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# ***Hemispherical Cooperation***

## **Is Theme of Inter-American Bar Association Meeting**

**By WILLIAM R. EATON\***

When a traveler asks any person in a South American or any other country—even in our own city—whether he, his townsmen, or the inhabitants of his country would rather have a dollar or a dime, the answer will be almost unanimous for the larger rather than the smaller portion, and this applies whether the subject is a quantity of money, beef, sugar, or any commodity.

However, if the person questioned and the other citizens of his country are asked whether they will use every effort to cooperate in a great common cause, even at the expense of some part of the dollars or articles of commerce involved, the practically unanimous answer will be found to be one for cooperation.

This was illustrated at the recent meeting of the Inter-American Bar Association at Havana, where lawyers from Argentina, Brazil, Cuba, the United States, and practically every country of the western hemisphere met to discuss questions of international and comparative law.

The Judge Advocate General of the United States Army, Major General Allen W. Gullion, the Assistant to the Legal Adviser of the Secretary of State, William Roy Vallance, and lawyers holding similar confidential offices in the governments of most of the countries in the western hemisphere, as well as the President of the American Bar Association, Jacob M. Lashly, and lawyers representing the most important legal, commercial and humanitarian interests, actively participated in the meetings.

The conference was opened by a message brimful of cooperative suggestions and opinions by governmental adviser Dr. Enrique Gil, one of the most outstanding lawyers of Argentina, and was closed by inspiring and instructive speeches of cooperation by Attorney General Hon. Robert H. Jackson, of the United States, and Minister of Justice Hon. Victor Vega, of Cuba.

The predominant themes were the effect of the European conflict on the relationships of the countries of the western hemisphere, the role of the lawyer in the defense of the Americas, a program for western hemisphere cooperation and defense, inter-continental brotherhood, and

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\*Delegate from the Colorado Bar Association and American Bar Association to the meeting of the Inter-American Bar Association in Havana, Cuba, March 24-28, 1941.

the promotion of harmony between the peoples of North, Central and South America.

Whether Argentine or United States beef, Cuban cane or Colorado beet sugar, or Brazilian or Guatemalan coffee, should have special consideration in the commercial, competitive or diplomatic fields, and the conduct of North American merchants toward those of South America became comparatively unimportant subjects, in which this conference differed from the news reports of previous Pan American conferences. There was a general understanding that the present situation in world affairs requires cooperation in matters and things which compel commercial supremacies to take second place, at least for the present.

No matter what particular controversies might have been voiced, after the discussions there was not merely a unanimous expression of the results as set forth in the resolutions, but there were as sincere personal expressions of cooperation and good will as it is possible for men to make.

To mention specifically the subjects discussed or the resolutions adopted would take too long. The activities of each government in respect to the vessels and airships of each other and European countries, whether in or out of the present war, the handling of munitions of war, contraband and lawful cargoes, the status to be understood by the terms "neutrals," "non-belligerents" and "belligerents," and the other statements of the representatives of the governments of each nation, were all finally resolved into and showed a full realization of the old maxim that "if we do not hang together, we will hang separately." In fact, this maxim, when delivered by one of the speakers in Spanish, obtained the most vociferous applause and continued comment of the entire conference.

A most interesting feature of the conference was the use of translators—electrical devices connected with ear-phones. Each word was translated and spoken simultaneously in English, Spanish, Portuguese, and French. One had only to turn the dial on his translator to test his understanding of any of the four languages. Or, if he wished, he could take one ear-phone away from one ear and listen with that ear to the speaker delivering his address in Spanish or another language, and at the same time, with his other ear, hear the exact translation thereof in perfect English.

From every standpoint, the conference was a great success. Each representative went back to his own country with a firm conviction that a great good had been accomplished, and that a basis had been made for a better understanding between those who must advise the representatives of their governments and commercial interests, which would have far reaching benefits.

## **Application for Change of Venue Brings Interesting Ruling from Judge in Murder Case**

On April 10, 1940, five people were killed on the Gunbarrel road south of Monte Vista, and as a result thereof, the state filed informations against Patricio Maez in the District Court of Conejos County for the deaths of three of these persons.

The wife and son of Maez were killed by a deputy sheriff, Martinez. Maez then killed Martinez, Dominquez and Ortega, and no eye witness of the tragedy remained except Maez.

The story as told by Maez, substantiated throughout by police officers, is as follows:

He, his wife and son, riding in their truck, were stopped by Ortega, Dominquez and Martinez at an intersection of the road. All three got out of the truck and walked about fifty feet to face the deputy sheriff.

A short conversation took place. Then Martinez either accidentally or wantonly shot the wife and son of Maez. Maez then turned and ran for his truck with Dominquez following him. Securing a rifle he shot Dominquez, then Martinez, and finally Ortega, whom he afterwards beat over the head with the barrel of the rifle.

Affidavits for change of venue were presented to the court before trial, alleging prejudice of the inhabitants of Conejos County, and were overruled by the court.

The case was tried in Conejos County and Maez acquitted of the killing of Martinez, and convicted of voluntary manslaughter in the killing of Dominquez and Ortega.

Motion for a new trial was filed, and of interest to the bar are the statements of Honorable John I. Palmer, judge of the Twelfth Judicial District, in regard to the motion for new trial, as follows:

The Court: (After hearing argument of counsel on motion for new trial).

When one considers what was offered in support of the application for change of venue, I think any lawyer would come to the conclusion that the showing was not sufficient to warrant any other ruling than the overruling of the application at that time. That application was based largely upon the prejudice of the people of Conejos County toward the defendant. But one who took part in the trial and particularly one who occupies the position that the court occupied during that trial was bound to be struck, impressed, and very much disturbed by that imponderable, intangible atmosphere that existed here throughout the trial. Prejudice of an audience and its influence upon the court on the trial is, as I have

described it, imponderable, intangible almost always. It doesn't manifest itself in overt acts and crude attempts to influence the action of the jury, but it is something that is in the atmosphere; something that shows itself that you can't put your hand on. You can't point at this or that and say here it is. You feel it. You sense it. And I feel that I would be doing less than my duty as one who tries to be a fair judge in matters of this sort if I refrained from pointing out in my forty years of experience in the trial of cases I never have seen so startling a manifestation of the existence, and I sometimes fear the effect of that prejudice, that we are always seeking to guard against. The fact that it is imponderable and intangible makes it hard to demonstrate. And the fact that it is difficult to bring forward positive evidence of the existence of a psychological state might explain the absence of those things which are technically required which you put in the written record as the reason for calling for the sustaining of the motion which is presently made. Ever since the trial I have studied for hours trying to satisfy my conscience in the matter without finding as yet a solution, without finding as yet that which would warrant action either way and leave one's conscience entirely clear that he had done the right thing after all. That is what counts.

The defendant was convicted in two of three cases of voluntary manslaughter. In order that you may understand what is in the court's mind, and in order that you may be able to realize something of the difficulty that this question presents (much more difficult than any other similar question that has ever come to my attention), I want to read from the instructions that were given—that are always given in a case of this sort—a couple of paragraphs of definitions.

“Manslaughter is the unlawful killing of a human being, without malice, express or implied, and without any mixture of deliberation whatever. It must be voluntary, upon a sudden heat of passion caused by a provocation apparently sufficient to make the passion irresistible, or involuntary, in the commission of an unlawful act, or a lawful act without due caution or circumspection.

“In cases of voluntary manslaughter there must be a serious and highly provoking injury inflicted upon the person killing, sufficient to excite an irresistible passion in a reasonable person, or an attempt by the person killed to commit a serious injury on the person killing.

“The killing must be the result of that sudden violent impulse of passion supposed to be irresistible; for if there should appear to have been an interval between the assault or provocation given and the killing, sufficient for the voice of reason and humanity to be

heard, the killing shall be attributed to deliberate revenge and punished as murder."

Apply that definition to the evidence, even to the defendant's story, and this question is difficult to answer: does not that definition fit exactly what happened? That story is that he saw his wife and his son shot down by Martinez, who came there in company with the other two men. According to the story, shot down without any reason or purpose that appears. That was an injury to this defendant; that was such an injury that would excite in the mind of anybody, of course, an irresistible passion and would lead almost anyone to do what Patricio Maez did. Does it therefor follow that the evidence beyond a reasonable doubt shows Patricio Maez to be guilty of voluntary manslaughter? That is the hard question. A killing caused by an irresistible passion aroused by an act sufficient to put the mind of a reasonable person in that sort of a state that was there, the evidence shows it was there.

I believe then that the situation that we have is this: That the record, if this case were presented to the higher court, would sustain the verdicts upon an assignment of error that the verdicts were contrary to the evidence, or that the evidence didn't warrant the verdicts. But does it necessarily negative the possibility that he acted in self-defense? I don't think that there would be a possibility of a reversal upon that question, and that leaves the other phase of the thing which is so difficult to determine. Whether that prejudice that was manifest (at least to a mind trained to watch for those things) did influence the verdict? Or it better be put, is the situation such that an honest man can say that it absolutely, certainly did not influence the verdict? I think we will have to go that far.

I am telling you candidly and honestly that I have thought of this for hours ever since the trial whenever the subject would happen to come to my mind, and I tell you just as frankly that I am yet uncertain what the proper answer is. It is impossible to get anything tangible that you could put in the record in words that would be an answer to that question. I believe ultimately the court will have to decide it from what he knows, observed, believes and what his conscience tells him are the facts in the matter and I repeat I am not yet ready to answer that question. I want to take this matter under advisement. Counsel have said all they could say, have done all they can do. There is no one to give the court any further assistance in this matter but I am not so constituted that I can decide a question of the seriousness of this question without being entirely clear in my own mind and conscience; and until I have arrived at that state of mind, I don't want to decide it. I appreciate that this is an unusual sort of a statement to come from the bench, but I wish to call your attention to the fact that it is an unusual situation that we

have here. I don't think any of us has ever seen anything approaching it in our past experience. I don't know how long it will take but since this matter has gone for some little time there will not be any harm nor any charge of delay, unjustifiable delay, if the court takes a few more days or a few more weeks to enable him to clear up the doubt which exists in his mind, and with that explanation I merely announce that the matter is taken under advisement."

Thereafter the motion for a new trial was sustained by the judge and Maez tried in Alamosa County for the murder of Dominquez and Ortega.

The jury was out about two hours bringing in an acquittal on both counts. The case was prosecuted by District Attorney Leonard M. Haynie, his deputy, Ralph Horton, and George Blickhahn as special prosecutor, and defended by George M. Corlett and Charles R. Corlett.

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### **Colorado Junior Bar Conference**

The Colorado Junior Bar Conference held its semi-annual meeting on Sunday, May 25, at the Albany Hotel in Denver.

Mr. William E. Hutton, President of the Colorado Bar Association, made a very inspiring address at the luncheon in regard to the lack of morality of present international affairs and also informed the group of the plans for the annual meeting of the Colorado Bar Association at Colorado Springs on September 12-13. John O'Hagan of Greeley presided at the meeting.

Preceding the luncheon, the various committees of the Conference held their meetings, and at a general business meeting following the luncheon the committee reports were made and plans were laid for continuation of the Conference work.

The Committee on Judicial Selection has made a very comprehensive survey of this project, which had its inception in the Colorado Junior Bar Conference in Colorado.

The Conference was informed by the Economic Survey Committee that the survey was completed and would be in the hands of the various lawyers in the state by June 15. This survey will be completely anonymous and is designed to obtain information in regard to the nature of

practice and the possibilities of practice in the various sections of the state.

The Committee on Public Information will begin a series of radio programs pointing out the advantages of the democratic form of government and explaining the Soldiers' and Sailors' Civil Relief Act and the National Selective Service Act.

The Conference will hold its annual meeting at Colorado Springs on September 13 at noon. Further information in regard to this meeting will appear in a future publication of DICTA.

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### **Convention Set for September 12-13 at Colorado Springs**

The forty-fourth annual convention will be held at Colorado Springs on September 12-13, 1941, the Executive Committee of the Colorado Bar Association decided in its recent meeting. Designation of the convention hotel was left to the Convention Committee. President Hutton has appointed Edward L. Wood of Denver chairman of that committee. Mr. Wood was chairman of the committee which last year so ably planned the 1940 meeting. A tentative program of the convention will be announced in the July issue of DICTA.

The Board of Governors also voted to dispense with the publication of the 1941 annual report as a separate volume, and to publish a condensation of the proceedings in DICTA. This resolution will effect a saving of approximately one thousand dollars in bar funds.

The District Attorneys Association and the County Judges Associations became sections of the Colorado Bar by approval of the Board. This action by the associations brings within the fold of the State Bar all organizations of attorneys and judges within the state, and promises a unified program of action.

The petition for membership by the Continental Divide Bar Association, consisting of Summit, Lake, Eagle, Park and Chaffee counties, was accepted. This local bar association now covers the only region in the state where there were no local associations. With its organization every section in the state is now organized. J. Corder Smith of Leadville was selected to act on the Board of Governors as representative of the Continental Divide Bar Association.