

Editorial Section

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EDITORS' NOTE

The profession of prosecuting political crime has never been busier. The Watergate convictions are barely a year old; only now are appeals being decided. In Maryland a very active investigation into corruption approaches a very important trial. Never has the prosecutor's office been so politically important nor so intensely scrutinized by the public. In our lead article, George Frampton discusses the many problems faced by lawyers prosecuting high level political officials. As a former Assistant Watergate Special Prosecutor, Mr. Frampton is in an ideal position to assess the impact on prosecuting of our recent experience. From publicity to plea bargaining, from witness interviews to the grand jury room, the Watergate Special Prosecution force found the practical and ethical problems of prosecuting magnified and intensified by the political affairs involved. The result is substantial new light on the old problems. In a brief response, Alan I. Baron, former Assistant United States Attorney, reminds us that, although prosecuting powerful government officials presents unique problems, our ideal of Equal Justice under Law is distorted when different standards are employed for different defendants.

In our third piece, a change of pace for the *Review*, Professor F. Patrick Hubbard of the University of South Carolina Law Center forcefully argues that legal philosophers lack any agreement on what are the objectives of the science of jurisprudence. Thus, different philosophers, with different objectives implicit in their reasoning, argue fruitlessly over what is the law. What is needed, and what Professor Hubbard proposes, is a theory of theories, or metatheory, to expose philosophy's hidden assumptions about its purposes to the light of rigorous analysis and debate, resulting, it is hoped, in some advance in the jurisprudential inquiry.

Our first student comment considers the issue whether individuals alleging that they have been constitutionally wronged by municipal officials may sue the municipality in federal court for damages. Because municipalities were excluded by Congress from the coverage of 42 U.S.C. § 1983 and its jurisdictional counterpart, 28 U.S.C. § 1343, the issue is whether the courts should imply a cause of action against the municipality directly under the fourteenth amendment. Many practitioners seem unaware of this jurisdictional possibility and the lower courts are divided on the subject. The Supreme Court in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*¹ implied a cause of action against federal officers directly under the fourth amendment. When *Bivens* is employed in the context of the fourteenth amendment, however, its application becomes problematical. The author's extensive research

1. 403 U.S. 388 (1971).

and analysis should be of particular interest as the cases work their way up through the federal courts.

Another issue currently before the federal courts is the extent of procedural protections required by due process before parents may have their children committed to mental institutions. The author of our second comment focuses on the potential conflict of interest between parent and child, a factor largely ignored by most state legislatures when "voluntary" commitment procedures were created. A thorough examination of parent-child conflict in other contexts and the law's accommodation of the competing interests involved provides an excellent basis for assessing the constitutionality and the wisdom of existing commitment statutes.

Overcrowding in jails and prisons, in Maryland and the nation, is the subject of our third student piece. The author presents a broad survey of the extent of overcrowding, its effects, its legality under the Constitution, and the remedies available to courts and legislatures for dealing with the problem. No easy answers are available; the problems are too complex. But our society must begin in earnest the difficult task of reforming our system of criminal justice. It is the purpose of this comment to put the problem before the Bar.

A fourth student comment considers the extension of federal admiralty law and jurisdiction to disputes arising out of the operation of pleasure craft. The hair-splitting decisions of the Fourth Circuit are analyzed, reconciled to the extent possible, and explained along with other lower federal court decisions. The author's policy analysis should prove very helpful to courts and lawyers in dealing with the ever growing number of pleasure craft cases.

The final comment in this issue deals with a definitional problem: when is a note a security under the federal securities laws? The author considers and rejects as erroneous the two most common methods of statutory construction utilized by the lower federal courts in answering this question. In their place is suggested a test based on several Supreme Court decisions dealing with other types of securities. Applying this test, the author examines a fair sampling of the lower court cases dealing with the problem of defining "note securities." The conclusion is that this method provides a useful framework for analyzing note transactions.

Closing the student section of this issue is a recent decision dealing with the problem of eviction from federally subsidized housing.

Grant Gilmore's *The Death of Contract* is the subject of Professor Anthony J. Waters' extensive and entertaining paper which can only loosely be categorized as a book review. Gilmore's lively pen and creative genius have inspired the same in the reviewer. The result should be a genuine delight for the reader.

To our critics who complain that the *Review* offers too little of professional use to the Maryland lawyer, our next issue, this Editorial Board's last, offers some compensation. We have undertaken a general review of the work product of the Maryland Court of Appeals during its

1974-75 Term. Although not every decision is discussed, the important cases are noted and analyzed in a massive student project entitled *Survey of Maryland Law, 1974-75*. The Survey divides the court's work into a number of subject areas and attempts to provide a scholarly and useful comment on each subject. It is our hope that the survey will be continued as an annual project.

The following students have contributed Comments to this issue:

Stephen J. Immelt
Marguerite S. Millhauser
John P. Machen
Robert P. O'Brien
Shelley S. Dreifuss

The following student has contributed a recent decision to this issue:

Gary P. Aiken