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The Effect of "Atmosphere" Upon Decisions

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gation of the law of oil and gas, and investigaton of whether the present available legal remedies are sufficient in the conduct of co-operative marketing associations among farmers of West Virginia.

"It is hoped that such work carried on by the Law School will have a double purpose. First, in its possible influence on the legal, economic and industrial development of the state, and second, the stimulating effect it will have on the faculty in keeping them abreast of practical legal problems. There will also be opportunity for students of high quality to do work on these problems, and it is hoped that this will create an atmosphere at the Law School not unlike the atmosphere in a law office where work on particular legal problems is being done. Its tendency should be to break the entirely theoretical train of thought which comes from a too close application to general principles and theory on the part of students.

"The appropriations here suggested will enable four professors to engage in research during the summers covered by the next biennial appropriation."

THE EFFECT OF "ATMOSPHERE" UPON DECISIONS.—Every year thousands of law students in and out of the classroom are engaged in deciding cases involving those perpetual litigants A, B, C, and their brothers. Much as the medical student acquires a knowledge of surgery by dissecting the cadavers of the medical laboratory, our future lawyers are preparing for their task in a realm apart from the struggles, hopes, fears, and occasional hatreds and heartaches that cluster about the actual work of the courts. Where fortunes may depend upon the outcome of a case, where human destinies may be determined by the stroke of a judge's pen, where legal problems are living problems, there may be elements which make the approach to their solution somewhat different from the one where only A and B are concerned.

The question arises as to whether the ideal toward which our profession should strive is to carry to the courtroom the detachment of the law school classroom. Of course, we know that that ideal, if such it is, is not even approximately attained. Every lawyer is aware of the fact that the courtroom is not a cold impersonal place. There is bound to be an atmosphere. Many of our rules of evidence are designed to reduce this atmosphere to a minimum, but it cannot be suppressed. The jury is especially susceptible to it. It is a commonplace that verdicts are not the result of a calm and deliberate attempt merely to weigh the evi-

dence and give a verdict in accordance with the court's instruction. But judges are not immune from its influence. Many judicial decisions have turned upon bits of evidence that have had no relation to the facts which in the cold light of judicial reasoning are deemed relevant.

It seems impossible to escape from this human element that enters into the decision of a case. Should we nevertheless strive towards such escape as an ideal? In so far as we seek to eliminate what may be termed prejudice, there can be no difference of opinion. The religious, political and economic views of litigants should not be permitted to become factors in determining the result. Striking employees and their employers are alike entitled to a hearing on the legal merits of any controversy that may arise. Members of the bar should avoid appeal to class prejudice. Judges should not be guided by their sympathy for particular groups. Of course, we should strive towards strict impartiality. However impossible that may be as a practical matter, it must be the ideal.

But after all this is eliminated, is there still room for the human approach to the settlement of a law suit as distinguished from the cold impersonal approach? Chancery courts originally assumed a large measure of discretion which has made possible the consideration of almost all conceivable facts and a nice adjustment of equities. Probably there is less opportunity today for the exercise of such discretion. Rules have been evolved; equity has become more rigid. But there are many types of cases where discretion is not admittedly exercised and yet there are no rules of law that necessarily call for a certain result. Although there may be many cases which reach our appellate tribunals that could be decided in only one way with any show of reason, there are still a very large number which present points that might be decided either way without reflecting discredit on the court's knowledge of the law. There are questions like those of the constitutionality of statutes and their construction where the decision must depend largely upon the social and economic views of the judges. The situation of the particular litigants before the court and the effect of the decision upon them may sometimes be a factor in such a case, but the significance of the decision as it affects the world at large will be the primary and usually the only consideration. There are a large number of cases, however, involving only the application of settled rules or the construction of particular contracts. These present no controlling social considerations. Each one has its own peculiar questions. Precedents do not exist and no precedent will be set for the future. This is the type of case where, if close questions are presented, courts are apt to give weight to facts which have no logical relation to the question

which the settled law makes determinative. Courts are not likely to treat such a case as a case between A and B in a situation restricted to legally relevant facts. Illustrations may serve to make this clear.

In a certain case the question arose in the administration of a bankrupt's estate as to whether a transaction constituted a preference. On the relevant facts the question was close, on the whole pointing to a preference. However, the creditor bank against whom the suit was brought had taken the step, at some risk to itself, to prevent what might have proved a general disaster affecting a large number of business enterprises. It was held that there was no preference. Obviously the virtuous motives of the bank were not relevant on the question of preference. Naturally the opinion of the court did not put the case on that ground. Yet it is difficult to escape the conclusion that the favorable impression produced by the bank's conduct had an important part in turning the balance in its favor.

Another case turned upon a very close question of the construction of a lease. The lessor had a number of similar leases and it appeared from correspondence in the record that this lessor had been very high-handed in dealing with his tenants. The case was decided in favor of the lessee. Again we see the same kind of influences working. Illustrations might be multiplied.

The principle that a contract will be construed to avoid a harsh result and the principle of construing a contract against the one who drew it are helpful in many cases. In equity, the clean hands doctrine affords some leeway to the court. But considerations of a similar nature do not always find principles of law under which a court may properly take them into account. That the court should nevertheless be influenced by them in arriving at the result is not altogether shocking. Indeed it is by no means clear that within limitations a more just result is not reached in many cases because of this so-called "atmosphere".

The administration of true justice may perhaps be best accomplished by leaving a large discretion to a capable judge, trained to recognize and evaluate the elements in a legal problem. The growth of a less flexible system of law withdraws from his proper consideration certain possible factors in the problem which in a less rigid system could properly come before him for evaluation. If such factors are indirectly brought to bear through the means of "atmosphere", does the cause of justice suffer?

—HAROLD C. HAVIGHURST.