Justice Eschweiler Presides at Moot Court; Right of the Trial Judge to Comment on the Evidence

S. G. H.

Follow this and additional works at: http://scholarship.law.marquette.edu/mulr

Part of the Law Commons

Repository Citation

S. G. H., Justice Eschweiler Presides at Moot Court; Right of the Trial Judge to Comment on the Evidence, 12 Marq. L. Rev. 320 (1928). Available at: http://scholarship.law.marquette.edu/mulr/vol12/iss4/7

This Article is brought to you for free and open access by the Journals at Marquette Law Scholarly Commons. It has been accepted for inclusion in Marquette Law Review by an authorized administrator of Marquette Law Scholarly Commons. For more information, please contact megan.obrien@marquette.edu.
tion of the executive committee and president to carry on these clinics even though only ten or a dozen men attended, but fortunately the idea proved popular enough to draw larger audiences. It is the present intention of the Association to continue another series of such clinics.

The speakers and their respective subjects in the course just ended were as follows: Monday, February 13, 1928, J. G. Hardgrove, on "Reduction of Trial Issues Under Wisconsin Practice"; Monday, March 5, 1928, Dean Clifton Williams, on "Some Problems Connected with 'Home Rule' in Cities Under Wisconsin Statutes"; Monday, March 26, 1928, Mr. Nathan Glicksman, on "Incorporation in Wisconsin"; Monday, April 16, 1928, Mr. Walter H. Bender, on "The Law of Eminent Domain and Special Assessments as Related to Milwaukee's Contemplated Public Improvements"; Monday, April 30, 1928, the Honorable Christian Doerfler, Associate Justice of the Supreme Court, on "Personal Reminiscences of Practice of the Bar of Milwaukee County."

WM. KLATTE, Secretary

Justice Eschweiler Presides at Moot Court

The question relative to the value of the moot court as a factor in legal education is gradually being settled in favor of the affirmative at Marquette. On Thursday, May 3, the Honorable Franz C. Eschweiler, Justice of the Wisconsin Supreme Court, presided over what proved to be an extremely beneficial practice court session. An actually adjudicated tort action was retried by two firms of student "attorneys," whose careful preparation of the case, coupled with the presence of Justice Eschweiler presented a valuable lesson to both the participants and audience. A genuine court room atmosphere pervaded the moot court from the time of the raps of the gavel and "Hear ye—" of the bailiff to the adjournment.

On the whole, Marquette enjoyed one of the most successful years of court practice work in its history. The sincerity of the student body in the trial of the cases, and the benefit of the years of trial experience of the Dean who presided, really accomplished what some authorities have asserted cannot be attained.

Right of the Trial Judge to Comment on the Evidence

The inconsistency between the practice of the Federal courts in permitting the trial judge to comment on the evidence in his charge to the jury, and the practice of the state courts, wherein the lips of the judge are sealed in this matter, has given rise to much discussion among the members of the legal profession as to the merits of the two methods, and whether one or the other should be abolished and a
substitution made. In a recent issue of the Marquette Law Review\(^1\) Mr. Frank M. Hoyt, of the Milwaukee Bar, presented his views on the question, concluding that the Federal practice is the more desirable.

A late criminal case in Chicago precipitated strong comment on the same subject by the Honorable Frank Comerford, presiding judge. Therein, a former judge of the Municipal Court was charged with forging notary public seals, and, despite the introduction of testimony by five professional alienists and psychiatrists that the accused was insane at the time of the commission of the crimes, the jury found the defendant guilty. While incidentally assailing the professional alienists, the presiding judge said: "It is unfortunate that a trial judge is compelled to rest in silence while witness after witness, not only in the——case, but in others, comes into court without any pretense at examining the factors and hypotheses, and has an opinion ready for the mental portrait presented by the lawyer. . . . . It is absurd to think that twelve men from various walks of life, teamsters, bank clerks, and others, can sit as a jury and listen to men who have studied medicine for years and then decide whether they are right or not."

The following excerpt from a treatise on "Reforms in the Law of Evidence"\(^2\) sums up the entire subject neatly:

[Right of Trial Judge to Comment on Evidence]

In regard to this rule, there is more ground for difference of opinion, depending to a large degree on the value attached to the present-day jury system.

This practice of commenting on the evidence has been followed in the Federal courts for years, although many of the judges have been exceedingly careful about the use or abuse of the privilege. The right must, indeed, be most carefully exercised, but, then, the entire administration of the law requires caution.

Any objection to this rule rests, of course, on the broad ground that in effect it destroys the efficacy of the time-honored jury system by substituting the opinion of one judge for that of twelve jurors; that the jurors will unquestionably reflect in their verdict the expressed opinions of the trial judge. Yet the other extreme should be considered. Without this rule, the judge must sit, helpless and powerless, although to his legally trained mind, it is quite apparent that the jury is obtaining a totally erroneous idea of the weight and persuasive effect of certain evidence. The procedure in the Federal trial courts does not, it is thought, indicate any serious deprivation of constitutional rights and there is no reason why one practice should exist in a Federal court, and a contrary practice be followed in a state court.

The committee sent out questionnaires on this important subject to more than 2,300 lawyers. Of those having experience in courts when judicial comment is permitted, 54 per cent believed this comment

\(^1\)Vol. 11, No. 2, p. 67.
\(^2\)Earle K. Stanton, of the Los Angeles Bar in The Bar Association Bulletin, April 19, 1928.
materially assisted the jury in reaching a conclusion, about 10 per cent were doubtful and 30 per cent returned a negative answer. Again 50 per cent thought this practice reduced the number of new trials and 75 per cent believed that judicial comment brought quicker verdicts and reduced the number of disagreements. Others thought the rule would result in closer attention of the trial judge.

Should such a rule be generally adopted by the State courts, it is clear that any comment by the judge relating to the weight and credibility of the evidence should not be made until after the close of the evidence and argument, and this is exactly what the committee advises. In other words, the jurors should be allowed to formulate their own opinions during the course of the trial.

Coming, as it does, from this committee, as a result of more than five years of consideration, this proposed rule is at least worthy of serious consideration. Whether we are quite ready for it now is another question, about which opinions are bound to differ. The jury system itself is, however, the subject of serious criticism at the present time, and in the course of two generations of lawyers it is quite possible that some changes will develop or perhaps that the jury system itself in its present form may pass into oblivion.

S. G. H.

Law Class of '28 Banquet

The annual banquet tendered the seniors by the freshman class was held on May 19 at the Pfister Hotel. It was a social and intellectual joy and will ever remain in the minds of the seniors as a monument and stepping stone in their respective lives.

The banquet preceded the seniors' final examinations by several days and, as always, for the seniors it had the aspects of an occasion which forbodes the beginning of the end of one era and the dawn of a new one in their lives and activities. One of this year's memorable seniors, John Ferris, remarked that the occasion caused him a feeling akin to one's thoughts of a friend who had passed to the Great Beyond. Another senior, on mentioning that he was sorry his college days were over, received the knowing remark from one of his older friends at the bar, that out of affection for him he, too, was sorry that the senior's college days were over. Nevertheless, the occasion contained a seed of what the future has in store and allowed a gleam of its promise to shine further to indicate the way that is soon to be.

Along with the faculty there were the honorable guests of the evening—men of the bench and bar who in themselves and their message sketched the life ahead. They presented the results of industry, character, learning, success, and the humanities of wide experience and deep contemplation, both in their message and in their very position and being—examples of the forces of life.

The toastmaster of the occasion was F. X. Swietlik. For the seniors, James Taugher gave a humorous but also sarcastic rendition inspired by the drama Chicago on the delays of law which were the damp