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THE PROGRESS OF THE LAW

U. S. SOLDIER MUST STAND TRIAL IN JAPAN

IN an unanimous decision, the United States Supreme Court has held that William S. Girard, an American soldier stationed in Japan, must stand trial in that country on a charge of manslaughter for the killing of a Japanese civilian.

Girard had maintained that forcing him to stand trial in a Japanese court violated his Constitutional rights. On the other hand, it was the Government's contention that the status-of-forces agreements which the United States has with thirty-nine countries, including Japan, were constitutional and, in the Court's opinion, such treaties were "exclusively for the determination of the Executive and Legislative Branches."

Secretary of Defense Wilson indicated that the United States would pay for defense counsel and that an official observer will attend the trial to report on its fairness.

NEW TRIALS ORDERED FOR CALIFORNIA COMMUNIST LEADERS

FOURTEEN California communist leaders had been convicted for violation of the Smith Act and sentenced to 5 years' imprisonment in 1952. They had been accused of (1) conspiring to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence and (2) conspiring to organize, as the Communist Party of the United States, a society of persons who so advocate and teach.

Speaking through Mr. Justice Harlan, the court held that the judge's charge at the 1952 trial was fatally defective in that he instructed the jury that "urging" the "necessity" and "duty" of violent forcible overthrow was a crime. The court in disagreeing with the trial judge, held that the crime as he described it was no crime at all. In Mr. Justice Harlan's words, "the essential distinction is that those to whom the advocacy is addressed must be urged to do something now or in the future rather than to merely believe in something." Apparently what the court was objecting to was the district judge's failure to use the key phrase "incite to action".

What was probably more important in its decision was the narrowing of the meaning of the word "organize" which appears in the Smith Act. Justice Department lawyers had argued that the meaning of "organize" includes the recruiting of new members into the Communist Party, the forming of new units, and the regrouping or expansion of existing units. Mr. Justice Harlan said that the word refers only to acts

involved with the creation of a new organization and not those performed in carrying on the activities of one already formed. Therefore, since the United States Communist Party was founded no later than 1945 and the defendants were indicted in 1951, the "organizing" indictment was barred by a three year statute limitation.

Justices Black and Douglas felt that the majority should have gone all the way and declared the Smith Act unconstitutional. Black referred a return to the "clear and present danger rule" of Mr. Justice Holmes. In his words, "the First Amendment provides the only kind of security system that can preserve a free government—one that leaves the way wide open for people to favor, discuss, advocate, or incite causes and doctrines, however obnoxious and antagonistic such views may be to the rest of us."

LIMITATION OF THE POWER OF CONGRESSIONAL COMMITTEES

IN a case of enormous significance, the United States Supreme Court has just held that the First Amendment to the United States Constitution is violated when a witness before a congressional committee is interrogated solely for the sake of interrogation. In reversing the conviction of John Watkins, who refused to identify old associates to the House Un-American Activities Committee and was accordingly adjudicated guilty of contempt, Chief Justice Warren held that his First Amendment rights had been violated. According to Warren, "no inquiry is an end in itself; it must be related to, and in furtherance of, a legitimate task of the Congress. Investigations conducted solely for the personal aggrandizement of the investigators or to 'punish' those investigated are indefensible . . . we have no doubt that there is no congressional power to expose for the sake of exposure."

On grounds generally following the Watkins pattern, the court reversed the 1954 contempt conviction of University of New Hampshire instructor Paul Sweezy. Sweezy had refused to answer some questions put to him by New Hampshire's Attorney General acting on authorizations from the State Legislature. As Chief Justice Warren put it, "we do not now conceive of any circumstance wherein a state interest could justify infringement of rights in these fields."

VIRGINIA LOSES SCHOOL PLEA

THE United States Supreme Court has rejected Virginia's appeals from orders of lower federal courts enjoining enforcement of racial segregation by local school boards. Treating the appeals as routinely as possible, the Court grouped them with 23 others in its list of orders denying Writs of Certiorari.

This is a serious blow to Virginia's

policy of "passive resistance" to racial integration in its public schools. By its decision the Supreme Court rejected the state's contention that a Federal District Court has no power to enjoin a local school board without the state's consent to be sued. It likewise rejected the contention that the Negro plaintiffs had not exhausted their state administrative remedies for filing suit in the federal courts and that the district judges involved had abused their discretion.

COURT CONGESTION AT 57 YEAR LOW

PRESIDING Justice David W. Peck of the Appellate Division has just announced that the Supreme Court of New York County has reduced calendar congestion to its lowest point in 57 years. It has also cut delay in jury trials of personal injury cases to the shortest period in 37 years. As an example of the reduction in congestion Justice Peck indicated that the backlog of cases awaiting trial, which had been 8,000 in 1900 and had grown to 15,000 in 1950, was at present 3,000. Delay in personal injury cases in which a jury trial was demanded had been reduced from 49 months in 1950 to 19 months, the shortest period since 1920.

However, Mr. Justice Peck predicted that delay would increase again in the future unless fundamental reforms were made. He recommended building new court houses, increasing the number of judges, jurors and court attendants, and qualification of the right to trial by jury.

A TOOTH FOR A TOOTH

RECENTLY City Court Justice George Starke rejected the long standing New York rule that if a store or restaurant sells contaminated food to a purchaser and a third person suffers damage as a result, the third person has no legal recourse against the seller in breach of warranty.

The case in question involved a Miss Myra N. Conklin, who was the guest of Mrs. Mary Lehr at the Waldorf Astoria. Miss Conklin bit into a roll which contained a piece glass and caused the loss of her front tooth. She sued the hotel and, despite the fact that precedent was against her, was awarded $3,000 for the loss of her tooth.

According to Judge Starke, "A contractual relationship existed between the plaintiff and the defendant long before payment of the restaurant check. An implied contract was formed when plaintiff and her friend became patrons of the restaurant, placed their orders for food and their orders were accepted. At

that moment, an implied obligation on the part of both the plaintiff and her friend was individually created to pay for whatever was individually ordered. Simultaneously, the defendant impliedly agreed to serve each of them food fit for human consumption."

If Justice Starke's opinion is upheld on appeal it might have far-reaching results. The long standing requirement of privity between injured consumer and vendor will have been eliminated or at least exist in a new frame of reference.

SUPPORT BASED ON FATHER'S MEANS

THE New York Court of Appeals has ruled that the father's station in life is the prime factor in awarding financial support for a child born out of wedlock. In so deciding the court has rejected the long held concept that payment should be based on the mother's means regardless of what the father is able to pay.

The case concerned the support of a child born to a $65.00 a week laboratory technician. The admitted father is an international business man worth many millions of dollars. The mother had appealed her case on the ground that the lower courts had not taken testimony on the father's financial status. The father argued that the mother's station in life is the sole consideration and whether the father is able to pay more is completely immaterial.

Speaking through Judge Adrian T. Burke, the Court of Appeals stated that "if such were the case it would mean that an illegitimate child born to an impoverished woman . . . would have to suffer the added misfortune of meager support regardless of the father's ability to afford a comfortable or advantageous existence."

ASTROLOGER'S MARKET TIPS LEGAL

THE New York Supreme Court has gone on record that it is legal for an astrologer to publish stock market predictions based solely on the stars and planets. However, it added that these forecasts become fraudulent when they are founded on genuine market analysis.

The case involved an astrology magazine which stated that certain well known securities were affected by movements of celestial bodies and went on to indicate the future of the stocks concerned. However, the magazine also included market analysis as a basis for its forecasts. Therefore a permanent injunction against such forecasting was signed by Justice Benedict D. Dineen because, in his opinion, the forecasts were founded on "a haphazard mixture".

JET NOISE NO GROUND FOR SUIT

A KANSAS Federal judge has ruled that there is no cause of action against the United States for noise caused by jet bombers. According to District Judge Delmas C. Hill, the public is not entitled to collect for "inconvenience, annoyance, disturbance or noise" of jet airplanes.

The plaintiffs, Mr. and Mrs. Roland E. Fitch, whose home lies under the flight pattern of McConnell Air Force Base, Wichita, Kansas, had sued the Government for $5,000.00 as claimed depreciation of their home because of the jet flights. Judge Hill held that these flights did not constitute a taking of property rights without due process of law. In his opinion the flights were not frequent enough or low enough to interfere with use of that property or cause substantial damage.

PRISON OFFER OBTAINS NEW HEARING

IN a 5-3 decision the United States Supreme Court recently held that Caryl Chessman, who has been in San Quentin's death house since 1948, could have been represented by counsel at a District Court hearing in 1956. That hearing was to determine whether he was entitled to a new trial on the ground that there had been fraud in the preparation of the state court records of his original trial.

Speaking through Mr. Justice Harlan, the Court's majority held that because Chessman had not been represented, he had been denied his Constitutional right to due process of law. Chessman's main argument is that the trial transcript that was submitted to the California Supreme Court on his appeal from a death sentence was "prejudicially incomplete and inadequate." The issue arose after the original court reporter died before he could transcribe all his shorthand notes. At the suggestion of the Deputy District Attorney, another stenographer was hired to complete the transcription. As Mr. Justice Harlan noted, the substitute reporter was an uncle by marriage of the Deputy District Attorney in charge of the case.

While in San Quentin prison, Mr. Chessman has written two books: "Cell 2455, Death Row" and "Trial by Ordeal."

NECROLOGICAL

THE NEW YORK LAW FORUM notes with regret the deaths of Denis O'L. Cohalan, a former Supreme Court Justice of the State of New York and trustee of New York Law School, Arthur T. Vanderbilt, Chief Justice of the State of New Jersey, and Zachariah Chafee, Jr., noted scholar and Professor of Law at the Harvard Law School.