

6-5-1969

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Recommended Citation

Drew Pearson and Jack Anderson, *Judge Burger Views U.S. Legal System* (1969).

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Judge Burger Views U.S. Legal System



Drew Pearson

Today's column is by Drew Pearson and Jack Anderson

Washington

IT NOW develops that the new Chief Justice Warren E. Burger addressed the same "Center for Study of Democratic Institutions" partly financed by the same Parvin Foundation which has paid an annual retainer to Justice William O. Douglas.

Judge Burger spoke before the center at Santa Barbara, Calif., and was paid approximately \$400. Officials of the center emphasized that this was to cover expenses and was not a fee.

In his speech Burger raised doubts regarding the American jury system, the Fifth Amendment, and the present system of criminal trials in the United States.

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"I SAY THAT the adversary system (of American courts) is not the best system of criminal justice, and that there is a better way," Judge Burger told the Santa Barbara group. "The American system, up to the time of the final verdict and appeal, puts all the emphasis on techniques, devices, mechanisms."

Judge Burger explained what he meant by "techniques, devices, mechanisms," as the presumption that the accused is innocent; the use of juries and the consequent rules regarding evidence; the right of the defendant to remain silent; the placing of the burden of proof on the prosecution.

Many of these "incidents of the adversary system," he said, were introduced after the Magna Carta and after the development of a legal profession because lawyers wanted to offset the enormous im-

balance between the power of the king and his establishment on the one hand and that of the individual person on the other. "But are all these devices of the adversary system valid in today's society?" Judge Burger asked.

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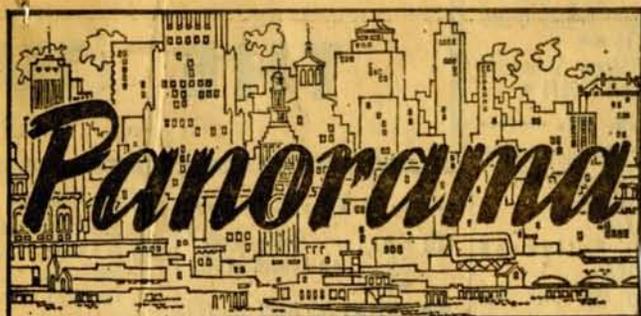
"I HEARD ONE Supreme Court justice say in a seminar that the presumption of innocence is 'rooted in the Constitution.' Well, it may be rooted there, but you cannot find it there. I think we have been deluded by some of our own utterances. Certainly you have heard — and judges have said — that one should not convict a man out of his own mouth . . .

"I am no longer sure that the Fifth Amendment concept, in its present form and as presently applied and interpreted, has all the validity attributed to it."

The original reasons against compelling a defendant to answer have been somewhat dissipated, the judge continued. "But whenever I discuss this with some of my colleagues they are horrified. They conjure up images of the rack and the screw."

The jury system was questioned by Judge Burger. Although conceding that time and money are not the only important factors, he pointed out that "if we could eliminate the jury we would save a lot of time. In Pennsylvania, juries are waived in 80 per cent of the cases and the system works much better. You can try a case without a jury in one day that would take you a week or two weeks with a jury."

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San Francisco Chronicle

Thurs., June 5, 1969

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