Constitutional Law: Mid-Semester Examination (April 1, 1957)

William & Mary Law School
1. By 1950 the practice on the part of states of offering inducements in the form of tax exceptions to industrial organizations to encourage them to move their factories and manufacturing plants from one state to another had reached substantial proportions. Inducements offered by some states, coupled with certain natural advantages, such as plenty of fresh water and natural gas, had caused a large number of concerns to move. The result was a wave of prosperity in the states which offered the greatest inducements and a wave of economic depression for the states from which the concerns were moving.

The federal government enacted a law which provided that any concern which moved a plant from one state to another would be taxed annually by the federal government to the extent of the amount of any state tax exemption arising by reason of the move.

In the debates in the House and the Senate the spokesmen for the bill stated that the purpose of the law was to prevent "raiding" of the industry of one state by offers of tax exemption by other states. They also declared, in response to questions, that the purpose of the law was not to raise revenue. There were no objections expressed to these statements.

You are an attorney for the Department of Justice; prepare a memorandum on the constitutionality of the law.

2. A shrimp fishery extends from North Carolina to Florida. Because of the integral nature of the fishery, many commercial shrimpers, including Mr. Client, a resident of Florida, like to start trawling off the Carolinas in the summer and then follow the migratory shrimp down the coast of Florida. Congress has not legislated on the matter.

South Carolina enacted a statute which (1) provides for a closed season in its three-mile maritime belt of territorial coastal waters beyond the low-water mark during the spawning season, from March 1 to July 1; (2) provides that the waters in that area shall be "a common for the people of the State for the taking of fish" and imposes a tax of 1/6§ a pound on green or raw shrimp taken in those waters; (3) requires payment of a license fee of $25 for each shrimp boat owned by a resident, and of $2,500 for each owned by a non-resident.

Another statute was enacted which requires that all boats licensed to travel for shrimp dock at a South Carolina port and unload, pack and stamp their catch before shipping or transporting it to another State or the waters thereof."

Note: It is settled law that a state in the absence of conflicting federal legislation can exercise its police and taxing powers over its three-mile maritime belt of territorial coastal waters to the same extent as over any of its territory.

You are an attorney for the Department of Justice; prepare a memorandum on the constitutionality of the provisions of both South Carolina statutes.

3. Section 313 of the Federal Corrupt Practices Act, as amended by Section 304 of the Taft-Hartley Act, provides in part: "It is unlawful for any national bank, or any corporation organized by authority of any law of Congress, or any labor organization to make a contribution or expenditure in connection with any election, at which ... to Congress ... to be voted for ..."

Labor Union X in the editorial column of its monthly paper supported one candidate for the House of Representatives over another and also used funds from its general treasury to finance radio and television broadcasts advocating the election of the candidate it favored. The District Court determined that on both counts the Union had violated the political "contribution or expenditure" provisions of Section 313, and the Court of Appeals affirmed. The Supreme Court granted certiorari.

You are an attorney for the staff of the General Counsel of Labor Union X; prepare a memorandum on the constitutionality of Section 313 as interpreted by the lower courts.

In the light of your knowledge of the history of the Supreme Court as a governmental institution and the various schools of constitutional construction, discuss the role of the Court in interpreting the Constitution by commenting on the following quotations (read all the quotations before you begin to write):

"When an act of Congress is appropriately challenged in the courts as not conforming to the constitutional mandate the judicial branch of the Government has only one duty—to lay the article of the Constitution which is invoked beside the statute which is challenged and to decide whether the latter squares with the former." (Roberts, J., in United States v. Butler, 297 U.S. 1, 62)
"We are under a Constitution, but the Constitution is what the judges say it is." (Charles Evans Hughes, as quoted in the Foner biography at 80th)

"... the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it." (Frankfurter, J., concurring in Graves v. New York ex. rel. O'Keefe, 306 U.S. 466, 491)

When asked whether he leaned toward liberal or conservative views, Mr. Justice Blittaker, recently appointed to the Court, replied: "I read the law only for understanding of its meaning, and apply and enforce it in accordance with my understanding of its meaning." (As reported by the AP, March 2, 1957)

"... am quite willing that it be regarded as the law of this court, that its opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported." (Taney, C.J., in the Passenger Cases, 7 Howe. 283, 470)

"I believe it will not be gainsaid the case (Grovey v. Townsend) received the attention and consideration which the questions involved demanded and the opinion represented the views of all the justices. It appears that those views do not now commend themselves to the court. Their soundness, however, is not a matter which presently concerns me. The reason for my concern is that the instant decision (Smith v. Allwright), overruling that announced about nine years ago, tends to bring adjudications of this tribunal into the same class as a restricted railroad ticket, good for this day and train only. I have no assurance, in view of current decisions, that the opinion announced today may not shortly be remanded and overruled by justices who deem they have new light on the subject." (Roberts, J., dissenting in Smith v. Allwright, 321 U.S. 649, 668)