

1963

## Constitutional Law: Final Examination (May 27, 1963)

William & Mary Law School

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**DIRECTIONS:** Discuss fully all issues raised by the following questions whether or not the answer to any one issue is conclusive of the question as a whole. Where abbreviations are used in the questions, such may be used in answers. Otherwise do not abbreviate. It will be most appreciated if separate issues are discussed in separate paragraphs.

I. Ds, twenty-five in number, were arrested and convicted for violation of a state law which provided it was unlawful to engage in fist fights, use loud or insulting language in public, be intoxicated in public, hold any unlawful assembly, commit any act in public so as to unreasonably disturb or alarm the public; or loiter or picket, without legal excuse, on the premises of another, with the intent of influencing others not to trade or do business, or be employed by, employers at such picketed places. Any or all of the foregoing acts were further provided to be breaches of the peace, a misdemeanor. By custom the state is racially segregated.

The evidence was without conflict: Ds, Negroes, met at a church, then walked about one-half mile to the center of town, where 13 of them, in single file paraded up and down in front of stores, carrying signs which said, in substance that the store-owners were depriving Negroes of their constitutional rights because of segregated lunch counters. The other 12 sat at one store's segregated lunch counter although requested to leave. Although passers-by seemed to notice Ds, nothing was said or done until the police arrived. Then a crowd collected and watched. The police advised all Ds to go home, and said that if they didn't within fifteen minutes, they'd be arrested. When Ds continued the picket and "sit-in" for fifteen minutes, the arrests of all of them followed.

Ds were properly tried in a court of record. The information upon which Ds were tried was objected to as "in violation of due process", but when the judge overruled the objection, Ds' attorney took no exception to the ruling in spite of the fact that state law made it mandatory to except to adverse rulings in order to preserve the record for appeal. Then, on appeal in the state courts, Ds raised in detail U. S. Constitutional objections, which, however, the state court refused to hear on the ground that such were not a part of the record and not raised at the earliest opportunity. Ds are now properly before the Supreme Court of the United States. Should their convictions be sustained? Why?

II. State X has passed a statute making it a misdemeanor for any person to engage in the business of "Debt Adjusting" except as an incident to the lawful practice of law. The statute defined "Debt Adjusting" as "the making of a contract, express or implied, with a particular debtor whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt adjusting business who shall for a consideration distribute the same among certain specified creditors in accordance with a plan agreed upon." P, d/b/a "Credit Advisors" filed an action to enjoin enforcement of the statute in Federal District Court, alleging he was engaged in the business of debt adjusting, that it was useful and desirable, not inherently immoral or dangerous, nor in any way contrary to the public welfare, and that, therefore, X could not absolutely prohibit his business. The three-judge court, after hearing the matter, held P's business fell within the statute, but that the statute was prohibitory, not regulatory, that, even if it could be construed as regulatory in part, it was an unreasonable regulation of a lawful business since it appeared to the court that the business was moral, legitimate, and useful. Thus, the court held the statute contrary to the due process and equal protection clauses of the 14th Amendment to the U. S. Constitution and enjoined its enforcement. What arguments should the Attorney General of X make in seeking reversal in the U. S. Supreme Court?



III. State X's criminal procedure allows prosecution of felonies on the basis of an information and does not require indictment. D was arrested after the police, acting on an informed tip, searched his home, without a search warrant, and found some goods known to be stolen. The information was then prepared which charged six separate and distinct crimes involving larceny, burglary and breaking and entering, all of which however, grew from one continuous action on D's part. X law also provided that if the same act be a violation of two or more criminal statutes, conviction under one is a bar to conviction under another. After arrest D was arraigned, and asked if he wanted a lawyer, and was advised of his right to a preliminary hearing. D said he didn't think he could afford a lawyer, and that there was no use of having a hearing without one. The arraigning official did not inform D that he could be supplied a lawyer from the local legal aid society, but just said for D to make up his mind, that there was a lot of work to do. D then pled not guilty, waived his preliminary hearing and, unable to post bond, was jailed. In jail, without any coercion whatsoever, D confessed and said he might as well plead guilty before the trial court. Prior to arraignment in trial court, D was sent a lawyer who, in view of D's confession, only attempted to have the judge render a light sentence when the court found D guilty on all counts upon hearing evidence of his possession of the stolen goods. Now, in prison, D brings a writ of habeas corpus, to a Federal District Court, alleging he should have been prosecuted by indictment, not information, that he was entitled to counsel in the proceedings prior to trial, and that this conviction resulted from an unreasonable search and seizure, basing his claims on the Fifth, Sixth and Fourth Amendments to the United States Constitution. Upon what grounds should the writ be, or not be, granted? Why?

IV. P is engaged in the trucking business, transporting general merchandise from coast to coast. For years, P has complied with Interstate Commerce Commission Regulations pertaining to engine size, grade of fuel, motor inspection, and the like, all of which relate to safety on the highways. Meanwhile, State X has enacted a statute providing all trucks using its highways shall be equipped with a "blow-back" device of certain specifications and capacity, the purpose of which is to re-burn exhaust fumes which would otherwise be discharged into the atmosphere from trucks' normal exhaust systems. The statute was adopted following extensive hearings and debates in the state legislature which satisfied the state legislature that much lung cancer resulted from atmospheric impurities caused by the exhaust from gasoline and diesel engines, both of which were used by P. Other states have enacted similar laws, but have uniformly prescribed a "blow-back" device of specifications and capacity different from those prescribed by X. Notwithstanding, the price of any blow-back device runs in the neighborhood of \$100.00. The only relative Federal regulations are those specified. One of P's drivers is charged with violation of the X law when inspection reveals the "blow-back" device on P's truck does not meet X specifications. Can the X statute be enforced?

V. D was born in the United States of Mexican parents, making him a Mexican citizen (as well as an American citizen) by virtue of Mexican law. When 20 years of age, D left the United States for Mexico with the admitted intent to evade service in the armed forces. He remained in Mexico for five years then returned to the U. S. when he was tried and convicted under applicable provisions of the Selective Service Act. Upon completion of his sentence, proceedings were begun (assume no questions of estoppel or limitations are involved) to deport D under Sec. 401(j) of the Nationality Act which, in substance, provides that one who is a national of the United States shall lose his nationality by departing from or remaining outside the jurisdiction of the U.S. in time of war or during a period of national emergency for the purpose of avoiding service in the armed forces. D then brought proceedings in Federal District Court seeking a declaration of his status as a citizen, of the constitutionality of 401(j), and of the voidness of



## V. (continued)

the order of deportation. At this time the deportation order had been issued by order of the Attorney General following inquiry and being based on the assertion that by remaining outside the U.S. to avoid military service in time of National Emergency, D had lost his American citizenship. D was not made a party to any of the deportation proceedings. Appeals to the Board of Immigration and Department of Justice were dismissed. D now has his case properly before the Supreme Court of the United States. What result? Why?

VI. Ds belong to a "Ban the Bomb" group and normally carry on their activities by picketing and distributing pamphlets. Learning that a sub is about to be launched which is capable of firing the polaris missile, Ds announce their intent to board the sub prior to launching so as to demonstrate their opposition.

The Magnuson Act (64 Stat. 427) provides that whenever the President finds that the security of the U. S. is endangered by reason of actual or threatened war, insurrection, subversive activities, or threatened disturbances of the internal relations of the U. S., he is authorized to issue rules to safeguard from such. Later the President invoking the Magnuson Act declared a national emergency and issued rules, to be enforced by appropriate Coast Guard Commanders, authorizing the captain of any port to prevent the boarding of any vessel to prevent activities inimical to the Magnuson Act. Ds were accordingly informed that the captain of the port had invoked the rules for the launching of the sub. Nonetheless, Ds attempted to demonstrate, by approaching the sub both from land and from the river into which it was to be launched. They were arrested by Coastguardsmen, tried and convicted under legislation (not here at issue) supporting the orders, and now claim the conviction deprived them of their rights under the First Amendment. Should, on appeal, the convictions be set aside? Why?

VII. The legislature of State X passed legislation authorizing one of its committees to make a complete investigation of all organizations whose principles or activities include a course of conduct on the part of any person or group which would constitute violence, a violation of the laws of the state, or would be inimical to the well-being and orderly pursuit of the personal and business activities of the citizens of the state. The Committee then ordered D, president of the state NAACP, to appear before it and to bring with him the membership lists of the NAACP in his possession. Prior to interrogation, D was informed of the legislation authorizing the committee's work and advised that the hearing would be concerned with the activities of various organizations which were operating in X in the fields of race relations, reform of social and educational practices by litigation, labor, and the like; and that specifically the inquiry would be directed to Communists and Communist activities, including infiltration of Communists into organizations in the foregoing fields. When requested D said that he would not produce the membership lists of the NAACP. His refusal to do so was based on associational rights incorporated in the Fourteenth Amendment. D was then taken before a state court and was adjudged to be in contempt of the legislative committee. Can D's conviction of contempt stand? Why?