1981

Vol. 29, No. 11, January 14, 1981

University of Michigan Law School

Special Welcome Back Issue

John Lennon
Page 2

Res Gestae

Campbell Results
Page 4

Ann Arbor's Oldest Law School Weekly

Vol. 29. No. 11 | The University of Michigan Law School | Wednesday, January 14, 1981

McCree to Join Faculty

By Matthew Kiefer

United States Solicitor General Wade McCree Jr., one of the nation's most distinguished lawyers, has accepted a full-time post on the Law School faculty, to begin this September. McCree's decision to come to Michigan, in the face of numerous offers from other law schools as well as private law firms, is regarded as "a real coup for the Law School," according to Dean Sandalow.

McCree, who as Solicitor General has represented the federal government before the Supreme Court since his appointment by President Carter in 1977, will step down upon President-elect Reagan's inauguration this Tuesday. His acceptance of the offer, made public on December 29th but known to the faculty some time earlier, was the culmination of a year-long recruitment effort involving meetings in Washington and a visit to Ann Arbor by McCree last summer. Among those attempting to persuade McCree to come to Michigan was D.C. Circuit Court Judge Harry Edwards, a former Michigan Law professor and personal friend of McCree's.

He is thought to have been influenced as well by strong personal and family ties here, which include a daughter and son-in-law—both lawyers and Michigan grads—and 93-year-old mother in Detroit; as well as by his "cordial relations" with the law school and many faculty members here. (McCree holds an honorary Michigan Law degree, and has spoken and judged Campbell Competition here in previous years.)

A Harvard Law grad and former federal appeals court judge, McCree is quoted as saying, shortly after the news of his acceptance was released, that he was pleased to be coming to "one of America's great law schools" to teach. He was not hired to fill a specific spot, and exactly what he will teach has not yet been determined. According to Dean Sandalow, McCree has "already expressed an interest" in teaching a section of Lawyers and Clients, and may teach courses in appellate advocacy and/or federal jurisdiction, as well as possibly developing a new course in judicial administration.

McCree was born in Des Moines, Iowa in 1920, graduated from Fisk University in 1941, and Harvard Law School three years later, joining the Michigan Bar in 1948. Following a brief tenure as commissioner on the Michigan Workmen's Compensation Board, McCree was appointed to the Wayne County Circuit Court bench by Gov. G. Mennen Williams in 1954, making him the first black to serve on that bench. Following his reelection in 1961, McCree was appointed to a Federal District Court judgeship by President John F. Kennedy, and was elevated to the Sixth Circuit Court of Appeals by President Lyndon Johnson in 1967.

During his 10 years on the Sixth Circuit bench McCree was regarded as "a certified liberal . . . a man of intellect, and a careful workman," according to the **New York Times.** Only the second black man to hold the post of Solicitor General (the first was Supreme Court Justice Thurgood Marshall, under President Johnson), McCree's appointment drew considerable praise at the time, later to be tarnished somewhat by a series of articles in the **Americal Lawyer** and elsewhere critical of his oral advocacy before the Supreme Court.

McCree will bring to his teaching post at Michigan experience as a visiting professor at Wayne State and Harvard Law Schools, and it is expected that he will "fill out the remainder of his professional life" on the faculty here, according to Dean Sandalow. Said to be very personable and approachable, McCree is also known for good relations with his law clerks.

Dean Terrence Sandalow

The Town Schreier

By David Schreier

Stack Wars

EPISODE ONE:
THE CHARACTERS

Long, long ago, in a law school far, far away, there existed a different type of legal education in a different type of state, with a different breed of student. Our story begins at exam time, in the dimly lit recesses of the University of Milkyway law school, in an area riddled with many small cubicles of the type which on Earth are called carrels—an area called . . . The Stacks.

The hero of our tale is young Nuke Stackwalker, an aspiring J.D. Knight who bears a striking resemblance to King Fudge (see Dress for Success, Oct. 17 R.G.). His faithful companion, who stands ever-ready at his side is Matt-2 D-2, and the woman he pursues is the beautiful Princess Lexis. But unbeknownst to Nuke, an evil being is gathering his forces in the area right next to Nuke's domain—Darth Najjar, who, with a ruthless hand (when it is not in his nose) rules over . . . The Death Pit. Darth's nefarious goal is to have his army of moles finish constructing the hidden tunnels that will connect the Death Pit to the Domain of the Stacks, so that he can prevent Nuke from helping Princess Lexis to find a new home for her orphaned people . . . The Walsa.

Matt-2 D-2, Nuke's trusted companion and ally, is not as mechanical as his name implies. True, he is so short

see Schreier, page 4

AN R.G. SPECIAL PERSPECTIVE

Double Jeopardy

Professor Westen, who has written previously on the subject of double jeopardy, comments below on the value of studying law by learning legal "rules," in the context of a double jeopardy case being argued today before the U.S. Supreme Court.

By Peter Westen

The U.S. Supreme Court will hear oral argument today in a case that has both specific and general significance for law students: specific, because it teaches us something about the particular meaning of double jeopardy in death penalty cases; general, because in doing so it tells us something about the nature of legal rules and, hence, about the ends of legal education.

The case, *Bullington v. Missouri,* asks whether a defendant who was convicted and originally sentenced to life imprisonment for a capital offense may be resentenced to death if he is now reconvicted following the reversal of his original conviction. The facts in *Bullington* are starkly simple. Robert Bullington, a white male, was charged with breaking into Pamela Sue Wright's home with a shotgun, binding three members of her family, abducting the 18-year old girl by force and later murdering her. Bullington was found guilty by a jury and, following a subsequent and separate sentencing hearing, sentenced by the jury to life imprisonment.

The trial judge granted his motion for a new trial based on the ground that the Missouri procedure for excusing women from jury service violated Bullington's right to be tried by a jury drawn from a cross section of the community. Prior to retrial, the prosecutor filed notice of intent once again to seek the death penalty. The trial judge struck the prosecutor's notice, ruling that resentencing Bullington to death would violate the double jeopardy clause. The prosecutor took an immediate appeal, the Missouri Supreme Court ruled in his favor, and the U.S. Supreme Court granted certiorari.

The key to the case is *North Carolina v. Pearce*[1], holding that a defendant who was originally sentenced to 12 years in prison could be resentenced to 15 years in prison upon retrial following a reversal of his original conviction. To decide whether *Bullington* is like *Pearce* or different from it for

see Double Jeopardy, page 3

Law in the Raw

Compiled by Matthew Kiefer

No Free Lunch

Berkleley Law School is requesting that private law firms planning to recruit on campus next fall make "voluntary contributions" of $150 per interviewer per day. Government and non-profit recruiters are exempt, and those who choose not to contribute will not be turned away. "With what these firms spend on recruitment," says Berkeley Dean Sanford Kadish, "a little bit of money to help the placement office is not very much to ask."

—**American Lawyer**, *December 1980*

Over Exposure

Penthouse Magazine is suing Kodak to force the film processing giant to return 239 slides of a certain Cheryl Rixon, the magazine's 'Pet of the Year.' Penthouse is crying "censorship," while Kodak claims it is only protecting itself from federal obscenity laws. In the midst of all of these charges and counter-charges, an unsympathetic Playboy executive is reported to have chortled "why do you think Polaroid cameras sell so well?"

—**Student Lawyer**, *January 1981*

Girl Named Bill?

A Chicago-area man named William Earl Wilcox III recently filed suit to compel his estranged wife to name their expected child William Earl Wilcox IV. To the dismay of future casebook authors, the suit was voided when the defendant gave birth to a girl.

—**Student Lawyer**, *January 1981*

Coked Out

A Tennessee woman who has had recurring nightmares about being chased by giant, exploding Coca-Cola bottles has been awarded $2.000 in a damage suit against the company. The nightmares began after a 32-ounce bottle exploded in her hand in a grocery store.

—**Student Lawyer**, *January 1981*

Squeeze Play

U.S. Army Private Cheryl Taylor, 20, has been sentenced to 30 days at hard labor for the indecent assault of a male soldier. According to Army reports, Pvt. Taylor began by hurling verbal abuse, after which she "placed her hand in his groin area and squeezed."

—**Student Lawyer**, *January 1981*

No Thanks

An Iowa judge locked out of his own courtroom turned to convicted burglar Loren Wilson for help. The convict, who was in the hall waiting to be sentenced, opened the door with a paper clip and a nail file in a matter of seconds. Inside the courtroom a few minutes later, the ingrate judge gave Wilson the maximum burglary sentence of ten years, saying that "if I need him again, I'll know where to find him."

—**Student Lawyer**, *January 1981*

Waking the Dead

Rejecting an insanity plea, a Fort Lauderdale judge sentenced a 25 year old man to 985 years in prison. The man had walked into a wake and threatened to shoot the corpse unless the mourners gave him their money and valuables.

—**Student Lawyer**, *January 1981*

Case of the Week

Tresnak v. Tresnak, 6 F.L.R. 2892—reverses lower court finding that mother in custody dispute who is a law student spends too much time studying to care properly for children.

Res Gestae
The University of Michigan Law School

On Our Guard Since 1950

Editor-in-Chief ..... Matthew Kiefer
Associate Editor ..... Cub Schwartz
Opinion ..... Bob Ling
News ..... Brian McCann
Arts ..... Kathy Ryan
Sports ..... Phil Dutt
Business Mgr. ..... Kyle Lanham
Copy ..... Jamie Bischoff
Photography ..... Paul Engstrom

LETTERS

John Lennon

I never really understood the phrase, "A part of me died with him," until I heard the stunning report of John Lennon's violent murder. I'm sure that many other U. of M. students also felt at a loss for words and a deep despondence upon hearing the tragic news.

More than any other rock and roll pioneer, John Lennon epitomized rock music. As the leader of the Beatles he infused their unique, non-derivative musical style with intelligence and wit and combined this style with an accessibility and broad appeal that has never been equalled. His influence on the thought and imagination of an entire generation reached around the world.

But the greatest compliment that can be given Lennon has to do with what a special, gentle human being he was. His fearless honesty and compassion for mankind pervade his music. His spirit and his genuine love for life were evidenced by the way in which he conducted himself since starting a solo career and then virtually retiring until the release this winter of his first album in years.

Resisting pressures to reunite the Beatles from the media, his fans, and even the other Beatles. Lennon accepted the fact that the sixties were over, and that he had moved on. At a time when too many others from that era refused to accept their age, Lennon turned forty without regret—with, in fact, great enthusiasm for the future. He settled down with Yoko and devoted most of his waking hours to their young son.

His old political and social views, which had developed because of the guilt he felt for having wealth while others did not, were replaced by a sense of realism; and, to his credit, he kept his firm belief that we truly can live with and love one another. His intelligence and perceptiveness these last few years were refreshing in the face of the hypocrisy, greed, deceit, and mediocrity which the rock mentality has too often come to mean today.

Perhaps the most fitting measure that can be taken of Lennon's impact and staying power with the public is the fact that his sudden death was the most shocking and regrettable news to reach the rock public since the Beatles announced their breakup a decade ago.

God bless you, John. You won't be forgotten.

Roger Mourad

Sam Estep

To the Editor:

An examination scandal has marred one of last semester's courses in Constitutional Law. It saddens me that in this course on individual liberties the professor has shown how little he cares even for the rights of those entrusted to his care—for the academic rights of his students.

The facts of the imbroglio require no great imagination to appreciate. Last term, Professor Sam Estep gave his students in Introduction to Constitutional Law a final examination of four one-hour essay questions, **each one of which he had already given, word-for-word, within the last three years.** None of the examination questions given in prior years had been collected after the test; they had all fallen into the public domain. Three of the questions were given last summer, and were handed from student to student in various xerox copies. The fourth question, given two or three years ago, is in one of the official law school examination books.

Since only some of the students saw the questions during exam week, Dean Eklund has stricken the entire examination and given us students a choice: take the exam over again in January or accept a mandatory pass/fail in the course.

The administration, in short, has stepped in to prohibit a Law School Professor from conducting his course as he sees fit. Those who know anything about academic freedom will appreciate the severity of this sanction. Professor Estep has blundered, and all of us here at Michigan, faculty and students, stumble with him.

The various ins and outs of the affair make for interesting reading. Although some students had only read through the questions beforehand, one group actually used the three questions from last summer's examination as a test model in a series of organized tutoring sessions. Still another, smaller group studied not just the questions, but the typewritten transcript of an "A" answer as well. A third group saw only the third question, the one that was given two or three years ago. More need hardly be said. Since the examination was open book & notes, those students expecting to apply their knowledge only indirectly were, of course, rather spectacularly rewarded.

But what of those who were not so lucky? What of my friend who prepared a nearly one-hundred-page typewritten outline, studied extraordinarily hard and did not see any of the questions beforehand? Can all of that work have gone for just a "pass/fail"?

The optionof retaking the test does not represent a realistic solution. Those who will choose to retake the test—those who are in a position to spend the better part of a week studying—will tend to be the best in the class, the students who expected A's in the course. A fair curve for these ten or twenty students cannot be constructed: none, certainly, should be given C's.

I cannot think of anything that may be said in Professor Estep's defense. To be sure, many professors base questions on old tests, but an entire examination taken word-for-word from old tests presents a vastly different case. I have it third hand that Professor Estep wanted to test the academic competence of summer students against that of fall students; however, no professor here at Michigan would conduct so extreme an experiment merely to satisfy his own curiosity about how hard students work in the summer. Surely a new examination is not so difficult to compose.

There is no panacea. Any solution to the dilemma that Professor Estep has presented us with will be imperfect. But the solution that Dean Eklund has chosen—a mandatory pass/fail or a January exam—visits upon us students the entire consequences of the error.

The author, a student in Prof. Estep's class who plans to re-take the exam, has asked that his name be withheld.

NOTICES

LAW REVUE TALENT SHOW—Those interested in serving on the production staff for this incomparable annual event should turn their names in to the Senate Office.

TIME ON YOUR HANDS—Students interested in writing, editing, or doing layout for the R.G. please contace Matthew Kiefer, 665-0018; or Cub Schwartz, 966-0335; or leave a note in the box next to the Senate Office.

Double Jeopardy

From page 1

double jeopardy purposes, one must first possess a standard for measuring likeness and difference. That is to say, in order to decide whether one double jeopardy case is like another, or different from it, one must identify the standards or values that inform the double jeopardy guarantee.

As I have suggested elsewhere,[2] the double jeopardy clause safeguards three separate constitutional values, each possessing its own particular weight: (1) the integrity of jury verdicts of not guilty, (2) the faithful administration of prescribed sentences, and (3) the defendant's interest in repose. To resolve *Bullington* —indeed, to resolve any double jeopardy problem—one must, first, determine which of the three respective values is implicated and, second, assess the strength of the state's interests in light of the particular weight the respective value enjoys.

Given the foregoing standards, *Pearce* was a relatively easy case from the prosecution's standpoint, because values (1) and (2) were not implicated at all, while the third value of repose was weighted in favor of the state. The contrary is true of *Bullington:* the defendant in *Bullington* invokes two of the double jeopardy values—i.e., the conclusiveness of jury verdicts of not guilty, and an interest in repose—and both are weighted in his favor.

Jury Acquittals

The Court has said that the most "fundamental" of double jeopardy values is that jury acquittals (including implicitly acquitting a defendant of a greater offense by solely convicting him of a lesser offense) are "absolutely final" and may not subsequently be set aside, even if the acquittals are "egregiously erroneous."[3]

Yet the Court also ruled in *Pearce* that a sentencing judge's decision to give a defendant a 12-year sentence is not an "implicit acquittal" of any greater sentence and, thus, does not preclude a judge from subsequently increasing the sentence to 15 years following retrial and reconviction. More importantly, the Court has reaffirmed the rule first announced in the 1919 case of Robert Stroud, the famous "Bird Man of Alcatraz," that a defendant who is convicted and sentenced to life imprisonment by a jury in a unitary proceeding may be resentenced by a jury to death following a reversal of his original conviction.

Once again, in order to decide whether *Bullington* is governed by the rule against retrial following an implicit acquittal on the one hand, or by the rule of *Pearce* and *Stroud* on the other hand, one must first identify the constitutional value that underlies the acquittal rule. Fortunately, the Court last month cast light on the issue by affirming that the prohibition on retrial following an acquittal " 'is based on a jury's prerogative to acquit against the evidence.' "[5] That is, the absolute finality of jury acquittals is based on the unreviewable authority of the sixth amendment juries to dispense mercy in the face of clear evidence of guilt.

Now that we have identified the constitutional value underlying the acquittal rule, we can see that *Bullington* is significantly different for double jeopardy purposes from both *Pearce* and *Stroud.* It is different from *Pearce,* because the principle of jury nullification that informs the acquittal rule is an aspect of a defendant's sixth amendment right to trial by jury and does not extend to favorable rulings by a trial judge. Thus, while the acquittal rule presumptively applies to the jury's favorable choice of life sentence in *Bullington,* the rule has no relevance at all to the trial judge's original 12 year sentence in *Pearce.*

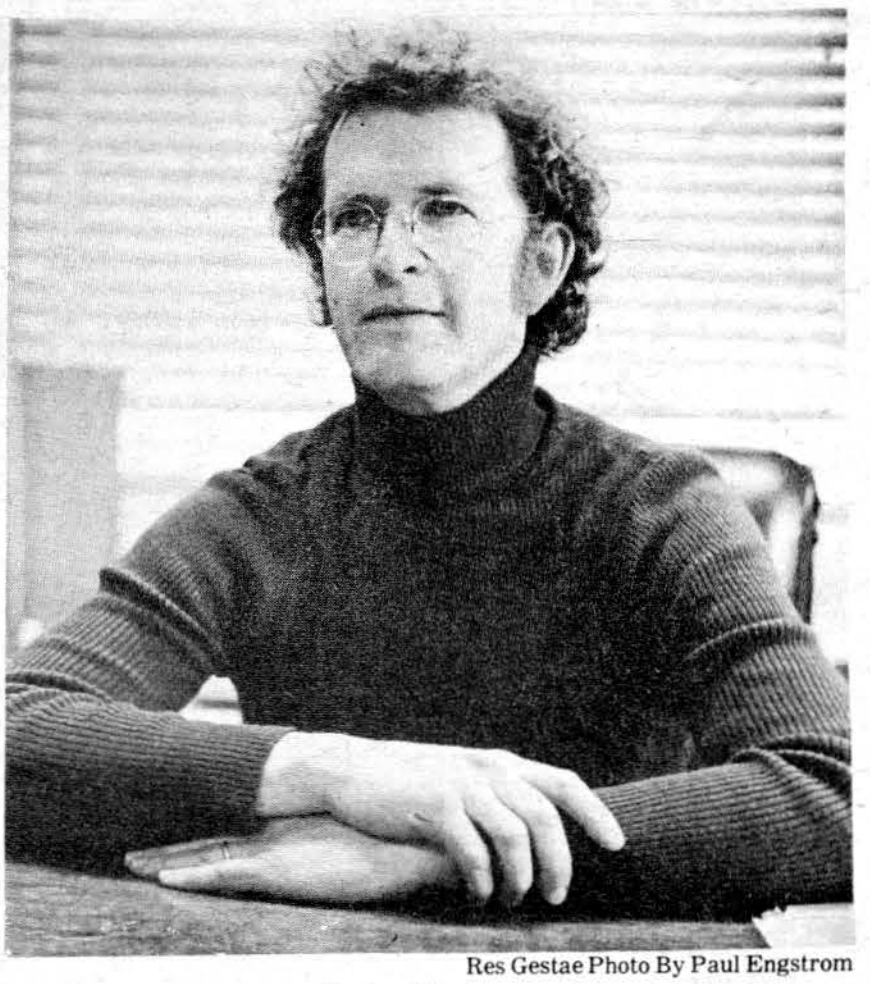
Moreover, even if Pearce had been sentenced by a jury to 12 years, the implicit-acquittal rule would not have operated to render his sentence final, because the jury's prerogative of nullification does not extend to ordinary sentencing decisions.[4] The difference between determinations of guilt or innocence (to which the jury's prerogative of nullification applies) and ordinary sentencing (to which nullification does not apply) is that decisions regarding guilt or innocence are either/or decisions, while decisions regarding length of sentence are line-drawing decisions on a continuous spectrum of nearly infinite possibilities.

By that standard, *Bullington* is again distinguishable from *Pearce,* because while sentencing in *Pearce* involved a decision as to where to draw a somewhat arbitrary line between one and 15 years in prison, the sentencing in *Bullington* involved the starkest of either/or decisions: the decision between life imprisonment or death.

Finally, *Bullington* is also distinguishable from *Stroud* for purposes of jury nullification and, hence, for purposes of the acquittal rule. Although *Bullington* and *Stroud* both involved jury choices between death and life imprisonment, the structure of their decisionmaking was very different. The *Stroud* jury, acting without standards or guidelines and proceeding without instructions regarding burden of proof, was allowed to exercise unbridled discretion at the close of a unitary proceeding in making its choice between death and life imprisonment.

The *Bullington* jury, in contrast, was directed to act in the fashion of a jury making a traditional determination of guilt or innocence: it was required to make its decision at a separate adversary hearing on the basis of detailed death-penalty standards and instructions regarding the prosecution's burden of proof. These differences are significant because just as the jury's nullification prerogative is confined to either/or decisions regarding culpability, it also appears to be confined to determinations of culpability on which the jury's discretion is guided and focussed by separate submissions of evidence, specific standards of culpability, and instructions on burdens of proof.

To conclude, while *Bullington* and *Stroud* both involved capital sentencing by juries, they are significantly different from one another for double jeopardy purposes, because the determination by the *Bullington* jury was identical to the traditional judgments of culpability made by juries possessing nullification authority, while the procedures followed in *Stroud* more closely approximated the kinds of sentencing judgments to which a jury's nullification prerogative does not apply. The consequence is that the jury's original verdict of life imprisonment in *Bullington* may be regarded as an implicit acquittal of the more onerous verdict of death and, thus, is "absolutely final,"[7] even if later determined to be erroneous.



Res Gestae Photo By Paul Engstrom

Professor Westen

"However **Bullington** *is decided, the very granting of certiorari shows that the* **Pearce** *rule is elusive; that its real meaning inheres in the balance of constitutional value it reflects; and that if a school can teach its students how to identify such values, it can largely dispense with hornbook rules."*

"In order to decide whether Bullington is governed by the rule against retrial following an implicit acquittal on the one hand, or by the rule of **Pearce** *and* **Stroud** *on the other, one must first identify the constitutional value that underlies the acquittal rule."*

Interest in Repose

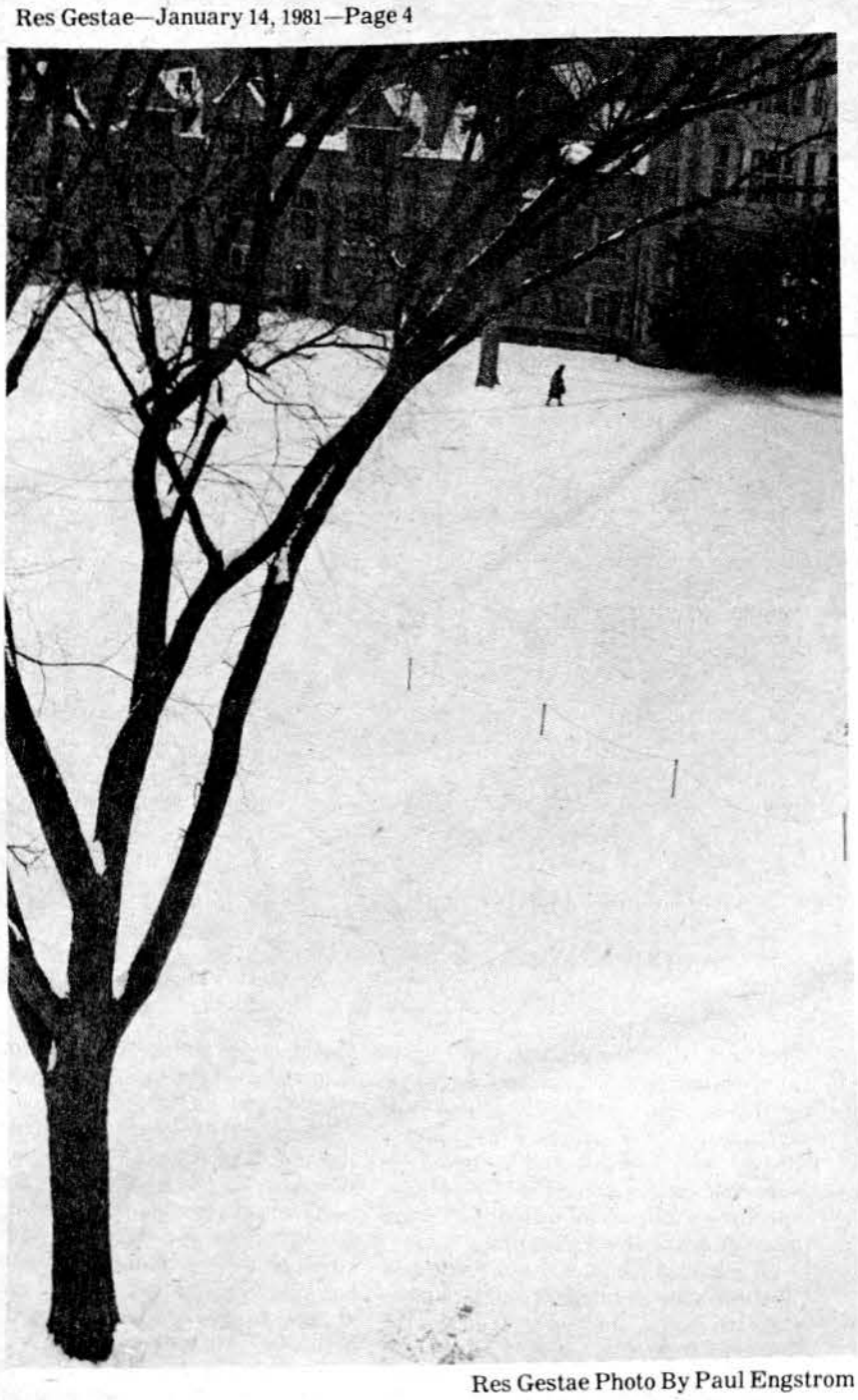
Bullington also differs from *Pearce* (as well as *Stroud*) with respect to the defendant's interest in repose. The argument for repose is to be distinguished from the argument regarding "implicit acquittals." The acquittal rule is a reflection of the jury's unreviewable authority to dispense mercy and is apparently absolute, operating even if the jury's verdict is otherwise erroneous. The rule of repose, in contrast, is not tied to the jury: it is a principle of res judicata, applicable to proceedings terminating in mistrials, dismissals and convictions (as well as acquittals).

Moreover, as a principle of res judicata, the rule of repose is not an absolute: it seeks instead to strike a balance between the state's interest in having a fair opportunity to make its case and the defendant's interest in not having to relitigate something that has or should have been fully litigated before.

Thus, the prosecution may appeal erroneous pretrial and post-verdict rulings in a defendant's favaor, may appeal erroneous sentences in his favor, and may retry a defendant following a reversed conviction; yet it may not try a defendant on an issue that was fully adjudicated against it in an earlier proceeding, or retry a defendant following a mistrial declared in bad faith over his objection or following a conviction reversed for simple insufficiency of evidence. Essentially, the prosecution is entitled to "one fair opportunity to offer whatever proof it [can] assemble" in a "trial free from error," but it is not otherwise entitled to a "second bite at the apple."[8]

To see how *Bullington* differs from *Pearce* for purposes of the rule of repose, one must first understand why the state in *Pearce* was allowed to relitigate the defendant's sentence after it had already had one fair, error-free opportunity to secure an appropriate sentence at the original trial. The reason was not that the prevailing law had changed in the meantime in the

see Westen, page 4



Res Gestae Photo By Paul Engstrom

ET CETERA

Schreier from page 1

that he talks to people's knees at cocktail parties, but the transistors that form his upper and lower hip areas store millions of the legal profession's most embarassing moments (some almost to the point of rawness). Also, he is the Master of the Bad Pun, and can spin his head unit around at will to hurl bad jokes or embarrassing stories at those who attack from behind as he and Nuke walk the Stacks.

Ahh, princess Lexis . . . what can be said that does this leader of the fierce WALSA tribe justice? She knows the ropes, the dopes, and she scopes out the best force fields in the galaxy in her tireless search for a star-studded firm for her people to practice J.D. Knighthood in.

As commander of the Stack People, Nuke spends untold hours in a nearly motionless state of compression, attempting to master The Source. When he is not chasing the beautiful Princess Lexis through hyperspace, Nuke seeks out the great J. D. Knight Terry wan Canary (a.k.a. The Sandman), whose knowledge of the Source can aid Nuke in his mission.

Nuke must also avoid the awesome Darth Najjar, who has been known to melt down his subjects where they stand. Currently, Darth is perfecting a vicious scheme to lure Matt-2 D-2 and Nuke into The Death Pit, so that he can jettison Nuke forever into the unknown reaches of the Business Galaxy, and turn Matt-2 D-2 into a Hoover Cannister Vacuum (badly needed right now in the Death Pit).

However, Darth is having a difficult time distracting Nuke from his favorite pastime—trying to stackwalk Princess Lexis into Room 2,000,000, where they can contact friendly forces to aid in the placement of the atmospheres.

Westen, from page 3

resentenced by the same trial judge applying the same sentencing standards as were applied originally.

Nor was it that the prevailing law prescribed "continuing sentencing" form of new sentencing standards, because the defendant in *Pearce* was rehabilitative sentencing standards tied to continuing assessments of a defendant's changing circumstances; in that event, ordinary rules of res judicata do not apply—no more than they do to the rehearing of continuing civil injunctions.

The State in *Pearce*, however, was not such a jurisdiction. It did not use indeterminate sentences or generally subject sentences to continual reassessment. All sentences were fixed at the close of trial once and for all, except for a few defendants (like Pearce) who were unfortunate enough to be reconvicted following successful appeals.

The real reason the rule of repose did not apply in *Pearce* is that the resentencing there was not relitigation as ordinarily understood. The prosecution in *Pearce* was not asking for a "second bite at the apple" in the form of a separate hearing with adversary proof, instructions, and burden of proof under specific sentencing standards. Rather, the prosecution was asking that the trial judge be allowed at the conclusion of trial to impose a sentence that was in accord with the evidence already before him by virtue of its having been introduced on the issue of guilt or innocence. To have ruled otherwise in *Pearce* would have required the sentencing judge to blind himself to probative evidence already before him by adhering to a previous sentence that might have nothing to do with the facts as he then understood them to be.

Bullington, on the other hand, is a paradigm for res judicata. The prosecution there is not asking that the trial jury be allowed to impose a sentence in accord with probative evidence that will independently be before it on the matter of guilt or innocence. Rather, the prosecution is asking to be allowed to present adversary proofs in a *de novo* proceeding before a jury to be instructed under independent standards of law—all for the purpose of relitigating historical facts that the prosecution had already fully and fairly litigated once before.

Consequently, unless the prosecution in *Bullington* has preserved a sufficient objection to the exclusion of women from the original jury, it should be precluded by constitutional rules of repose from seeking a "second bite of the apple."

Conclusion

I suggested at the start that we might learn from *Bullington* something about legal rules and, hence, about legal education. If ever there has been a rule of criminal procedure that we all assumed we understood, it is the double jeopardy rule of *Pearce*, that a defendant who is reconvicted following a successful appeal may be given a greater sentence than he originally received.

Now *Bullington* comes along and reveals that those of us whose knowledge of law consists of hornbook rules know less than we thought we did. For however *Bullington* is decided, the very granting of certiorari shows that the *Pearce* rule—like all legal "rules"—is elusive; that the real meaning of *Pearce* inheres in the balance of constitutional values it reflects; that if a school can teach its students how to identify and analyze such values, it can largely dispense with hornbook rules; and that if a school does not equip its students with skills of analysis, no amount of learned rules will do them much good.

1. 395 U.S. 711 (1969).
2. Westen, *The Three Faces of Double Jeopardy*, 78 Mich. L. Rev. 1001 (1980).
3. *U.S.* v. *Martin Linen Supply Co.*, 430 U.S. 564, 571 (1977) ("fundamental"); *Burks* v. *U.S.*, 437 U.S. 1, 16 (1978) ("absolute finality"); *Green* v. *U.S.* 355 U.S. 183, 190 (1957) ("implicit acquittal"); *Fong Foo* v. *U.S.*, 369 U.S. 141, 143 (1962) ("egregiously erroneous").
4. *Stroud* v. *U.S.*, 251 U.S. 15 (1919).
5. *U.S.* v. *DiFrancesco*, 49 U.S.L.W. 4022, 4026 n.11 (U.S., Dec. 9, 1980).
6. *See Chaffin* v. *Stynchcombe*, 412 U.S. 17 (1973).
7. *Burks*, *supra* at 16. To be sure, if death penalty decisions are not required to be allocated to sixth amendment juries in the first place, the acquittal rule might be deemed not to apply to such decisions as are left to juries by legislative choice. The Supreme Court, however, has never explicitly passed on whether a defendant today is constitutionally entitled to a sixth amendment jury verdict on issues of life or death. *But cf. Proffitt* v. *Florida*, 428 U.S. 242 (1976). Indeed, now that death penalty practice so closely approximates traditional sixth amendment determinations of guilt or innocence, it can be persuasively argued that the death penalty has become a mandatory sixth amendment issue for final resolution by juries.
8. *Burks* v. *United States*, *supra* at 16 ("fair"); *Palko* v. *Connecticut*, 302 U.S. 319, 328 (1937) ("free from error"); *Burks*, *supra* at 17 ("second bite").

Campbell Winners

Winners in the first round of this year's Campbell Competition, though announced before Christmas Break, did not appear in the previous issue of R.G. due to space limitations. The following students have advanced to the quarterfinal round:

Petitioner—Anti-Trust Issue
Pat Carnese/Kathy Ryan
William Carroll/Brian Boyle
Sheree Kanner/Joseph Blum
Dan Bergeson/Richard Scarola
Robin Harrison/Jason Johnston

Respondent—Anti-Trust Issue
Dan McCarthy
Carolyn Rosenberg/Mitch Dunitz
Janice Cohn/Jedd Mendelson
Bob Scharin/Mark Haynes

Petitioner—Labor Issue
Pat Lamb/David Schreier
John Foote/Eric Linden
Mike Olmsted/Herb Glazer
Bill Fallon/John Low

Respondent—Labor Issue
Anne Brakebill/Janet Lanyon
Robert Krause/Elaine Hodges
Elaine Hodges
John Grabow/Richard Hoffman
Susan Berman/Sara Brown

Those students whose briefs have been nominated for the Best Brief Award are:
Foote/Linden
Grabow/Hoffman
Fallon/Low
Brakebill/Lanyon
Harrison/Johnston
Carnese/Ryan
DeVice/Bouma
Serlin/Prero
Kanner/Blum
Olmsted/Glazer