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## The Progress Of The Law

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# THE PROGRESS OF THE LAW

## NEWARK RESIDENCE ACT UPHELD

THE New Jersey Supreme Court recently upheld a Newark ordinance that requires all city employees to reside within the city. The unanimous ruling affects 585 Newark employees who reside in surrounding communities.

The suit began in 1956 when 15 nonresident city employees claimed that the ordinance was unconstitutional. Their contention was upheld by the trial court, only to be reversed by the Supreme Court. Chief Justice Weintraub, who wrote the opinion, stated that the question was not "whether a man is free to live

where he will (but) whether he may live where he wishes and at the same time insist upon employment by the government." There is a "common acceptance of the proposition," he said, "That the Legislature may well find the public interest is advanced by residence within the political unit which provides the pay."

This case is of interest in New York in view of the fact that the Legislature was asked to modify the Lyons Law to permit New York City policemen and firemen to live outside the city limits.

## SUPREME COURT HEEDS CRITICISM

IN view of the recent criticism of the United States Supreme Court by the American Bar Association, it is interesting to note that the Court does respond to criticism. One point of controversy has been the court's occasional practice of summarily reversing a lower court decision without hearing argument or receiving full briefs.

This practice was severely criticized by Harvard Law School Professor Ernest J. Brown in an article published in the Harvard Law Review. Prof. Brown pointed out that the Court sometimes granted certiorari and, at the same time, reversed the judgment below. This was recently done with three obscenity

cases in which the Court summarily upset decisions banning a nudist magazine, a magazine about homosexuality and the film, "Game of Love."

The Justice Department, in view of this practice, has been accustomed to ask the Supreme Court for summary reversal of tax lien decisions. However, in view of Prof. Brown's criticism, the Court recently refused a summary reversal in *United States v. Durham Lumber Company*. In granting certiorari, it pointed out the soundness of Brown's article, indicating that it is sensitive to professional criticism of its procedural performance.

### PSYCHOLOGIST LAW FOUGHT

AN action challenging the constitutionality of a law governing the qualifications and activities of psychologists was filed recently in the New York State Supreme Court against the University of the State of New York. The plaintiffs include the National Psychological Association for Psychoanalysis, Inc. and several well-known psychologists.

The suit describes the statute in question as the only one that has no definition of a profession and that neither "psychological services" nor "psychology" are defined. They fur-

ther contend that there are no requirements or provisions for the chartering of schools of psychology. Lacking the definition of a profession, the plaintiffs assert, the statute delegates legislative power to the University of the State of New York in violation of the Constitution.

Asking remedial action that would lead to the granting of diplomas labeled "Certified Psychologists," the plaintiffs pointed out that the law makes no provision for the policing of the practice of psychologists "beyond their areas of competence."

### SCHOOL PRAYER ATTACKED

THE American Civil Liberties Union has attacked the constitutionality of a morning prayer in the public schools of Herrick, L. I. Injunctive relief was sought by five residents of the school district on the ground that the use of the prayer violates the principle of the separation of church and state.

The prayer was recommended for

use in the public schools by a unanimous vote of the Board of Regents in December, 1951, and was adopted in Herrick in July, 1958.

The attorney for the school board, in asking dismissal of the petitioners' suit, contended that the children were not compelled to say the prayer.

### GOLFERS VERSUS DOGS AND CHILDREN

THE New Jersey Supreme Court has held that frustrated golfers have no right to take out their sliced drives, smothered irons or missed putts on the dogs and children living near a golf course.

A couple, who live near the Ramsey Country Club, complained that their home life had become intolerable because golfers were scolding

their children and clubbing their dog when the youngsters and the animal spoiled their concentration by making noise in the vicinity of the third tee.

The Supreme Court upheld rulings by two lower courts barring the country club from using the third tee.

## REVIEW OF CITIZENSHIP

THE Supreme Court has agreed to review a case posing the question whether United States citizens lose their citizenship if they leave the country in war time to avoid military service.

Under the 1952 Immigration and Nationality Act, nationals of this

country, whether by birth or naturalization, lose their citizenship by fleeing the country as a draft evader. This provision has been ruled unconstitutional by a California District Court and was appealed directly to the Supreme Court by the Justice Department.

## FEDERAL JUDGES APPOINTED

PRESIDENT Eisenhower recently announced the filling of two federal court vacancies in this area. He nominated Henry J. Friendly to fill the year-old vacancy on the United States Court of Appeals for the Second Circuit and Lloyd F. MacMahon to the District Court for the Southern District of New York.

Both appointments are subject to confirmation by the Senate.

The two judicial vacancies have been the subject of extraordinary political struggles during the past year. Both posts were filled against the wishes of New York's senior Senator Jacob K. Javits, but it is expected that confirmation will be swift.

## CITY BAR BACKS HIGH COURT

A RESOLUTION supporting the United States Supreme Court has been unanimously adopted by a membership meeting of the Association of the Bar of the City of New York. The resolution called upon all members of the bar to sustain the court's independence as the keynote of an independent judiciary and its authority to interpret the Constitution and the laws of the United States.

It condemned any attempt to create the public impression that there was an attack on the court by the organized bar. Criticism by some

lawyers of the court's decisions on civil rights and internal security, it held, had been misinterpreted as criticism of the court itself by the organized bar.

The most recent criticism on Supreme Court decision by lawyers had come in a report by the American Bar Association's special committee on communism in February. This action was followed by that of the organization's House of Delegates, urging Congress to strengthen legislation dealing with communism and thus to modify the effects of criticized decisions.

## AMERICAN TROOPS IN JAPAN HELD UNCONSTITUTIONAL

THE Tokyo District Court, in a surprise decision, has just held the stationing of American troops in that country to be unconstitutional. The three-judge court, in freeing seven Japanese accused of breaking into the United States Tachikawa Air Base, dismissed the indictment against the defendants on the ground that the base violated a no-war clause in the Japanese Constitution. This clause, which bars maintenance of military forces, was sponsored by

the United States during the post-war occupation of Japan.

The Japanese government indicated that, unless the decision was affirmed by the Supreme Court of Japan, it would not change its policies toward the stationing of American troops in that country. However, if the Supreme Court upheld the District Court's ruling, pressure would increase for the United States to pull out of its strategic Far Eastern bases in Japan.

## DOUBLE JEOPARDY

By a 6-to-3 split, the United States Supreme Court has held that there is no constitutional bar against double jeopardy when "two sovereignties"—a state government and the United States—bring successive prosecutions.

In two cases, both arising in Illinois, the Court's majority indicated that prosecution by one sovereignty did not foreclose prosecution by the other on the same charges. The first case involved one Alfonse Bartkus who was acquitted by a Federal court jury in 1953 on a bank robbery charge and then convicted and sentenced to life imprisonment for the identical crime by an Illinois court. In the second, two defendants pleaded guilty in the state court to conspiring to dynamite some telephone facilities in connection with a union dispute. They were sen-

tenced to three months in prison and then prosecuted in a Federal court for plotting to destroy the same telephone equipment. They were again convicted and sentenced to three-year and one-year prison terms respectively.

In the first case, Mr. Justice Frankfurter stated that the due process clause of the Federal constitution has never been interpreted to include a flat bar against double jeopardy. Secondly, he maintained that the basic concepts of American Federalism would be violated by barring two successive prosecutions by state and Federal governments. Writing for the majority in the second case, Mr. Justice Brennan (who had dissented in the Bartkus case) felt that Federal law enforcement would be crippled if state verdicts foreclosed any future action.

## INTESTATE SUCCESSION LAW CHANGED

GOVERNOR Rockefeller has just signed a bill which changes the Decedents' Estate Law with reference to the distribution of the property of a spouse dying intestate. If the dead spouse leaves a wife or husband surviving and one child, the surviving spouse is entitled to one-half of the estate of the decedent. Under the former law, one-third was the maximum permitted in such a case. If more than one child survives, the old order of distribution still pertains and the surviving spouse can receive no more than one-third of the estate.