The fear that the entrance of corporations into the field of law will cause a lowering of the standards of the bar is derived largely from the impersonal nature of such organizations. But it would not be impracticable to impose the same requirements on corporations that are now imposed on private attorneys.[27] The prohibition of advertising and soliciting by attorneys can be extended to the legal activities of corporations.[28] Although the advertising of other features of their business would give the corporations some advantage, such advertising does not result in the degradation of the profession. Nor would there appear to be any inherent difficulty in compelling the corporation to comply with professional standards. Both the attorney-agent [29] and the corporation itself [30] are subject to judicial discipline.

A glance at the factual situation reveals a striking disparity between theory and practice. The infrequency of prosecutions indicates the unwillingness of the state or the bar to support a blanket prohibition.[31] The attempts of the bar to enforce the existing law have been directed toward the trust companies alone.[32] A recognition of the *fait accompli* would permit a concentration of effort [33] against those corporate activities which are inimical to the public welfare.[34]

THE GASTONIA STRIKERS' CASE. — The decision of the supreme court of North Carolina affirming the conviction of seven defendants for the murder of Chief of Police Aderholt of Gastonia [1] writes the

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[27] Mr. Boston suggests that the bar associations can enforce the same code of ethics against the lawyer-employee. Boston, *supra* note 6, at 561.

[28] For proposed statute and discussion, see *Advertising by Banks and Trust Companies for Legal Business* (1924) 9 MASS. L. Q. No. 4, p. 35; (1925) 10 *id.* 11 *et seq.* In Barton v. State Bar of California, 289 Pac. 818 (Cal. 1930), the defendant argued to no avail that modern conditions rendered this prohibition unfair.

[29] *In re* Otterness, 232 N. W. 318 (Minn. 1930); *In re* Gill, *supra* note 26; Matter of Pace, 170 App. Div. 818, 156 N. Y. Supp. 641 (1915).

[30] Fines have been used to punish corporations for other acts. See BALLANTINE, PRIVATE CORPORATIONS (1927) 308. There is also the power to dissolve the corporation, or to exclude it from the state. See the Protective Corporation cases, *supra* note 25; Jackson, *supra* note 20. It would not be difficult to extend the procedural device of summary process to a corporation practicing law. *Cf.* Note (1930) 43 HARV. L. REV. 1126.

[31] In New York alone have the efforts of the bar association been diligent. See *Annual Reports of the Committee on Unlawful Practice of the Law*, N. Y. COUNTY LAWYERS' ASS'N YEAR BOOKS. Mr. Beardsley has found that California district attorneys will not prosecute because of their disbelief that any lay jury would convict. See Beardsley, *supra* note 19.

[32] *Supra* note 20.

[33] Some writers contend that the only remedy is to improve the quality of the service the lawyer gives the public, by simplifying judicial procedure and by raising the standards for admission to the bar, in order to restore public confidence in the legal profession. See Shinn, and Beardsley, both *supra* note 19; (1929) R. I. BAR ASS'N REP. 56.

[34] See Ashley, *supra* note 6; (1929) R. I. BAR ASS'N REP. 56.

[1] State v. Beal, 199 N. C. 278, 154 S. E. 604 (1930). The defendants were also indicted and convicted upon separate counts of felonious secret assault upon officers Gilbert, Roach and Ferguson; these charges were tried in the same proceedings.

closing words to a bitter chapter in the industrial struggle in that state. Following a disturbance at the Loray mill in Gastonia, where a strike broke out early in April, 1929, Governor Gardner despatched five companies of militia to the town.[2] On the 18th of April, while the mill was publishing vituperative denunciations of the strike leaders as communists and atheists who were determined to establish racial equality,[3] a masked mob stormed and wrecked the union headquarters, and destroyed the strikers' supplies.[4]

New headquarters were built by the strikers, and an armed patrol was established. On the evening of June 7th, Aderholt was shot and killed, and three other officers and a striker were wounded in an exchange of shots which took place at the union lot.[5]

The trial of sixteen defendants indicted for murder was begun in Mecklenburg county, after Judge Barnhill [6] had granted a change of

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[2] See N. Y. Times, April 4, 1929, at 2. By April 21st, the troops had been entirely withdrawn. *Id.*, April 22, at 3.

[3] See the advertisements which appeared in the Gastonia Daily Gazette, reprinted in Blanshard, *Communism in Southern Cotton Mills* (1929) 128 NATION 500; *cf.* TIPPETT, WHEN SOUTHERN LABOR STIRS (1931) 76–108.

[4] See N. Y. Times, April 19, 1929, at 2; Lloyd, *Gastonia* (Prog. Lab. Library, No. 4, 1930) 15; TIPPETT, *loc. cit. supra* note 3.

[5] On the evening of June 7th, a meeting of the strikers was held on the union lot. The defendant Beal was one of the speakers; he told the workers to form a picket line and march to the Loray Mill, and, according to the state's witnesses, urged them to "go into the mill and drag out those at work" and, if anybody bothers, "to shoot and shoot to kill." The defense's witnesses denied that Beal had counselled violence.

The picket line formed and began its march, but was turned back by the police. Chief Aderholt and three of his deputies got into a car and drove to the union lot in answer to a call by one of the neighbors of the union that "If we ever needed protection, we need it now." The officers found the lot dark and quiet. Four of the defendants, Carter, Harrison, McGinnis and McLaughlin, were among those outside the building, guarding it, armed with shotguns. The state's witnesses testified that as the officers approached, one of the guards came toward them with his gun levelled at Gilbert. The latter grabbed the gun and took it away from the guard. Aderholt asked what the trouble was. The guard replied, "None of your . . . business." On the chief's order, Gilbert arrested the guard for resisting an officer. The testimony of the defense was that Carter, who was the guard, accosted the officers with his gun under his arm, pointed toward the ground, and asked them for their search warrant; Gilbert replied, "Here is all the warrant I need," as he drew his pistol and flashed it in Carter's face.

Aderholt and Deputy Roach proceeded toward the building; Roach testified that he looked in and saw four men with shotguns raised, one of whom was Beal; then the officers turned back. Meanwhile, as Gilbert held the guard, there were shouts of "Turn him loose, Gilbert," or according to the prosecution, "Shoot them" and "Do your duty, guards." Then three shots rang out, and a volley of firing followed. Whether the guards, or strikers in the building, or the officers fired the first shot is in dispute. When the smoke cleared away, three officers and one of the strikers had been wounded; Aderholt had been shot in the back and, shortly thereafter, he died. See Record of the case *passim*.

[6] The conduct of the case by Judge Barnhill, who presided at both trials, was widely commended by observers, who attested to his determination to give the defendants an impartial hearing. See Bailey, *Gastonia Goes to Trial* (1929) 59 NEW REP. 332; Porter, *Justice and Chivalry in Carolina* (1929) 129 NATION 160; *cf.* Nelson, *North Carolina Justice* (1929) 60 NEW REP. 314; Editorial, N. Y. Times, Aug. 3, 1929, at 14. However Judge Barnhill's rulings may have affected the fairness of the proceedings, the Record in the case, and the charge to the jury

venue because of prejudice in Gaston county.[7] A mistrial was declared August 16th, when one of the jurors became insane.[8] That night an anti-red mob raided the strikers' headquarters and destroyed their supplies; three of the strike leaders were kidnapped, and one was flogged.[9] Five days later the violence reached a tragic climax when Ella May Wiggins, twenty-nine-year-old " poet laureate " of the strikers, was shot and killed by the anti-communist mob.[10] For the raid, the flogging and the mob murder, there has been no conviction.[11]

From the moment the second trial[12] began the prosecution made persistent efforts to inject into the case testimony relating to communism. These questions to the earlier witnesses were uniformly excluded by the court, but when the defendant Beal, whom the prosecution regarded as the leader of the strikers, was cross-examined the trial judge admitted the testimony to impeach his credibility.[13] After examining Beal concerning his distribution of copies of the communist newspaper, the Daily Worker, the solicitor was permitted to ask Beal whether he advocated the overthrow of the government of the United States and of North Carolina, and had brought his organization to North Carolina to teach the principles of communism to workers' children.[14] Beal's evasions and denials gave little affirmance to these questions.

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reflect a sincere insistence that the defendants be tried for the crime charged, and not for radical beliefs or activities.

[7] See N. Y. Times, July 31, 1929, at 8.

[8] *Id.*, Sept. 10, 1929, at 1.

[9] *Id.*; see *Fighting Communism with Anarchy* (Sept. 28, 1929) 102 LIT. DIG. 12; TIPPETT, *op. cit. supra* note 3, at 104 *et seq.*

[10] Mrs. Wiggins was killed when the mob fired upon a truckload of union mill workers on their way to a meeting. See N. Y. Times, Sept. 15, 1929, at 1; note 9, *supra*.

[11] The grand jury of Gaston county found the evidence insufficient to indict any of those charged with the killing of Mrs. Wiggins. See N. Y. Times, Oct. 25, 1929, at 24. Governor Gardner thereafter appointed Judge McElroy to investigate the matter. *Id.*, Nov. 4, 1927, at 27. After a hearing, he held sixteen defendants for the next term of the grand jury, and five were indicted by that body. *Id.*, Jan. 16, 1930, at 47. When the case was tried, the jury, after thirty minutes' deliberation, freed all of the defendants on every count in the indictment. The bail for the defendants had been furnished by the Loray mill. *Id.*, March 7, 1930, at 25.

Four persons were indicted for the kidnapping and flogging of the communist organizers on Sept. 9, but all were acquitted at the trial in Concord, N. C. The attorney for the defense was Major A. J. Bulwinkle, counsel for the Loray mill, and a special prosecutor in the Aderholt case. *Id.*, Oct. 20, 1929, at 12. Bail had been furnished for the defendants by the mill. *Id.*, Sept. 18, 1929, at 22.

[12] The state took a *nolle prosequi* in respect to all but seven of the defendants, and reduced the charges against the remaining seven to second-degree murder and felonious assault. See Record, 3. The prosecution sought to establish a conspiracy on the part of the defendants to resist the police authorities which resulted in Aderholt's death. The court ruled that evidence of the conspiracy would be limited to the events occurring June 7th, the night of the shooting.

[13] See argument of counsel and court on the point. Record, 1461–71. But *cf. id.*, 1656. This Note makes no attempt to treat the numerous exceptions of the defendants and the errors assigned, such as the insufficiency of the indictment, the plea of double jeopardy, the numerous rulings on the admissibility of evidence, the motion to nonsuit, the exceptions to the court's charge. It is limited to the cross-examination into religious and political beliefs and the argument to the jury.

[14] See Record 1506–27, 1586–87.

Then followed the cross-examination of Mrs. Miller, one of the key witnesses for the defense, who had organized the strikers' children into branches of "Pioneer Youth." The state elicited the information that Mrs. Miller had been teaching Gastonia's children that the government and the bosses stand together for the slavery and starvation of the workers; that force is necessary to produce social change, and that in Soviet Russia, as a result of a revolution, there are no bosses, no private property, and the workers and farmers control the government.[15]

Having disposed of her political beliefs, the state was permitted to examine the witness as to her religious views.[16] The Mecklenburg county jury learned that the witness did not believe in a Supreme Being who controls man's destiny, nor in divine punishment; and that an oath taken on an almanac would be as binding upon her as an oath on the Bible.[17]

The trial court allowed the questions concerning the political beliefs of Beal and Mrs. Miller as evidence affecting their credibility.[18] The upper court apparently regarded the testimony as admissible to prove the charge that the defendants were engaged in an unlawful conspiracy to resist the police.[19] These beliefs may be relevant to prove such a conspiracy on the night of June 7th, although the connection between Mrs. Miller's convictions and the charge against the defendants seems highly attenuated. But the establishment of the testimony's relevancy does not establish its admissibility. The doctrine runs through the whole law of evidence that testimony, though it is relevant, is to be excluded from the jury when it is too prejudicial in character.[20] The probative value of this testimony, whether as direct or as impeaching evidence, seems wholly out of proportion to the dangers with which its

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[15] Mrs. Miller testified that she had told the workers' children that the National Guard had been ordered to Gastonia to shoot down workers on the picket line. She had distributed literature showing a child firing at soldiers, and a leaflet urging the support of a children's delegation to the Soviet Union to bring the "message of solidarity of the children of America to the workers' children in Russia." See Record, 1614–31.

[16] When Mrs. Miller came to the stand, no objection was made to her testimony on the ground of incompetency. North Carolina has never by statute abrogated the common-law rule of incompetency because of religious disbelief. A law regulating oaths, passed in 1777, is still on the statute books. N. C. CODE ANN. (Michie, 1927) §§ 3189–91. But decisions have gone far to affirm the admission of testimony when the trial court has found the witness to have a sense of "moral obligation" of the oath. *Cf.* Shaw v. Moore, 49 N. C. 25 (1856); State v. Pitt, 166 N. C. 268, 80 S. E. 1060 (1914); Lanier v. Bryan, 184 N. C. 235, 114 S. E. 6 (1922); see Biggs, *Religious Belief as a Qualification of a Witness* (1929) 8 N. C. L. REV. 31; Hartogensis, *Denial of Equal Rights to Religious Minorities and Non-Believers in the United States* (1930) 39 YALE L. J. 659; *cf.* also N. C. CONST. § 26.

[17] See Record, 1644–56.

[18] Mrs. Miller's sympathies had already been shown by her testimony that she was the wife of one of the defendants, and had been sent to Gastonia by the president of the union to organize the children's section. *Id.*, 1608–14.

[19] In support of its ruling the court relied on Spies v. People, 122 Ill. 1, 12 N. E. 865 (1887), and Commonwealth v. Sacco and Vanzetti, 255 Mass. 369, 151 N. E. 839 (1926). For a criticism of the view taken in the latter case, see Note (1927) 36 YALE L. J. 384.

[20] See 4 WIGMORE, EVIDENCE (2d ed. 1923) § 1864; Chafee, *The Progress of the Law* (1922) 35 HARV. L. REV. 428, 433 *et seq.*; *cf.* note 21, *infra.*

admission is fraught. To secure a fair trial of strikers in a community which flogged union leaders, wrecked union headquarters, and refused to indict for crimes against strikers, was at best hardly an easy task. But to link the strikers with "revolution" and "Russia" and "the abolition of private property" was to arouse passions and prejudices likely to result in the conviction of the defendants irrespective of their guilt.[21]

The upper court's answer to the defendants' objections is that the question of the admissibility of the evidence is within the discretion of the trial judge. This proposition is supported by a long line of North Carolina decisions.[22] The tendency to vest wide discretion in the trial court is a highly salutary departure from the restrictive and confusing rules laid down by some tribunals for the regulation of a trial. But this does not mean that the trial court's discretion is uncontrolled, nor that the appellate court thereby abdicates all duty to prevent an unfair trial resulting from the abuse of discretion.[23] In a recent prosecution growing out of a strike, the New York Court of Appeals, which recognizes wide discretion in allowing impeaching evidence, granted a new trial when the trial court permitted cross-examination into the defendant's communistic beliefs.[24]

The opinion of the court neither approves nor disapproves the examination into Mrs. Miller's religious beliefs. It declares that if there was any error involved, it was not prejudicial.[25] Mrs. Miller, however, was one of the chief witnesses for the defense. And the defendants were convicted by a jury, nine of whom were farmers, living in a community which has been characterized as the most "fundamental Bible-loving people in the world." [26]

The conduct of the prosecution in its argument to the jury was urged as a ground for a new trial. The trial judge struck out the defendants' exceptions to the argument on the ground that when the defendants objected, he stopped the solicitor and warned him to confine his remarks to comment on the evidence, and also because the jury was told to disregard the plea.[27] The upper court refused to order the certification of

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[21] The state sought to cross-examine Beal concerning his belief in Negro equality. In spite of the prosecution's vigorous assertion that no "high class respectable white man advocates social equality," and that therefore the testimony should be admitted to impeach the witness, the court ruled against it. See Record 1465–66.

[22] State v. Lawhorn, 88 N. C. 634 (1883); State v. Cloninger, 149 N. C. 567, 63 S. E. 154 (1908); State v. Winder, 183 N. C. 776, 111 S. E. 530 (1922); State v. Dickerson, 189 N. C. 327, 127 S. E. 256 (1925); State v. Colson, 194 N. C. 206, 139 S. E. 230 (1927).

[23] State v. Scott, 194 Iowa 777, 190 N. W. 370 (1922); Clark v. Variety, Inc., 189 App. Div. 462, 178 N. Y. Supp. 698 (1919); Dungan v. State, 135 Wis. 151, 115 N. W. 350 (1908); see Note (1927) 36 YALE L. J. 384.

[24] People v. Malkin, 250 N. Y. 185, 164 N. E. 900 (1928); *cf.* State v. Schleifer, 102 Conn. 708, 130 Atl. 184 (1925); note 23, *supra*.

[25] State v. Beal, *supra* note 1, 154 S. E. at 616–18.

[26] See Wharton, *Poor White Capitalists* (1929) 153 OUTLOOK AND IND. 252; "I have never been in a cotton-mill house whose walls were not littered with cheap, loud-colored prints of Biblical scenes." *Ibid.* See also (1929) 129 NATION 477: "To a Southern fundamentalist farmer, a communist or an atheist is a criminal per se."

[27] See Brief for the Defendants.

the record of the argument, taking the position that any prejudice was removed by the court's action,[28] and that thereafter the defendant's failure to continue to object prevented review of the remainder of the argument. If the court means that in fact any prejudice due to a prosecutor's plea is, in the nature of things, removed by a charge and an admonition, its position is untenable; that any jury would, upon the court's instructions, abstract itself from the influence of Solicitor Carpenter's dramatic performance in this case is inconceivable.[29] In numerous instances a new trial has been granted, even though the trial court admonished or stopped the attorney and instructed the jury to disregard the remarks.[30]

Nor should the failure to continue to object prevent reversal. In one case in which the solicitor, after a warning from the court on the defendant's objection, made an improper statement to the jury the North Carolina court itself granted a new trial even though no exception was taken to the final statement.[31] A federal court granted a new trial be-

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[28] There is much authority in the North Carolina cases for this view. In the following cases, which are among the more extreme holdings, the solicitor's argument was held to be cured by the court's admonition, or its charge, or both. Jenkins v. North Carolina Ore Dressing Co., 65 N. C. 563 (1871) (plaintiff is a "poor widow" and the defendant "a wealthy corporation is attempting to cheat her out of her rights"); State v. Davenport, 156 N. C. 596, 72 S. E. 7 (1911) (statement that defendants' fines would be paid by a wealthy foreign corporation); State v. Saleeby, 183 N. C. 740, 110 S. E. 844 (1922) (the jury could not "afford not to convict the defendant for . . . he had sold so much liquor in town that an indignation meeting had been held"). None of these cases approach in inflammatory character the appeal in the instant case. In State v. Tyson, 133 N. C. 692, 45 S. E. 838 (1903), where there was a gross appeal to local prejudices, the decision was rested in part upon the ground that the defendant had invited the attack. *Cf.* Goodfellow v. People, 75 Colo. 243, 224 Pac. 1051 (1924); State v. Cleaver, 196 Iowa 1278, 196 N. W. 19 (1923).

[29] The solicitor knelt and prayed before the jury. Then grasping the hand of the widow of the dead officer, he handed her the shot-torn coat of her husband, and pledged the vengeance of the state. He characterized the defendants as "devils with hoofs and horns who threw away their pitchforks for shotguns, foreign Communists, fiends incarnate, who came sweeping like a cyclone, like a tornado to sink their fangs into the heart and life blood of my community."

"Do you believe in the flag, do you believe in North Carolina, do you believe in good roads? . . . Men, do your duty; do your duty, men, and in the name of God and justice render a verdict that will be emblazoned across the sky of America as an eternal sign that justice has been done." See N. Y. Times, Oct. 19, 1929, at 2; *id.*, Editorial, Oct. 21, 1929, at 26; *The Gastonia Strike-Murder Verdict* (Nov. 2, 1929) 103 LIT. DIG. 14; (1929) 153 OUTLOOK AND IND. 336.

[30] Miller v. People, 70 Colo. 313, 201 Pac. 41 (1921) (reference to fact that defendant was a German); State v. Peirce, 178 Iowa 417, 159 N. W. 1050 (1916) (reference to prevalence of crime; and translation of defendant's nickname as "bad actor"); State v. Brown, 148 La. 357, 86 So. 912 (1921) ("it is high time to put a stop to these murders by negro women by hanging some of them"); People v. Fielding, 158 N. Y. 542, 53 N. E. 497 (1899) (vivid description of defendant, a public officer, stealing poor widow's taxes); People v. Manganaro, 218 N. Y. 9, 112 N. E. 436 (1916) (defendant brought doctors to prove his insanity; prosecuting attorney said the "medical profession prostitutes itself" to testify to insanity; also that "we can't let men stab their wives"); People v. Brigham, 226 App. Div. 104, 234 N. Y. Supp. 567 (1929) (statement that this prosecution of a Negro had caused loss of Negro votes to district attorney).

[31] State v. Evans, 183 N. C. 758, 111 S. E. 345 (1922). But *cf.* State v. Ray, 166 N. C. 420, 81 S. E. 1087 (1914).

cause of a grossly improper argument of the prosecutor, even though no objection was ever made.[32] The solicitor is duty bound to secure the defendants an impartial hearing.[33] To refuse to consider the fervid appeal of the prosecuting attorney, in reaching a decision that the defendants have been convicted of murder after a fair trial, is hardly justified on the ground that the defense counsel failed to continue to interrupt the state's legal representative.

These errors can not be dismissed as non-prejudicial. Far from revealing the undisputable guilt of the defendants, the record discloses a sharp conflict of testimony upon every important issue in the case.[34] In this state of the facts, the admission of the evidence of nonconformist beliefs and the character of the solicitor's plea make it exceedingly difficult to determine whether the defendants were convicted because of their guilt or because of their radicalism.[35]

LEGISLATION

TAXATION OF TAX-EXEMPT SECURITIES IN THE HANDS OF CORPORATIONS.[1] — With the shifting trend in corporate taxation, the frequently criticised [2] constitutional immunities which afford legal sanctuary to governmental securities have again placed spiked barriers in the path of tax progress. The recent cases of *Macallen Co. v. Massachusetts* [3] and *Educational Films Corp. v. Ward* [4] have raised the problem whether the efficacy of taxation according to income is to be exenterated by its failure to reach exempt securities.

It was early determined that the Constitution shielded such securities

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[32] August v. United States, 257 Fed. 388 (C. C. A. 8th, 1919) (lengthy speech concerning the war with Germany in prosecution for interfering with the mails). This case relies in part upon a statute requiring the appellate court to give judgment "without regard to technical errors . . . which do not affect . . . substantial rights." See JUDICIAL CODE § 269, as amended by 40 STAT. 1181 (1919), 28 U. S. C. § 391 (1926).

[33] See People v. Fielding, *supra* note 30, at 547, 53 N. E. at 498.

[34] See note 5, *supra*; Record *passim*.

[35] Beal, Miller, and Carter, northerners, and Harrison, a Gastonia resident, were sentenced to prison terms of seventeen to twenty years; McGinnis and McLaughlin of Gastonia received sentences of twelve to fifteen years, and Hendricks, also a local resident, received a five- to seven-year sentence. State v. Beal, *supra* note 1, 154 S. E. at 612. None of the defendants is in jail, however, all having jumped bail. See N. Y. Times, Sept. 30, 1930, at 1.

[1] The statutes dealt with in this Note, except where otherwise indicated, are confined to those relating to domestic business corporations. The statutes dealing with foreign corporations are similar, and the problem the same.

[2] See Mills, *Tax-Exempt Securities* (1923) PROC. NAT. TAX CONF. 334; Powell, *The Macallen Case — and Beyond* (1930) 8 NAT. INC. TAX. MAG. 91, 95. But see Hardy, *Taxation and Tax-Exempt Securities* (1925) PROC. NAT. TAX CONF. 222; Plehn, *Taxation of National Banks* (1929) 17 CALIF. L. REV. 357.

[3] 279 U. S. 620 (1929); see Powell, *The Macallen Case — and Before* (1930) 8 NAT. INC. TAX MAG. 47; Powell, *supra* note 2; Traynor, *National Bank Taxation in California* (1929) 17 CALIF. L. REV. 456; Note (1929) 43 HARV. L. REV. 280.

[4] 282 U. S. 379 (1931); see Powell, *An Imaginary Judicial Opinion* (1931) 44 HARV. L. REV. 889; Note (1931) 44 HARV. L. REV. 829.