country where these principles have taken root has dictatorship made any headway; they keep each individual in check from damaging his neighbour, and protect the liberties of all. These rights, duties and protection which mold the character of the nation can be of considerable nuisance to powerful interests and are always subject to erosion by the Executive. If we suppose an Eastern despot sitting in his gate and dealing with disputes according to the whim or fancy of the moment, recognising no rule at all, we may say he is doing some sort of justice, but we cannot say he is doing justice according to law. Similarly, when the judgments of our own Supreme Court are based on the whims and fancies of the Judges under pressure of powerful interests, we cannot say such judgments are according to law enacted by Congress. Owing to the persuasive power of such groups in England much of the common law has gone, either incorporated into statutes or fallen into disuse, but much remains.

May the wigless but halo'd shades of the great common lawyers who added lustre to the Woolsack, especially those made in the mold of St. Thomas More, hover around the Editors as they launch their first edition of More Hall's quarterly venture.

W. J. Miller
Barrister-at-Law,
I.T. London

CONGRESSMAN UTT

35th DIST., CALIF.

Limited Test Ban Treaty

The ratification of the limited test ban treaty by the United States Senate is probably the most important issue facing the Congress today. It is an emotional issue and highly political. In such an atmosphere, it is difficult to resolve the question dispassionately.

From a political standpoint, it is well-known that one of the main issues in the 1964 elections will be the position that each Senator and Congressman takes on the test ban treaty. Those who favor it will be claiming that they are for peace, and those who oppose it will be charged with being warmongers. Averell Harriman set the tempo when he stated that anyone opposing the treaty would find it difficult to explain to the mothers of this country why he was opposed to peace.

The truth of the matter is that the test ban treaty does not lay the groundwork for peace, as claimed by the Administration, but rather sets the stage for national surrender on the installment plan.

Since the Bolshevik Revolution, Russia has alternately smiled and raged at America seven different times. You should remember that the Japanese Ambassadors in Washington the day before Pearl Harbor were also smiling, although they had full knowledge of the impending sneak attack which was to take place the following morning. The American people should realize that Russia has broken 51 of its 53 treaties and that the Russian Constitution provides that any treaty is null and void upon the say-so of their government. We should also have in mind what Mr. Khrushchev said a few years ago:

> "If anyone thinks that our smiles mean the abandonment of the teachings of Marx, Engels, and Lenin, he is deceiving himself cruelly. Those who expect this to happen might just as well wait for a shrimp to learn how to whistle."
>
> "If you don't like us, don't accept our invitations and don't invite us to come to see you. Whether you like it or not, history is on our side. We will bury you."

The "Butcher of Budapest" has not changed his spots. He is simply buying the most precious time that has ever been for sale. He has nothing to give; he only takes. During the voluntary test ban a few years ago, Russia was able to develop a bomb with the equivalent of 50 million tons of TNT. The destruction of Hiroshima needed only a 20,000-ton bomb. The present nuclear capabilities of Russia in the big bomb are more than two-to-one over our capabilities, and they have developed an anti-missile missile. America cannot develop the anti-missile missile under the test ban treaty. It cannot even use a small tactical nuclear missile in Korea or South Viet Nam, should it become necessary. Our hands are tied. The greatest danger lies in the fact that under this treaty the American people have been lulled into a sense of false security, falling all over themselves to believe that Khrushchev is our friend.

Under this aura of good feeling, the Administration will make further concessions of appeasement and accommodation. We will negotiate a non-aggression pact with the Warsaw Treaty countries. We will recognize the communist government of Hungary. The American public will be distracted from the fact that Russia is expanding its empire all over the world. We will be led to believe that Russian activities are commercial rather than military. Here are a few of the things that Russia is doing:

Yemen - The Russians built a modern port at Hodeida and placed their technicians in key posts.

Iraq - The Russians are helping the Iraqi to enlarge the port of Basra.

Egypt - Soviet warships, including submarines, have been given to the government of the ambitious, power-crazed Gamel Abdel Nasser.

Algeria - The Soviets are negotiating a contract with their friend, Ben Bella, to equip and train an Algerian navy. Soviet warships and technicians have been offered to the "Arab Castro."

Morocco - The Moroccan navy has acquired several small Russian vessels. A shipyard is planned in the port of Tangier, with a submarine base in Alhucemas, right opposite Gibraltar.

Guinea - The Russians established a spanking new naval base at Conakry to supply their South Atlantic "fishing fleet." Sekou Toure signed a contract with the Soviets to "bring about the development of the national fishing industry."

Indonesia - A large maritime center is being constructed in the island of Amboina. This complex includes facilities for the processing of fish, a shipyard, gasoline tanks, and personnel training by Russian technicians. Similar bases are being constructed in Java, Sumatra, Borneo, and Celebes.

Antarctica - Soviet naval bases exist at Novo Lazarevskaya, Molodezhnaha, and Mirnyi.

British Guiana - Cheddi Jagan and the Soviets have been negotiating the establishment of "fishing port" facilities at Georgetown with the assistance of Russian technicians.

Ghana - The port of Tema, near Accra, is being converted into a vast center of Soviet naval operations.

Meanwhile, America is phasing out its Strategic Air Command. Today SAC has a total capability of 30,000 million tons of TNT and could completely demolish all of Russia in a few hours' time. This is what Khrushchev fears.

Peace can only come through strength, and not through weakness. If we do not reverse our trend of unilateral disarmament, we will be subject to military blackmail within the present decade. I subscribe to what Winston Churchill once said, "If you will not fight for the right when you can easily win without bloodshed; if you will not fight when your victory will be sure and not too costly; you may come to the moment when you will have to fight with all the odds against you and only a precarious chance of survival...there may even be a worse case. You may have to fight when there is no hope of victory, because it is better to perish than live as slaves."

Tobacco on Trial: Guilty ?

by MILAN L. BRANDON, M.D.

Part I: THE MEDICAL BATTLE

On the basis of conclusive evidence an intense movement against tobacco smoking is taking place throughout the United States and it has earmarks of becoming world wide. The American Medical Association, American Cancer Society, American Heart Association, and other medical and voluntary health agencies here and abroad, have begun to launch an active anti-smoking campaign before the general public.

The House of Delegates of the American Medical Association (AMA) announces that the AMA has "a duty to point out the effects on the youth of the use of toxic materials, including tobacco." The House urges that these facts be widely disseminated, particularly in schools.

The American Cancer Society is circulating a booklet which summarizes the causal relationship between cigarette smoking and lung cancer, based on evidence collected by U.S. and foreign scientists over more than ten years. The American Cancer Society cites many facts: 1. Lung cancer now kills about 41,000 Americans a year. Standardized for age this is ten times what it was thirty years ago. The risk of developing lung cancer is directly proportional to the number of cigarettes smoked. Based on diagnosis confirmed by pathological examination, men who smoke less than 1/2 pack of cigarettes per day have 15 times the lung cancer mortality rate of non-smokers and those who smoke two or more packs daily have 64 times the lung cancer death rate of non-smokers. Men who stop smoking have a substantially lower death rate from lung cancer than those who continue. Precancerous changes are consistently found in the cells lining the bronchial tubes of cigarette smokers who die of causes other than lung cancer. Cigarettes contain tars carcinogenic to mice and also other agents that enhance the cancer producing ability of certain carcinogens. 2. Cigarette smokers have higher death rates from cancer located at certain other sites, such as the buccal area, pharynx, larynx, esophagus, genito-urinary tract, and they also have higher death rates from certain other disorders, such as chronic bronchitis, obstructive pulmonary emphysema, and coronary artery disease. 3. Men aged 35 years, who are heavy cigarette smokers, have nearly twice the chance of dying before age 65 years as non-smokers. Michael B. Shimkin, M.D., Associate Director of Field Studies of the National Cancer Institute, Bethesda, Maryland, states that there is no longer any doubt that cigarette smoke is a direct primary cause of lung cancer.

Similarly, the American Heart Association, its affiliates and chapters, has joined with other health agencies to educate the general public on the harmful effects of smoking. The Board of Directors of the American Heart Association has approved a new report correlating smoking and cardiovascular disease. The report was prepared by a special committee of physicians and scientists headed by Doctor A. Carlton Ernstene, Chairman of the Cleveland Clinic division of medicine. The death rate from heart attacks in middle-aged men is at least 50% higher among heavy cigarette smokers than among non-smokers. The risk is apparently higher in persons with high blood pressure, elevated blood cholesterol, signs of arteriosclerosis ("hardening of the arteries"), or a family history of heart attacks or strokes. The Heart Association also acknowledges the relationship of heavy cigarette smoking to chronic pulmonary disease and cancer of the lungs.

Several state and numerous county medical societies in the United States have passed resolutions scoring the health hazards of smoking. The State Medical Associations of California, Illinois, Maine, New York, Ohio, Pennsylvania, Texas, and Utah acknowledge adverse respiratory and cardiovascular effects of tobacco.

At the annual meeting of the Canadian Medical Association (CMA) in June 1963, Doctor Norman C. Delarue (Toronto General Hospital) noted that although the present emphasis lay on the relationship of cigarette smoking and lung cancer, the habit is also connected with emphysema and coronary heart disease. The Canadian Medical Association General Council has asked the Minister of National Health and Welfare to recognize publicly the problem of lung cancer and its causal relationship with the smoking of cigarettes and to assume leadership in combatting this problem. The government was asked to make educational material on smoking and health available to public health departments throughout the country, and local education departments were asked to launch campaigns on smoking in universities, schools, and among teachers. The Canadian Medical Association Cancer Committee acknowledges that the incidence of lung cancer is now eight to ten times what it was twenty years ago, and that the major part of this increase is due to cigarette smoking.

The anti-smoking drive developing in Canada is similar to the one launched in Britain after the Royal College of Physicians published its critical report on smoking and health. The report indicated that cigarette smoking is a cause of chronic bronchitis, lung cancer, and that it probably contributes to the development of coronary heart disease and various other diseases. This group advises that "There are good medical grounds for advising patients with bronchitis, peptic ulcer or arterial diseases to stop smoking."

The results of epidemiological studies conducted for the British Medical Research Council, the Canadian Department of National Health and Welfare, the United States Public Health Service, and the American Cancer Society, essentially confirm the

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TRUSTS AND THE ESTATE OWNER

by PAUL L. CROSBY
Life Underwriter
N. Y. Life Insur. Co.

Generally speaking, let's think of a LIVING TRUST as one created by an individual during his lifetime for the benefit of himself or of some other person. Ordinarily, the trustor names someone other than himself as trustee; however, the person creating the trust can be the trustee, if the trust is for the benefit of some other person. He can also be one of the trustees if the trust is for his own benefit, but the trustor cannot create an effective trust by naming himself as sole trustee and sole beneficiary.

One of the first questions every estate owner must answer when he considers the use of a LIVING TRUST is this: Should I make the trust revocable or irrevocable? Should I retain for myself the right to do away with - revoke - my trust and take back my property? OR should I deliberately and completely part with my right to do away with the trust and the right to take back the property? Many estate owners make their living trusts irrevocable, because of the possibility of tax savings - estate, inheritance, and income, but taxes should not be the sole consideration as to whether a trust should be revocable or irrevocable - overall estate planning purposes should be the basis for decision. What am I trying to accomplish, should be the question.

The consequences of stripping one's self of all interest in the trust property (making the trust irrevocable) should be carefully weighed. Some estate owners, unduly influenced by the thought of tax savings, later find themselves and their beneficiaries hemmed in by the limitations which were set up (in the irrevocable trust). On the other hand, some estate owners find that they have erred in their reluctance to part with assets in making their trusts revocable, when it would have been a real benefit, tax wise and otherwise, to have made irrevocable gifts in trust.

Observing that income tax savings were so often the motivation to the establishment of an irrevocable trust, one of the most prominent tax men has said, "Move slowly on irrevocable trusts. The main pre-requisite to shifting income (and the saving of income taxes) is that the creation of the trust and the transfer of the property to it must be irrevocable, and, if this is the case, the property transferred to the trust may escape estate taxes as well as income taxes. But, the irrevocable surrender of income or of property is a very serious step, which should be contemplated by only a relatively few people whose wealth is so great that there is no reasonable prospect that parting with their property will leave them short."

The revocable trust is used as an estate planning aid, principally with the idea of obtaining continuity of management and distribution of property at the owner's death without the delay of probate and the expense of settlement and administration. It should not be eliminated from consideration without due regard for each client's peculiar circumstances.

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CONGRESSMAN VAN DEERLIN

37th DIST., CALIF.

Congressional Conflict of Interest Problem

The Bar Association of the City of New York in 1960 completed a five-year study and issued a report on a subject entitled "Conflict of Interest and Federal Service." Among the opening statements of the report was the following:

"The Congressional conflict-of-interest problem is current, complex and controversial. It is also largely unresolved." Today, three years later, these statements still hold true. It is only fair to point out, however, that the failure of Congress to lay down and enforce hard-and-fast rules of behavior in matters of ethics is caused, not so much by unwillingness, as by the difficulty of doing so.

In recent months a rising tide of criticism of Congress by the press and public has been inspired by the revelation of a number of improper incidents. The operations of Billy Sol Estes, convicted Texas swindler, allegedly involved several Congressmen in unethical procedures. The actions of sugar lobbyists in 1962 and of Philippines' lobbyist, John O'Donnell, brought unfavorable publicity to more Congressmen. The prosecution of former Congressmen Thomas Johnson and Frank Boykin on conspiracy and conflict of interest charges focused still more public attention on Congress. Some activities of Congressman Adam Clayton Powell brought criticism.

Perhaps a high point of criticism was reached when reporter Jack Anderson, in two articles in the national publication, Parade Magazine, entitled one article "Congressmen who Cheat," and the other, "Is Congress Protecting its Members Who Cheat?".

In response to these scandals and near-scandals, a growing number of legislators have expressed concern about the damage done to the "image" of Congress at home and abroad, and there is a growing demand from the Members themselves that a code of ethics be formalized. In some areas, action has already been taken. The House of Representatives, for instance, has voted to place curbs on official travel abroad by restricting nine committees to activities within the United States, and by providing that counterpart funds could not be used by members of those committees, when abroad. Five other committees were authorized to use such funds but were required to make a strict accounting. The House also passed a bill placing limits on travel by members of House and Senate committees.

Senators Javits and Keating and Representative Lindsay have also offered a joint resolution that proposes establishing a Committee on Ethics for Congress, which would draw up a Code to guide the Members.

In theory, this seems an excellent idea. With more than half of the House of Representatives themselves members of the bar in various states, such a code would appear to be a relatively simple one to outline.

In actual practice, however, difficulties may arise almost immediately.

The Code would, for instance, have to provide the answer to such questions as these:

- What are the proper limits on the power of a Member of Congress to appoint members of his family to his staff?
- What kinds of outside employment and income are compatible with what kinds of committee assignments?
- How far should a Member go in voting on matters in which he has a personal stake, and at what point is he deemed to have such a stake?

No one, for instance, believes that a Member should disqualify himself from legislating a housing bill because he owns a house. But what if he is a member of a construction firm building houses? How large must the firm be before there might be a conflict of interest? ...50 houses a year?...100? ...1000? At just what point would possible conflict of interest enter, and would one house more or less make the difference?

No Member of Congress would be expected to disqualify himself from taking part in legislation involving oil or gas because his house is heated by these fuels. But what if he owns an oil well, or stock in a power company? How much stock or how many oil wells might bring suspicion of conflict of interest? Is it all right to own $1,000 worth of stock but not $1,000,000--and if so, at what exact sum of dollars is the dividing line crossed?

Should Members of Congress accept speaking fees for appearances before trade organizations or professional organizations? If this is all right, what about cases where the fee is so inordinately large as to be obviously a campaign contribution? Where is the dividing line in terms of dollars?

What should be done, if anything, about the cases of Members who may represent business interests on a retainer fee, but who are also required by committee assignments to vote on tax bills that affect such businesses? Is the legislator supposed to give up all other business interests when he becomes a Member of Congress? If not, in which ones may he engage? What line of demarcation should be drawn by many of the 238 lawyers who are Members of Congress and who still retain either their own practice or membership in active law firms? Is it proper for them to become members of the "Tuesday to Thursday" club, leaving Washington Thursday afternoon and journeying to their home city for Friday, Saturday, Sunday and Monday, there to continue their private law practice? And is it ethical and proper for them to retain membership in law firms which are from time to time called upon to handle cases involving the Federal Government?

Some Members have solved this problem to their own satisfaction, but their solution may not work for all. Representative Emanuel Cellers, for instance, chairman of the House Judiciary Committee, is a member of a large New York law firm with two divisions--one without Cellers in it, handling tax and other business involving the government; the other with Cellers. Mr. Cellers, one of the most respected Members of the House, says that if one of his cases develops a Federal connection, he does no more work on it and the fees are divided accordingly.

These are just some of the problems that will have to be answered by a Code of Ethics, and it is obvious that the answers are not simple to find.

The problem is complicated by the fact that there is wide disagreement on the exact role of the legislator. Is he, for instance, supposed to act always in the national interest? And if so, by whom is the national interest to be defined? Or is he to act in the local interest, as he defines it with the concurrence of his constituents, on the assumption that the national interest is always the prevailing sum of the local interests?

Again, in serving that local interest, how far should he go in pressing the case of a constituent before a Federal agency, or in seeking to influence the award of a Government contract or building project?

From the very beginning, Congress has been concerned with finding the answers to such questions, and with enforcing a code of ethical procedures on the part of its Members. In 1801 Thomas Jefferson's Manual stated specifically, "...Where the private interests of a Member are concerned, he is to withdraw."

The vast majority of Members of Congress are honest, dedicated men who are honorable in both act and spirit. But these are vastly more complicated times than those in which Thomas Jefferson spelled out his precepts. Most Members would welcome guidelines that indicated the proper course of action in every circumstance. But today, Jefferson himself might find it difficult to draw up such guidelines.

PHI ALPHA DELTA
(Continued)

plished over these summer months and what we hope to achieve during the impending school year. We sincerely hope that many of you will join with us as we strive to fulfill the motto of Phi Alpha Delta, "Service to the School, the Profession, and the Fraternity."

TOBACCO ON TRIAL
(Continued)

relationship of cigarette smoking to disease.

The American Cancer Society, American Heart Association, American Public Health Association, and the National Tuberculosis Association have started publishing a special news letter on smoking and health that is dis-

(Continued on Page 6)

PHI DELTA PHI
(Continued)

words and there just isn't much warmth in either of them. Knowing this, and knowing that you will probably affiliate yourself with your closest-friends' fraternity, we would like to invite you to a cocktail party on Sept. 17th. We hope you will find both warmth and close friends waiting for you there.

TOBACCO ON TRIAL
(Continued)

tributed to physicians throughout the United States supplying "objective information" to keep the physicians abreast of current research findings and other new developments concerning tobacco and its biological effects on human beings. At the urging of these same four groups, the Surgeon General of the United States Public Health Service in October 1962 appointed a study committee, composed of ten men known as the "advisory committee on smoking and health," to make "a comprehensive review of all available data on smoking and other factors in the environment that may effect health." Eight of the men are physicians, one a chemist, and one a statistician. When all the data from published and unpublished sources have been gathered and interpreted, the committee will make conclusive statements regarding the hazards of the use of tobacco as well as specific recommendations for action. The National Library of Medicine has compiled a bibliography of about 800 items, including articles, monographs and annotated bibliographies for the committee, which is expected to complete the review by the end of 1963.

The current, intense movement against tobacco is somewhat restrained by delays in organization and publication of the data being reviewed by the advisory committee. The National Association of Broadcasters at its recent convention in Chicago declined to accede to the suggestion of its President, Leroy Collins, that cigarette advertising be voluntarily withdrawn from programs appearing before 9 P.M., as a means of keeping the subject away from the viewing of children. The Broadcasters decided to await the findings of the Surgeon General's advisory committee before taking action.

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MEET THE FACULTY

One of the foundation stones of every law school is, of course, its faculty. Without a top-notch faculty, there is little that a School of Law can attempt and nothing of substantial value that it will achieve. We, the student body, pride ourselves on the fact that our Law School, although young and lacking the time-worn traditions of older and more established citadels of learning, has both attempted and achieved with great success, most of which achievement has resulted from the labors of the faculty. Here at U.S.D. there are only a few full-time professors, hence, it is fitting that this first faculty profile should be about the newest addition to the full-time ranks, Professor Eugene Reynolds.

Many of the students are already acquainted with Professor Reynolds for he has served as a part-time instructor for the past two years. Born in 1928, he completed both his undergraduate and legal work at the University of California at Berkeley. He was admitted to practice in 1957 and served as Deputy Commissioner of Corporations for the State of California prior to his embarking on a full-time teaching career.

In the past, Professor Reynolds has taught Agency to the First Year Day and Night classes as well as his specialty, Corporations, to the graduating seniors. In his new role as full-time professor, he will continue to teach Corporations and also will instruct the incoming First Year Day and Second Year Night students in the vagaries of the Law of Real Property.

Professor Reynolds first encountered the problems of Corporate Law during his years of private practice. When asked, why he preferred this field of law over the others, he replied that "In corporate cases the decisions one has to make are strictly business decisions; making it is a far less emotional process than if one was involved in a criminal or divorce proceeding."

Noting that Professor Reynolds was a graduate of Boalt Hall, one of the leading law schools on the West Coast and numbering among its graduates such greats as Professor Witkin, Justice Earl Warren and Professor Prosser, I asked him if it was possible for him to make some kind of comparison between the two institutions; a difficult question since he was a student at one, while being a professor at the other. However, he did feel that the top students at both institutions would be equally matched.

The chief advantage of a smaller school as compared to one with a large enrollment is that the individual has many more opportunities to participate in class discussions and perfect his legal "modus operandi." Professor Reynolds repeatedly emphasized the fact that "when you attend law school, you don't learn the law merely by committing a number of legal phrases and principles to memory; rather, you develop a method of legal thinking through analysis and apply this method to a given factual situation. Mere memorization of rigid rules is not enough."

However, many prospective attorneys are drawn to the larger school because of its outstanding faculty and the school's impeccable reputation. Professor Reynolds summed up such an advantage by citing the learned Professor Prosser's remark upon learning that Earl Warren, a Boalt Hall graduate, had been appointed to the U.S. Supreme Court, "It speaks well of their placement service!"

One of the distinct characteristics of U. S. D.'s faculty is its individual make-up. Its composition of youthful and quick-witted intelligence represented by the younger faculty members, most of whom are practicing attorneys "downtown," is skillfully supplemented by the years of experience possessed by the "Old Guard" members. Together, they form a uniquely efficient and cohesive unit. The Woolsack extends its heartiest congratulations to one of the newer members of the "young lions," Professor Eugene Reynolds. Welcome to the arena!

EXCESSIVE DETENTION
(Continued)

but this addition was proven unnecessary by a Ford Foundation Study.

The study determined that the judge would not need the additional facility if he handled his detentions properly. The judge followed the recommendation.

I accepted the challenge of Judge Carter and took another look at our policy. As a result, although our admissions in juvenile hall are up 20 percent, our detentions are down 20 percent.

Section 635 of the California Welfare and Institutions Code states in part:

> "....unless it appears that such minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of such minor or the person or property of another that he be detained or that such minor is likely to flee the jurisdiction of the court, the court shall make its order releasing such minor from custody."

I have tried to strictly interpret this provision. The result has been that our average daily attendance at San Diego County Juvenile Hall has dropped from 204.6 in 1960 to 163.8 in 1963. Two years ago the Probation Department predicted an average daily attendance of 300 in 1963 (Fiscal Year).

Each detained juvenile costs the taxpayer $17.50 per day. But more important by far, non-detention proves to both child and parent that the juvenile court is not one of punishment but one of prevention and guidance.

At one time I followed the philosophy that detention was of great therapeutic value; that it was good for the juvenile in trouble to see what the inside of a jail looked like and that the trauma of detention would make a better citizen out of him, and that once he was released he would never come back. In other words, let him "sweat it out" until his regular hearing.

Today, this is the philosophy of many judges and probation departments; however, the juvenile court law does not recognize it. In California the law was revised in 1961, and no provision was made for such practice, although those who revised the law were well aware of the philosophy and practice.

Neither, can I find any sound basis for it outside the law. Some have said that there will be more recidivism when juveniles are released "indiscriminately"; however, Mr. Jack Meltzer, Superintendent of our San Diego County juvenile hall, checked 17,662 admission cards for 1960, 1961 and 1962. He found that the percentage of recidivism was 13.3, 13.2, and 12.7, respectively.

Some of the simple ways to have less detention, I have found, are as follows:

When a boy is sent to our boys' camp, which has a capacity of 100, it may be two or three weeks before he gets there because either his teeth need fixing, he needs clothing or there may not be room for him. Previously, it was just an accepted policy to detain him in juvenile hall at $17.50 per day. Now, I do just the opposite. I release him to his parents or relatives and let them feed him. I have found that even a rejecting parent takes another look when it is explained to him that he is saving $17.50 per day by keeping his boy at home.

When this is done, the parents of the boy have to believe me when I tell them that he is not being sent to camp to be penalized or punished, but to help him find himself at home and in school by receiving professional counseling and remedial courses in reading, math, and English.

Now, to assure his behaving himself before he gets to camp, all you have to do is to tell him to behave himself or you will send him to the California Youth Authority. I tell them this is not a threat; it is just a fact.

The girls are handled the same way when I am placing them in our girls' rehabilitation facility and foster homes.

When a ward of the court again commits a delinquent act, or violates a court order, he is not routinely detained. If, in my opinion, he does not seem potentially dangerous to the community or to himself, I allow him to remain at home pending the regular court hearing. This does not preclude my ordering out-of-home placement at the regular hearing.

Detention as used in my court has held the juvenile hall population to a minimum, has not caused an increase in delinquent acts, and has improved the sense of responsibility in both parent and child.

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