

Harvard Law School Record



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PRICE TEN CENTS

Finalists To Argue On Adoption Law

On Monday the facts for the Ames final were released to the Jaffe and Baker-Smith Equity Clubs. The case is patterned on a recent Massachusetts case, *Petitions of Goldman*, 121 N.E.2d 843 (1954), which prevented a Jewish couple from adopting a child of a Catholic mother. The decision was based on a statute, G.L. (Ter. Ed.) c.210, §5B (as inserted by St. 1950, c.737, §3), that required children to be placed with foster parents of the same religion "when practicable." The Supreme Court of the United States has denied certiorari in this case.

The Ames statute is precisely identical to the Massachusetts law. The case, *Ingersoll v. Rice, in re Joanne Connolly*, although it involves a child of a Roman Catholic mother, does not involve Jewish foster-parents. Mr. Ingersoll is a Universalist, and Mrs. Ingersoll is described as an agnostic. In the proceeding below she testified that she was uncertain as to the existence of a God, although she subscribed to the ethical teachings of Jesus.

Mrs. Connolly, the natural mother of the child was herself formerly a Universalist until after her marriage, when she was converted to the Roman Catholic church. Before her marriage she signed an agreement to require the children of the marriage to be brought up in the Roman Catholic faith. After her child, Joanne, was born, Mrs. Connolly divorced her husband on the grounds of adultery. The divorce decree made no provision for support of the child, nor for the religious training of Joanne.

Since the divorce the mother supported herself by working as a waitress. Because her earnings were low and her hours of work inconvenient, she asked her stepbrother, Mr. Ingersoll, to take Joanne into his home. Mr. Ingersoll, to take Joanne into his home. The child was then 3½ years old.

The Ingersolls, according to the record, are of moderate means. They have a net income of about \$5000 a year and own a newly renovated house with a yard.

(See AMES FACTS on page three)

WOODBURY ACCEPTS

The Hon. Peter Woodbury, LL.B. '27, will be an associate justice on the Ames final bench, according to Monroe Freedman, LL.B. '54, Faculty Assistant in Charge of the Ames Competition. Judge Woodbury is a member of the Court of Appeals for the First Circuit. He has frequently appeared at Law School moot arguments, having judged the model appeal in 1952.

Frederick W. Brune, LL.B. '20, Chief Judge of the Maryland Court of Appeals, will be the third member of the court at the Ames final.

Cohn To Appear On Loyalty Forum

Roy M. Cohn, Allan Barth and Professor Ralph S. Brown will be the speakers at the next Harvard Law School Forum, which will be held Friday, March 11, at 8 p.m. in the Rindge Technical High School, Broadway and Irving St., Cambridge.

The subject of the forum will be "Loyalty, Security, and Individual Freedom." Professor Richard H. Field will moderate the discussion.

Mr. Cohn is former chief counsel of the Senate Subcommittee on Investigations. He toured Europe in Spring 1953 hunting "subversives" in the Voice of America. In the spring of 1954 he was a main figure in the Army-McCarthy hearings, serving as adviser to his chief, Sen. Joseph R. McCarthy (R., Wis.), who was assuaged of having pressured the Army in an attempt to win favored treatment for Cohn's close friend, G. David Schine, A.B. '49. Mr. Cohn resigned his committee post the day before a committee majority was scheduled to dismiss him as chief counsel. He is now in private practice in New York City.

Allan Barth, an editorial writer for the Washington Post, is the author of "The Loyalty of Free Men," and "Government by Investigation," presently in the hands of his publishers and scheduled for release April 1. He has served in the Treasury Department and, prior to 1943, was with

(See LOYALTY on page three)



ELECTED TO POSITIONS ON LAW REVIEW

Seated (left to right): Mansfield, Shapiro, Sailer, Landau
Standing: Greenblatt, Winterer, Bator, Leinhardt, Esbenshade

Vincent Urges Asian Policy Geared To Influence Neutrals

"It is important that all our action in the Far East be geared more toward improving our standing in the remainder of Asia rather than with a view of retaining any particular military posture," according to John Carter Vincent, former career diplomat and high State Department official.

Although he favors our current "military posture" in Formosa, Mr. Vincent said at the Coffee Hour last Friday afternoon, that the United States should support evacuation by the Chinese Nationalists of Matsu and Quemoy Islands. In support of his position, Mr. Vincent maintained that:

- * By evacuating "these rocky islands" we would not be conceding anything firmly in anyone's possession.
- * If we did enter into a war, we might not be able to limit its scope.
- * These islands are neither essential or important to the defense of Formosa. The advantages to be gained by such a move, Mr. Vincent suggested, would be improved standing of the United States in the eyes of the other Asiatic countries since such action, it is believed, would reduce the chance of war.

In his address, entitled "Focus on Asia" Mr. Vincent stressed the importance of winning such favorable response in Asia as our most desirable strategy, as long as

any action that we take does not weaken our military position.

Thus, our current commitments towards Formosa should be approved not because of any emotional attachment to the Chinese Nationalists, but rather for the strategic and national interests of the United States. Furthermore, although there is no chance that Chiang Kai-Shek would agree to any U.N. plebiscite on Formosa, an attempt by the United States to foster such a plan, Mr. Vincent believes, would have a favorable response in Asia.



John Carter Vincent

Other possible steps toward such a policy include:

- * Greater effort at economic cooperation in the form, perhaps, of long-term low-interest loans rather than outright gifts.
- * More economic aid and without any political "strings" attached. "The Asiatics are hypersensitive about anything that even barely resembles political 'strings,'" he said.
- * We ought to keep our eyes open to little things that might offend the Asians without benefitting the United States. For example, we should refrain from implying that "we're calling the tune in Asia."

Mr. Vincent stressed the importance of early action by pointing to the impending meeting in April of an Asiatic conference, composed exclusively of Asian nations, at which time the policies of and the future relations with the Western Powers will be discussed.

Before presenting his views on what the future policy of the United States in Asia ought to be, Mr. Vincent traced the history of Formosa. A period of questions and answers followed his talk.

(See SECURITY on page three)

Government Security Procedures Evaluated In A Detailed Analysis By Harold Riegelman

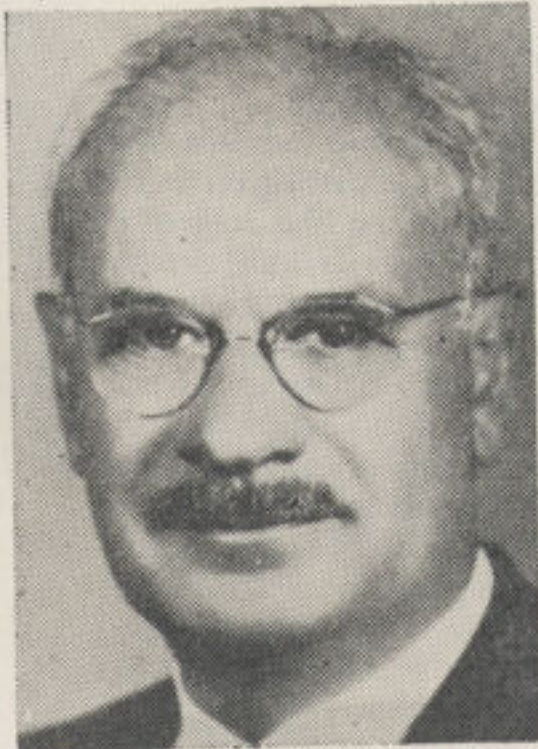
(The following analysis was written by Harold Riegelman of Nordlinger, Riegelman, Benetar & Charney in New York City. It will be continued in the next issue of the Record.)

The problem of internal security is posed by an avowed mortal enemy of our political and economic system, which has demonstrated in other countries a ruthless will and an ominous capacity to infiltrate a target government, subvert it, and enslave its people. In these circumstances, protection of our institutions is our paramount concern. But the genius of those institutions is their purpose and design to protect the rights of individuals. Among those rights are a precise and sufficient statement of an alleged offense, trial by jury, confrontation of accusers, exclusion of irrelevant hearsay, or otherwise incompetent or irrelevant evidence, and of appeal.

The gravity of the Communist threat and the insidious nature of Communist methods quite evidently require some compromise of those rights in the case of government employees who may be security risks. Manifestly, the compromise should be no greater than the situation requires; for, otherwise, we should be unnecessarily sacrificing some of the very things it is our purpose to preserve and protect—namely, the rights of the indi-

vidual against invasion by the state.

The question is: Have we compromised more than is necessary to our security? If so, how can we safely end the excessive compromise and, consistent with maximum national security, accord the accused government employee substantial rights presently denied him?



Harold Riegelman

Criteria for separation from government service trace back to the Lloyd-LaFollette Act of 1912, and have evolved through congressional action (1939 and 1950) and executive or interdepartmental order

(1942, 1943, 1947, 1951, and 1952) into the current doctrine embodied in Executive Order 10450 (1953). The more recent history of this development shows a shift in criteria of dismissal of a Federal employee from "reasonable grounds for belief of disloyalty" to uncertainty that continued employment "is clearly consistent with the interests of national security." In effect, the shift has been from an implicit presumption of innocence to an implicit presumption of guilt. The following discussion is within that framework.

Information tending to show continued employment to be inconsistent with national security under Order 10450 relates broadly to disloyalty, immorality, personality weaknesses, and exposure to coercion. These as they are applied may be summarized as follows:

Disloyalty would include overt acts, adversely affecting the national security or obstructive of the orderly carrying out of our government policy and serving the interest of a foreign government, advocacy of violent overthrow of the government, or association with organizations or individuals identified with subversive activities or activities inimical to the interests of the United States.

Immorality would include untruthfulness or serious misconduct.

(See SECURITY on page three)

Bator Elected Review Chief

Paul M. Bator, 2L of New York City, was elected the new president of the *Harvard Law Review* Monday morning after more than 30 hours of balloting. A graduate of Groton School, Groton, Conn., and Princeton, he obtained an M.A. degree in history at Harvard in 1953. He is a member of Lincoln's Inn and Kent Club. His brother, Peter A. Bator, LL.B. '54, was also a member of *Law Review*.

Mr. Bator will succeed Dennis G. Lyons, 3L of Passaic, N.J., as president of the organization.

Nine other officers were selected by Bator to complete the hierarchy of the new *Review* staff. Taking over as case editors are Howard A. Shapiro, 2L of Albany, N.Y., and Walter F. Leinhardt, 2L of New York City. Note editors for next year's volume will be Henry P. Sailer, 2L of Wellesley Hills, and Ray H. Greenblatt, 2L of Milwaukee, Wis. Selected as article editors were Albert I. Borowitz, 2L of Waretown, and Richard D. Esbenshade, 2L of Port Clinton, Ohio. Developments editor is W. Loeber Landau, 2L of New Orleans. Philip S. Winterer, 2L of Short Hills, N.J., was named as treasurer and John H. Mansfield, 2L of San Francisco, was selected as book review editor.

The new officers will not officially take over until next year, although they will assume much of the responsibility for the last two issues. The term of office is designated by volume number, the tenure of the officers-elect being Volume-69.

The new president was selected by a two-day process of elimination. All third-year members of the Board and, as they were eliminated, second-year men joined in the discussion and balloting, Bator being elected early Monday morning. Guided by the recommendations implicit in the preferential voting and other advice, he then selected the remaining officers.

Review Resolution

In a recent resolution, the Board of Editors of the *Harvard Law Review* changed its method of selection of new third-year candidates for Board membership. Under the new system each candidate will be ranked according to either his second-year average or his average for the first two years, the higher average being used in the ranking.

Previously approximately half of the third-year candidates were selected on the basis of the second-year averages and the other half on the basis of a combined average. It is believed that the new system will give more weight to second-year marks.

All Classes Invited To Seavey Dinner

First-year and second-year students have been invited to attend the testimonial luncheon which will be held in honor of retiring Professor Warren A. Seavey on Tuesday, March 15, Fred Smithline, 3L of New York City, has announced. This announcement seems to mean that ticket sales to third-year students have not gone as well as hoped.

Over 100 tickets have been sold to the affair, which will be held at the Hotel Continental in Cambridge. Tickets will be sold in Harkness Commons from 11 a.m. to 2 p.m. on March 4 and 5. At the luncheon, Professor Seavey will be introduced by Dean Erwin N. Griswold.

The affair is being sponsored by the Seavey Luncheon Committee, which consists of Martin Bresler, Robert Booser, Michael Egan, Paul F. Glenn, Harry Heher Jr., Remsen Kinne II, Raymond King, Sanford Liebschutz, Dennis G. Lyons, Peter Mosher, Charles Rippey, Fred Smithline, Chas. H. W. Talbot and William Walsh, all third-year students.

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Open Court

Since Mickey Jelke's successful appeal from a conviction for compulsory prostitution, there has been an unusual amount of discussion of the accused's right to a public trial. Jelke's conviction was reversed and a new trial ordered by an intermediate appellate court in New York on the grounds that his rights had been violated when the public was excluded during the presentation of part of the prosecution's case.

Some judges and other legal scholars have been giving this decision their begrudging approval with the reservation that only the accused enjoys the right to a public trial, and that the public, and particularly the press, has no right of access to a criminal trial.

We think that the press and public have a right to be present at criminal trials, and that the appellate courts ought to examine closely legislative or judicial efforts to keep the public out. Several basic policies of our system of government require that conclusion.

First. The defendant himself has a right to have the public at his trial. As Wigmore says (6 Wigmore sec. 1834), the presence of the public tends to bring new witnesses and new evidence into the trial. Witnesses are more likely to tell the truth in public. Furthermore, judicial abuses of discretion, or bias on the part of the jury, become more difficult when the public can oversee the entire trial.

Second. The public has a right to know what its courts are doing. Judges are hired by the people, and they are engaged in enforcing law that has at least the approval of the people's representatives. No government activity affects the individual more directly than the enforcement of the criminal laws, and the public has a right to know that that law is being enforced fairly.

Third. As a corollary to our second argument, the courts must keep the popular confidence if they expect their decisions to be respected. A decision based on evidence that apparently cannot stand the light of day is always suspect.

Fourth. Under present conditions, the general public cannot attend many trials. There are too many people and the courtrooms are too small. The only way for the public to learn of the courts' activities is through reports of friends, or, more effectively, through the public press. The only adequate way for the public to be represented is through the press.

Fifth. The concept of free press includes the right to report and to comment upon affairs of state in all branches of government. There is nothing in the judicial enforcement of the law that makes it less susceptible to the press' reporting and comment than the affairs of the legislature or the executive. Despite the exigencies of military security and secret diplomacy, most governmental activity is open, public, and free for the press to report.

If a judge happens not to care for a newspaper's approach to or its emphasis on a particular case, has he any better right than any other public officer to prevent the press from reporting on his activities and on the case that is going forward in his courtroom? The trial judge in the Jelke case was greatly disturbed by the newspapers' handling of the case. His taste was offended. But as long as the press is to be free, there will be disputes as to the good taste of particular newspapers. Judges are not appointed arbiters of journalistic decency. We agree with the opinion of the New York appellate court—"A judge may have his personal opinion as to the good taste of what may appear in public print but when serving as a judicial officer he has no right in a situation such as this to restrain or dictate what portion of court proceedings shall be made available to the reading public."

Fair trials for defendants, public trust in the courts, and a free press require that courts be kept open to the public. Appellate courts should look with a jaundiced eye on decisions and statutes that attempt to close the doors of the courtrooms against the people.

Gallery

RUDOLPH SHAEFER

Amtsgericht Judge



Rudolph Shaefer, a 42-year-old judge from Hamburg, Germany, is a Research Fellow working with Professors Benjamin Kaplan and Arthur von Mehren on a comparative study of German and American civil procedure. He plans to spend a total of 11 months at Harvard before returning to Germany.

Thus far Judge Shaefer has spent most of his time in his office in Langdell mastering the complexities of American civil procedure and improving his English legal vocabulary. Because of his preoccupation with this task he hesitated to express any opinion about the comparative merits of the German and United States systems at the present time.

Different Roles For Judges

The judge in Germany plays quite a different role in the judicial procedure than in the U. S. The German jury was abolished in civil cases in 1870 and in criminal cases in 1924. Consequently, the work load of the individual judge has greatly in-

creased, which in turn is reflected in the increase in the total number of judges. The highest German court consists of no less than 80 judges working in panels of five. The jury function has in part been assumed by lay judges, who have equal power with the law judge in criminal cases.

The German judge gains his position through a civil service system which has existed since the latter part of the 19th century. The increased scope of the grounds for removal from office was the only change under Hitler. One who plans to be a judge must take seven semesters of university training in the law. Next comes an examination which approximately 70 percent of the applicants pass. Then comes a three-year period of working in the courts, followed by a second examination for the final selection of the judges. The result is that German judges are a very young group of men as compared with their Anglo-American colleagues.

Three Levels Of State Courts

The highest level of the German judiciary is the federal court. The lower three levels are state courts. The system functions smoothly as an organized whole and does not run into the problems of the American federal-state relationship. Judge Shaefer himself served on the *Amtsgericht*, or county court. He is currently a provisional appointee to the intermediate appellate court.

Judge Shaefer expressed enthusiasm about the development of the supranational court, of which the Nuremberg Tribunal and Saar Court are outstanding examples. Although there was some strong sentiment in both Germany and the United States that the Nuremberg Tribunal mixed retribution with ex post facto justice, the trend toward greater international responsibility as represented by these courts was viewed by the judge as a good omen. He spoke humorously of the occasion when he was called from Belgium to Nuremberg as a witness for the defense. However, he was not actually called upon to testify. In addition to mining coal as a P.O.W. in Belgium, he has also served as an Italian interpreter for the German army.

Judge Shaefer lives with his wife in Cambridge. He hopes to augment his knowledge about the United States gained in his 1952 visit.

N.E.S.

Letters to the Editors

TO THE EDITORS:

The report of Dean Shulman's Oliver Wendell Holmes Lecture in your issue of Feb. 17 which has just come to my desk prompts me to record some reactions and thoughts which occurred to me as I listened to his dissertation on that occasion.

The Dean prefaced his remarks with the observation that Section 301 of the Labor-Management Relations Act of 1947, authorizing suits for violation of contracts between an employer and a labor organization, is unwise, in addition to being unconstitutional in his judgment. (Why?) He then proceeded to elucidate that which is obvious to anyone experienced in the field of labor-management relations, namely, that arbitration is the only feasible method available for implementing and enforcing labor contracts, the terms of which by their very nature must be left quite general in many respects. However, the Dean oversimplified the problem or, perhaps more accurately speaking, he overlooked or ignored a very elementary problem—what happens if the union flouts the contract and refuses to arbitrate? I doubt that even the Dean would deny that this happens all too often. Dean Shulman concluded with the observation that the law had best abdicate the field of labor relations, although he was kind enough to preserve the role of the lawyer. What the special competence of the lawyer would be in an area of human relationships in which law becomes an impertinence remains a mystery.

Labor Legislation

The logic of the Dean's position would lead to a repeal of all labor legislation, returning the problem to the arena of economic warfare—as John L. Lewis has persistently advocated—otherwise he must frankly acknowledge that he favors a sweeping exemption of labor unions from all legal controls, as they are now exempt from the anti-trust laws. In enacting the Wagner Act Congress imposed a legal obligation on employers to bargain with the representatives of its employees and to enter into written contracts covering the terms of their agreement. This obligation is buttressed with sanctions that are very real indeed. It is easy to understand, and not too difficult to accept, the one-sidedness of the original Wagner Act which was passed by Congress in a time when labor was virtually helpless against even the unorganized, much more so against the combined, power of capital. But to perpetuate such a discriminatory policy in this day and age when the power of labor in the largest industries is as great, if not greater than, that of capital, and as against the medium-sized and small enterprises is overwhelming, is palpably unjust and unwarranted.

With the approximate balance of power now existing between labor and industry it is not unreasonable to hold unions to the same degree of accountability that society imposes upon all other

individuals and groups. To argue otherwise is to champion an hegemony of the working classes—a program which very few would explicitly espouse in this country today.

I should like to return for a moment to the substance of Dean Shulman's remarks. He proved, quite conclusively, that the techniques of legal processes are inappropriate to the ordinary interrelationship of labor and management. Discharges, promotions, leaves of absence and other such recurring problems can only be administered by a voluntary system of arbitration. But should an employer be required to arbitrate his right to recover damages resulting from violence, or an unlawful sit-down, during an authorized strike? Or, to put it another way, should unions be immunized against liability for such conduct by its duly authorized agents? Again, if a union refuses to arbitrate a dispute as provided by the contract, and, in disregard of a no-strike clause, nevertheless resorts to a strike, what recourse or remedy, if any, would Dean Shulman afford to the employer?

Labor has come of age and must be held to the standards of mature conduct, and be subject to the same sanctions that restrain all other segments of society. Mutuality of responsibility is no less appropriate in the field of labor-management relationships than it is in the inter-relationships of all other groups in our society. Politicians may shrink from such a policy—we have a right to expect more objective and honest thinking from our professors and social scientists. The law does have a function to perform in this area. It must always be the final arbiter of social conflicts, including conflicts between labor and management.

Benton's Remarks

While I am in a letter-writing mood may I comment on certain remarks of former Senator William Benton who appeared as a participant at the Harvard Law School Forum on the subject of Ethics in Politics. I do so only because Senator Benton too, by clear implication, attributed a special sanctity to labor which the facts of life belie. If the Dean spoke out of professorial naivete (which is difficult to accept in view of his experience) the Senator was probably talking for political effect. Let me be explicit: in commenting on the Corrupt Practices Act, Senator Benton sarcastically referred to the manner in which corporations deployed their funds to win political friends and influence elections. Unquestionably the charge is true; but was it ignorance, oversight, or chicanery which caused him to overlook the stupendous political contributions of the United Mine Workers and other labor organizations?

My plea is simply for clear, honest, objective and impartial thinking in this very important area of national life.

JOSEPH B. WOLBARSHT, LL.B. '28

Sub Judice

BAKER v. NEW JERSEY

1 Cranch 138, 2 L.Ed. 60 (1802)

MARSHALL, C. J., delivered the opinion of the Court.

The order granted by the New Jersey Court would restrict Baker's activity within the State of New Jersey so long as he shall fail to comply with the Legislative Act of 1768. So far as it appears from the record there may not . . . properly be raised any objection as to the validity . . . of the Act in respect to the competency of the agencies involved. But we are not at all concerned with that question here.

The issue of this case may succinctly be put as follows: Whether the State of New Jersey, presuming to act in accordance with its Sovereign authority, as properly delimited by the applicable parts . . . of the Constitution of the United States of America, may issue, or cause to be issued, against a citizen of another State an order as forcing upon that individual, who is also a citizen of the United States, and, as such, entitled to its full protection and to the protection of the laws made in pursuance to it, the jurisdiction of such commercial regulation as to make him, if not in the actual position of open defiance of the statutes of his own State, then in such a questionable relationship with the situation brought about by acts of the Congress . . . that he may find himself flaunting the very laws whose manifold purposes were to protect him against such an encroachment, the State upon the Federal and the National upon the State, as well as the State upon the State?

The first question to be determined is whether Congress acted with valid authority under the Constitution. An examination of that Noble Document will immediately disclose an attitude, as well as a literal discretion, to the arm of the Federal Government that was destined by that Document to protect the Rights given by the People of the United States to their Government. But the argument is not directed to this. It rather addresses itself to the words of the enabling direction: ". . . and the Congress shall have full Power to make . . . such . . . enactments as to facilitate the operation of the . . . designated functions." By asserting that by specifically stipulating "designated functions," the Congress is limited to the enumerated authorizations, it is contended.

But this argument fails to take into consideration the meaning of the word "full." Full power can mean no more and no less than the actual necessary degree of activity that is normally to be found in any Legislative assembly exercising the same or similar functions. Can anyone doubt that in the broad expanse of this Great Republic, stretching from the Chesapeake to the Monongahela, such limitations as . . . would be imposed . . . would ineffectuate the very principles and purposes underlying the Constitution? Full means exactly what it says. It does not mean sufficient, or adequate or merely necessary, but boundless, infinite, as is the common understanding of the word.

Much careful attention has been paid to the arguments of the very able counsel for the great State of New Jersey, for they are indeed attended by a most careful and, we feel, valid interpretation of section Five, yet though we are greatly impressed by the great scholarship and learning that is so evident on the Bench of the Supreme Court of New Jersey, the answer to the second exception of the writ was made in such manner that, though it does not violate any of the proprieties of . . . procedure, yet it is so attendant with evidence of tardy filing as to bring in serious question its standing under the Certification requirement of the New Jersey Judiciary System, that we must reluctantly refrain from consideration of this crucial point.

Although we found in *Parker v. Connecticut* that a similar statute was unconstitutional, it was upon grounds which, although closely related in facts, were far removed from a more general consideration. We need not tarry here. It all comes to this: Is New Jersey to be accorded a greater degree of leeway . . . than Vermont, or surrender . . . its Power?

REVERSED.

E. L. C.

Recently Published

CONSTITUTIONAL LAW

Meyers, S., Status of Evidence Obtained by Illegal Search and Seizure in the State Courts. 34 B.U.L. REV. 450-63.

CONTRACTS

Intervening Death or Insanity in the Offeror. 23 FORD. L.REV. 340-51.

Sparks, B. M., Enforcement of Contracts to Devise or Bequeath After the Death of the Promisor. 39 MINN. L.REV. 1-47.

Sparks, B. M., Legal Effect of Contracts to Devise or Bequeath Prior to the Death of the Promisor, 53 MICH. L.REV. 215-32.

Sparks, B. M., Problems in the Formation of Contracts to Devise or Bequeath. 40 CORN. L.Q. 60-80.

Indiscriminate Handling Of Data A Fault In Procedure

(Continued from page one)

*Personality weaknesses would include sex perversion, excessive use of alcohol, drug addiction, illness affecting judgment over a continuing period, unreliability, or untrustworthiness.

*Exposure to coercion against national security may arise from immorality, personality weakness, or relatives residing in Communist-controlled areas, or in custody there.

Each agency is responsible for the application of these criteria to the employment of its own employees.

Procedures Described

The steps normally leading to final termination of employment or reinstatement under these criteria are: investigation, service of charges and suspension without pay, opportunity for the employee to answer in writing the charges, request for a hearing, hearing before a security board (in the case of a permanent employee), advisory opinion by the board, and final determination of the agency head. Withdrawal of charges or a favorable determination by the agency head after hearing results in reinstatement with back pay.

Investigation: This is mainly a function of the F.B.I. which receives and collates, but is not expected to evaluate, information bearing on the criteria defined in the Executive Order. The information may be secured directly from eyewitnesses or from informants who convey what was alleged to have been told them by eyewitnesses or hearsay sometimes repeated by others and reported to the informant. There is evidently seldom any attempt made to verify such reports at the reported source. Where the alleged risk rises out of a reported association, the association may be with individuals or organizations actually identified as subversive or only reported as having been subversive, the quality of such report often being unevaluated. Newspaper reports, names mentioned at legislative hearings and other casual sources all go into the F.B.I. hopper.

Data Are Unverified

The dossier so developed goes to the agency's head or to his security officer. Considering the indiscriminate manner in which the data are sometimes assembled, it would seem that the prescribed procedure should require verification, when practicable, by the investigating body, whether F.B.I. or otherwise. The frailties of human nature being what they are, the source of the transmitted data invites damaging statements which often could have been proved worthless by the most casual testing. Yet these come before the head of the agency or his security officer with the same emphasis as the most damning and trustworthy evidence. And he in turn is under a duty to suspend the employee if the information thus transmitted to him indicates that the continued employment "may not be clearly consistent with the interests of the national security, if he deems such suspension necessary in the interests of the national security."

The first step in the security program, namely the investigation, affords opportunity for greater fairness to the employee than is presently provided for. The weight of the burden placed upon him to remove any doubt that he is a security risk, makes systematic effort to evaluate important and desirable in those instances when verification of damaging information is practicable without jeopardy to the security program.

Charges: It would seem elementary that charges in the security cases should be as particularized as the available information permits, and, in any case, should, if admitted or proved, be sufficient to establish that there is a security risk in continued Federal employment of the respondent. Neither of these standards is required to be met.

An example of an unwarranted and prejudicial lack of preciseness is a charge in a case recently closed: "That your name appeared in the files of the Communist Party in Los Angeles in June, 1944." What files? Membership? Newspapers? Files of names of government officials hostile to Communism? Mailing list? Obviously an innocent respondent cannot affirm or deny this charge, nor would proof of his anti-Communist activities and convictions necessarily have any bearing upon the truth or falsity of the charge.

Vague Charges

Identification of the kind of files in the text of the charge would not be prejudicial to national security, but it would enable an innocent respondent to show why it was natural for his name to be in a particular kind of file, or why it should not have been there, or that it was there without his knowledge or consent.

This charge also exemplifies the other deficiency: namely, that the truth of the charge (omitting as it does any allegation of knowledge, consent or contributory conduct) would not necessarily mean that the respondent was a security risk.

Another example of this kind of deficiency is the charge: "That in February, 1938, you were an instructor at Blank College (giving the name and address)" listed by the Attorney General. This "charge" was wholly true. If the implication that the respondent, then a young man, had engaged in Communist propaganda at Blank College or knowingly associated with Communist sympathizers or, indeed that Blank College was then known by the respondent to be a Communist front or agency, had been expressly charged, a violation of a criterion in the Executive Order would have been sufficiently alleged. The charge could have been denied. Thus interpreted, it was, in fact, proved to be unfounded.

Other examples of the deficiencies above noted are legion. It is difficult to see how greater precision in defining the circumstances upon which doubt concerning the risk to national security is predicated, and an explicit allegation of the inferences

Class Of '55

Martin Bresler, 3L of New York City, chairman of the Law School Committee of P.B.H., has announced the names of the seven-member third-year class committee.

In addition to Bresler, who is the ex officio chairman, the members are Charles P. Rippey of Omaha, Neb., June D. Strelecki of Irvington, N.J., Remsen M. Kinne III from Delmar, N.Y., Robert J. Alderdice of Pittsburgh, Pa., Chas. H. W. Talbot of Walla Walla, Wash., and Edgar Masinter of Huntington, W. Va.

which create the doubt would adversely affect the national security. But imprecision or silence in either of these respects unjustly, seriously and unnecessarily handicaps any respondent in the preparation of his defense.

Suspension: Doubt created by unfavorable information normally results in the employee's suspension without pay. It may be argued with some weight that the sensitivity of his position is irrelevant on the ground that even if his position is not sensitive, his Federal employment may give him reader though unauthorized access to information, material or contacts, abuse of which could be prejudicial to security. Granting that, it does not follow that deprivation of pay during suspension, pending a final determination of whether in fact any doubt of security risk will survive further investigation or a hearing, is necessary to national security.

But that action occurring at a time when the employee's good name, his economic and social future and the preparation of his legitimate defense place him most in need of money, can and frequently is catastrophic. The subsistence of the employee and his family for a period of as much as six months (during which he is virtually unemployable), retainer of counsel, the assembly of facts, interviews of witnesses and the preparation for the hearing, are a colossal monetary burden to carry without income. The psychological effect is enormous and can be tragic.

Employees Impoverished

It may well be that this embarrassing impoverishment accelerates the withdrawal by resignation or failure to ask a hearing in cases where the facts justify removal under the Executive Order. But it is also true that it can prevent an employee from asking for the opportunity to prove and from proving that there is no vestige of doubt that his continued employment is well within the criteria set up by the Executive Order.

Appropriate time limits upon the demand for a hearing and upon the respondent's readiness to be heard are or can be fixed. Within those limits, however, it seems peculiarly cruel and unreasonable to visit upon him in immediate effect a penalty which is warranted only if he later fails to meet the established criteria of continued employment. True, having met those criteria, he is entitled to back pay for the period of suspension. But in that period when the outcome in the strongest and best prepared of cases is uncertain and the respondent should be able to concentrate upon his proper defense and meet his personal family needs with a minimum of distracting worry and deprivation, the ultimate receipt of back pay after vindication does not by any means compensate for the long, indeterminate and crippling deprivation.

(To be continued next week)

LOYALTY

(Continued from page one)

the Office of War Information. He has been honored by awards from the American Newspaper Guild, Sigma Delta Chi, and the Hillman Foundation.

Professor Brown, of the Yale Law School, will keynote the forum by explaining the scope of the evening's program and commenting on the Peters Case, now before the Supreme Court. Professor Brown is presently working on a book on the subject of law and security.

Cohn is the second person prominently figuring in the Army-McCarthy hearings to appear in a forum program during the current school year. On Oct. 27 Attorney Joseph N. Welch, counsel for the army spoke in Sanders Theatre on "Reflections on Army v. McCarthy."

Ellington Hits It At Coffee Hour

Duke Ellington played at the Coffee Hour Tuesday, and in three short improvisations indicated why so-called popular music in the United States, in the hands of the better musicians, has left modern academic composers with almost no public.

Ellington's genial and easy improvisations on familiar Ellington tunes combined the most dissimilar harmonic styles and rhythmic textures that one is likely to hear on a piano. In addition to playing like himself, the Duke made sounds like the Dave Brubeck group, and other modernists. Perhaps the most revealing touch was at the end of his first improvisation, when he used the classic style of the late Jelly Roll Morton for a few bars, and then passed on to his own familiar manner.

The contrast between the Duke's plausible dissonances and the brittle sterility of the composers who are learning their craft in the universities leaves it clear that the vital creators of new music in this country are the heirs of the jazz tradition, not the imitators of Stravinsky and Bartok.

Chwt

Yearbook to Honor Seavey and Hudson

The yearbook for 1955 has been given a dual dedication—to retiring professors Warren A. Seavey and Manley O. Hudson, and to the 'devoted and unstinting' tradition of Harvard professorship which they represent.

Also included in the Yearbook is a written tribute by Judge Calvert Magruder to Professor Seavey and a similar tribute to Professor Hudson written by Sir Arnold D. Nair, Chief Justice of the International Court of Justice.

This year's editor Sanford J. Liebshutz, 3L of Rochester, N.Y., announced that the issue will feature a special In Memoriam Section for the late Justice Robert H. Jackson and for the late Judge Augustus N. Hand, LL.B. '94, Professor Paul F. Freund is the author of articles dedicated to Justice Jackson and Judge Hand. The In Memoriam section also includes drawings of the two jurists by Hugh E. Bradshaw, Jr., of Belmont.

The Yearbook will be published and ready for distribution during the second week of April.

Dedication Text

The following is the text of the Yearbook's dedication:

"The distinguished service of the members of its faculty to the school, the students, the legal profession, the country and the world has given to Harvard Law School its fame and distinction. From its earliest times down through succeeding generations of the school's existence such men as Story, Langdell, Ames, Gray, Beale, Williston, Warren and Pound have carried on this great tradition.

"Manley O. Hudson and Warren A. Seavey have exemplified this spirit with their unstinting and devoted efforts. To them and to the tradition they represent, the Editors humbly dedicate this Yearbook."

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Less Student Participation In German Law Education

(This article was written for the RECORD by Manfred G. Bohlig, a graduate law student at Harvard Law School on a Fulbright scholarship. Mr. Bohlig is a graduate of The University of Munich Law School and a resident of Munich.—Eds.)

In comparing and contrasting the legal education in Germany with that in the United States two factors must be kept in mind; first, that Germany is a civil law country, and secondly, that the pattern of all higher education in Germany is somewhat different from what it is here.

Before a German student is admitted to law school he will have gone through several competitive examinations. The first differentiation is made when the brighter students are permitted to enter *Gymnasium* after having attended an elementary school. At the end of nine years' attendance at the *Gymnasium* the state gives an examination, which, if passed, allows the student to enroll at any German, and usually any European university. As a rule only about five per cent of an age-group enter a university. Completion of the *Gymnasium* would roughly be equivalent to the completion of two years of college in the United States.

The change from *Gymnasium* to the University is rather drastic and a first-semester student usually feels quite bewildered.

Upon entering the university a student registers in some faculty; usually humanities, medicine, science, or, if he does not know what to do, law.

It is interesting to note that approximately 10 per cent of the beginning law students are women.

He then is at liberty to select any courses that he wants. Fortunately older law students come to his aid and the student usually manages to take the basic courses first. But, even if he does so, a further difficulty is that the basic courses are not especially suited to meet the embryonic proficiency of a legal "greenhorn." Usually the basic courses are also audited by those students who are preparing for their bar exams.

"Despair" in First Year

As a result the first-year student does not really understand his courses and lives in a state of deep despair. I understand, from my American colleagues, that, even here, many of the first-semester students experience much the same bewilderment as they commence the study of law.

The method of instruction at German law schools is also quite different. Usually the courses tend to be more abstract, sometimes almost philosophical.

Neither the case method nor the Socratic method is used. In a civil law country the cases are not to be considered the law, but only the manifestations of it. Therefore, the case method of instruction would not be too appropriate.

Little Contact With Teachers

Classes consist almost exclusively of straight lectures. Inasmuch as students have no assigned seats, the professors rarely gets to know his students by name. He usually asks no questions during class and the students pose their queries after class. So, the student-teacher relationship is much more impersonal, than it is at an American law school.

The active participation of the students in class is more or less limited to a stomping of the feet as the professor enters the room and, again, when he has finished his lecture. This custom, which connotes approval of the lecture, dates back to medieval times, and is usually as a matter of courtesy extended to every professor.

However, if a professor, who by his manner, comments, or standard of teaching, meets the disapproval of the students, who as a rule are very critical, he will be met by hissing and a shuffling of the feet.

I was quite interested to find that the "hissing" privilege is an integral part of

the demeanor here at Harvard Law School.

Students are the same the world over, and German law students are no exception. The one main difference in the life of a student in Germany as compared to the United States is that dormitories are non-existent. However the students get together in the cafes or fraternities and discuss the law and other topics. However, it should be pointed out that the student life depicted in the movie "The Student Prince" passed out of existence along with gas lights.

Only One Examination

The culmination of the years at law school is the final examination, which is the only examination given.

In order to be admitted to the final examination, a student must prove that he has studied law for a minimum period of seven semesters. As most students at least partially work their way through law school, they of course attempt to complete it in the minimum time.

State Runs Test

The examination is not handled by the university, but by the state ministry of justice and it might be described as a "first bar" exam.

In Bavaria, where I was examined, it consisted of six cases, each of which must be solved in five hours. There is also a five-hour oral exam. The cases cover practically the whole law school curriculum; contracts, torts, property, civil procedure, criminal law, commercial law, corporations, negotiable instruments, constitutional law, to list the more important courses.

The successful completion of this exam does not make you a full-fledged lawyer. It merely entitles you to become a *Rechtsreferendar*, that is, in essence, a law clerk.

Employment Guaranteed

During the three and one-half year clerkship, the prospective lawyer is an employee of the state, and as such will work in any department of judicial administration. His duties vary from clerking for a judge to acting as counsel for paupers.

During the time of this clerkship he will work in a municipal court for almost a year; in a court of appeals for a half year, in actual administration for a year; and then for sometime with a trial lawyer or public prosecutor.

At the end of his "trainee program" there is another examination, the second bar exam—which consists of 14 individual examinations and an oral examination. Then, upon successful completion of this examination, the clerk is entitled to practise law, to become a judge, or to embark on a government career.

In evaluating this elaborate clerkship one must take into account the valuable legal and practical training received, while balancing the detriments of a late start on a career and very nominal compensation. However, this clerkship occasionally permits collateral employment and some of the clerks hold part-time jobs with law firms, banks, and insurance companies.

I regard myself as very fortunate to be able to spend a year here at Harvard Law School. It is quite enjoyable to delve into the common law and the intricacies of stare decisis, and at the same time to carry on my comparative legal studies.

Unfair Competition Featured In Review

The forthcoming March issue of the *Harvard Law Review* devotes over 100 pages to a comprehensive treatment of the law of trade-marks and unfair competition.

Centered around the implications of the Lanham Act of 1946, the article also deals with the common law protection afforded to this area. Entirely student written, the study is believed to be unique in its concise, but comprehensive treatment of the subject. For the past several years the *Review* has run an annual feature dealing in some major area of the law.

Two independent articles are also included in the March issue. The lead article is "Pressure Groups and the Revenue Code: A Requiem in Honor of the Departing Uniformity of the Tax Laws" by Professor William L. Casey of Northwestern University Law School. It deals with various examples of favored tax treatment.

The second article is "Applicability of American Law to Overseas Areas Controlled by the United States" by Sedgwick W. Green, LL.B. '53. Mr. Green reviews three major Supreme Court decisions on applicability of United States law to leased bases outside the continental United States and refers to the applicability of wage and hour laws and other federal statutes in trust territories, Canal Zone, Guantanamo Bay and the "historical" possessions such as Alaska and Hawaii.

The March issue will continue in the hands of the old board. The newly-elected editors are to assume positions later in the year.

AMES FACTS

(Continued from page one)

After about a year, the Ingersolls began adoption proceedings. The guardian ad litem, who was appointed as a matter of course to protect the minor's interests, recommended that the petition be denied, citing the adoption statute and the difference in the religions of the mother and the Ingersolls, as his grounds.

Catholic Foster Parents Available

The guardian ad litem's report said that the director of a Roman Catholic adoption agency told him that the agency had the names of at least 20 Catholic couples who were willing to adopt a child like Joanne. They were of good character and of as good or better financial status as the Ingersolls.

Until Joanne went to live with the Ingersolls, she had received rudimentary Roman Catholic training. The Ingersolls had given the child no religious indoctrination; they testified below that they intended to bring up the child with "a broad philosophical background"; they intended the child to follow her own conscience in religious matters.

Although the Ingersolls' petition was denied, the natural mother had consented once to the adoption, and had raised no religious objections.

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Two Seminars Make Tour Of New York Stock Exchange

On Monday, Feb. 28, 25 members of Professor Louis Loss' seminar in "Regulatory Aspects of Corporate Finance" and Professor Laurence C. B. Gower's seminar in "Problems of the Management-Shareholder Relationship" went to New York City to observe the New York Stock Exchange. A luncheon was followed by a visit to the Gallery, Ticker Room, and Quotation Department.

The students then assembled in the Board of Governors Room to hear a discussion of Exchange operations by heads of leading departments. The speakers were three vice presidents and an assistant vice president of the Exchange. Messrs. Borneman, Coyle, Vanderbeck, and Cassidy of the Listing, Member Firms, and Floor Procedure departments and the Stock Clearing Corporation addressed the Harvard students.

The seminars of Professors Loss and Gower have had joint meetings on several occasions. Professor Loss taught substantially the same seminar in SEC Aspects of Corporate Finance at Yale from 1947 to 1952 while serving as Associate General Counsel for the SEC. Mr. Loss made the annual

visit of students to the Exchange a part of his Harvard seminar.

As a sideline, five of the students paid an involuntary visit to a Connecticut traffic court on their way to New York, but emerged in good spirits after justice was done.

"Market Place, U. S. A." Film at Bull and Bear

Mr. Eugene Grummer, manager of the Textile Fiber Department of Merrill Lynch, Pierce, Fenner & Beane, will address the Bull & Bear Club this afternoon at 1:40 p.m. in the Wheeler Room of Holmes Hall. His topic will be "Commodity Futures Trading."

A half-hour film entitled "Marketplace, U. S. A." will preface his talk. The Merrill Lynch booklet, "How to Hedge Commodities" will be distributed at the door.

The current issue of *Ticker-Tape*, the Club's publication, contains a lengthy article by Paul F. Glenn, 3L of Sharon, Pa., on the subject of Mr. Grummer's talk.



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