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Notre Dame Law School Student Bar Association

Dooley's Dictum

A Newspaper of, by and for the Fighting Irish Lawyers of Notre Dame

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Lectures on Soviet Law begin today

BY WAYNE F. WEILER

Beginning this evening, the Notre Dame Law School will present the first in a series of five lectures on the Philosophy of Soviet Law. The lectures, scheduled to take place every Monday evening through March 15, will be given by Monsignor Elias El-Hayek.

Msgr. El-Hayek, who lectured here on the philosophy of socialist law during the past semester, will speak on the theories of Soviet state and law as well as upon constitutional law and federalism in that nation.

Born in Bijji, Lebanon in 1925 and naturalized as an American citizen in 1963, Msgr. El-Hayek has traveled extensively in the communist countries from 1950 through 1957. He was educated in Beirut, Lebanon and at St. John Lateran University Institute of Law in Rome where he received a Doctorate in Canon and Civil Law. He also received a post doctoral Master's in Comparative Law from the Georgetown Law Center in 1970. Msgr. El-Hayek lists his special interests as Roman civil law and equity in government contracts. His writings include numerous articles for the New Catholic Encyclopedia and several studies in the field of comparative law.

February 15—4:00 p.m.—The Soviet Theory of State

February 22—4:00 p.m.—The Soviet Theory of Law

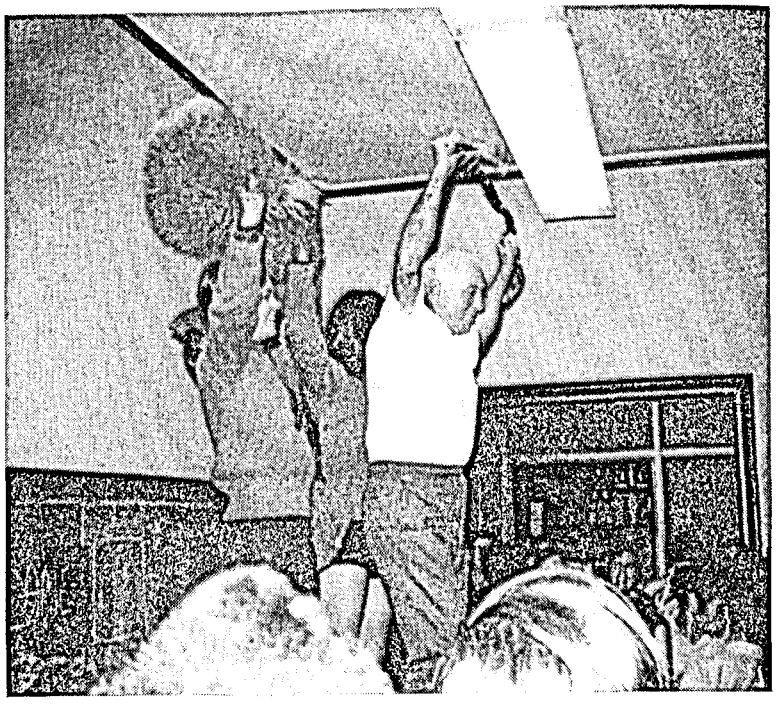
March 1—4:00 p.m.—An Analysis of Soviet Constitutional Law

March 8—4:00 p.m.—Church and State Relationship in the Soviet State

March 15—4:00 p.m.—Concept of Federalism in the USSR

LECTURE SCHEDULE

The lectures will be conducted on the next five Monday evenings beginning at 4 p.m. in room 103 at the Law School.



"Chief" Justice, John Broderick, demonstrates to Moot Courters his winning technique? Moot Court sits Saturday night.

NOTRE DAME MOOT COURT

NOTRE DAME LAW SCHOOL

TWENTY-FIRST ANNUAL COMPETITION

FEBRUARY 20, 1971, AT 8:30 P.M.

CENTER FOR CONTINUING EDUCATION AUDITORIUM

T. T. NOTRUB v. SAMUEL GUDGYE

A CASE CONCERNING DISCLOSURE OF NEWS SOURCES

Presiding:

Hon. Wade H. McCree, U.S.C.A., Sixth Circuit
Hon. Louis H. Burke, Supreme Court, California
Hon. Frank J. Murray, District Court, Boston, Massachusetts

Counsel:

For Petitioner, T. T. Notrub—

James C. Aranda (A Graduate of Xavier University)
Michael W. Brennan (A Graduate of Notre Dame)
Theodore J. Leo (A Graduate of Providence College)

For Respondent, Samuel Gudgye—

Joseph J. Beisenstein (A Graduate of Loras College)
David A. Bornhorst (A Graduate of The Citadel)
Michael P. Scopelitis (A Graduate of Niagara University)

Opinion

Polluters have rights too!

Tom Dovidio

The small and picturesque Tittabawassee River—not much more than a creek—bends and twists through the heart of Michigan, flowing through game-filled woodlands and small truck farms. When it makes the turn into Midland, it becomes a sewer for one of the world's largest chemical complexes.

Dow Chemical began a single-building operation on the Tittabawassee around 1900 and has grown into a smoke-belching giant, producing 3 billion pounds of chemicals annually. The small stream of waste water flowing into the Tittabawassee in 1900 has cancerously grown to 250 million gallons a day.

Dow's problems overflow the banks of that small river, however. Its Canadian installation, near Lake St. Clair, until lately was spilling 30 pounds of mercury a day into the lake, which was later found in the lake's fish.

The chemical industry is not the only suspect in the current environmental quality drive. Pittsburgh's massive steel industry has since the beginning of the Industrial Revolution dumped voluminous amounts of dirt, acids, phenols, oils and smoke into the air and water. The pulp and paper industry, with its leader International Paper Company, has had its stench described as "a meal of boiled cabbage and rotten eggs prepared by a skunk." Houston's Ship Channel, petroleum center of the West, stretches for 50 miles along the Gulf of Mexico—classified now as one of the dirtiest bodies of water on earth—and the Channel itself is known as "the open sewer to the sea." Akron, Ohio's great rubber industry center, found its residents believing snow was grey as the fly ash and carbon black pollutants discolored its virgin whiteness before it even touched the ground. The electric-power industry, long-held prime target of citizen protest groups, emits billows of steam of such magnitude that they can radically alter the surrounding community's weather patterns.

The time has arrived when ecology is a major issue. Environmental quality sympathizers send up the hew and cry that they will no longer tolerate industrial prostitution of America's natural resources. The issue is popular, and greatly misguided.

Whatever the reasons for its quick acceptance—and there is great cause for concern with the pollution picture—it has been exploited to the point that its proportionate gain becomes questionable. Its citizen protest groups suffer from the common protest malady—basic ignorance.

The Movement's emotional outeries have led to a flurry of legislation at all levels designed to make industry pay for its wastes. But industry has paid and is paying: Dow's million dollar Midland project now means the Tittabawassee is cleaner than in 1900. There is now less than a pound of mercury going into Lake St. Clair each day. The steel industry spent 385 million dollars in 1970 to stop a 10% pollution problem—the other 90% had been eliminated years ago. The pulp and paper industry has cured 99% of its pollution problems, at a cost of over a billion dollars. The rubber industry's transition to synthetic materials in the 1950's eliminated 90% of its former pollution problems. Goodyear Industries spends 3 million dollars annually in its environmental-control department. The electric-power industry installed precipitators to curb its emissions. It was successful in eliminating 80% of its pollutants. Those precipitators were installed in 1929. Today that industry reclaims 98% of its emissions.

The ecology movement is misguided. Roadside trash is not poured from industrial smoke stacks, but from individual inconsideration. Forest fires usually start with a carelessly discarded cigarette. Broken glass on a sandy beach is generally from a broken beer bottle.

Industry has felt the sting of conflicting and contradictory legislation, often requiring impossible standards. Corporate giants have not balked at America's clean-up campaign, but have led its charge to the tune of billions annually. Americans want progress yet remain ignorant to its costs. Justice Musmanno, Pennsylvania's famous jurist, made the classic statement that: " . . . one's bread is more important than landscape or clear skies. Without smoke, Pittsburgh would have remained a very pretty village." Pittsburgh's residents now have plenty of bread and are breathing fresh air under bright, clear skies—to the credit of big industry.

On the Docket

Feb. 17

Gray's Inn—Professor Pedro David, criminologist and sociologist at the University of Argentina will speak in the auditorium.

First Year Moot Court—respondents' brief due

Ice Capades—At the ACC thru Feb. 21

Wrestling—Western Michigan at ND, 7:30 p.m.

Feb. 18

Basketball—Fordham at Madison Square Garden (N. Y.)

Feb. 19

Hockey—Michigan (away)

Feb. 20

Basketball—West Virginia (away)

Hockey—Michigan (away)

Swimming—Purdue at ND.

Feb. 22

First Year Moot Court—Oral arguments thru Feb. 26

Feb. 23

Second Year Moot Court—semi-finals, arguments begin 7:30 p.m. Hayes-Healy Business Center in rooms 120 and 124.

Basketball—NYU at ND

Feb. 26

First Year Moot Court—second-round trial records distributed

Feb. 27

Basketball—St. John's (away)

Hockey—Bowling Green at ND

Dooley's Dictum

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# # #

Dooley's Dictum is an independent publication by law students of the Notre Dame Law School. The views herein are those of the authors or the editors and do not necessarily represent or reflect the views of the Law School, its administration, faculty, student body or alumni.

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Justice John Mowbray comments on courts

We must bring our courts up to date

JUSTICE MOWBRAY

BY BOB LUECK
Dictum Co-editor

What is wrong with the American court system? Why is it that the United States, world renowned for its tremendous wealth of managerial skill and technical accomplishments, finds itself hard put to cope with the mass of civil and criminal litigation awaiting adjudication?

These are some of the hard questions facing the legal profession today. The issue of judicial administration is very much in the news these days, so much so that Chief Justice Warren Burger of the United States Supreme Court apparently intends to make judicial management reform the hallmark of his tenure on the high court.

Chief Justice Burger isn't the only jurist worried about court management. Another concerned commentator is Nevada Supreme Court Justice John C. Mowbray.

Justice Mowbray visited Notre Dame Law School Feb. 4 and 5 interviewing third year students for clerkships on the Nevada high court. While here, he agreed to discuss court problems and what might be done about them.

The Justice has seen the legal profession from several sides. After graduating from Notre Dame Law School, he started his legal career in Nevada as the Chief Deputy District Attorney for Clark County (Las Vegas) from 1950-1953, then returning to private practice until 1959 when Democratic Governor Grant Sawyer appointed him District Judge. In 1963, Republican Governor Paul Laxalt elevated him to the Nevada Supreme Court.

Along with his interest in judicial management, Justice Mowbray is actively concerned with prison reform and other problem areas of American law.

Although he is a member of the judicial side of the legal profession, Justice Mowbray stated frankly that "the primary responsibility for breaking the logjam rests on the judges—they are in command.

"I think that some of the Judges have gotten away from the concept that the courts belong to the people," he said. "The courts don't exist for the judges, the bailiffs, etc. They exist for the people. The courts should serve the people but they are not doing so.

"Althought court administrators are invaluable and necessary it doesn't follow that judges can be removed from this responsibility nor can they abrogate this responsibility. The judges are the ones who must be sure that the courts are brought up to date."

Justice Mowbray said he was pleased with the Burger program for judicial management reform and also with the school in Denver, Colorado, that recently graduated its first class of professional court administrators. However, he was careful to point out that many things can be and are being done right now to speed the flow of litigation through the court system.

At the trial court level, Justice Mowbray observed that the judge himself may be the chief impediment to the settling of litigation.

"Too many judges feel that they are a principality unto themselves. For example, a judge may set three days to hear a case but it is settled privately or is finished within a day. Instead of calling other cases right away, the judge waits for the next case on the calendar. This wastes a lot of time."

There are remedies available for this. Multi-department districts, for example, must have presiding judges with authority and responsibility over other judges. The main function of the presiding judge is to see that the judges are working at maximum capacity.

"With proper management," he noted, "the amount of litigation that can be disposed of is staggering. Two major things can happen: forcing a trial forces many cases to be settled out of court before trial, and having backup cases available for a judge to handle when he finishes a case cuts down on the waste of a judge's time."

Court sessions at night? "They can be helpful. The people will love it because they can see that cases are being adjudicated. Also, Saturday sessions would help."

The practicing lawyer is not without his responsibility, either, in assisting the processes of justice. The lawyer's tasks are to get case settlements as soon as possible. Some clients, he observed, won't settle a case until the threat of an actual trial looms on the doorstep. A lawyer also has to be ready with his witnesses and evidence for trials in districts where trials are quickly scheduled, a factor which lawyers may expect to see more of in the future.

"Many attorneys get into the habit of dragging their feet," he said. "A client may come in with a case that sounds good but may not actually look so good when more of the facts are known, so some attorneys subconsciously put off a trial if they can.

"It's better to try a case—win, lose or draw—and then move on to something else."

Good public defender offices are also essential. They should be staffed with young, ambitious lawyers who will work fulltime to defend indigent defendants.

"Don't appoint a political hack or a middle-aged attorney who just wants to pick up a little extra income," Justice Mowbray commented. "A good man will develop good rapport with the prosecutor and give the indigent better representation. The result is fewer errors on the record and fewer appeals of cases."

Not even the Supreme Court of the United States escaped criticism. During the Warren Court era, several decisions were handed down expanding the rights of criminal defendants.

Justice Mowbray didn't criticize the court's decisions but he did have some blunt words about the impact of the decisions: "They have raised havoc with the appellate courts. Appeals take so much time and there is no reason why the Supreme Court can't announce whether a decision is retrospective or prospective when it is handed down."

On the subject of young people today, the Justice didn't seem to be suffering from any symptoms of a generation gap. He had this to say about today's youth: "The young people are more honest than others think. I think what they want is justice—pure and simple. This generation today can detect phoniness with more clarity than any previous generation."

In parting, the Justice advised law students to work hard and prepare for the future.

"No profession today has meant as much, as far as freedom is concerned, as has the law. It is the law which makes our rights viable."

Kommissioners Korner

LSAA cagers show strength

BY PAT HERALD

After the first week of action in the Law School intramural basketball league, the second year's Team 4 seems to be living up to its pre-season publicity.

The leaders in this week's LSAA poll rolled to an easy win over the upperclassmen on Team 3. The sharp shooting of John Suminski and the fine ball handling of Don Gehring put the game away for the favorites by the end of the third quarter.

In an earlier dual, second year Team 1 beat Team 2, 61-34, as Mike McGloin's 28 points were added to Jerry Mackey's rebounding efforts to thwart another third year contingent. Jim Gorman's heads-up play was also a large factor in the win.

LSAA Poll

team	points
1. Team 4 (3)	230
1. Team 4 (3)	230
2. Team 6 (2)	205
3. Team 7	150
4. Team 9	85
5. Team 1	35

(Enclosed numbers indicate first place votes received.)

This week's second-ranked squad, Team 6, made an impressive debut, coasting to an 82-48 victory over a respected third-year quintet, Team 5. All of the winner's starters scored in double figures, with Bennet Webb and Tim Sullivan sharing the honors with eighteen points apiece. Team 7 ran by Team 8, 59-28, in their season opener.

In ACC action Sunday, Feb. 5, Tim Westfall's 22 points paced Team 9 to a 54-39 victory over Team 10. Team 11 defeated first year rival Team 12, 42-34, and Team 3 outscored Team 1 in a defensive contest, 35-33.

Team 4 again showed its power by trouncing Team 2, 72-23.

All team captains are requested to contact Jerry Mackey concerning times their teams will be available for afternoon scheduling. The scheduling of games will be primarily on a week to week basis due to problems with the undergrad inter-hall competition.

IM TEAM STANDINGS

Team	W	L	Team	W	L
team 4	2	0	team 3	1	1
team 6	1	0	team 5	0	1
team 7	1	0	team 8	0	1
team 9	1	0	team 10	0	1
team 11	1	0	team 12	0	1
team 1	1	1	team 2	0	2

A letter from London

To the editors:

What is it like to study law in England? It's like studying journalism at Columbia, philosophy at Berkely, art in Paris. It is all this and more, for it affords us a very unique perspective of the American legal system itself. It gives us an outsider's view of America and her institutions, and it presents us with a Platonic glimpse into the very heart and center of the commonlaw genius of precedent, preserved in the English doctrine of Stare Decisis. But even more, we have before us the truely novel opportunity of comparing our own law school at Notre Dame with another law school: for how could we have realistically appraised or assessed the *relative* merits and demerits of our own institution without having stepped outside of it for a breath of fresh air? We see a different pedagogy in practice here, we are asked to approach the different branches of the law on the basis of the problem method; the case-law method is not accepted here as the sole implement for the teaching of the law. We see the rigid dichotomy between the student-body and the professoriat, we are not asked to question the law, we are expected to learn the law, we hear our mentors speaking *ex cathedra.* We are told to seek the *ratio,* and are not urged to probe into extra-legal considerations underlying the rules; we are expected to read cases, yes, but even more, we are required to know the text, to know it well, and to be prepared to regurgitate it to the best of our ability. We are being taught the law here as it has never been taught to us before, and we are beginning to appreciate how a different pedagogy may inspire a different system of jurisprudence. So, when all is said and done, and when we have returned from London to tell our tales, we believe that our encounter with the English legal institution will have equipped us to do more than merely recite English rules of law. We will be immeasurably more experienced, both in life and in the law, and lest we not forget the sterling motto enunciated by O. W. Holmes that the life of the law has not been logic, it has been experience. We will be looking forward to bringing our experience of London and the English legal system home to our practice of the law.

Paul R. Armstrong
John C. Hund

1L class discusses grading, classes

On February 4, the Class of 1973 conducted its first general meeting of the year. Class President Charles Sullivan pointed out that the principal reasons for congregating the class were two-fold: first, to acquaint the class with some of the committees which were actively engaged within the school and to report on their progress; and secondly, to discuss important issues which had been raised by members of the class.

Tim Hartzer, '72, student chairman of the Curriculum Committee, was present and spoke briefly on the recent accomplishments of his committee and on proposed curriculum changes. He said there were several students with whom he had talked who were much in favor of eliminating all required courses after the first year. Such a policy would permit students freedom to elect subjects which would prepare them for the practice of a particular branch of law. Hartzer further remarked that after research of many law school bulletins, he has concluded that Notre Dame is presently included among the minority of law schools which still maintain post-first year required courses. He commented that Notre Dame Law School, though business oriented, could possibly expand its curriculum to include more public, poverty, and governmental agency law courses.

Mike Bradley, '73, addressed the class on changes which he and other students proposed for the present grading system. The recommended changes called for the exclusion of the present "High-pass" category and the substitution of the "Failure" category for an "Incomplete." Bradley stressed his view that the school should make a decided effort to keep people here once they enroll, rather than to try to maintain a certain fail rate. The class reaction to the proposed changes was mixed. It was evident that many students favored a liberalized grading system and some were vehemently opposed to it. Other students expressed a desire to return to a numerical grading system to include class ranking.

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