Denver Law Review

Volume 23 | Issue 8 Article 2

July 2021

Which School Do You Favor?

Erl H. Ellis

Which School Do You Favor?

By ERL H. ELLIS*

In 1900 one H. F. Parsons, a student at the School of Mines, voted in Golden and was found *guilty* and fined ten dollars. This serious conviction was upheld by the Supreme Court in Parsons v. The People, 30 Colorado 388, because the constitution says that a domicile cannot be created at attending school.

In 1922 one Kliewer, a student at the University of Colorado, voted in Boulder. In a later election contest for 1924, his vote at his home town in Kit Carson County was challenged because of the Boulder vote. The supreme court referred to his vote in Boulder as based upon the *innocent* supposition that mere attendance at school there gave the right to vote.

Picnic Sidelights

The only serious injury at the Denver Bar Association summer outing at Park Hill Country Club, July 10th, was that received by District Judge Francis J. Knauss. Judge Knauss, a spectator at the ball game, received a fracture of the leg when he was hit by a bat which slipped out of the hands of the batter. All players came through the game, after hurdling benches and other obstructions on the playing field, without injury other than sore muscles.

Supreme Court Judge Norris C. Bakke likes to call them out, even in a ball game. It wasn't clear in all cases whether the excellence of Supreme Court Judge William S. Jackson's good batting average was due to skill or the fact that Judge Bakke umpired.

Tennis champs were Vic Ginsberg and Mike Reidy. President Gorsuch advised Mike to keep his cup on his own desk—not put it on that of Senator Bosworth. Golfers who drew prizes were Darwin Coit, Ted Adams, Mandel Levy, Joel Stone and Myles Tallmadge. Champion horseshoe pitchers were Art Quaintance and Grant McGee. Not unexpectedly victorious over other bridge players were Judge Edgar Kettering and Legislator (almost ex-) Don Lesher. Perennial Chess Champ Frank Fetzer surrendered his crown to H. B. Van Valkenburgh, who, being a comparative newcomer to Denver, and no doubt not realizing Judge Fetzer's reputation, took on the champ.

The outing came on a hot day, was a welcome relief from the stuffy offices, and was enjoyed by a big crowd of fun-loving lawyers.

The committee responsible for such a successful outing were Shorty Draper, chairman, and Ira Rothgerber, Jr., Allan Phipps, Sam Sherman, Walter Scherer, Frank Fetzer, Darwin Coit, Bill Black, Park Kinney, Sidney Jacobs, Fred Pferdesteller and Sydney Grossman.

---

* Of the Colorado bar.

Our Returning Lawyer-Veterans

WINSTON S. HOWARD, lt. cmdr., U. S. N. R., served from Feb. 1944 to April 1946 in Washington, D. C., Chicago, and Los Angeles in contract negotiations; O-I-C of Los Angeles office for West coast. Has returned to practice in his former association as a member of the firm of Pershing, Bosworth, Dick and Dawson, Equitable Bldg., Denver.

LEONARD v. B. SUTTON, capt. Inf., later Quartermasters Corps, served from May 1942 to June 1946 in the U. S. At time of release from active duty was Chief, Legal Branch, Hdqtrs. Calif. Q. M. Depot, Oakland, Calif. Was awarded the Army Commendation Ribbon, by the office of the Q. M. General. Has returned to practice in association with Leon H. Snyder, Exchange National Bank Bldg., Colorado Springs.

JOHN M. EVANS, lt. cmdr., Navy, served from June 1942 to Jan. 1946 in the American Theater. Is now in the office of the Attorney General for Colorado, State Capitol Bldg., Denver.

CLYDE C. DAWSON, Jr., lt. cmdr., U. S. N. R., served from Jan. 1943 to Nov. 1945, in Washington, D. C. Has returned to practice as a member of the firm of Pershing, Bosworth, Dick and Dawson, Equitable Building, Denver.

IRVING I. OXMAN, sgt. AAF Regional and Convalescent Hospital, served from Dec. 1943 to Jan. 1946 in the continental U. S. While stationed with the A. A. F. in Coral Gables, Fla., worked with the Office of Military Intelligence. Is practising in his own office at 308 Quincy Bldg., Denver.

DAVID ALLEN, tech. 4th grade, Transportation Corps, Third Army, served from Nov. 1942 to Dec. 1945, in U. S., England, France, Luxemburg, Germany and Austria. Received five battle stars. Was admitted to practice in Colorado in March 1940; A. B. degree from Denver University, 1937, and LL.B. in 1939. Prior to entering the service was in practice for himself in all state courts, and U. S. District and Circuit Court of Appeals, emphasis on criminal law and juvenile work. Is interested in obtaining office space.

SAM F. DAVIS, lt. cmdr., U. S. N. R., served Oct. 1942 to May 1946 in South Pacific. Has returned to practice in association with A. M. Lutz under the firm name of Davis & Lutz, in the Symes Bldg., Denver.

DAVID A. PRESTON, lt. (j. g.), Navy, served from May 1943 to March 1946 with Naval Air Ferry Squadron One, and then in contract termination work in the U. S. He was admitted to Colorado bar March 1940; has A. B. degree from University of Colorado, 1936, and LL. B. from University of Denver, 1939. Prior to entering the service was Deputy District Attorney for Pueblo County. He is now in practice associated with the firm of Devine, Preston and Peterson, Thatcher Bldg., Pueblo, with which firm he was associated prior to his entry into the service.

FORREST C. O'DELL, tech. sgt., Criminal Investigation Division, served from Jan. 1943 to Dec. 1945, in the United States and European Theater. Has returned to practice with the firm of Wolvington & Wormwood, Symes Bldg., Denver.

HAROLD M. WEBSTER, col. Air Corps, served from May 1917 to Feb. 1919 in the 1st World War and in the 2nd World War from April 1941 to Aug. 1946. He served in the continental U. S. He has received the Purple Heart and the Commendation medal and has returned to practice with Barker & Webster, Symes Bldg., Denver.

IRA C. ROTHGERBER, Jr., lt. col., G. S. C., served from Feb. 1942 to March 1946 in the Southwest Pacific. Received the Legion of Merit and Bronze Star. He has returned to practice with Rothgerber & Appel, Symes Bldg., Denver.

LEO S. ALTMAN, capt., M. A. C., served from March 1942 to April 1946 in the U. S. and European Theaters. Was with the U. S. Foreign Claims Service. Has returned to practice in the firm of Koperlik & Altman, Thatcher Bldg., Pueblo.

WILLIAM Q. HANEY, capt., Judge Advocate General's Dept., served from Feb. 1942 to March 1946 in the continental U. S. Has returned to practice with the firm of Haney & Haney, Mining Exchange Bldg., Colorado Springs.

DONALD S. GRAHAM, major, Judge Advocate General's Dept., served from April 1942 to April 1946, in European Theater. Has returned to practice with the firm of Lewis & Grant, First National Bank Bldg., Denver.

GORDON JOHNSTON, lt., U. S. N. R., served from May 1942 to Dec. 1944 in the Training Division, U. S. He is Assistant Dean of the College of Law of the University of Denver, 211 15th St., Denver.

GREGORY A. MUELLER, 1st lt., Infantry, served from July 1941 to Nov. 1945, in the U. S. and Italy. He has returned to practice in association with John F. Mueller, Midland Savings Bldg., Denver.

SAMUEL H. STERLING, major, Air Corps, attached to Inspector General's Dept., served from Aug. 1942 to Oct. 1945 in the continental U. S. and Canada. Is now practising for himself in the First National Bank Bldg., Denver.

JOHN L. MOFFETT, staff sgt., Air Corps, served from Sept. 1942 to July 1945 in Roswell, New Mexico, as trial judge advocate. He was admitted to the Colorado bar Oct. 1928, and practised law in Denver for 14 years before entering service. He has an A. B. degree from Denver University, 1925, and an LL. B. degree in 1928. He is now associate enforcement attorney, O. P. A., Denver.

CHARLES E. GROVER, 1st lt., army, Judge Advocate General's Dept., served from Feb. 1944 to July 1946 in the United States, with Security Intelligence at Kansas City, Mo., later with branch office, Judge Advocate General, Baltimore, Md. He received the Army Commendation Ribbon for work as Assistant Chief of Personnel Claims Branch, Judge Advocate General's Office, Baltimore. He is now Deputy District Attorney, West Side Court, Denver.

Bar Examinations

The following persons took the Colorado Bar Examinations, June 26th to June 29th, 1946:

1. John A. Anderson, 1555 Washington St., Denver, Colorado.
2. Richard Lester Bloss, Jr., 1722 Williams St., Denver, Colorado.
3. William Bodan, Jr., 3091 So. Washington St., Englewood, Colorado.
4. Walter Bohm, 159 Adams St., Denver, Colorado.
5. Maurice Edward Bosley, Jr., 1060 Colorado Avenue, Grand Junction, Colorado.
6. A. B. Chapman, 821 Humboldt St., Denver, Colorado.
7. Robert Carl Christensen, 754 Lincoln St., Loveland, Colorado.
8. John R. Clayton, 1245 Logan St., Denver, Colorado.
9. Roland William Coffey, 1115 So. Emerson St., Denver, Colorado.
10. Albert Cohen, 1471 King St. Denver, Colorado.
11. Sherman Phillips Corwin, 2533 E. Eleventh Ave., Denver, Colorado.
12. Burton Crager, 1450 Grant St., Denver, Colorado.
13. George W. Currier, 1121 Willow St., Denver, Colorado.
14. Elmer Denton Davis, 917 Baseline, Boulder, Colorado.
15. John Marshall Dickson, 1252 Rosemary St., Denver, Colorado.
16. Peter Hoyt Dominick, 3600 So. Gilpin St., Englewood, Colorado.
17. Charles Michael Dosh, Route 1, Box 24A, Littleton, Colorado.
18. Harl G. Douglas, 713 Twentieth St., Boulder, Colorado.
19. James C. Flanigan, Sr., 1525 E. Twenty-third Ave., Denver, Colorado.
20. Kathryn Louise Freed, 945 Regent St., Boulder, Colorado.
21. Otis J. Gibson, 1086 Corona St., Denver, Colorado.
22. Floyd Kirk Haskell, 1101 Hudson St., Denver, Colorado.
23. John Iacoponelli, 6005 E. Twenty-eighth Ave., Denver, Colorado.
24. Harlan David Johnson, 410 West Olive St., Lamar, Colorado.
25. Matthew John Kikel, 940 Sixteenth St., Boulder, Colorado.
26. William V. Moore, Jr., 12220 W. Forty-fouth Ave., Wheat Ridge, Colorado.
27. Lowell Alexander O'Grady, 1926 Emerson St., Denver, Colorado.
28. William J. Peyton, Jr., 2009 Vine St., Denver, Colorado.
29. John E. Radloff, 1374 Race St., Denver, Colorado.
30. Annette Reese Shermack, 452 Humboldt St., Denver, Colorado.

31. Frederick Gordon Shermack, 452 Humboldt St., Denver, Colorado.
32. Alf R. Stavig, 1750 So. Franklin St., Denver, Colorado.
33. George J. Stemmler, 3120 West Thirty-seventh Ave., Denver, Colorado.
34. William F. Stevens, 419 Gilpin St., Denver, Colorado.
35. Charles Joseph Traylor, University of Denver Pioneer Village, P. O. Box 44, Denver, Colorado.
36. Roscoe Walker, Jr., 1690 Swadley St., Lakewood, Colorado.
37. Peter P. Watson, Rt. 1, Box 24A, Littleton, Colorado.
38. Robert Neil Wilkinson, 1011 Pennsylvania St., Boulder, Colorado.
39. John H. Winchell, 1464 Monroe St., Denver, Colorado.
40. John Stump Witcher, 650 North Fifteenth St., Canon City, Colorado.

Personals

E. B. EVANS, Assistant Attorney General for the past five and one half years, assigned to the Public Utilities Commission, has resigned to devote his entire time to his private practice. He maintains offices in the Symes Bldg., Denver. Joseph W. Hawley, Trinidad lawyer, has been appointed to succeed Evans by Attorney General H. Lawrence Hinkley.

FAITH MOORE OLSEN has resigned as deputy clerk in the justice of the peace court of Paul F. Crocker to enter the practice of law with the firm of Joseph Amter, University Bldg., Denver. Clyde Royer is her successor as deputy clerk.

DONALD M. LESHER, secretary of the Denver Bar Association, has recently become the attorney for the Midland Federal Savings and Loan Association, with offices in the Midland Savings Bldg., Denver.

JOHN D. ROGERS, who was attorney for the Midland Federal Savings and Loan Association, Denver, for over twenty years has retired.

QUIGG NEWTON, JR., Denver, has been elected president of the Denver University board of trustees, becoming one of the youngest university trustee presidents in the United States. He is a director of the Colorado National Bank, the Boettcher Foundation and the American Crystal Sugar Co. He is a member of the firm of Newton, Davis and Henry, with offices in the Colorado National Bank Bldg., and was recently released from active duty in the navy as a commander. A partner, S. ARTHUR HENRY, is secretary of the board of trustees.

JAMES S. HENDERSON, First Assistant Attorney General under Attorney General H. Lawrence Hinkley, has resigned to enter private practice. THEODORE A. CHISHOLM, who has recently returned from military service, where he served as a colonel in the Judge Advocate General's Department, has been appointed to succeed him.

"Free Government by Free Men" †

ROBERT W. UPTON*

Boston University School of Law is cherished by its alumni. This is evident by your presence here and your action taken tonight. It is a small law school, but its accomplishments entitle it to high rank. In judges and jurists and in civic leaders and able lawyers, its contribution to the community has been far out of proportion to its size.

It is an honor to appear before you tonight for which I am deeply grateful. The invitation to speak, coming as it did through a distinguished alumnus, could not be refused, but I know that Judge O'Connell in inviting me was moved by a desire to recognize the alumni in my state, rather than a desire to pay tribute to me. I bring to you their greetings and gladly tell you that they maintain the high traditions of Boston University.

We live in an era of wars and revolutions. The liberal concepts of government which at the beginning of the era seemed likely to find universal acceptance were, after the First World War, largely swept aside by authoritarian ideology. The economic depression which followed the First World War over much of the world was attended by want and misery comparable to the ravages and suffering of war. In many nations the people, in the hope of greater economic security, surrendered their personal liberties to the state. Even in those states which preserved the liberal concepts, individual rights were restricted as greater authority was assumed by the government to meet new and complex problems. In our own country, big government cast its shadow over free institutions. Then came the Second World War. In this bitter conflict the skill and ability of our great military leaders and the courage and sacrifice of our fighting men have opened the way to final victory Under the impact of war and revolutionary forces long established institutions have been overthrown and great nations laid prostrate. While we cannot yet discern the pattern and form which the new world will take, it is evident that the problems of peace are no less complex and difficult than those of war. To meet these problems successfully we as a people must be strong and free.

Our government is a constitutional democracy. The powers of government are exercised through representatives chosen by the people at popular elections. In the nation and the states to assure a government amenable to the people, these powers are defined by written constitutions. To prevent abuse, the powers are divided among the three departments, legislative, executive and judicial. In addition, Bills of Rights guaranty certain essential rights

---

†Address delivered before meeting of Boston University Law School Association, Saturday, June 23, 1945. Reprinted by permission from Boston University Law Review, January 1946.

*Former President of New Hampshire Bar Association.

and liberties to the individual, even as against his own government. The framers of our constitutions thus sought to resolve the unending struggle between authority and liberty. The vast enlargement of the authority of the Federal government opens a new phase in the struggle for liberty. In this time of great changes, we need to look to fundamental principles for our guidance. I think these may be found in the Bill of Rights. Freedom of speech, freedom of religion, the right of protection against inquisitorial processes in criminal proceedings and against cruel and unusual punishment, the right to just compensation for property taken by the government and the right to trial by jury are plainly fundamentals on which depends the American way of life.

The relative importance of these civil rights is not easy to pronounce because each has special significance, but freedom of speech is clearly the most pervasive. It is essential to the dignity and self respect of the common man. It is necessary to the democratic processes of representative government as the wise selection of candidates and right determination of issues depends upon open and complete access to the truth. The framers of the Constitution, as stated by Mr. Justice Roberts, in a recent opinion of the Supreme Court, believed that the exercise of freedom of speech and of the press "lies at the foundation of free government by free men."

Freedom of speech is American in its origin and development. It was not derived from English customs or laws as were others of our civil rights. It took form during the conflict between the British government and the American colonists which culminated in independence. It is our heritage from the resolute men and women who to achieve independence risked their lives and fortunes, and who to maintain order and freedom in an unparalled display of political genius established the Constitution of these United States.

In England, prior to the American Revolution, freedom of speech did not exist. The English licensing acts through the Seventeenth Century prohibited the publication of any periodical, book, pamphlet, or circular without the approval of the royal censor. In 1695, when the last of these acts was repealed, only one newspaper was published in London. Following the repeal, other newspapers were published but Parliament promptly responded in 1712 by an act imposing a special tax upon newspapers to restrain circulation.

These taxes were continued in to the Nineteenth Century and came to be known as "taxes on knowledge" because of their evident purpose to prevent the dissemination of knowledge. Even more effective in preventing the open discussion of public affairs was the common law of seditious libel, which consistently with the doctrine that "the King can do no wrong," made public criticism of the Crown or its representatives a felony. To prosecutions for seditious libel the truth was not a defense and this gave rise to the legal maxim, "The greater the truth the greater the libel." Only in Parliament which had won immunity from the hampering restraints was there freedom of speech.

These English laws were not compatible with a free society and did not find ready acceptance in the American colonies. When Parliament by the Stamp Act of 1765 imposed special taxes upon the colonies, including a tax upon newspapers, the taxes were vigorously resisted. The publishers of colonial newspapers and periodicals were in the forefront of this opposition and many newspapers were published without stamps in open defiance of British authority. The Stamp Act was shortly repealed to be followed in 1767 by an act imposing duties on a great variety of imports, including newsprint. This new attempt to subject the colonists to unauthorized taxation resulted in forcible resistance. This revolt against British authority did not end until the colonies by force of arms had gained their freedom. In this long and costly conflict American lawyers were among the leaders in organizing and directing resistance and in prosecuting the war.

Among the first states to adopt permanent Constitutions were New Hampshire and Massachusetts. In the Bill of Rights of each Constitution emphasis is placed upon freedom of conscience rather than freedom of speech, but freedom of the press, which was threatened by the Stamp Act, is specifically guaranteed. Each Bill of Rights declares that the liberty of the press is essential to the security of freedom in a state and that it ought, therefore, to be inviolably preserved.

The Federal Constitution as submitted for ratification contained no Bill of Rights. In spite of the limited powers granted the Federal government, the omission of a Bill of Rights became the basis of much of the opposition to ratification. As the debates upon ratification proceeded the need of a Bill of Rights to protect minorities from the abuse of Federal powers by the majority came generally to be recognized. In New Hampshire and Massachusetts the Conventions in ratifying the Constitution recommended several amendments, but none for freedom of speech or of the press. The view may have been taken that these were matters of local interest not within the limited powers of the Federal government. Thus Hamilton stated in *The Federalist* that the Federal government was intended "to regulate the general political interests of the nation," and not "every species of personal and private concern." However, in Virginia and New York, North Carolina and Rhode Island the amendments recommended included guarantees of freedom of speech and of the press.

The Congress in 1789 promptly upon the organization of the Federal government proposed amendments embodying the Bill of Rights which were finally ratified in 1791. In the resolutions submitting these amendments Congress stated "that further declaratory and restrictive clauses should be adopted" to the Constitution "in order to prevent misconstruction or abuse of its powers." The First Amendment broadly provides that,—

"Congress shall make no law respecting an establishment of religion, or

prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievance."

This guaranty of freedom of speech and of the press against abridgment by Congress is broad and unqualified. It applies to the powers vested in Congress because only in the exercise of these powers could Congress abridge speech. It applies as much to the power to wage war as to the power to impose taxes or any of the other powers of Congress. While the purpose to restrain Congress in the exercise of its powers is plain, there has been much difference of opinion as to the effect of this limitation upon these powers.

The first attempt to curb public speech came within the decade following the adoption of these amendments. The war for supremacy between Great Britain and France aroused intense feeling among partisans here and resulted in bitter controversy over American foreign policy. In no period in American history has the criticism of the Federal government been so venomous and unfair. In 1799 the Congress responded by enacting a law against seditious utterances, and since the purpose was to provide for the public safety during the emergency the act was limited in its operation to March 3rd, 1801. This Sedition Act of 1799 made unlawful the publication of "any false, scandalous and malicious writing or writings against the government of the United States, of either house of Congress, or the President of the United States with intent to defame." It is significant that the Congress made no attempt to revive the English law of seditious libel which penalized the publication of true as well as false criticism of the government.

The prosecutions under this act were not numerous, but the most notable against Matthew Lyon intensified the already bitter feeling. He was a publicist and a member of Congress from Vermont. In a letter he charged that President Adams had "an unbounded thirst for ridiculous pomp, follish adulation and self-avarice," and he published a letter written by Joel Barlow which also criticized President Adams and referred to his "bullying speech." For this he was prosecuted. Although truth was a defense and some extravagance of language might be excused in a political controversy, Lyons was convicted and imprisoned. While in prison he was re-elected to Congress, and in 1801, when the election of the President was thrown into the House of Representatives, he had the satisfaction of casting the vote of Vermont for Thomas Jefferson. The prosecutions for sedition, directed chiefly against political opponents of the Administration, caused a popular reaction against the Federalist Party, which contributed in no small degree to its defeat. Jefferson upon his inauguration discontinued the pending proceedings and pardoned those who had been convicted, and so none of the cases reached the Supreme Court.

The experience with the Sedition Act was so disastrous politically that the Congress for more than one hundred years made no attempt to abridge

freedom of speech. But upon our entry into the World War, Congress by the Espionage Act of 1917 prohibits in wartime (1) the wilful making or conveying of false reports or statements with the intent to interfere with the operations of the military or naval forces, (2) wilful attempts to cause insubordination, disloyalty or mutiny in the military or naval forces, and (3) the wilful obstruction of recruiting or enlistment. The clause prohibiting the publication of wilfully false statements requires no special consideration, as the guarantee of freedom of speech does not extend to deliberate falsehood. The second and third clauses do not expressly prohibit criticism either of the government or its war policies, yet criticism was dangerous because of the broad language employed to define the offense. It was impossible to determine with any certainty when public criticism of the Administration's foreign policies ceased to be legitimate and became an attempt to cause insubordination and disloyalty in the armed forces. The Espionage Act was vigorously enforced and in the more than twenty-two hundred prosecutions there were few acquittals. Consequently, critical discussion of the war or peace was largely suppressed. The constitutionality and scope of these provisions were not finally determined until after the armistice when most of the cases had been disposed of. The Act was upheld, but in the leading case *Scheuck v. United States,* 249 U. S. 47, Mr. Justice Holmes, speaking for the Court, said—

"The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

This test narrowed the loose construction which had been placed upon the statute by the lower courts during the war. The Espionage Act of 1917 as thus construed seems to have met with popular approval as it has never been repealed, but its provisions are effective only when the United States is at war. In 1940 the Congress enacted as an amendment to the Alien Registration Act a sedition law effective in peace as in war. The Sedition Law of 1940 makes criminal when done with the requisite intent (1) advising counselling or urging, or in any manner causing insubordination, disloyalty, mutiny or refusal of duty by any member of the armed forces (2) distributing written or printed matter calculated to have this effect (3) advocating, advising or teaching the desirability of overthrowing the government by force, and (4) organizing or becoming a member of any group for such purpose. The first two clauses apply in time of peace restrictions similar to those imposed by the Sedition Act of 1917 in time of war. The two clauses forbidding the inculcation of revolutionary doctrines are in interesting contrast to the right of revolution which was expounded among others by Jefferson and recognized in the Constitution of New Hampshire. In this, however, Congress is in strict harmony with the Constitution, which provides for orderly change through amendment. The Sedition Act of 1940 is chiefly significant in that it invoked

in time of peace restrictions which had been deemed proper only in time of war. In 1942, not long after our entry into the war, an unsuccessful attempt was made to enact a "War Secrets" act, which strictly administered, would have practically confined the press to the publication of official communiques. This measure would have prohibited publications in whole or in part of any map, plan, paper, memorandum, document, record or other writing in the custody of the United States made secret or confidential by statute or by the rule or regulation of any department or agency. The Espionage and Sedition Acts to the credit of the Department of Justice have during the present war been administered with admirable restraint, the only important exception being the mass prosecution for conspiracy instituted in the District of Columbia.

It may well be doubted whether the Espionage Act of 1917 or the Sedition Act of 1940 contributed materially to the winning of either World War. In contrast, during the Civil War when the nation was imperiled by strife from within, Congress did not attempt to abridge freedom of speech. President Lincoln, who had himself opposed the Mexican War, recognized the right of his opponents freely to be heard upon the vital issues of war and peace. In this great national crisis, except in war areas, freedom of speech was virtually unrestricted. In war areas, activities interfering with the prosecution of the war were dealt with by courts martial. Censorship was employed only to prevent information of military importance from reaching the enemy. In 1864 the opposition party nominated candidates for President and Vice-President on a platform which declared the war a failure, but President Lincoln was re-elected. The open debate seems to have unified the people of the northern states, as no policy of suppression could, in firm determination to win the war and preserve the Union.

The limitations of the first Amendment apply only to Congress. Since the first World War the Fourteenth Amendment has been held to impose a similar limitation upon the states. In *Schneider v. Irvington,* 308 U. S. 246, the Supreme Court declared that—

"The freedom of speech and of the press secured by the First Amendment against abridgment by the United States is similarly secured to all persons by the Fourteenth against abridgment by a state."

In successive decisions the Supreme Court has held invalid state laws which would establish some form of censorship by requiring licenses for public addresses or for the distribution of pamphlets. In a notable decision a state law imposing special taxes upon newspaper advertising was held unconstitutional and in another freedom of assembly was vindicated. The limitations imposed by the first and fourteenth amendments have been found effective to strike down federal and state laws which directly interfere with freedom of speech, but this does not assure a full and free dissemination of knowledge.

The constitution of Soviet Russia contains broad guarantees of freedom

of speech and of the press, but whatever may have been the purpose, as guarantees they are wholly ineffective because the government owns and operates the printing presses and the systems of communication. Consequently, nothing is published which the government does not approve. In the United States during the War censorship applied at the source has been effective to withhold from the American people important information especially concerning our allies, which had no relation to the effective prosecution of the War. Even before the War propaganda from federal departments and agencies had become a potent factor in shaping public opinion. This propaganda largely emanated from departments and agencies organized for other purposes. Since the War governmental propaganda has become so extensive as to make difficult a fair appraisal of public issues. In 1942 the Office of War Information was created by executive order to mold opinion here as well as abroad. When recently the appropriation for the OWI was drastically cut by the lower house a prominent columnist vigorously assailed Congress, asserting that the domestic propaganda of the OWI ought to be continued to inform the people concerning the government's aims and objectives. It is probably unnecessary to state that this critic of Congress has shown a strong bias for the government's objectives. If we could assume that our government would always be right we would have no occasion to fear governmental propaganda. Experience has demonstrated not only that no government is always right, but also that public officials irrespective of party are prone to justify their own mistakes and to insist upon their own indispensibility. Governmental propaganda is no more likely to be a revealing source of truth than other propaganda and is much more difficult to counterbalance, even when wrong. The time is here when we must consider whether governmental propaganda through its very volume shall be permitted to stifle other sources of information.

Freedom of the radio is today as essential to free government by free men as freedom of the press. However, the necessity for the regulation and allocation of wave lengths have placed radio broadcasting directly under the control of the Federal government. While the Communications Act forbids radio censorship, licenses may not be granted for a longer period than three years. The Commission in determining whether a license shall be renewed considers "the public interest, convenience and necessity." A station's status inevitably depends in some degree upon its programs. The broad powers of the Commission to grant or withhold renewals actually operates as a censorship. There is grave danger that these powers may be used not only to regulate the channels of communication, but also effectively to control the thoughts and ideas which may be disseminated over them.

The other great agencies, the press and the motion picture, despite constitutional guarantees, have also been subjected to restraints which tend to prevent the free dissemination of knowledge. The guarantee of freedom of the press does not assure freedom in the use of the mails for the distribution

of newspapers, pamphlets and other publications. In the first World War an effective censorship was exercised over publications deemed inimical to the public welfare through exclusion from the mails. Motion pictures have been held directly subject to censorship for reasons of doubtful validity.

In its development, freedom of speech fully exemplifies the struggle between authority and liberty. Our own experience demonstrates that the full enjoyment of our civil liberties even though guaranteed by the fundamental law depends upon constant vigilance. The constitutional guarantees protect us from laws violating civil liberties but not from our own excesses. Freedom of speech to function successfully requires not only vigilance in asserting our rights, but also in sustaining the rights of those with whom we disagree. Tolerance is as essential as vigilance. Social ostracism, unfair criticism, boycotts and the cruder manifestations of mob psychology are as effective to suppress unpopular ideas as could be any rule of law. Happily even in these critical times, the democratic processes of government have not been denied, and few organized attempts have been made to abridge freedom of speech.

The past warrants the belief that with freedom of speech we may approach our problems complex and difficult as they are with confidence in the future. Some problems in time will cease to trouble us, others will be successfully resolved, but others will continue to confound and confuse us. Big government is among the problems which will not pass away. It is a product of conflicting economic and social forces operating in a highly developed and complex society. We cannot expect to return to the simple ways which preceded this era. In many of its manifestations, big government is here to stay. We must control and confine it or it will control and confine us. Through trial and error, given freedom of speech, we may hope to find effective means to prevent big government from absorbing our civil liberties. In this new phase of the struggle for freedom the lawyer is eminently qualified by training and experience to lead the way. The American lawyers in this as in other great crises appreciate and accept their responsibility. Of this, a single illustration will suffice. The administrative agencies are the outstanding governmental development of our times. They have virtually become a fourth branch of governmental exercising promiscuously the powers vested in the other three. These agencies now comes closer to our daily life than any other department of the government. Unrestrained they could become the instruments of a new tyranny. The McCarran-Simners bill now pending before Congress represents the concerted effort of the American Bar Association to establish minimum procedural requirements for these agencies in the exercice of their rule-making and quasi-judicial functions, and also to provide simplified standards for judicial review of their findings, orders and decrees. To require these agencies to conform to elementary principles of justice will not impair their efficiency, and will protect the individual against the abuse of

the broad powers conferred upon them. The McCarran-Sumners bill is only the beginning, but an important beginning, in establishing the rule of law in this important branch of the government. It is indicative of the task which falls upon us as lawyers to prevent our government of laws from becoming a government of men. In the present crisis, the great social and economic changes directly challenge free government by free men. The preservation of our constitutional democracy in these times requires vision, wisdom and determination as great as were necessary for its establishment. In this struggle to maintain order, justice and freedom, we must not, shall not, fail.

Lawyers Are People†

By MALCOLM W. BINGAY *

The Bingay Institute of Human Relations, after some years of research, has definitely decided that lawyers are people. While this may be startling news to some ignorant or prejudiced persons it come as no surprise to me. Some of my best friends are lawyers. I attribute this to the fact that I have never had a law suit.

In a mild sort of a way, I have been interested in the study of law myself. Forty-five years of activity in journalism have made this necessary as a defense mechanism. In my salad days as a reporter and child-city-editor lawyers used to frighten me terribly with their Latin jargon, which I never could understand. Years later, I found that that was why they used it. I learned that the less Latin a lawyer used in threatening to punch my nose the better lawyer he was.

I always had a sneaking suspicion that they were just putting on dog. I had read the whole Constitution of the United States and had found it all written in very simple English.

While it was the great Coke who spoke of "the gladsome light of jurisprudence," it was the toast of Wilbraham a generation later which spoke of "the glorious uncertainties of the law." I do not know much about the gladsome light of jurisprudence in recent years after reading some decisions of our United States Supreme Court, but I see that the glorious uncertainties of the law have grown more glorious.

Hire a Tax Expert

If Coke is also right that "reason is the life of the law; nay the common law itself is nothing else but reason" why not just hire a tax expert in the first place and then see where you can get a stand-in with some bureaucrat who administers the rules and regulations without benefits of the courts?

Something must be nutty because I find little reason in what is passing

† Reprinted by permission from The Detroit Lawyer, January, 1946.
* Editorial Director, Detroit Free Press.

for law these days. If it were an engineering job the engineer would say, "Let's wipe it off the slate and start all over again." But you cannot do that in law—or at least there was a time you couldn't. Now nobody knows what the law is until the latest judge says what it is and then he's stuck with it.

But, then, I'm supposed to be writing about lawyers and not about the law. Of all the professions I have gummed up in seeking to explain them to others, I have the greatest sympathy for the lawyer. The attorney is the most misunderstood of all professional men. This is because of the very nature of his practice.

As soon as the lawyer takes a case he becomes an advocate of a side, a cause. This wins him the enmity of the opposing client. Therefore, if he wins he makes an ingrate of one and an enemy of the other. If he loses, he has two enemies. That is why so many lawyers become misanthropes and develop persecution complexes. They might escape all this anguish if it were not for the fact that they are open prey for all punsters, gag writers and other low comics.

"An Honest Lawyer"

Some years ago while motoring through rural England I was taken to the court house of a little village. It had been built in the twelfth century. Carved in wood over the doorway was the truncated figure of a man carrying his head under his arm. Underneath were the words, "An Honest Lawyer." For some centuries, I was told, the great legal lights of the Kingdom tried to get that insult removed but to no purpose. So finally they just ignored it.

Now these jibes are not fair to the lawyer. He is an honest man. If he were not, the grievance committee of any bar association would have him disbarred. The very fact that he is allowed to practice is testimony to his integrity and his honor if not his sagacity.

And where people will disagree, it stands to reason that they must have lawyers to fight their cases for them. I remember, as though it were yesterday, just such a case. It was before the late great Judge George Hosmer, as gentle a soul and as keen a mind as ever blessed the law with justice and wit.

Would Try Case Himself

A low, rough, illiterate fellow was suing another man for alienating his wife's affections (sic). He had a young lawyer who spent the afternoon battling with his client to keep him quiet. The following morning the complainant appeared without counsel. He announced to Hosmer that he was going to try the case himself.

"I fired my lawyer," he explained.

"Dear me," sighed the Judge, "this is an unusual procedure. Are you quite sure you can handle this case yourself?"

"You bet I can!"

"Well, I have my doubts, but we'll see how it goes. Who do you wish called as the first witness?"

The fellow named the man he was suing. The accused took the stand and was sworn. The complaintant rushed up to the witness box and shook his fist under the nose of the supposed Don Juan.

"Where were you last Thursday afternoon at four o'clock?"

"You're a damn dirty liar!" yelled back the witness.

"Here, here!" protested Hosmer, "I didn't think it would work."

Lawyers Are Necessary

So, you see, I agree that lawyers are necessary. So are plumbers and truck drivers and newspaper editors. We all like to believe that we are doing big and vital tasks in this world. If we didn't we wouldn't amount to much.

There are moods when all of us rise to the heights and sink to the depths. All the frailties and faults of all other professions and other walks of life are to be found among lawyers. And yet, in looking back through the golden years of friendship with many fine legal minds and great jurists who have passed on to the Greater Court, I can sense that they possessed in their very souls the essence of the law laid down by Sidney Smith;

"Truth is the handmaiden of justice, freedom is its child, peace is its companion, safety walks in its steps, victory follows in its train; it is the brightest emanation from the gospel; it is the attribute of God."

St. Patrick, Lawgiver†

By JOHN P. O'HARA*

Two citizens, plainly embarged on a holiday, excitedly argued on a street corner. It was the 17th of March. First citizen was loudly shouting, "I knews a man in Ireland who could jump 27 feet." The second heatedly replied, "There never was a man in Ireland or any other place who could jump 27 feet." The first repeated his assertion, the other denied it vehemently. The exchange continued in identical vein for several more rounds. Then second citizen still beligerently unconvinced, demanded, "Very well, if there was such a man, what was his name?" First citizen with a catlike smirk, replied, "He was your father." Whereupon the other expanded his chest, broke out a big smile and exclaimed, "Oh sure, he could do that."

Even though this article is concerned with St. Patrick and his association with law, the foregoing preface should be permissable. Observance of the day is generally regarded as a celebration, but oddly enough it commemorates the

† Reprinted by permission from The Detroit Lawyer, March, 1946.
* Of the Detroit Bar.

death of the noted Saint. This is no more surprising than the number of countries that claim him as their own, and not without some right.

History says Patrick was not Irish. In the year 387 he was born near Dumbarton in what is now Scotland. So the claim of the Scots to the Saint has substantial basis. Neither was he a Scotsman however. His parents were Calphurnius and Conchessa, the former a Roman of high rank, and a *decurio* of the Empire in Gaul. His mother apparently was a Gaul of distinction. So the efforts of Italy and France to claim the Saint may have some merit.

At 16, Patrick was kidnapped by a lawless Irish band and sold as a slave to an Irish chieftain. For six years he performed the menial work of a human chattel. Then he escaped to Britain. Christianity was fast spreading over Europe. It inspired Patrick and filled him with a burning desire to carry the truth of revelation to the pagan world, Ireland particularly. He entered the priesthood, spent several years as a missionary in Gaul, then was sent to Britain.

After years of study and tireless labor, he was consecrated a Bishop about 433 and ordered to proceed to Scotia, charged with the weighty mission of bringing Christianity to the pagan peoples whose religion was the mystic beliefs and worship of the Druids.

Another of those paradoxes that seemingly fill the life of the Saint is that Ireland, sometimes Erin and now Eire was then Scotia, the home of the Scots. Yes, Scotland came by its name because a colony from Scotia emigrated to the north, called their new home Scotia, whence came Scotland we know today.

The spiritual conquests of St. Patrick are almost unbelievable. Knowledge of the language and the land acquired when in bondage, gave him valuable advantages. The Druids fought fiercely to keep their superstition founded hold on the people. The Christian Crusade brought one chieftain after another to the philosophy of Christ. Their peoples followed by thousands.

To the student of law, Patrick's part in christianizing Scotia's jurisprudence is keenly interesting. Prior to his advent the Brehon code of the Celts had attained development which amazes legal historians today. Brehon law was the evolutionary consequence of experience, tradition, trial and error. To quote Sir Henry Maine, the able English jurist, it is "a very remarkable body of archaic law, unusually pure from its origin."

Four times in its history, before British invaders forcibly supplanted it with the laws of England, Brehon law was amended by legislative assembly. In the second of these St. Patrick's influence and thoughts were written into the code. Possessing an intimate knowledge of Greek and Roman law, he was well qualified for the task. The changes effected aligned the code with the principles of Christ he taught.

Much has been written in Gaelic of this early body of laws and its

growth. Volumes have been translated, but in the library of Trinity College, Dublin, the Royal Irish Academy and the Bodleian Library at Oxford valuable original documents exist which no modern student has yet deciphered. Many who have penetrated the principles of the Brehon Code and the wise revisions due to Patrick have ranked him with famous early lawgivers of Greece and Rome.

Historians may differ on the point, but it is generally accepted that St. Patrick lived over one hundred years. History holds records of many remarkable crusades for Christianity, and the infusion of its teachings into legal principles, but few equal that of St. Patrick. He in fact lived nearly two lives. He was tireless, courageous, uncompromising, yet most humble, and lived by self-imposed privations, that won the respect and loyalty of his people. His clothing was coarse and uncomfortable, his bed usually hard rock. He preached the simple doctrines he so faithfully practiced himself. His fame today, nearly 15 centuries after his death in 493, never wanes.

He established institutions of learning, which attracted students and scholars from Britain, Gaul and Spain. He wrote extensively in Latin. His works, poetic and prose, contain thought, style and fluency that captivate reader interest in this, which we consider, such an enlightened age. Recall too, his time was about 1,100 years before Shakespeare's day.

Nearly everyone knows when St. Patrick's Day is here. Few know or seek the historical facts of his life, or his genius in a juridical sense, some of which are here related. While Patrick is considered a typical Irish name, again the origin must be credited elsewhere. When Pope Celestine I. at Rome commissioned the missionary to labor in Scotia, he called him Patercius or Patritius, meaning *Pater Civium,* father of his people.

St. Patrick has been dead nearly fifteen centuries. Many peoples insist he is their own. It's rather late, but the legal order may yet join the procession and not without ancient precedents of substantial probative value.

Calendar

October 7. Denver Bar Association, first fall meeting.

October 18 and 19. Colorado Bar Association annual meeting, Broadmoor Hotel, Colorado Springs. Hon. Tom Clark, Attorney General of the United States, principal speaker.

October 28 to November 1. American Bar Association, annual meeting, Atlantic City, New Jersey.

Dicta Advertisers Merit Your Patronage

DICTA

VOL. XXIII SEPTEMBER, 1946 No. 9

Calendar

October 7. Denver Bar Association, first fall meeting.

October 18 and 19. Colorado Bar Association annual meeting, Broadmoor Hotel, Colorado Springs. Hon. Tom Clark, Attorney General of the United States, principal speaker.

October 28 to November 1. American Bar Association, annual meeting, Atlantic City, New Jersey.

Colorado Bar Association Will Meet

Tom C. Clark, Attorney General of the United States, will be the banquet speaker at the annual convention of the Colorado Bar Association to be held in Colorado Springs at the Broadmoor Hotel on October 18 and 19, as announced by President Frank Moorhead. According to the tentative plans of the convention committee the theme of the 1946 convention will be *Improvement of the Judicial System.*

The convention will open Friday morning with a meeting of the Board of Governors, of the Water Law section, a business meeting of the Junior Bar section, and a joint meeting of the Probate and Trust Law section and the County Judges' Association. The Friday luncheon entertainment will be provided by the Law Club of Denver. The afternoon session will be under the supervision of the Junior Bar Section. Their program will feature matters of general interest to the entire bar with emphasis on the problems of the returning lawyer. The El Paso County Bar Association is arranging for entertainment on Friday evening.

On Saturday morning Philip S. Van Cise, chairman of the Committee on Judicial Administration, will lead the discussion on the reformation of the court system in Colorado. Since this meeting is of vital importance it is hoped that as many lawyers as possible will make arrangements to attend. On Saturday afternoon President Frank Moorhead will deliver the annual president's address and the remainder of the afternoon will be devoted to a discussion of title work and the business of the state association.

The address by Attorney General Clark will mark the end of the convention.

Mr. Clark was born in Dallas, Texas, on September 23, 1899. He was educated in the public schools of Dallas, at the Virginia Military Institute,

and the University of Texas, where he received an A.B. degree in 1921 and an LL.B. degree in 1922.

Admitted to the bar in June 1922, he immediately entered into the private practice of law in partnership with his father and brother. In 1927 he was selected Civil District Attorney for Dallas County, Texas, in which position he served until 1932 when he was named Master in Chancery in the Joiner oil litigation cases affecting the title in East Texas oil fields.

Mr. Clark came to the Department of Justice in 1937. In September 1938, he was appointed special assistant to the Attorney General in the Antitrust Division. He was active in the prosecution of a number of cases growing out of the Agriculture Marketing Agreement Act of 1937 and the Wage and Hour Law. In 1939 he acted as chief of the Wage and Hour Unit of the Antitrust Division, and that fall he was placed in charge of the Antitrust field office at New Orleans, Louisiana. Mr. Clark was named Regional Director for the Antitrust Division, West Coast Field Offices, in April of 1940. In January 1942, the Attorney General named Mr. Clark as Coordinator of Alien Enemy Control in the Western Defense Command. In May 1942, Mr. Clark was placed in charge of the War Frauds Unit of the Department of Justice. In September he was given the additional post of first assistant to Assistant Attorney General, Thurman Arnold, in charge of the Antitrust Division. On March 29, 1943, Mr. Clark was appointed Assistant Attorney General in charge of the Antitrust Division, succeeding Mr. Thurman Arnold.

Committee Correction

EDWARD MILLER, 930 University Bldg., Denver, is a member of the committee on Real Estate Standards of the Denver Bar Association. His name was inadvertently omitted from the committee list recently published in DICTA.

Our Returning Lawyer-Veterans

MILTON J. BLAKE, col., Judge Advocate General's Dept., Army, served from Mar. 1941 to Aug. 1946. He was asst. staff judge advocate, Ft. Bliss, Texas, from Mar. to June 1941. He then went to the Judge Advocate General's Dept., Wash., and in March 1943 became Chief, Legal Assistance Branch, Judge Advocate General's Office. He received the Legion of Merit, Army Commendation Ribbon, and personal letters of commendation from the Undersecretary of War and Secretary of the Navy. He was admitted to the Colorado bar in 1928, and was in general practice in Denver from that time until 1941. He has an LL.B. degree from Denver University Law School, 1928. He is associated in practice with his father, Milton E. Blake, 522 Colorado Bldg., Denver, and is a candidate for the state legislature on the Republican ticket.