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CAVEATS FROM THE ELDERS: WARNINGS AND ALARUMS TO STUDENTS OF THE LAW AS THEY LEARN TO TREAD WATER IN ITS INCONSISTENT DEPTHS

BRUCE McM. WRIGHT*

Law is necessary because men are subject to passions; If all men were reasonable, law would be superfluous.¹

In the best and most sterile tradition of the law, it has become the dull and stale custom and usage for new law students to be harangued by the elders of the tribe. Both speeches and writings are predictably dull, the custom is sleep-producing and the students are abused. Generally, such lectures take place amid the hoary surroundings which exact dignity because of the overpowering melancholia they induce. Paintings of dead giants of jurisprudence stare from the walls, as though deeply pained by mournful knowledge of the past. It marks the solemn moment when history has stopped breathing. It seems strange to expect the uterus of the youthful mind to have the ovum of the law developed in such an arid place of dry syllables. It is doubtless for that reason that the carefully selected speakers always mind their speeches and seldom speak their minds.

When I prepare my resume and apply for permission to enter that Sodomick hell where, as convicts say, all lawyers go, if they ever die, I can say that, one day, as summer ended, I harangued some of the law's students with admonitions, caveats and alarums, as a male Cassandra—and all in vain, of course. For, no matter what I say, some of you will help edit the law review and some of you will disdain it. Some of you, too much haunted by the study of dead antiquity, will move on to living things. Others, pursuing Hogarth's curved line of beauty, as opposed to the straight line of duty, will yield to the flesh-pot attractions of X-rated

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¹ Benedict de Spinoza, *The Political Treatise*, p. 20.

220 NORTH CAROLINA CENTRAL LAW JOURNAL

life and bear naked witness to the pornographic pageant and seminal parade which so severely tests community morals and baffles the elderly Justices who must edit the national conscience.² Still others, who have fooled the Princeton computer as to aptitude, will astonish themselves and sadden the pride of their parents by their swift decline and fall as students.

Mr. Justice Bernard Botein,³ with the pungent phrase which sometimes glows in the harsh poetry of legal esperanto, once said that the law devours its young. This auto-cannibalistic warning was not enough for one lawyer. He invoked a coarse simile to replace the black toga on the flesh and bones of those civil divines who grace the high benches of the land. He said that the appellate judges are the whores who have become madams.⁴ Some have said that lawyers are the caretakers of the common-

² *United States v. Roth* [354 U.S. 476], begins the modern legal brood on how far expression could go before being called obscene, or hard core pornography absent every socially redeeming characteristic. See, also, 38 Minn. Law Rev. 295; Paul and Schwartz, *Federal Censorship*, Glencoe, 1961; *The Metaphysics of the Law of Obscenity*, *The Supreme Court Review*, Univ. of Chicago Law Review, 1960.

³ Former Presiding Justice of the Appellate Division of the New York State Supreme Court.

⁴ This robust opinion expressed concerning a conservative profession has resulted in a sore and sensitive reaction by at least two courts thus far. In *Erdmann v. Stevens*, 458 F.2d 1205, Martin Erdmann, a Legal Aid lawyer in New York, sought to enjoin the New York Appellate Division from pressing disciplinary proceedings against him, arising out of publication in *Life Magazine* of the colorful comparison between judges and whores. Erdmann contended that the proceedings against him were tantamount to punishment for the exercise of his First Amendment rights and that he was being deprived of his right to equal protection and due process.

The United States Court of Appeals for the Second Circuit refused to enjoin, noting that the Appellate Division was acting in its judicial capacity and not administratively. What, however, it may be asked, is the difference between having First Amendment rights swallowed up by administrative ukase or judicial fiat?

Charged with violation of the Code of Professional Responsibility (N.Y. Judiciary Law Appendix; McKinney's Supplement, 1971) and the Canons of Professional ethics (N.Y. Judiciary Law Appendix; McKinney's Supplement, 1968), Mr. Erdmann must have found the title of the *Life* piece ironically accurate. It was "I Have Nothing To Do With Justice," and the precise words parsed and punished are as follows:

"There are so few trial judges who just judge, * * * who rule on questions of law, and leave guilt or innocence to the jury. And Appellate Division judges aren't any better. They're the whores who became madams.

"I would like [to be a judge] just to see if I could be the kind of judge I think a judge should be. But the only way you can get it is to be in politics or buy it—and I don't even know the going price."

The matter was particularly galling to Mr. Erdmann because an earlier reference of the complaint was made to the Grievance Committee of the Association of the Bar of the City of New York and that prosecutorial group had recommended that "no disciplinary action should be taken." The Justices of the Appellate Division nevertheless pressed on with their discipline. Ultimately, Erdmann was cen-

sured by a three-to-two division of the justices [*In Re*, Justices v. Erdmann, 39 App. Div. 2d 223, 333 N.Y.S.2d 863.] The censure, it was said, was because Erdmann had used "intemperate, vulgar and insulting language," offensive to "the dignity and integrity of the courts."

The dissenting opinion thought the description by Erdmann of the justices was no more than "a figure of speech," since it could "not possibly be taken literally as an accusation." And, it added, after all, the words "were not directed at any individual."

But compare *Sullivan v. The New York Times*, 376 U.S. 254 (1964), which held, *inter alia*, that a State may not, under First and Fourteenth Amendment protections, award damages to a public official, unless the attacked officer who is the target of defamatory falsehoods relating to his official conduct, unless the officer proves that *actual malice* energized it and that it was made with knowledge of its falsity, or with reckless regard for whether the defamation is true or false.

And see *Ex Parte Steinman*, 95 Pa. 220, 238-239, holding that "no class of the community ought to be allowed to have freer scope in the expression or publication of opinions as to the capacity, impartiality or integrity of judges than members of the bar. * * * To say that an attorney can only act or speak on this subject under liability to be called to account * * * by the very judge or judges whom he may consider it is his duty to attack and expose, is a position too monstrous to be entertained for a moment under our present system."

The abstinence of the Federal court in granting relief to Erdmann perhaps signifies sensitivity of judicial skin as much as anything else. Certainly, freedom of speech is a Federally protected civil right. And, in *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 299 F.2d 117 [a three-judge statutory court], affirmed on other grounds, 401 U.S. 154, 91 S.Ct. 720, 27 L.Ed. 2d 749 (1971), it was held that jurisdiction exists to issue injunctive relief against the commission of acts in violation of a plaintiff's civil rights by State judges acting in their official capacity.

But, there has long been a policy, in balancing State and Federal writs, of federal non-intervention. Indeed, non-intervention is given supremacy (*Younger v. Harris*, 401 U.S. 37, 91 S.Ct. 746, 27 L.Ed. 2d 669 [1971]; *Samuels v. Mackell*, 401 U.S. 66, 91 S.Ct. 764, 27 L.Ed. 2d 688 [1971]; *Boyle v. Landry*, 401 U.S. 77, 91 S.Ct. 758, 27 L.Ed. 2d 696 [1971]; *Perez v. Ledesma*, 401 U.S. 82, 91 S.Ct. 674, 27 L.Ed. 2d 701 [1971]; *Dyson v. Stein*, 401 U.S. 200, 91 S.Ct. 769, 27 L.Ed. 2d 781 [1971]; *Burne v. Karalexis*, 401 U.S. 216, 91 S.Ct. 777, 27 L.Ed. 2d 792 [1971]).

"Membership in the bar," said Mr. Justice Cardozo [then on the New York Court of Appeals], "is a privilege burdened with conditions," a thought which has doubtless troubled the noonday repose and midnight slumber of Mr. Erdmann. (*Matter of Rouss*, 221 N.Y. 81, 84, 116 N.E. 782, 783.)

And of course, lest one be lulled with illusions of a gentlemen's club bar association being tender of the mercies due a new lawyer, keep in mind that disbarment proceedings have been characterized as being "of a quasi-criminal nature," *In Re Ruffalo*, 390 U.S. 544, 551, 88 S.Ct. 1222, 20 L.Ed. 2d 117 (1968).

In slapping the wrists of Erdmann, the court said that it is axiomatic that the effective functioning of any court depends upon "its ability to command respect" (p. 1210 of 458 F.2d, *Erdmann*, *supra*). Left unanswered is what a lawyer should do if, in his view, courts and judges no longer command respect. Should a defective quality of respect be demanded under duress, or under pain of punishment?

A solid wall of isolation from Scot-free criticism of the judiciary by an officer of the court has been erected by case law and a morality of self-interest. It was easy to find that Erdmann had sinned and had failed to uphold the dignity of the judiciary. While "Judicial officers are not immune from suit or criticism," they are protected from "scandalous charges" (*Matter of Bevans*, 225 App. Div. 427, 431).

It seems ironic that neophytes coming to the law as a calling, while looking to

222 NORTH CAROLINA CENTRAL LAW JOURNAL

weal and, more often, are simply the takers. Other legal philosophers have suggested that lawyers are the reincarnation of Dr. Faustus, selling their souls to the highest bidding devils.

As the *tabula rasa* of young and innocent minds may possibly suspect, prostitution is a crime, and because of the sharp and piercing cervical analogy just quoted, the brilliant legal analyst who made it and dared to utter this view to a magazine, has been taught that First Amendment freedoms cost a pretty penny in moralistic censure. That this is so is made clear in the sententious rhetoric in which the censorship appears.

One of the early lessons we learn after being admitted to the bar is that the term "bar" has some literal meaning in prohibiting, in an essentially speaking profession, one's speech. Some of the overly sensitive reasoning of the majority of Appellate Division judges who ultimately censured Mr. Erdmann, give shape and anxious definition to some troubling flickers capering in the shadows of caves less noble in their concept than those of Plato's Cave.

New adventurers into the mysteries of the law come to its fearsome threshold at a time of gross scandal, wholesale mob murder, private homicide and morality's strip-tease in various sensational public trials. In New York, the Knapp Commission has given us a book of revelations easily distinguished from that of the Bible. In an exhibition worthy of a Times Square peep show, we have been allowed to see that corruption casts a crooked shadow upon the very highest of thrones of the law. One tends to look at a New York police officer these days and wonder: If he is New York's finest, then what is our worst? Those students who, in the quick eagerness of priceless youth, swept through ablative-absolutes, gerunds, declensions and Punic Wars, will cynically recall the loaded question: Who shall guard the guardians themselves?⁵

The ancient poets tell us that tragedy and comedy are different faces of

the profession to protect the First Amendment and the freedom of expression deriving from that first of the ten Constitutional Commandments, may test the scope of its range and reach at their peril.

⁵ That dissatisfaction with the law as cleanser and savior of the realm is not new, is found in a quick sampling of some figures who preceded Martin Erdmann. Edmund Burke, e.g., in *Vindication Of Natural Society*, may be summarized as to disenchantment, as follows: "The development of laws was a degeneration * * *; Law is injustice codified; it protects the idle rich against the exploited poor, and adds a new evil—lawyers * * *; The misery of the English miners never existed before the making of laws."

Oliver Wendell Holmes thought, in 1897, that it was "revolting" that Americans had no better reason for a rule of law "than that so it was laid down in the time of Henry IV." And, "ignorance," he said, "is the best of law reformers."

the same coin. Plato comments that the tragic and the comic are so closely akin that a great writer must suffer and translate the schizophrenia of both. Horace Walpole, more than two hundred years ago, brooded that: "To those who think, life is funny; to those who feel, it is tragic."⁶ Thought, anger and the cynical awareness of a blemished reality have infused the comic tragedy in Bill Cosby's lament that he was twenty-one before he realized that the cops were *also* paid by the city.

In 1923, T. S. Eliot published an abrasive, yet poetic lamentation for the desert of contemporary culture,⁷ where, as in Oscar Wilde's epigram, one knows the price of everything and the value of nothing.⁸ The Eliotian *Wasteland*, with its cities already dead, was caught in the coils of an urban serpent. The anxious flailings of the doomed people, somehow surviving temporarily on the desperation of their artificial respiration, were stunned in their pain. They were trapped in smog, breathing poisonous pollutants as the life of rivers and oceans was despoiled and architectural dross mouldered and crumbled men and institutions.

In a way, such predictions confirm the apocrypha attributed to a George Bernard Shaw sneer that America was the only country to suffer a decline and fall in its civilization before first becoming civilized.

So, to all of the idealistic and cheerful students of that mixture of money and poetry we call the law, you are now on the eerie door-sill of what may roughly be said to be the barren ecology of a spiritual landscape. That you remain willing to step through the beckoning looking glass,⁹ may indicate an incredible itch for the curious. Even as with Alice in her Wonderland, things may grow curiouser and curiouser. And despite the hopeful prayers codified in the Preamble and the United States Constitution, you will find that a great deal of this world's humanity dwells among the slag of that greatest of evils, poverty;¹⁰ in a pen, or sty on an international animal farm. And there, you will discover a perverse animal

⁶ Letter to the Countess of Upper Ossory, August 16, 1776.

⁷ *The Wasteland*, T. S. Eliot. See, also, *This Generation* (The War And The Wastelanders), Anderson and Walton [Scott, Foresman, 1939]. Note the ecological prophecy in the numbered subdivisions of *The Wasteland: The Burial of the Dead; The Fire Sermon* and *Death by Water*. Compare Oliver Goldsmith's *The Deserted Village*, and those lines of omen which begin: "Till fares the land, to hast'ning ills a prey, / Where wealth accumulates and men decay."

⁸ *Lady Windermere's Fan*, Act III: "CECIL GRAHAM: What is a cynic? LORD DARLINGTON: A man who knows the price of everything and the value of nothing."

⁹ Lewis Carroll, *Through The Looking-Glass*, Modern Library, Random House.

¹⁰ George Bernard Shaw, *Major Barbara*, 1907 [Preface]: "The greatest of evils and the worst of crimes is poverty."

224 NORTH CAROLINA CENTRAL LAW JOURNAL

husbandry where, as pigs all, some of us are equal and some others are equaler.¹¹

To some, the law is the idea of a sacred grail; to some, it embraces the symbol of fertility and resurrection. Whatever it is, and it may be something entirely different from either of the two dreams mentioned, it is unlikely to be discovered by you modern pilgrims who, in one artificial way or another, will proceed in a stumbling gait, each towards his or her own private vision of the gleaming chapel of our lady of the law. Some may never reach it. Those who do, often find that it is empty.

So to hold, is to believe, as an article of faith, that an optimist is one who believes that this is the best of all possible lives in the best of all possible worlds. A pessimist, incidentally, is one who believes that the optimist may just possibly be right.

In each of us then, who dares the challenge of the law, its dares and its barbed thickets, there is the same doom which so grimly haunted Sisyphus.¹² You may parallel his frustration by pushing ambition up a craggy hill with your protruding ganglia, only to have it topple back when near the top.

The law is an anachronism these days. It has been coupled with order in an obscene act, say the liberals. It is much too lenient, say the smug majority. For a stealthy minority, it is a plague from both houses to be avoided and eluded, at all costs. However, if the law is as sterile, dull, barren, unrewarding and unable as its harsh critics hold, then it would be unworthy of criticism. For many of us, it has been and continues to be, an exciting chase through Plato's Cave and towards the sensitive, sensible and sensual shadows in a bright distance. If not at least that, never would its judges be called whores seeking promotion to the status of madams. What more dramatic way to see, with Mr. Justice Cardozo, how, when and where the whole truths of one generation become the half-truths of the next?

The law is indeed a wild, passionate and sometimes pornographic love affair. Some of you, for example, will find a quite momistic satisfaction as young adults nursing at the corporate tit. Under careful and idealistic massaging and ministration, there may be such rich and comforting development that silicon for your ambition will be a relic of the

¹¹ George Orwell [Eric Blair], *Animal Farm*, Ch. 10: "All animals are equal, but some animals are more equal than others."

¹² Sisyphus, the legendary King of Corinth, condemned to roll a heavy stone up a steep hill in Hades, only to have it roll down as it neared the top.

deflated past. The hazardous comfort of wealth will have sprung from the promise of pneumatic bliss.

For still others, there may be a preference for a more noble professional diet. These will cherish the vulgate version of helping the poor. You will extend the translation of Chamfort, who wrote, in the eighteenth century that the poor are the Negroes of Europe,¹³ to read that the poor are the niggers of the world. You may then gaze into the haunted mirror of our urban peasants, or our rural relics, take holy orders and go forth from your private La Mancha.

No matter how you go or the direction you take, remember that life is a terminal disease, a short sprint first to the golden horizon of retirement, no matter how much we imagine it to be a long-distance run. There is much to do for the lawyer, even the one whose vision is always in the future tense. In your next track meet, notice how hard the competitor runs who has been lapped.

Some young lawyers, dreaming of the contrived happenstance which never failed the stirring plots used and re-used by Horatio Alger, may go bravely into the dungeons of Big Government. There, with the benign hallucinations which define normality, they will search for the illusion of security in the civil service, that burdensome branch of managed existence and bureaucracy where, it is said, few retire and none ever dies.

Some of you, as you study, and study, and study, will begin to wonder why. The black students may wonder if some Wall Street firm will see in them the perfect token for integration of a profession which has much excluded them from the rich fruits of corporate practice and the partnerships which dominate it. Jewish students may rejoice that tokenism for them has been on the increase. At the same time, they may wonder why, when Governor Thomas E. Dewey gave up that title and became the head of a Waspish Wall Street firm, he allowed his trusted counselor, George Shapiro, to leave him and join Proskauer, Rose, Goetz and Mendelsohn.

Almost ranked with Negroes for their scarcity in the large and affluent partnerships are women. Many states now have anti-discrimination laws prohibiting the rejection of a possible employee simply because that person is either a woman or a Negro. Since the subtleties of the law are admirably equipped to discover loop-holes and evasive defenses, it is not anticipated that such devices, geared to sexual and racial integration of the profession, will inundate the discipline with those two long-con-

¹³ Nicola-Sébastien Roch de Chamfort (1741-1794), "Les pauvres sont les nègres de l'Europe," *Maximes*.

226 NORTH CAROLINA CENTRAL LAW JOURNAL

demned minorities. When, in 1936, I presented myself to Princeton University in a pride of high school honors (including a beautifully bound copy of the United States Constitution), Dean Radcliffe Heermance was shocked to see a black face before him. He immediately recovered, however, and summoned the Dean of the Chapel, Robert Russell Wicks and the editor-in-chief of *The Daily Princetonian*, the campus newspaper. Although I corresponded with Dean Wicks thereafter and up to the year of his death, I remember less of the God-diluted platitudes than I do of the senior logic of the editor. He suggested that I should not be astonished that Negroes were unacceptable at Princeton, since the university also discriminated against women and, after all, there were more women than there were Negroes.

Heermance, then the Dean of Admissions, not to be outdone by this brilliant display of Cartesian debate, assured me that when King George granted the university charter, that document admonished that there should be no discrimination against "any race, color, or creed."¹⁴ Thus, my

¹⁴ These things should not be excised from context. The letter which followed my personal interview touches the rough edges of Princeton's posture in the long-ago thirties. That it now has a recently graduated Negro as a member of its board of trustees, italicizes the incredibility of my own youth: "Dear Mr. Wright: Princeton University does not discriminate against any race, creed or color. This is clearly set forth in the original charter of the college and the tradition has been maintained throughout the life of the University.

"In admission to the University, regard is given to character, personality and promise as well as to scholarly attainment. Every applicant, except under a particular type of exemption, referring to the far south and west, must take the examinations prepared and conducted by the College Entrance Examination Board, and inasmuch as the number entering the freshman class is strictly limited and the candidates applying far exceed this number, very careful selection must be exercised, giving consideration to character, personality and promise as well as to school standing and examination success. Satisfactory showing in one of these qualifications alone is not considered sufficient to guarantee admission.

"So much for the general policy of the University, which policy it is the privilege of my committee to administer. Now let me give you a purely personal reaction, and I speak as one who has always been particularly interested in the colored race, because I have had very pleasant relations with your race, both in civilian life and in the army. I cannot conscientiously advise a colored student to apply for admission to Princeton simply because I do not think that he would be happy in this environment. There are no colored students in the University and a member of your race might feel very much alone.

"There are, moreover, a number of southern students enrolled in the college. This has been a tradition of long standing in Princeton, and as you know, there is still a feeling in the south quite different from that existing in New England. My personal experience would enforce my advice to any colored student that he would be happier in an environment of others of his race, and that he would adjust himself far more easily to the life of a New England college or university, or one of the large state universities than he would to a residential college of this particular type.

"I write these personal reactions simply because I would wish you the greatest success in your college course both as a student and as a member of a university family."

first step along the path to a legal career was met by a Charter which both welcomed and blocked black progress. All of this has changed, of course. Having conquered the universities, perhaps it is up to the women and the blacks to merge their forces to integrate the large law firms. Keep in mind what I have already said about "benign hallucinations," however.

E. E. Cummings begins one of his early romantic rhymes by admonishing us that, "Who thinks of the syntax of things, / Will never wholly kiss you." For kissing, of course, this is a splendid caution. For the law, it might be a disaster. The Queen's tongue is mandatory in our precise calling. It is the carefully juxtaposed phrase, the convoluted clause, the cleft infinitive, and the dangerous jungle of commas, colons and hyphens through which you must make your intellectual safari. If you manage this vexatious feat, you will be able, in a short three years, to emerge from the academic wilderness, look yourself in the mirror, say, "Dr. Juris, I presume," and then begin your education.

Some of you may be so innocent of mind and intention, and so barren of ambition that you wish to become judges. Having read the hundreds, nay, the thousands of themes and variations of Agatha Christie, and having thrilled to the in-between-the-commercials confessions by Perry Mason's doomed and wicked antagonists, you already know how easy it is to be a judge and how over-paid they are. For the salary, it may even be worth being called a whore or madam, when one only has to learn the proper judicious moment to say, in a pompous baritone, "Objection overruled," or, to avoid a dull rut, now and then to say, "Objection sustained." If a day becomes strenuous and lawyers seem on the brink of rebelling against your serenity, by urging that complicated cases be tried, one need say no more than, "Adjourned." If pushed to the wall by a nasty litigant, who insists upon posing disgusting Constitutional questions, one must know how to take a recess and speak to a law student and learn the latest legal innovation. Forgetting for a moment the Thirteenth Amendment, this kind of judicial acumen can be justified as helping inchoate lawyers into the prickly foothills of research.

America has long been regarded as a radical brat in the international family of nations. One reason for this, in the legal community, is that our judges receive on the job training, after advertising their golden merits in a political campaign. In Egypt, for example, bright young law students opt for a career on the bench and then they are trained for that noble career. I was astonished, when lecturing there in 1971, to discover that Egypt has no jury system. Judges, it is assumed, can never be less

228 NORTH CAROLINA CENTRAL LAW JOURNAL

pure and virtuous than the legendary and moral excellence of Caesar's wife. It is further assumed that they will never follow the precedent of Bacon by taking equal bribes from both sides and then ruling on the merits.¹⁵

Judges, as you know, belong to that exotic elite known, thanks to Professor Sarokin, as the organized minority. One example should confirm that label. Nine Supreme Court Justices decide what is Constitutional and the law for over two hundred million lesser human beings.¹⁶ It is understandable, of course, why one might fantasize about wishing to be a judge. So long as democracy frowns upon dictatorships, judging and its status become our best substitute.

Students come to the study of our stuffy mystique at a time of internal revolution. You will find that corporations now practice law; that there

¹⁵ Despite its advertised quest for the verities, the law has never been free of shocking scandals and it has been, on several occasions, debased to the status of "common" by the speculations of its Great Men. Chief Justice Henry Montague, the successor to Lord Coke [the Attorney General for Queen Elizabeth I], bought for himself the Treasurership for 20,000 pounds Sterling. (D. Willson, *Privy Counsellors In The House Of Commons*, p. 88—1940.)

Francis Bacon, in 1621, held a rich bouquet of titles—Lord Chancellor, Baron Verulam and Viscount St. Albans. The last two continue to this day. Charged with accepting money from parties while their cases pended, he said he had taken bribes from both sides and nevertheless ruled on the merits. But, as his arch-enemy, Lord Coke, remarked on the occasion of Bacon's impeachment, "A corrupt judge is the grievance of grievances." (Sir. W. Sanderson, *Secret History*, Vol. II, p. 268; *Bench and Bar*, L. D. Bigelow, p. 23 [1871].)

¹⁶ The aristocracy of the American bench has always been a curious aberration of United States jurisprudence. How odd that a ragged band of often disjunctive and querulous rebels could oust the divine right of kings from their government and, at the same time, cloak their courts and judges with what amounts to the ultimate divinatory ermine. Tocqueville, in his *Democracy In America*, ponders this aristocracy of the immigrant commoners. So, too, C. Grove Haines, in *The American Doctrine of Judicial Supremacy*.

More recently, in *The New Leader*, Vol. LVI, No. 1, 1973, Richard Kuh, a disenchanted former assistant district attorney in New York City, explains the illusions of divine right and higher royalty sometimes acted out by judges, as deriving from ancient Biblical times when "judges were sages, wise men; they spoke in thunder and lightning; God-anointed, they were larger than life, leaders of the sorely tried flock of Abraham, Isaac and Jacob."

A "court," after all, has always been associated with royalty. Those who functioned there were called courtiers, some synonyms for which are such words as "flatterers," "claquers," "laudators," "praisers," "adulators," "fawners" and "Mac-Sycophant," to mention a few of the more servile descriptions of the genre.

Condemned as common politicians, a winning candidate for the bench, through the magic and alchemy of election, is transmuted by a benighted electorate and his luck, from the base metal of his crude origins to the precious ingots of "Your Honor." His most casual arrivals and departures from court are accompanied by a uniformed legal acolyte, picked for his stature and voice who, rousing the decibels like a latter-day Stentor, proclaims The Presence Of The Judge, exacting much the same awe and wonder, coupled with humble piety, which the faithful might otherwise reserve for The Second Coming.

are legal communes, where young geniuses of due process, except for their female consorts, are heavily bearded and embattled in their plots to win such incredible cases as those involving Black Panthers and the rioters in Attica, the Tombs and other hostelryes of durance vile. Lawyers of old experience are now revising their stationery to show that, instead of a partnership, they now practice under the aegis of a "Professional Corporation."

The legal experience itself, with which the newly graduated come to the law, is one of raw exposure to the different faces of the law. Prior to becoming doctors *juris*, many will join the others in The Legal Aid Society, where second-year students are now actually conducting the trial of cases, with veteran litigators at their sides. The district attorneys provide students with summer employment, who do investigative work. At long last, the law has made an effort to catch up with the cautions of medicine and the training interns receive, without which, their cures would be worse than the diseases of their victims. For years, our noble profession has let loose upon an unsuspecting public masters of high-flown theory, bulging with a mixture of perfect and inapplicable jurisprudential philosophy. They have known nothing of the biting reality of that harsh arena we call the courtroom. Today, that defect is being cured and for those who wish to be specialists in criminal law, they may choose the prosecutor's office, or, they may select the impossible dream and decide that they were chosen by Saint Jude¹⁷ to defend the poor.

Seduced by the gleam of money and the status it buys, some students may wish to seek comfortable refuge in what has come to be known as the "Wall Street" law firm. Many of these are now on Madison and Park Avenue, a move which has not diminished their wealth. It is simply more convenient for the departures and arrivals from the suburban bedrooms of Long Island, New Jersey and Connecticut, to which the income of senior partners entitles them. Before admission to the bar, new graduates of the "good" law schools are being offered \$18,000.00, to start. Not to worship the bitch goddess, Success, in such Edens, may be the equivalent of commercial atheism.

The virginal minds of the new lawyers must be always on guard not to be seduced by a concept of the legal profession as bearing some rational kinship with justice.¹⁸ Some may suspect that the bail system as it is now

¹⁷ St. Jude is the patron saint of hopeless cases.

¹⁸ Reforming the law is an ancient and nagging burden of the legal conscience. In October, 1621, Sir Francis Bacon made a placatory gift to Lord Edward Coke, his long-time enemy and rival. It was *Novum Organum*, Bacon's words to pos-

230 NORTH CAROLINA CENTRAL LAW JOURNAL

constituted and practiced, is out of touch with due process and the fairness doctrine. Unless blind, it will be seen as an invention to convenience the rich and a plague to harry and detain the poor. A close look at the criminal justice system, as it works, not as it was conceived, may reveal for wounded eyes, that it is used to control, detain and jail the blacks and Puerto Ricans [or just the poor, which may be a synonym for the first two groups]. In America, where sports are so venerated, bail is one of its uglier games.¹⁹

If it is a game, one may find that, like polo, squash and court tennis, it is one only the rich can afford. A quick glance at some recent legal history might tend to confirm this kind of suspicion. A former state senator in New York, who was elected to that state's Supreme Court, was indicted for marketing stolen United States treasury bonds worth over one-quarter of a million dollars. When he was arrested, he was released on his own recognizance. He also received a speedy trial and, although convicted, remained free pending his appeal. This man, an officer of the court, an elected Supreme Court justice, a trustee of the people's confidence, who betrayed it, nevertheless, because of his status in the community, received a beneficial discrimination.²⁰ He is white.

Angela Davis, indicted on the most tenuous of non-evidence and speculation stemming from her admitted love for a participant in the shooting of a California judge, was held for eighteen months without bail and then released in bail of \$100,000.00, only to be acquitted after trial. She is black.²¹

terity. In that leather-bound volume, tooled in gold, Coke wrote, in Latin, of Bacon: "You propose to reconstruct the teaching of wise men of old. Reconstruct first our laws and justice." But what was justice? Lord Coke, as Attorney General, presided over the Star Chamber proceedings where one could be branded in his face with *stigmata*, or have his ears lopped off. (*History of England*, E. P. Cheney, 1914, p. 25 of Vol. II.)

¹⁹ The Thirteenth Amendment to the Constitution was a national affirmation of Lincoln's Emancipation Proclamation [with bitter dissents duly noted in the annals]. However, our prisons have become concentration camps for involuntary servitude because the Eighth Amendment, providing that there shall be no "excessive bail" imposed against those accused of crime, can be so easily abused to send the poor to jail. Often, the principal crime they have committed, is to be poor. As judges are political creatures, to the extent that the poor are jailed in default of high bail, to just that extent are they "political prisoners."

On the deeply divisive question of bail in American jurisprudence, see *Stack v. Boyle*, 342 U.S. 1; *Carlson v. Landon*, 342 U.S. 534-536; Fed. Rules of Criminal Procedure, Rule 46(c).

²⁰ *U.S. v. Thaler*, unreported 2nd Cir. (1971).

²¹ This was impossible bail, of course, for a discharged philosophy instructor and an admitted Communist. That she was released at all, was due to the incredible generosity of a California farmer, who mortgaged his real estate to

WARNINGS AND ALARUMS

231

William Phillips, one of New York's finest, was indicted after being televised as a Knapp Commission witness and identified by a man who said he had been shot by Phillips and left for dead, at the same time that Phillips had shot and killed a prostitute and a pimp. Mr. Phillips was released on bail and, despite his revelations of graft-taking while a patrolman, was only suspended *with* pay. White, he was released on bail he could afford.

Clifford Irving and his saga of self-delusion, is reminiscent of a poster now popular in some of the more exotic emporia of the swinging generation. It shows a disappointed young woman, with a tear glistening on her cheek. She is saying that she has abandoned all psychedelic drugs because the fantasies and illusions they induced, were unable to match those of her reality.

Having defrauded a famous publisher of nearly one million dollars, he was released on bail he could afford, pending trial in both the Federal and the State courts. He was almost hailed as a hero of deception. After both he and his wife were found guilty in both jurisdictions, humane arrangements were made so that their children would always have one parent available while each served jail sentences. The Irvings are white.

George Jackson, a doomed Soledad Brother,²² was convicted of stealing a pittance as a youth. He remained in jail most of his lost life. He was black and poor.

A certain Mrs. Crimmins was indicted for the murder of one of her own children, although both were found dead under similar circumstances. Yet, she was released on bail. She is white.

The "Harlem Seven," as they were known at the start of their travail, virtually came to manhood in the New York City jail known as The Tombs. For seven years, it was their only home. Finally released on bail collected by the poor from the other poor of New York's black ghetto, they were tried and the jurors could not agree. They will be tried again. They are, of course, black.

Immigration policies have always favored the whites coming to America. Northern European stock has always been thought to be preferable. It has always been remembered that the Moors and the Carthaginians had time, during their ill-fated hikes in Southern Europe, to

raise the bail and was then harassed off his homestead as patriotic Americans aimed shafts of double jeopardy at him for aiding a black and a Communist. It was difficult to tell which sin was the greater—aiding a black or a Communist.

²² Soledad Brother, *The Prison Letters of George Jackson*, Coward, McCann, 1970.

232 NORTH CAROLINA CENTRAL LAW JOURNAL

plant the seed of miscellaneous genes.²³ The only time when black quotas were unrestricted was when our Constitutional Democracy was importing slaves.

Little wonder that Pablo Neruda could refer to the blacks as "the luckless people."²⁴

A recent case in the New York City Criminal Court, saw a distinguished looking white man arraigned on a charge of criminal trespass. He had been arrested in the Hotel Americana, where he had gone to keep a tryst with a prostitute. When discovered, he was given a summons. The prostitute, however, was arrested and taken to jail to await the setting of bail and to be publicly arraigned in a loud voice at night court, before an attentive audience. The businessman's case was called quietly and, without any fanfare or untoward attention, his case was adjourned in contemplation of dismissal.

Who dares to speak of women's rights in the face of such a sexist discrimination?²⁵ While a woman may do with her body what she wishes, so far as abortion is concerned, prostitution is still punished as a crime. Seldom is the man prosecuted, although, for purposes of crime, in New York, all parties are principals.

Women, then, are the luckless sex.

So, for those of the student body who face a career in the law undecided as to which path to follow—whether to crusade for private gain or public good, there is much to be done.

The subtle nuances of the *Goldberg Variations* of Bach are matched by the filmy shadings of distinction, if not difference, in the law. One is presented with multiple choices in our profession, the practice of which is an oral and written examination of life itself. It is a mixture of legal fictions and contradictions calculated to vex the most astute logicism. There is much conservatism and inertia against change. Your impatience with the immobilized energies of the elders for change may inspire you to pause at

²³ Edward Gibbon, *Decline And Fall Of The Roman Empire*; See, also, *Ploetz' Epitome of History*, translated by William H. Tillingham, Blue Ribbon Books, New York, 1925. Few scholars of the present recall or care to remember that Hannibal trespassed upon European society, not only in Sicily, Italy and Spain, but he also marched through ancient Gaul and then eastward to Vienna.

For America's encouragement of white immigrants, see *White Over Black*, Winthrop D. Jordan, Univ. of North Carolina Press, 1968. See, also, *The American Mind*, Henry Steele Commager, Chs. II and IX, Yale University Press, 1950.

²⁴ 1972 speech to the P. E. N. Club, after he received the Nobel Prize.

²⁵ No one takes seriously the Oscar Wilde observation that: "All women become like their mothers. That is their tragedy. No man does. That's his." *The Importance of Being Earnest*, Act. I.

points of rebellion in your life. You may recall the words of Angela Davis who said that, under a system of oppression, one should at least strike a pose of rebellion. Somewhere between the Davis and Douglas advices on rebellion, it may be well to remove the fig-leaf from your minds and not be ashamed of the sin of hard study and learning well.

It is not a crime against humanity to know well one's profession. Nor is it an atrocity to help edit the school's law review. A close reading of the fine print of the footnotes prepares one for the rude surprises of life which lie in ambush for us all. It is the accumulation of experience, both intellectual and visceral, which will gird us, as Mr. Justice Douglas has said, for the great struggle of the life time of each of us, and that is, "to keep the Bill of Rights alive."

The ineffable joy in knowing the law is the knowledge of *how* it embraces that wide range of terrifying melancholia which covers man's visions and revisions and, as T. S. Eliot put it, regulates that short time which we abuse as we "murder and create," and search blindly for the peace which perhaps defeats inspiration.

The law is a ubiquitous conscience. No matter that there are fifty states, each with its baffling maze of differences concerning divorce laws, for example. The point is, that it is law which is the guide in which we trust. To one who has studied no law, or its basic philosophy, combining those contraries, freedom and discipline, there might appear to be no tragic problem connected with that "scientific research project" conducted forty years ago in Alabama by the United States Public Health Service. There, some four hundred semi-literate black men, afflicted with syphilis, agreed to "forego" treatment in return for medical comfort offered to their other afflictions, if any, accompanied by free hot lunches and free burials, following free autopsies.

To those of us who do study law, there is not only a genuine problem with this kind of experimentation, but a retroactive fear for the Bill of Rights. It now for then, that a flash of the Justice Douglas wisdom hits us in our sense of history. We can see at once that the law which was impotent enough at the time of the Constitutional Convention, to say, grudgingly, that Negroes were only three-fifths of a man,²⁶ has been able

²⁶ James Madison, *The Federalist*, No. 54; Worthington, *et al.*, eds., *Journals Of The Continental Congress, 1774-1789*, 34 vols. (Washington, 1904-1937. See, also, Albert F. Simpson, "The Political Significance Of Slave Representation, 1787-1821," *Journal Of Southern History*, 7 (1941), 315-42.

Scott v. Sandford, 19 Howard 393 [1857]. The law was later agitated by Plessy v. Ferguson [163 U.S. 537 (1896)] and its dismal dogma of separate but unequal duality. *Plessy*, of course, is that bar-sinister progeny of Dred Scott, and, the

234 NORTH CAROLINA CENTRAL LAW JOURNAL

to rally both its text and the humanity which is its caretaker, to a rather different view of human fractions.

What is there to distinguish the Alabama aberration from the Nazis making lamp-shades of human skin? Both had the energies of federal government behind them. Not to be concerned about this kind of lewd peep-show into provincial genocide, is to parallel the recent killing of Columbian Indians. Those accused of murder simply said they never knew that killing Indians was a crime. Dred Scott, fighting for his own dignity, learned to his dismay, that he was the symbol of the Supreme Court fiat that no black man had any rights which any white man was bound to respect. This seminal decision, written by Mr. Justice Taney, casts a dreadful shadow over America to this day.

To the libertarians of that time, there must have been sore vexation and they might easily have wept with the poet that the situation of that time surrounded them like an elusive crime. The faithful must have wept to King Christ that this world was all a-leak and life-boats there were none. But, in a manner of speaking, it is the law which should stand ready to provide society's life-boats, whether it is for the purpose of smoothing mergers and acquisitions, or in the cause of less exotic crimes against humanity and the Constitutional ethic. Lawyers have not always been able to hold their heads high, or to look the high purpose of the law in its unflinching eye.²⁷ One likes to think that this is more the fault of the lawyers

same may be said of the necessity by black citizens to shape the Constitution to their constant arguments through the years. See Pollak, *Racial Discrimination And Judicial Integrity*, 108 U. of Pa. L. Rev. 1, with its funeral reunion of so many cases affecting basic rights. Most lawyers thought that legal nirvana had been achieved with the coming of *Brown v. Board of Education*, 347 U.S. 483 [1954] (which incorporated *Briggs v. Elliott* [S.C.]; *Davis v. County School Board* [Va.]; and *Gebhart v. Belton* [Del.]. And, there are always other issues of deprivation commanding the lawyer's intervention and the law's ceaseless vigil.

²⁷ Concepts of "justice" and law change. Justice has long been like the morals of man, who created them both, something of a vague and amorphous dream in cipher, for which no Rosetta's Stone yet exists. Definitions, however, abound: "* * * Might is right, justice is the interest of the stronger." Plato, *Dialogues*.

This concept has had an adventurous progress throughout history, sometimes glorious, sometimes shameful. It has, we may admit, taken long strides since the brave days when King James ruled. Then, Sir Edwin Sandys, of the Middle Temple, urged, quite in vain then, that those charged with crime, at least be allowed the solace of counsel. (D.N.B., XVII, 777, Article *Sir Edwin Sandys*.)

The law has also known its infamy. For example, there was the elimination of all Jewish lawyers, as provided by a Hitlerian decree of September 27, 1938. Hilberg, *The Destruction Of European Jewry*, p. 84. The German laws and edicts of the Nazi ascendancy gave European Jews a painful kinship with American Negroes, as witness: There was a 1933 decree by which Jewish artists were excluded from the practice of their profession; in 1941, Jews were restricted to their ghetto districts, unless given written permission to leave (*ibid.*, p. 117); the use of trolley cars was

than of the law, even though, generally, it is the former who shape the latter.

One of the continuing human puzzles you will face as future members of bar associations is what, if anything, can be done about Committees on Character and Fitness, those inquisitions which X-ray you for defects *after* your graduation and *after* you have passed your bar examinations. When I was a new lawyer and a member of a Bill of Rights Committee, the struggle was to get the Character and Fitness gods to confront candidates for admission to the bar with their accusers. This may seem strange to a new generation of lawyers, but it is part of the fascinating history of the law and its ability, though painfully slow, to both make and dissolve its paradoxes and contradictions.

Here, may be found a perfect example, as lawyers love to say, of what Mr. Justice Cardozo may have been hinting at as a practical matter, when he said that the whole truths of one generation invariably become the half-truths of the next. The new lawyers may well wish to challenge the entire concept of a Character Committee and its power to wait until *after* a student has invested four years of college and three years of law school, before taking a censor's look at the makeup of one's honor and integrity. After all, the vicious immorality of bingo, state lotteries and playing the horses, have all been sanctified by state statutes and one of these, at least, is worshiped as an article of fiscal faith by some churches.

It was not so long ago that pregnant girls, guilt-ridden by their possibilities of status as unwed mothers, were searching about for redemption, committing themselves, in their desperation, to crude mid-wives, moon-lighting nurses and septic butchers, practicing *in camera*. The law has now given us abortion as legality and respectable surgical procedures. This, in New York, despite the zealous opposition of one member of the State

forbidden in Prague; in Austria, Jews could take seats in public transport only when there were no German standees; private telephones were ripped out of Jewish apartments; Jews were deprived of all right to appeal judicial rulings against them. Allied with the Nazis, the fascists, not to be outdone, uttered a decree in Italy in 1938, drafted by lawyers and judges, which excluded Jews from the armed forces and the civil service; restrictions were placed upon the ownership of land by Jews; Jewish lawyers were forbidden to serve any other than Jewish clients; Jews were forbidden to marry Italians, although Jews, as Italians, date back to Biblical times and, as prisoners of war, had built the Colosseum in Rome; and Jewish naturalizations were nullified (*ibid.*, pp. 423-424).

All of these atrocities, of course, had American precedents in the Negro ordeal, where the sadism of dismemberment was practiced with the dignity of legal sanction. Virginia, Pennsylvania, New Jersey and North Carolina, all had laws allowing castration of Negroes. (Purdie and Dixon's *Williamsburgh, Va. Gazette*, Dec. 23, 1773; Mitchell, *et al.*, eds., *Statutes, Pa.*, II 79 (1700). *Acts of New Jersey in 1704*, 18-20.

236 NORTH CAROLINA CENTRAL LAW JOURNAL

legislature who spoke for the sanctity of human life. At the same time, he applauded intensification of saturation bombing of North Vietnam.

For those students of the law who feel that they wish to forego the money and the power of being a Wall Street-type partner, but who nevertheless do not wish to share the slings and darts of defending the poor charged with crime, there is always the rapidly developing Ralph Nader-like practice, where the *Qui tam* action is becoming more and more popular.²⁸ Almost anyone or any corporation can be sued for acts of omission or commission in civil actions, and the successful plaintiff is allowed to retain a portion of whatever is recovered.

Preoccupation with such pioneering disputes keeps the law alive and modern by the literal mouth-to-mouth resuscitation offered by the flow of new and youthful life into the legal ranks. In many ways, law is an emphasis upon the beauty of living, a rhetorical war against the evils which afflict life and a forceful negation of the nihilism that the only thing in life which is worthless is life itself.

The beauty and symmetry of the law change each year, as new students of the legal aesthetic enter its classrooms. Its beauty is that it is always in a state of intellectual agitation. Its symmetry is its continuing movement, its variable shape, always seeking the contours of the Constitution. In a country where blacks have seen slavery blessed as an article of legal faith; where the separate-but-equal myth was employed by our highest court to ensure inequality; and where segregation corrupts the text of United States Supreme Court opinions, it may nevertheless be true that the only true revolution of the black man in America has been through the shaping and cultivation of law.

For women, still in the throes of a bondage under men, they remain well-dressed slaves, questing yet for whatever emancipation they desire. Even as mankind has thus far survived the brash assault of the descendants of black slaves with their litigious impertinence, so, too, must the law brace for an attack by women upon its chauvinistic male origins and the logic of its bearded inventors. Men must gird themselves and yield to female humanism, or risk retreat and the adoption of a new Freudian banner bearing this strange legend: "Lead us not into castration, but deliver us from that evil."²⁹

²⁸ This is an action brought by an informer. Part of the penalty recovered goes to the informer and the balance to the state. The plaintiff states that he sues for himself as well as the state. An ancient example of such litigation in New York is represented by *Grover v. Morris*, 73 N.Y. 478.

²⁹ Peter DeVries, *Mrs. Wallop*, Little, Brown (1970).

It is natural for first-year students of the law to specialize in that hard exotica which is the language of the learned profession. They generally become instant critics of various high court opinions and tend to believe that the judges who wrote them, must be as high as their courts. They will see immediately, that the judges lack style, delicacy and discernment in their awkward expression and their victimization by a thesaurus you have already mastered. The callous student, preoccupied by his own complex iconography, tends to forget that most judges have had to suffer a certain amount of over-exposure to political clubs and association with those who make them smoke-filled havens of inarticulate babble. Once masters of the limpid *le mot juste*, quondam authors of literary grace and followers of the Cardozian syllable, judges have never been able to recover from the impediment of chewing cigars and begging the answer to their eager and obsequious question. Once elected, however, there is no need to meet a lofty critical standard and common mankind is left to ponder a decision's semantic riddles. This is a situation which should not be unexpected, in view of the unwritten graffiti over the door of every political club, which warns: "Throw him out; he's talking sense."

Discovering all of this dismaying lore, students of our tense craft will marvel in disbelief that Oliver Wendell Holmes, even to make a satirical point, could say that the training of lawyers is a training in logic. But he honestly believed it should be otherwise.³⁰

The logical method, Holmes thought, only served to cater to and flatter man's longing for certainty and repose which is in every man's mind. But, in any event, he *knew* that certainty is an illusion and that repose is not the destiny of man.

And repose can never be the lot of the law student. He comes to a body of philosophy and case-decisions in a state of continuous change. The law remains as protean as the sea god who gave us that adjective. To the ex-

³⁰ Holmes believed that the principal element infusing the law with life was experience, and certainly not logic. The law, he said, must never be considered to be "some brooding omniscience in the sky," but only "what the courts will enforce." He went to great pains to stress that the best preparation for the law was the study of sociology and economics and that "considerations of what is expedient," were the real life-blood of the law. One engaged in civil rights litigation in the south might well quarrel with his thesis that, "the first requirement of a sound body of law is that it should correspond with the actual feelings and demands of the community, whether right or wrong."

The law could never be a finished thing or an absolute. Thus spake our great pragmatist of the law, concluding that all who think the law to be an exercise in logic, only advertise a pernicious fallacy. (Oliver Wendell Holmes, *The Common Law and Collected Legal Essays; The Mind And Faith of Justice Holmes*, Max Lerner, Ed.; Catherine D. Bowen, *Yankee From Olympus*.)

238 NORTH CAROLINA CENTRAL LAW JOURNAL

tent that the student joins in the restless experiment which is our law, he will follow a precedent set by Holmes, Brandeis, Frankfurter and Douglas. For all of life is an experiment and law is inseparable from life. Neither should be withdrawn from the other and both should be the beneficiary of experimentation.

From the text of the Book of Romans [VII, 7], an old testimonial laments:

"I had not known sin, but by the law."

And why not? After all, the reason of the law is the reason for cherishing the profession. It is the reason of mankind and it is as imperfect as the men who author it. Reason, in addition to its imperfections, has other problems, one of which is pointed out to us by John Henry, Cardinal Newman, who expressed the theological view that "Reason is God's gift; but so are the passions. Reason is as guilty as passion."⁸¹

From this, you may gather that the law can only improve and be given the substance of stability by your presence in it, even as Elitonian wisdom and rude insights may have improved poetry. It is recalled that, during a lecture at Cambridge University, he was asked to explain the meaning of his lines that: "In my beginning is my end," and "In my end is my beginning."⁸² He replied that it simply meant that, "In my end is my beginning and in my beginning is my end." Other than pure obscurantism, of course, this may be called the offering of a comfort. As with some problems in law, it should excite the analytical mind to a puzzled grapple. It is at least on a par with the Palinurian warning that we can only avoid our endings if we first avoid our beginnings.⁸³

It is unreliably reported that Heinrich Heine once said of the City of Göttingen that, "In general, the inhabitants of that place are divided into students, professors, philistines and cattle, but that these four social groups were not sharply distinguishable." Perhaps in some cruel or flattering way, the training which one gets in the law will distinguish him or her. Students come to the law today during a time when the United States Supreme Court is being called the "Nixon Court." What with busing now made a national issue and as some of the Warren Court's criminal justice reforms are being threatened with reversal, the profession is in a state of shaky unrest, anxious agitation and ambitious motion.

⁸¹ *Apologia pro Vita Sua*.

⁸² T. S. Eliot, *Four Quartets* [East Coker], *Collected Poems*.

⁸³ Palinurus (Cyril Connolly), *The Unquiet Grave*.

The tumult and uncertainty, to be sure; such tremors justify the Holmesian view. Such is the nature of the law as its hard-pressed novitiates offer it a challenge. When the surging restlessness and the challenge cease to be, it will be because the law's infusions from the young will have ended.

In recent headlines, we have seen how Arab guerrillas presented an ultimatum to the Israeli Government, demanding that prisoners be exchanged for hostages held by them. Had only lawyers been faced with such an ultimatum, I have every confidence that they would have said, "Free the Palestine Liberation prisoners and save the lives of the Olympic athletes." That is because the law teaches us the joy, the pain, the wonder, the magic, the hum-drum, the sensuality and the miracle of life, as well as its sanctity. It is not by accident that lawyers led the agitation throughout the country for abolition of the death penalty, while other professions, led by he undertakers, stood mute.

It is no aberration of happenstance that lawyers long ago invoked the Constitution in their efforts to halt the war in Asia. They also led the fight to dignify welfare mothers and when peace is made, it will doubtless be the lawyers who patch together the paper solemnities which will still the shrapnel and allow us to see the elusive phantom of peace. And, even when we miss the aimed-for mark, lawyers seldom are heard to weep that, "The fault, dear Brutus, lies not in the stars . . ." ³⁴ We appeal to that other branch of our calling, those other lawyers who wear the profession's ermine and call themselves judges.

In that hell in which some lawyers practice, they may well believe that judges are the whores who have become madams, ³⁵ but, in the law's heaven, the United States Supreme Court is the great nine-headed God.

The lesser judges are the prophets. The rest of us are disciples engaged in ceaseless debate, self-examination and the exegetics of our wide-ranging and eclectic faith. If it were not so, how explain a single decision of our highest court, split five-to-four, with nine opinions and every concurrence no less acid than the smarting dissents?

The popular law office gambling game is wagering timidly on how the five-to-four decisions will go. That is the burning question among lawyers, judges and students alike, in any event, since all of us know the multiple possibilities of direction and the undiscovered by-ways leading to and from each of the directions. Every time a landmark issue is argued, it becomes

³⁴ William Shakespeare, *Julius Caesar*, Act I, ii.

³⁵ See note 4.

240 *NORTH CAROLINA CENTRAL LAW JOURNAL*

no better than an honest horse race to guess what tattered banner of reason and pragmatism will be seen in the advance sheets.

The volcanic unpredictability of the law may be best summed up by the story of the man who bought a horse from a monastery. He had been warned that horse dealers are a clever and hard-dealing lot, so he was grateful to discover a monastery that eschewed the making of wine for the breeding of horses. He assumed that within the walls and on sacred ground, he would be dealt with fairly. After pleasant and relaxed negotiations with the monk in charge of such secular commerce, a fine looking animal was selected.

When the buyer sought to ride it, however, it would not move. With some chagrin and with his faith in danger, he demanded to see the monk who was his sales person, throbbing with the anger of one betrayed by a divine. But the monk, with the incredible patience of those who believe they believe, apologized to the buyer and told him that the horse had only known a monastery life and was extremely religious. The only way in which it would move forward was for the rider to say, "My God." Two "My Gods" and the horse would gallop: three, and it would literally fly like the wind. It would stop only when it heard that solemn ratification we know as "Amen."

With an expression of doubt worthy of a law student, the man returned to the saddle of his pious beast and said the magic words. The horse leaped obediently ahead. Two "My Gods" and the horse galloped with restrained speed, but upon hearing the rider utter three rapid "My Gods," the animal accepted them as sacred spurs and began to out-race the speed of wind, time and light. As the horse sped along, the new owner began to have rich visions of winning the Kentucky Derby and other thousands, on the way to becoming a millionaire. So rapt was in by his rejoicing over the wisdom of his purchase that he neglected to notice that he and the horse were hurtling towards the brink of a sheer cliff, which plunged three miles straight down into rocky depths.

Panic-stricken for a moment, he forgot the magic word to halt the beast until the very last second, when he was able to gasp out a sibilant "Amen!" The saintly gelding slid to a miraculous stop, with its two front hooves protruding recklessly over the edge of the abyss. The rider looked down into the bottomless pit, wiped his sweating brow and, marvelling at his survival, said, thankfully, "My God!"

It is to be hoped, of course, that as students of the law race through their examinations, from time to time, their professors, provoked by the

WARNINGS AND ALARUMS

241

brilliance of so many potential *doctors juris*, will not look at the test papers and be compelled to say, "My God!"

And may the students be spared the same kind of ambiguous exclamation when they see their grades.

Welcome to the door-sill of our legal amazements. It is no less a sullen craft than that practiced by Dylan Thomas. In a country of commoners, it seems astonishing that we can have so many of the trappings of the royal despot. It is always the duty of the student to push his profession along a way of progress. All students will learn, in one way or another, that, even as the fact of marriage does not always mean it is accompanied by love, neither should law always be confused with justice. To make it so, however, should be an objective as anxiously sought as the honest man who so successfully eluded the good Diogenes.

And now, with some corruption of *The Love Song Of J. Alfred Prufrock*, I say to the continuing parade of students of the law that there will be:

Time for you and time for me,
And time for yet a hundred indecisions,
And for a hundred visions and revisions;
There will be time to murder and create,
And time for all the works and days of hands
That lift and drop a question on your plate.

Those who study law, are in a love-wrestle with a profession almost as old as The Oldest One. It is the hope of the discipline and should be the hope of the students that they prosper in our common calling and its survival as man's better instinct.