

# MOTION PICTURES AND PRACTICE COURT.

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The difficulties which the writer has experienced in endeavoring to make practice court work interesting and realistic are probably similar to those found by others. For a number of years reliance was placed upon the use of printed records of cases which had been carried to the state Supreme Court. The student attorneys for the plaintiff were given the portion of the record which contained the plaintiff's evidence in the actual case. The attorneys for the defendant received the portion containing the defendant's evidence. Pleadings were drafted on the basis of the facts so disclosed, without access to the pleadings which had been used in the actual case. The attorneys gave the printed testimony of each witness to some classmate, who was expected to familiarize himself with it and to testify accordingly. There were two chief shortcomings in this method: (1) too little opportunity was given to the attorneys to develop their cases according to their own ideas; the attorneys in the actual case had established a mold into which the practice court case was poured; (2) student witnesses frequently failed to give a forceful presentation of stories which they had memorized or failed to memorize.

From time to time attempts were made to create incidents which would result in practice court cases. It has been practically impossible to stage such incidents in a manner sufficiently realistic to make the proceedings worth while. The manufacture of situations and facts so as to bring about litigation is so contrary to actual experience as to offer little aid in training students for conducting real litigation.

For the past several years almost complete reliance has been placed upon a technique involving current motion pictures. The practice court work is part of a course in Ohio Court Practice which all third-year students are required to take. It extends over two quarters in the regular school year, and over both terms of the summer session. In the first quarter, cases and materials in Ohio trial practice are covered in the orthodox casebook fashion. The second quarter is devoted to the practice court. Two students are named attorneys for the plaintiff and two for the defendant in each case.

Columbus has nearly fifty motion picture theatres, all but three being subsequent-run houses, scattered throughout the city. The Sunday papers list the pictures which are to be shown in all theatres during the week. The instructor goes to see pictures, making his selection from the weekly list and taking into account the possibility of witnesses' seeing the picture at the same theatre or others, if it proves to be usable. Considerable help in the process of selection is obtained from a weekly publication of Fox West Coast Theatres, which is called "Unbiased Opinions of Current Motion Pictures." The brief descriptions which are to be found in this publication make possible the elimination of many pictures as entirely useless for the

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purpose at hand. While seeing a picture the instructor takes notes of all names, addresses, and dates shown on the screen. With these notes, and the story of the picture in mind, an effort is made to find an incident which might have resulted in litigation if the characters involved had seen fit to engage in it. Criminal cases are seldom used because of the practical difficulty of adhering to rules of criminal procedure and at the same time giving each side a fair opportunity of getting a verdict.

The instructor selects four student attorneys, none of whom has seen the particular picture. They are given, in considerable detail, the story and the names, dates, and addresses as taken down by the instructor. The particular incident and type of action are suggested. Each pair of attorneys is then expected to have witnesses see the picture and be prepared to testify as the screen characters might in real life. The attorneys are cautioned to refrain from seeing the picture until after the trial. If the attorneys, after their witnesses have seen the picture and reported to them, decide to change the character of the proposed action, they are permitted to do so if an injustice is not done to opposing counsel.

A petition, in form comparable to that used in the Ohio common pleas courts, is prepared and filed. When a praecipe for summons is filed it is assumed that service is obtained. The defendant's attorneys plead by motion, demurrer, or answer, and when questions of proper pleading have been disposed of the case is ready for trial.

A pre-trial conference is held two days before the date of trial. Stipulations are obtained and many time-consuming factors are eliminated. Each party's counsel is required to file with the instructor, who acts as trial judge, a trial brief on the day before the trial.

The trials are scheduled for afternoons, commencing at one o'clock and continuing until the jury has returned a verdict, usually between five and six. Each first-year law student is required to serve on at least one jury. When it is explained to the first-year students that this experience can be quite valuable to them as attorneys-to-be, and that it will be the nearest approach to actual jury service they are likely to get, they usually welcome the opportunity. In the summer term, when first-year law students are not available in sufficient numbers, jurors are recruited from other colleges on the campus.

After the jury has returned its verdict the members are requested to remain in the jury box for a short time and to answer questions which the attorneys and the judge ask concerning their deliberations. Jurors are requested to be frank in criticizing the attorneys, and in suggesting good and bad points in their respective presentations and general conduct throughout the trial. The instructor-judge supplements this with such criticism as he deems advisable.

Motions for judgment notwithstanding the verdict and/or for new trial are filed, argued, and disposed of. Even though a new trial is ordered only one trial is had.

In the dozen or more years in which the motion picture technique has been used, a great variety of cases has resulted. In recent years murder pictures have become so common that resort has been had to types of civil actions not formerly used. At the present time cases are being prepared

which are based upon life insurance policies assumed to have been issued to characters in "Pitfall" and "Apartment for Peggy." In the former a man was shot and killed while leaving the home of the hero, whom he had come to kill but who induced him to abandon the idea. Will the beneficiary of his policy be able to recover from the insurance company in spite of the defense that he met his death while in the commission of a crime?

In "Apartment for Peggy," a retired college professor befriends a G. I. student and his wife who are caught in the housing shortage. He allows them to turn his attic into an apartment and everybody is happy for a time. When things get bad the old professor takes a big dose of what he mistakenly thinks are sleeping capsules. He is forced by others to drink sixteen cups of coffee and finally pulls through. For the purposes of the case it is assumed that he took a life insurance policy naming the young woman as beneficiary. This was done at a time when he had abandoned the idea of suicide which the picture indicates he had formed before meeting her. It is also assumed that he died, not as a direct result of the sleeping capsules, which alone would not have caused death, but by being forced to drink the enormous quantity of coffee when his heart was not in perfect condition. Will the suicide defense be successful?

In a case based upon the picture "The Velvet Touch," an actress is being sued for damages by the producer of a play. She permitted him to incur production expenses at a time when she was aware of the imminence of her arrest for the murder of another producer, whose star and mistress she had been.

In "Shed No Tears," an insurance company pays \$50,000, the amount of a life policy, to the wife of the insured, who is alleged to be dead. He is actually alive, surprises his wife and her paramour, and kills the latter. He forces the wife to give him half the insurance money and is shot by her when she learns that he has killed her lover. She is accidentally killed before the death of the husband, who lives a short time after being shot. It is assumed that the policy, with a double indemnity provision, was purchased in good faith and that the plot to defraud the company came later. May the company recover the full amount of the payment, including that part now held by the son of the insured, who is administrator of his father's estate and the alternative beneficiary in the policy?

In "Ruthless," a young boy saves a little girl from drowning. He needs a home and her family gives him one, and makes it possible for him to go through high school. After selling insurance for a couple of years he has a strong desire to go to college. The girl lets him know that she loves him and they become engaged. Her father borrows the money to finance his education at Harvard. As a swimming star he comes to the attention of a wealthy girl. She is in a position to help him get started with a New York brokerage firm. He breaks his engagement to the first girl and goes to New York. The facts that she owed her life to him and that she had taken the initiative in causing the engagement give the defendant some chance of getting a verdict in the breach of promise suit which has been brought.

In "Bodyguard" a detective has his new automobile demolished as the result of plot to have him blamed for a murder. There is some evidence

linking a meat-packing corporation with the plot and with the destruction of the car. He is suing the corporation for damages.

Each member of the class is required to prepare a written report of an actual case which he has seen tried in the common pleas court. The report must be filed before the trial of the case in which he is acting as one of the attorneys. In previous years there has been a tendency for students to rely upon observation of other students in preparing for their own trials. It is believed that they will profit from being required to watch experienced lawyers in an actual trial.

The requirement that a student sit through a trial and report on it has another objective. It is hoped that students will be interested in continuing a study which was originated in 1935 and not carried further. Two members of the law faculty observed the trials of twenty-five civil jury cases, and interviewed the jurors to ascertain, if possible, the real basis for the verdict in each case.<sup>1</sup>

As has been mentioned, the pre-trial conference is a feature of the practice court, and students are given some indication of its advantages and disadvantages. Pre-trial procedure is used in six or eight counties of the eighty-eight in Ohio, but not in Franklin County, of which Columbus is the county seat. A by-product of the assignment to watch an actual trial has been the selling of the students on the advantages of pre-trial procedure. Nearly every student has experienced inconvenience as a result of the delays incident to negotiations for settlement after cases have been set up for trial. Parties, witnesses, jurors, and observers cool their heels while the lawyers dicker. Frequently a settlement is reached and delay is experienced while another case is being readied for trial. The same negotiation and delay may also result in the second case. It is believed that ample demonstration of the disadvantages of not having pre-trial procedure is provided for the members of the class.

The most valid objection which may be made to the use of current motion pictures for practice court cases concerns the burden which it places upon the instructor. It is practically essential that he shall have seen the picture before assigning it as the basis for a case. It is not very difficult to find incidents in which a plaintiff or a defendant would have a sure-fire action or defense. The difficulty lies in finding an incident which affords a plausible basis for an action, and which does not give one party a distinct advantage over the other. To find a sufficient number of such incidents necessitates the witnessing of a very large number of motion pictures. Under the pressure of getting cases, going to the movies becomes a burdensome chore, and the instructor takes a complete vacation from them when the last case has been assigned—until another class brings on a renewal of the pressure.

If other practice court instructors are using this device, or desire to do so in the future, an exchange of ideas would be helpful. A postal card calling attention to a good litigious incident in a current picture would be a boon to a man who is wasting time and money seeing pictures which are not inaccurately alluded to as "Stinkeroos."

<sup>1</sup>The study was reported in Hunter, *Law in the Jury Room*, 2 OHIO ST.L.J. 1 (1935-36). Reference to it will be found in Rossman, *The Judge-Jury Relationship in the State Courts*, 3 F.R.D. 98, 108 (1944).