1960

Constitutional Law: Final Examination (1960)

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I. The Civil Rights Act of 1960 provides, in part, that anyone transporting in interstate commerce any explosive with the knowledge or intent that it will be used to damage or destroy any building or any real or personal property for the purpose of interfering with such property's use for educational, religious, charitable, residential, business or civic objectives or of intimidating any person pursuing such objectives, shall be subject to imprisonment for not more than one year or a fine of not more than $1,000.00, or both. State X has also a law of substantially the same effect, though instead of relating specifically to interstate commerce, it provides a like penalty for bringing explosives into X for such purposes. D is arrested by the Sheriff of Y County, in X. The arrest followed a tip that D was dealing in stolen goods, after which without either a search warrant or a warrant of arrest, the arrest was made when D was found counting stocks of dynamite in an abandoned warehouse located adjacent to the city docks. Following arrest, D was taken to the county jail where he was put in a cell which had neither bedding nor sanitary facilities. A deputy sheriff asked D about an hour later for coffee and wash. D requested permission to get in touch with his lawyer, and the deputy told him that the rule was to allow prisoners one phone call and that D could make it. D called but there was no answer, and thereafter the sheriff ordered that the one-call-rule be strictly enforced. D spent the night in the cell, after having refused to make any statement, and complained about the rats which all night ran through the cell. Next morning, after a cup of coffee, D was asked if he was ready to talk, and D made a full confession to the effect that he'd arranged for shipment of the dynamite from State Y into X, and that its intended use was to blow up the Russian Orthodox Church because, "obviously that Church was receiving its orders from Moscow." After the confession, and subsequent arraignment, the Sheriff was able to find sufficient evidence to corroborate the confession. The case proceeded to trial on the basis of this evidence and a conviction resulted. At proper times prior to and during the trial D objected to the introduction into evidence of the dynamite and the confession and to the jurisdiction of the court, which objections were overruled, though the objections were based on the Federal Constitution as well as the State Constitution. Following the conviction D was indigent, because his lawyer, finally contacted after D had pled not guilty at arraignment prior to indictment, charged large fees for defending D at the trial. Now in the state penitentiary, D wants to appeal, and having become something of a jail-house lawyer, demands a transcript of his trial. X provides for mandatory appeals only in capital cases. X authorities refuse, but do allow him free use of a procedure to raise his Federal questions, and appoint a lawyer, to be paid from the court funds, to process this aspect of the case. What should the federal courts do as the result of D's appeal? Why?

II. State X owns a large acreage which it uses for the raising of grapes. X then processes the grapes into wine which it places on the national market in standard-sized bottles as well as selling in bulk. The income from the sale of the wine goes into the general fund of X. C resides in, and operates a distillery in, State Y. C purchases wine from X by the vat, along with other wines from France, also by the vat. X wines and French wines are used by C, in varying quantities for the production of several grades of brandy. When the vats from X and France arrive at C's premises on the Atlantic seaboard, they are placed together in a storehouse, each being identifiable by label. For the distilling process, C draws specific quantities of each wine from the vats, places each into barrels, and then moves the wine to the actual distilling process. C then employs a sales office in State Z staffed by one salesman who forwards orders received at the office to C. C then fills the orders by sending the brandy directly to the customer in Z. The United States has levied an excise tax on the production of the wines in X and on the French wines in the storehouse in Y. State Y has levied a personal property tax on the wines in C's storehouse. State Z has levied an income tax on the net earnings of all foreign corporations which is apportioned solely to the business activity of C in Z. X and C object to paying all of the above taxes on constitutional grounds, and come to you for advice as to whether or not they should pay them. How, constitutionally speaking, will you advise them?

III. Following the decision in Brown v. Board of Education, etc., the NAACP noted that State X passed legislation of the following importance: (1) Public schools should be removed from county control and placed under state control whenever Negro children enrolled in white schools, and such schools should be closed and removed from the school system. (2) The Governor was empowered to make tuition grants to children who could not be assigned to non-integrated schools. (3) No funds should be appropriated for maintenance of any integrated school. NAACP, asserting Federal jurisdiction on the grounds that the legislation violated 14th Amendment rights, that there was diversity of citizenship, and that there was a federal question, immediately sought declaratory and injunctive relief in federal district court against the Attorney General of X to prevent him from enforcing the stated legislation, and to have these laws declared uncon-
IV. Ds were charged in Federal District Court with: (1) Conspiring to advocate and teach the duty and necessity of overthrowing the U. S. Government by force and violence, and (2) to organize, as the Communist Party of the U. S., a society of persons who would so advocate and teach, all with the intent of overthrowing the U. S. Government by force and violence as speedily as circumstances would permit. Government evidence was introduced against Ds to the effect that they had long been members of the Communist Party of State X and that they were employed by a Communist Newspaper. (The Newspaper contained no relevant evidence). Ds requested the court to charge the jury that in order to convict, the jury must find that the advocacy which Ds conspired to promote was of a kind calculated to "incite" persons to action for the forcible overthrow of the Government. This instruction was refused, and the court proceeded to instruct the jury that no conviction should be returned on a basis of mere belief or opinion, and while advocacy that did not include the use of force or violence, however, was less than advocacy, the kind of advocacy required for conviction was not merely a desirability but a necessity that the U. S. Government be overthrown by force and violence and not merely a propriety, but a duty to overthrow the U. S. Government by force and violence. Ds were convicted and they appeal. What result? Why?

V. D, a law student, procured a sound truck in order to publicize a meeting of the "Young Progressives of America" to be held later in the evening. The truck was parked and D stood on a box beside it, using the speaking system. In the course of his remarks he called the President of the U. S. a "Fascist", thereby accused the American Legion of being a "Fascist Gestapo". D's audience which filled the sidewalk and part of the street, was of mixed races, and he urged the Negroes to rise up in arms and fight for their rights. There was some pushing and shoving in the crowd and some angry mutterings. One of the audience told a policeman, "If you won't get that S. O. B. off there, I'll do it myself." Thereupon the police politely requested D four or five times within twenty minutes to end the speech. Upon D's refusal he was arrested for disturbing the peace. The ordinance under which D was tried defined "disturbing the peace" as (1) using abusive or insulting behavior; (2) acting in such a manner as is offensive to others, (3) congregating with others on a public street and refusing to move on when ordered by the police. Should D be convicted? Why?

VI. The U. S. established an Army Camp on lands of State X under circumstances which did not transfer exclusive jurisdiction over the area to the U. S. An applicable Act of Congress provided that Army supplies should be purchased after competitive bidding and that, except in case of emergency . . . , where they can be purchased the cheapest. The Army purchasing officer invited bids for a four-months supply of milk for the troops at the Camp. D, dairy, submitted the low bid, which was less than the minimum wholesale price prescribed by the X Milk Control Commission, and was awarded the contract. X then denied a dealer's license to D because of the violation of the price laws. X Supreme Court affirmed the action of the Milk Commission. On appeal to the U. S. Supreme Court, what result? Why?

VII. D is a court clerk for a Circuit Court in State X, and is empowered under state law to issue marriage licenses. X laws concernin g those eligible to pro­ cure marriage licenses provide, in part, that it shall be unlawful for any white man to intermarry with any woman of either the Indian or Negro races, or for any white woman to intermarry with other than a white man. Anyone issuing a marriage license to other than persons qualified under the state law is liable to a fine of not more than $500.00 or imprisonment for not more than one year, or both such fine and imprisonment. A, a white man, and B, an Indian female, come to D and apply for a marriage license. They are of age and have fulfilled all other requirements. Upon noting the racial differences on the application, D refused A and B a license. A, incensed, causes charges to be filed against D on the basis of 18 U.S.C., § 212, which provides that whoever under color of any law, regulation, or custom wil lfully subjects any inhabitant of any state, territory or district to the deprivation of any rights, privileges or immuni­ ties secured or protected by the Constitution of the United States . . . on account of his color or race, shall be fined not more than $1000.00 or imprisoned not more than one year, or both. An indictment properly drawn is filed in the United States District Court. D moves to dismiss the indictment. What should be the judgment of the court on D's motion? Why?

VIII. The Public Utilities Commission of State X ordered, as empowered by state law, the enlarging of two railway underpasses. The underpasses were constructed in 1912 under an agreement between P railway and U. City, in X, providing that
each party was to pay one-half the cost. The total cost of the enlargement was placed at $1,500,000.00. The Commission in 1960, acting under a finding that the enlargement was in the interest of public safety, convenience and necessity, allocated the cost of the enlargement as follows: 50% to P, 25% to N, and 25% to Z, the county in which N is situated. At a hearing on the matter, P introduced evidence intended to show that its share of the costs should be based on the benefits received, and that it would receive little or no benefit from the construction. This evidence related to traffic on the roads flowing through the underpasses, the fact that the improvement was related primarily to such traffic, the declining revenues of the railways, and the inconveniences to P for having to relay its tracks. The Commission failed to agree with P, and on appeal to the Supreme Court of N, the decision of the Commission was affirmed. P appeals to the Supreme Court of the United States. What result? Why?

II. For years P, incorporated in State Y, has been doing business in Y, State X and State W. X has not levied any sort of fee on P for the interstate business done there but has subjected P to an advalorem tax on intangibles. This tax was applied to accounts receivable of non-resident corporations and foreign corporations where the sales were made outside X by an agent having an officer outside X, though the goods were delivered from a point in X. Similar receivables held by residents and domestic corporations were exempt from the tax. P has paid the taxes under protest. Meanwhile, hoping to escape the tax, P applied to the Corporation Commission of X for a certificate of authority to do intrastate business. P's assets at the time of application were $132 million, its authorized capital $100 million, and its issued capital $67 million. The Commission granted the application, but assessed P an entrance fee of $5000.00. This fee was based on an X statute which for the purpose of fixing entrance fees for foreign corporations divided them into twelve classes. The fee for the lowest class--authorized capital of $50,000 or less--was $30.00. For the highest class--authorized capital of 90 million or more--the fee was $5000.00. P paid the fee under protest. Are P's protests well-founded? Why?