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Book Review. A Pre-Trial Conference

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client is well suggested, perhaps in part as a result of the participation of the principals² instead of actors to represent them. Altogether, I consider the documentary effects outstanding, in a medium to which the kind of documentation that was used lends itself with a distinctive impressiveness.

The theme of the judiciary as an "auxiliary precaution" for elective government was deftly carried out, if the audience is composed of law students. However, a sequence of "box scores" visualized with the pictures of the justices in the majority and those in dissent in a succession of cases seemed to me an awkward statement too readily susceptible of superficial interpretation that government by judiciary is government of men and not of law. Audiences other than those composed of law students may find this sequence a confusing distraction from points elsewhere suggested concerning the insulation of judges from politics (through life tenure and judicial methods of proceeding in specific cases). Even for law students, there may be a nonpictorial way of stating the other side of the issue that would frame it in better-rounded terms. The eye of the beholder would be the measure of success of the venture in terms of humane letters, and as an individual, I consider that my time was well spent watching the film. As a teacher, I should be reluctant to make it "required work," although it seems to me to justify considerable effort to make it available for voluntary viewing by those who have been substantially introduced to the study of law.

I have tried to suggest that the theme as I understood it may present its central issue unfairly to the unsophisticated viewer. The difficulty seems to be that the theme is too involved for pictorial treatment. One of the hazards of a picture is that it lacks precision in communicating abstract ideas. Box scores are also blunt instruments by comparison with able judicial opinions. Combined, they provide an uncertain light in comparison with a few well-selected words from Hamilton and Madison. Yet, if pictures can be combined with words so as to give back to abstractions some of the concreteness of experience with a minimum of distortion, the educational effect of the abstract should be enhanced. Hence, this film, in view of the difficulties inherent in its theme, is entitled to respect not only for its aims, but for the degree to which they were approached.

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A PRE-TRIAL CONFERENCE. A 16 mm. black-and-white sound film production by the University of California. 1957. 25 minutes.*

The recent filming of a pretrial conference by the University of California provides an additional method of propagandizing a procedural device which has long been a favorite subject for lecture and demonstration. The subject matter of this particular conference involves a familiar "exploding bottle" accident in which the injured party institutes an action against the retailer, bottler, and the manufacturer of the bottles. There are sufficient complexities in the case to demonstrate the usefulness of the pretrial conference in clarifying pleadings, securing admissions of evidence, limiting the

² *I. e.*, defendant and his counsel in *United States v. Darby*, *supra* note 1.

* Information as to purchase or rental may be obtained from the National Legal Audio-Visual Center, Indiana University, Bloomington, Indiana.

number of expert witnesses, arranging the time and order of discovery proceedings, including a physical examination of the plaintiff, and exploring settlement possibilities. The "acting" of the judge and the lawyers is surprisingly natural and not at all the wooden, strained performance one might have expected. While there is a rather long introduction by the judge, explaining the nature of the conference, sermonizing is kept to a minimum, adding to the film's realism. Technically, the film is a thoroughly competent job.

Of particular interest in any discussion of pretrial is the method employed by the judge in obtaining an agreement by the parties as to disputed issues raised by the pleadings and as to the settlement of the case. The moderate, one might almost say gentle, presentation of the settlement question by the judge in the film bears little resemblance to the domineering tactics employed by some judges in attempting to force settlement. The same comment applies to attempts made by the judge to obtain agreement as to disputed issues. Since this is an educational film having as its purpose the presentation of a pretrial conference as it operates in the hands of a competent, fair-minded judge, no other result could be expected. The task of explaining the seamy side of the procedure is rightly left to the instructor. The failure of the judge and lawyers to explore the legal theory of the action is less easy to understand. Unless there is some peculiarity in the California law, the plaintiff could have proceeded on a warranty theory at least against the retailer; yet, the discussion in the conference was limited to a negligence theory. There are obvious advantages in having the legal basis of the action clarified prior to trial, and there appears to be no good reason why this was not done.

While the pretrial conference has its greatest usefulness in complicated commercial litigation, the choice of a simple tort case as the subject matter of the film was a wise one. Each case presents unique problems requiring distinctive solutions. All a film can hope to accomplish is the exemplification of certain of these pretrial processes. The advantage of the case chosen is that a person viewing the film can immediately comprehend the issues involved and observe the technique of the judge in simplifying the case for trial. With complicated transactions as the subject matter, no such result can be achieved within practicable time limitations.

It seemed to me that the film is a considerable improvement over the demonstrations of pretrial techniques staged at various bar associations I have attended. It is vastly superior to the lectures on the subject. Even more important, students enjoy the film; and who has the courage to deny students what little pleasure they may find in the dull, laborious study of civil procedure?

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