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Winter 1961

### **Barrister News, volume 8, issue 3**

St. Mary's University School of Law

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#### **Recommended Citation**

St. Mary's University School of Law, "Barrister News, volume 8, issue 3" (1961). *Barrister News*. 13.  
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# LABOR RELATIONS



Theo Weiss — Graduated from the University of Texas Law School in 1930; Member of the American, Texas, and San Antonio Bar Associations since 1930; President of San Antonio Bar Association, 1938; Chairman of the Labor Law Section of the Texas Bar Association, 1952-1953; Chairman of the Labor Law Section of the Southwestern Legal Institute, 1955-1957.

If there is any doubt in your mind as to the importance of labor law or as to the incidence of litigation in the field of labor management relations, take a look at any Federal advance sheet or at the decisions of the United States Supreme Court during any court term. You will find cases in almost every advance sheet under the heading "Labor Relations," and frequently will find much of a weekly issue devoted to such cases. This, of course, is only that portion of the iceberg which appears above the surface. Below the court level, is a vast and growing volume of board decisions, administrative rulings and decisions of various kinds and arbitration cases.

Recent United States Supreme Court decisions have opened the flood gates to labor arbitration and have underlined the vital importance of careful draftsmanship in negotiating and writing collective bargaining agreements.

In *Textile Workers Union of America vs. Lincoln Mills of Alabama*, 1 L Ed 2d 972, 40 LRRM 2113, 1957, the Supreme Court held that Section 301 of the Labor Management Relations Act of 1947 (29 USCA S 185) authorized federal courts "to fashion a body of federal law" for the enforcement of collective bargaining agreements and held that a federal district court could compel arbitration of a controversy involving work loads and work assignments, under the terms of the contract in question.

In June of 1960, the Supreme Court handed down decisions in three cases involving the scope of arbitration agreements in collective bargaining contracts: *United Steelworkers of America vs. American Manufacturing Co.*, 4 L Ed 2d 1403, 46 LRRM 2414; *United Steelworkers of America vs. Warrior & Gulf Navigation Company*, 4 L Ed 2d 1409, 46 LRRM 2416; *United Steelworkers of America vs. Enterprise Wheel & Car Corp.*, 4 L Ed 2d 1424, 46 LRRM 2423. In *American Manufacturing Company*, an employee claiming to be permanently disabled filed a workman's compensation claim. A few days after the settlement of the claim in which he was paid a substantial sum of money, he sought to return to work. When the company declined to employ him, the union sought to submit the matter to arbitration under the collective bargaining contract. The Court of Appeals in affirming the District Court's dismissal of the union's suit held that the grievance was "a frivolous, patently baseless one, not subject to arbitration under the collective bargaining agreement." 264 F. 2d 624. The Supreme Court reversed the District Court and the Court of Appeals, holding that under the terms of the contract, the courts "have no business weighing the merits of the grievance."

In *Warrior Navigation Company*, the employer operated a shop for normal maintenance of its barges but was not equipped to make major repairs and accordingly, over a period of more than nineteen (19) years, had contracted out much of its repair work. When the company, in accordance with its practice, sought to contract out some of the repair work, the union questioned its right to do so and sought arbitration. Here again the Supreme Court reversed the District Court and Court of Appeals and held that since the contract did not make it clear that the company had the right to contract work and that such prerogative was not subject to arbitration, the matter was to be decided by an arbitrator. Justice Whittaker, in dissenting, pointed out that the majority had departed from the established law, that the ousting of the normal functions of the courts and the vesting in arbitrators of authority and power "must rest upon a clear, definitive agreement of the parties." The court held that under the broad arbitration clause in the contract, any subject was arbitrable unless the language of the contract in clear and unmistakable terms excluded the subject from arbitration.

In *Enterprise Wheel & Car Corp.*, a group of employees, in violation of the contract, left their jobs. The company discharged them. An arbitrator, while holding that they acted wrongfully, in effect held that the disciplinary action was too severe. The award of the arbitrator was admittedly vague and ambiguous. The Supreme Court held that under the terms of the contract in question, the arbitrator's award had to be enforced. The court held that arbitrators have no obligation "to give reasons for an award" or to write awards "free of ambiguity."

In a recent arbitration case where an employer had moved his factory from New York City to a new location in Mississippi, an arbitrator awarded, as damages against the company, more than \$200,000.00 and required that the company move its factory back to New York. *Jack Meilman*, 34 LA 771.

(Continued on Page 3)

## ST. MARY'S UNIVERSITY LAW SCHOOL

# Barrister News

Vol. VIII No. 3

St. Mary's University School of Law

San Antonio, Texas

## DR. PAUL DAVID CANTOR OCCUPIES ALUMNI CHAIR

St. Mary's University School of Law is happy to announce that Dr. Paul David Cantor, M.D., LL.B., will occupy the Alumni Chair for Visiting Professors for the Summer Semester. Dr. Cantor is the Fifth member of a growing list of outstanding members of the Legal Profession who have held the chair. This select group includes Clyde O. Molrty, A.B., LL.B., William J. Bowie, A.B., LL.B., John Hanna, A.B., A.M., LL.B., and David Stern, B.S., LL.B., LL.M., S.J.D.

The Chair underwritten by the Alumni of the School through the Annual Alumni Living Endowment Fund, is dedi-

cated to the Great Distinguished Teacher. This dedication has been emphatically fulfilled by the selection of Dr. Cantor. He is presently Adjunct Professor of Law, and Professor of Medical Jurisprudence at Georgetown University Law Center, Washington, D.C. In addition, he is Managing Editor of *Traumatic Medicine and Surgery for the Attorney*.

Dr. Cantor's three-hour course of instruction at St. Mary's will be entitled Medico-Legal Science. It will commence on June 7, 1961 and continue through the first semester, terminating on July 15, 1961.

## PLUMB-ALSA CHAIRMAN

Peter N. Plumb of the St. Mary's University School of Law has been named Chairman of the Audio-Visual Committee of the American Law Student Association, one of the top positions in that American Bar Association-sponsored organization. His appointment was announced by ALSA President James Dan Batchelor, Oklahoma University Law School.



PETER PLUMB

The Audio-Visual Committee is one of the 18 committees of ALSA which "are responsible for maintaining the quality and value of services upon which the Association's reputation and progress are based," according to Batchelor. As chairman, Plumb will direct the work of committeemen representing other top law schools throughout the nation.

Organized in 1949, the American Law Student Association represents and serves some 35,000 law students in 128 law schools—nearly every approved law school in the United States. The purposes of ALSA are directed toward improving professional preparation—with resulting benefits to the individual, the profession and the public. The St. Mary's University Barristers Student Bar Association has been a member of ALSA since 1951.

## LAW STUDENT— WRITER

Douglas Drury, a part-time law student, Assistant Principal of a local junior high school, College instructor, holder of two Master degrees, a jet pilot instructor, and all-state high school quarterback has now added another to his list of accomplishments.

Mr. Drury has written a book, *Earl Warren, The Supreme Court and Civil Rights*, which will be released soon by the Naylor Publishing Company of San Antonio. It is a modification of a thesis written by the author toward a Master's Degree.

Surprisingly, the author relates to us that there is a scarcity of material written on the Chief Justice and consequently many a scholarly hour was consumed in completing the outline of the opinions and decisions of the "Warren Era" in the High Tribunal in book form. These opinions mainly concern litigation involving civil liberties.

Of interest is a cross-reference made to the opinions of Mr. Justice Warren which were used in the writing of the book.

Mr. Drury is also co-authoring a book with Mr. Tony E. Duty, Assistant City Attorney of Waco, Texas, to be entitled *Texas Educators and Their Legal Liability*, for release this summer.

## GEORGE SEWELL —C. L. U.

George Sewell, a 1955 graduate of St. Mary's University, School of Law, has become a member of the American Society of Chartered Life Underwriters. Mr. Sewell and eight other Life Insurance men have completed a four year course, culminating in this honor.

Chartered Life Underwriters represents a professional designation of Life Insurance Specialists. The total membership in San Antonio now totals 35.

Congratulations to George Sewell, C.L.U., distinguished alumnus of St. Mary's Law School.



JUDGE NORVELL

Judge James R. Norvell, Associate Justice of the Supreme Court of Texas, spoke at the Student Assembly on Friday, February 10, 1961. Justice Norvell spoke of the early history of the Supreme Court of the State of Texas. His vivid description of the Court in its early days, and its development over more than a century of years was enlightening. Of particular interest was his description of the Court during its trying times following the Civil War—the era of the "Semi-Colon Court."



**BARRISTERS CLUB OFFICERS FOR FALL SEMESTER 1960**  
Left to right, Front row: George Adams, vice-president; Sparta Bitsis, secretary; Mickey Hunter, president. Second row: Stewart Alexander, historian; Peter Plumb, ALSA delegate; Royal Adams, parliamentarian; Clarence Lyons, sergeant-at-arms; John Quinlan, ALSA alternate; Delano (Mike) Martinak, treasurer.



LABOR—

In a recent decision by the U. S. District Court for the Eastern District of Pennsylvania, *Brooks Shoe Manufacturing Co.*, was held liable for \$28,011.00 actual damages and \$50,000.00 punitive damages, or a total of \$78,011.00 for moving its factory from Philadelphia, Pennsylvania, to Hanover, Pennsylvania, in alleged violation of its collective bargaining contract. *United Shoe Workers vs. Brooks Shoe Manufacturing Co.*, 46 LRRM 3003.

The success or failure of any business is dependent upon management. The continued existence of our system of free enterprise is dependent upon the preservation of management's right to manage. This right can only be protected and safeguarded by carefully drawn contracts. Justice Brennan and Harlan in a separate opinion in the three 1960 cases above referred to (4 L Ed 2d 1432) pointed out that "the arbitration promise is itself a contract. The parties are free to make that promise as broad or as narrow as they wish, for there is no compulsion in law requiring them to include any such promise in their agreement."

The Perils of Cross-Examination

According to the Reno, Nevada Evening Gazette, of December 24, 1958 one Adams, charged with a \$500 bank robbery, attempted to conduct his own defense in the trial of his case in a Federal Court.

Acting as his own lawyer, Adams was cross-examining the bank teller who had faced the stick-up man.

"Was the bank robber frightened?" asked Adams.

"Yes," replied the teller.

"Then why did you give me th. . . I mean the bank robber the money?" said Adams, with a classic slip of the tongue.

Later, as he cross-examined another witness about the color of a jacket worn by the alleged robber, Adams gained the reply that it was either blue-gray or gray.

"Well, when I bought it they told me it was blue," he interjected.

The jury deliberated less than an hour, found Adams guilty.— Contributed by William C. Sanford, Esq., Reno, Nevada.

From *Case and Comment*, Sept.-Oct., 1960

ALSA NEWS

Peter N. Plumb

This year as last, St. Mary's University School of Law is the seat for the chairmanship of the American Law Student Association's Audio-Visual Committee. As such, St. Mary's is charged with the not so light responsibility of achieving the audio-visual goals set by the National Association for the current school year. The instructions directed to this years audio-visual committee are as follows:

(1) Prepare a list of the currently available tape recordings for publication in the Student Lawyer Journal.

(2) Select and prepare a list of particularly good films for showing to the following groups: Law students, pre-law students, laymen in conjunction with Law-Day observances.

(3) Prepare suggested programs on various topics utilizing legal films. The programs should be on subjects of practical and educational interest to law students such as: A. Penal conditions and needed reforms. B. Filing your first case. C. Examining a medical witness. D. Argument to the jury.

(4) Prepare a letter for mailing to Student Bar Associations suggesting the recording of lectures and moot court arguments for retention in the law school library. For example, lectures providing a summary of certain areas of law might be made available in the law school library, and the tape recorder provided by the Student Bar Association.

These are the official instructions for the 1960-1961 year. As may be easily noted the goals desired will require a maximum of effort from each committee member.

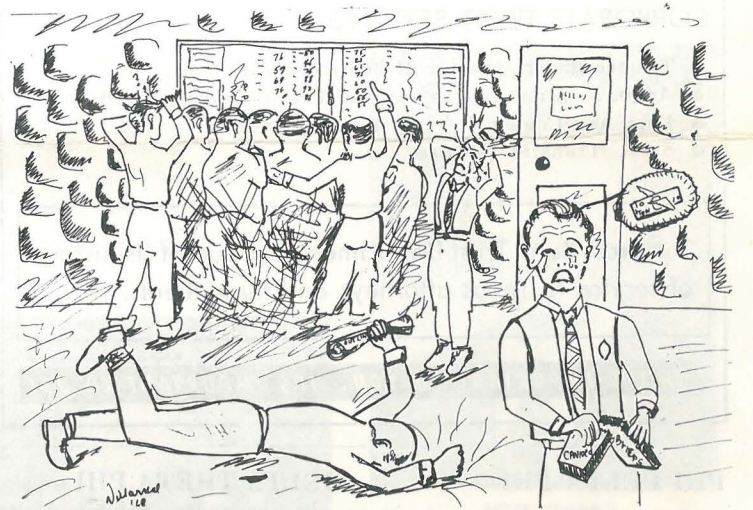
To date the committee has moved forward relatively well, completing one instruction and making substantial progress on the remaining assignments. A letter suggesting the taping of lectures and moot court arguments has been prepared and mailed to each law school in the association. Likewise a survey letter has been formulated which will be sent to all member schools, requesting information concerning newly recorded material and new audio-visual sources. Other groups and associations such as the American Medical Association, the Library of Congress, and the Government

(Continued on Page 4)

THE RAINS GAME

Calvin Parrish

As I entered the hall I seemed to sense an ominous chill, but I shook off the feeling of impending doom and with a melodious whistle went forward bravely, for I was going to see if any grades were up yet. I paused confidently and casually by the water cooler, for my throat was as dry as an eight o'clock professor's humor. I was very wary at this stage, though I managed to conceal my apprehensions, for the bulletin-board was not far from this very area. The air was filled with a chattering sound, as of gnashing teeth, the monotony of which was somewhat lessened by an occasional low-pitched whine or growl, depending on the potential virility of the individual venting the same. While in this deep reverie I paused with alacrity to note that my feet were getting wet. Lifting my eyes (always the man of action) I saw what appeared to be a babbling brook coming in my direction, flowing from South to North in a most untoward manner, and I knew then that this was a stream composed of tears and the babbling came from my classmates. Rushing past the stair-well I abruptly came upon a scene of utter chaos.



The grades were up. The cacophony of sound was deafening, but I was able to catch a few of the more carefully enunciated phrases (ever in the legal manner). One of my nobler companions lay prostrate, clutching his canned briefs to his chest (solace is where you find it) declaiming vehemently, "He never covered that point in class." One rather stout individual (that's stout as in fat) muttered to himself convincingly and repeatedly and finally complacently, shrugging his shoulders gracefully each time, "So who cares; what's legal about legal accounting?" I was unable to move for long moments, but I felt such compassion for these unfortunates that with a supreme effort I sprang into action. I forthwith passed among them, kicking study-aids aside as I went, trying to lift their spirits, telling them "There's no instructor like a good instructor," and other equally heartening cliches and misnomers. After diligent efforts on my part the crisis was over and small groups began purposefully moving toward the library. One small though robust individual, carried on the shoulders of the crowd like the champion he is, seemed to echo everyone's thoughts as he said in broken English, "Next semester's gonna be different. Next time I'll make my own outline."

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DELTA THETA PHI

Left to right; Sitting: Peter Flatten, Joe Chacon, Ray Weitzel, Charles Dickenson, Caroll Sierk, Royal Adams, Richard Wilson, John Quinlan. Standing: Fred Galindo, Emmett Cater, Joe Villarreal, George Adams, Clem Lyons, Robert Bambace, Pete Plumb, Mike Martinak, Rudy Georges, Carl Besch, Lou Rutherford, Al Leopold.

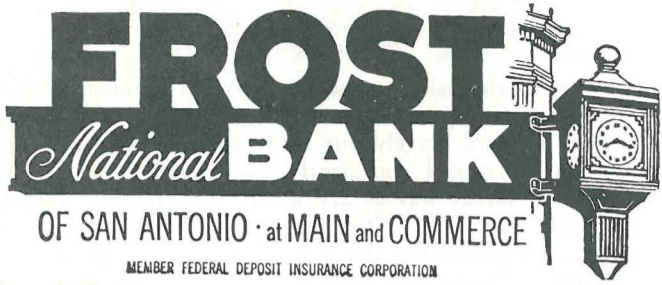
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### PHI DELTA PHI—

tended. Barrister member Phi Delta Phi's witnessing this honor to Mr. Brewer were: Mr. P. H. Swearingen, Sr., Mr. Niles Chub, Trust Officer, Alamo National Bank, San Antonio, Mr. William Chumney and Mr. James Castleberry, St. Mary's University School of Law, Faculty Moderator.

### FACULTY CORNER—

In 1958, Professor Greene, his wife, Pat, and their daughter, Catherine, moved to San Antonio. As a faculty member of St. Mary's School of Law he has taught Administrative Law, Bills and Notes, Constitutional Law, Private Corporations, Insurance, and Torts. He is a member of the State Bar of Texas, and is also a limited partner in Lentz Newton and Company. Professor Greene is Faculty Moderator of the St. Thomas More Club, a member of the Catholic Lawyer's Guild and a fourth degree Knight of Columbus. His favorite pastimes are bridge, golf, hunting, and fishing.

### DELTA THETA PHI—

In the sports column Delta Theta Phi's flag football team was on the short end of the win column, but was high on the list of outstanding players, placing Brother Lamoine Holland on the all University InterFraternity team as fullback and Brothers Royal D. Adams—tackle, Mike Brown—tackle, A. L. Hernden—half back, and John Quinlan—center, on the Interfraternity Allstar team.

The Delt's bowling team which had been leading the league for some time has slipped to second place recently, but expects to regain the number one spot after examinations this semester.

Congratulations to the deer-slayers, Joe Chacon, Charles B. Dickinson, Peter Plumb.

Also it is with a great deal of pride that we wish to congratulate Brother John Alaniz (class 1957) on his recent election to the House of Representatives of Texas and we wish him the best of luck during his forthcoming term of office.

Congratulations to Peter Plumb who received the Delta Theta Phi scholarship key.



## And A Good Time Was Had By All

BARRISTERS CLUB CHRISTMAS PARTY

### ALSA—

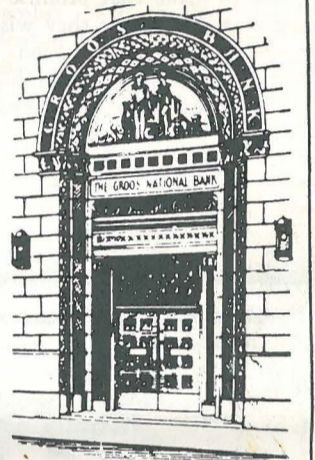
Printing Office have been contacted in the search to obtain more comprehensive audio-visual information.

In addition to its formal instructions the committee has also been asked to draw up a MODEL AUDIO-VISUAL PROGRAM to be included in the Student Bar Programs Clearing House portfolio. The committee plans to set out such A MODEL PROGRAM in outline form utilizing the legal-medical theme as a sample topic. The model will make suggestions concerning the Audio-Visual Educational Method to be employed, the length of the program and the various aspects of the subject which could possibly be explored. The several methods of employing films, tapes, lectures, panel discussions and visits to topic related institutions, will likewise be demonstrated by the outline of the model program. This project should be completed by February 1, at the latest.

The following St. Mary's students have volunteered to work as Audio-Visual Committee members: Joseph Rubio, Jim Braniff, Larry Hamilton, Edward Mainz, August C. Moser, John Fashing, and E. Cater.

If any student wishes to make useful suggestions or volunteer for the committee's assignment they are encouraged to do so.

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