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EDITOR'S NOTE

Although courts must operate within the contours of history and the precepts of formal analysis, they quite properly warrant attention as institutions for choosing among conflicting social policies. The quality of the law, therefore, reflects not only the rigor of their logic but also the wisdom of their choices. Appropriately, the Greek chorus of legal commentary can—by applauding, advising, and criticizing the courts—promote this vitality of the legal drama.

Illustrative of this catalytic role is our lead article. Traditionally, the general rule for the award of attorneys' fees in the United States requires each party to bear his own fees. The tradition and the logic make sense. Nevertheless, in some situations other considerations dictate a different approach. Two such areas of importance are civil rights and constitutional litigation. Not surprisingly, lower federal courts, spurred by the theories behind recent Supreme Court decisions, have begun, if somewhat inconsistently, to award attorneys' fees to the prevailing party plaintiff, even though the particular remedial statute does not provide for that award. Analyzing the entire problem of attorneys' fees, Professor Richard Falcon synthesizes the current case law into a theory for the consistent award of attorneys' fees to the prevailing party plaintiff in civil rights and constitutional litigation.

"Time is a great legalizer," H.L. Mencken once wrote, "even in the field of morals." In the regulation of obscenity, however, the Supreme Court continues to resist the suasive blandishments of the progression of time. In a comprehensive analysis of the Court's recent obscenity decisions, the author of the first Note suggests that the Court's continuing failure to articulate the rationale for obscenity regulation has doomed its latest pronouncements to misunderstanding and potential abuse. The question: Can and should society regulate that which analytically is so difficult to define?

The second student Note focuses upon another aspect of judicial decision making. Pursuant to section 6332 of the Internal Revenue Code, the Internal Revenue Service can levy upon the cash loan value of a delinquent taxpayer's insurance policy. Regrettably, there is disagreement over the date on which the amount due the Government is to be ascertained—of crucial importance under certain circumstances. A federal court of appeals having resolved the conflict in a logically consistent manner, the student author examines this triumph of grammar over the prac-

tical considerations raised by the IRS and a dissenting judge.

Federal courts are overcrowded. Diversity jurisdiction should be abolished. Other assertions abound, all to the point that something ought to be done to federal jurisdiction as we know it. Judge Henry Friendly has written a scholarly and practical book, *Federal Jurisdiction: A General View*, which offers several suggestions for a revision of the jurisdiction of the federal courts. As pointed out by Michael Shakman in his review of this imposing book, many of these suggestions are sensible. Yet, as Mr. Shakman argues, the problems besetting the federal system may be better resolved by solutions less restrictive of the federal courts' role as a guardian of federal rights.

An alternate solution, perhaps wiser than Judge Friendly's, recognizes the extent to which the relief of the federal docket, through a restriction of federal jurisdiction, would burden the state courts with a more crowded docket. Instead of restricting federal jurisdiction, therefore, the better approach to this systemic problem entails an increase in the efficiency of the administration of justice. Naturally, there are problems with this course of action, not the least of which is the independence of the judiciary. In this issue of the *Review*, Professor Davis explores a major book posing this problem, Mr. Peter Graham Fish's *The Politics of Federal Judicial Administration*.

Finally, the Recent Decisions section covers a wide range of topics: the awarding of alimony and the extension of immunity; a striking standing decision and a possibly long-standing striking decision. The examination of the recent reflections of the Maryland Court of Appeals concerning the award of alimony under the statutory provisions for no-fault divorce should be of interest. Moreover, the court demonstrates its wisdom and its logic in its refusal to extend charitable immunity to an individual. And as Sweeney guards the hornéd gate,* so too Congressmen have standing to challenge the War. Lastly, in view of the recent strike by teachers in Baltimore City and in other cities, timely is the discussion of the Pennsylvania strike statute and the not-as-recent Philadelphia teachers' strike.

The perspicacious reader will notice that we have added to the masthead the names of all of those who are presently members of the *Review*. We have made this change in order to recognize the great contributions made by all of the members of the *Review*. We have also added an errata sheet at the end of this last edition of the current volume. We are grateful to those who have

* T.S. Eliot, *Sweeney Among the Nightingales*, line 8.

brought to our attention mistakes in the present volume, and we encourage others in the future to inform the *Review* of all grammatical, logical, and substantive mistakes.

March, 1974

The following students have contributed Notes to the present issue:

Barbara J. Safriet
Robert P. Hillerson