CURRENT NOTES

An Addition to "The American State Trials"—The recent war-time trial by a Military Commission of the German saboteurs in Washington, D. C., must be recognized as an outstanding landmark in American State Trials. It likewise must be recognized as an answer to those who wondered whether the famous case of Ex parte Milligan (1866), 4 Wall. 2, restricted the jurisdiction of Military Commissions over civilians when the criminal courts were open and functioning.

This case is chock-full of legal questions that are bound to tax the most astute mind even though it is not lacking in constitutional concinnity. For instance, it involves the scope of the constitutional guaranties and the right of trial by jury as provided for in the Fifth and Sixth Amendments; the legal status of a spy; the significance of a military uniform in war-law; the scope of the jurisdiction of a Military Commission over criminal civilians; the power of the President as Commander in Chief in time of war; the wartime limitation on Habeas Corpus; and the question of whether the American doctrine of judicial review is subject to limitation in time of war.

The facts in this case are astounding. In the words of the court: "All the petitioners were born in Germany; all have lived in the United States. All returned to Germany between 1933 and 1941. All except petitioner Haupt are admittedly citizens of the German Reich. . . . After declaration of war between the United States and the German Reich, petitioners received training at a sabotage school near Berlin, Germany, where they were instructed in the use of explosives and in methods of secret writing. . . . All had received instructions in Germany from an officer of the German High Command to destroy war industries and war facilities in the United States, for which they or their relatives in Germany were to receive salary payments from the German Government. They also had been paid by the German Government during their course of training at the sabotage school and had received substantial sums in United States currency, which were in their possession when arrested. The currency had been handed to them by an officer of the German High Command, who had instructed them to wear their German uniforms while landing in the United States. . . . Thereafter petitioners, with a German citizen, Dasch, proceeded from Germany to a seaport in Occupied France, where petitioners Burger, Heinck and Quirin, together with Dasch, boarded a German submarine which proceeded across the Atlantic to Amagansett Beach on Long Island, New York. The four were there landed from the submarine in the hours of darkness, on or about June 18, 1942, carrying with them a supply of explosives, fuses and incendiary and timing devices. While landing they wore German Marine Infantry uniforms or parts of uniforms. Immediately after landing they buried their uniforms and the other articles mentioned and proceeded in civilian dress to New York City. The remaining four petitioners at the same French port boarded another German submarine, which carried them across the Atlantic to Ponte Vedra Beach, Florida."

The Florida landing was similar to that in New York but subsequent arrests in Chicago and New York exposed the plot and the plotters. In the words of the old adage, "Truth is stranger than fiction."

One of the most important aspects of this case is that which relates to the question whether the enemy belligerents could have access to the civil courts. The Government contended that the courts were closed to the petitioners by virtue of the President's Proclamation as Commander in Chief of the Army and Navy but the court properly ruled contrariwise. One
cannot help remarking that it would be impossible to find a more splendid assertion of the supremacy of law in time of war under the Constitution. The American doctrine of judicial review should if possible always be preserved and the opinion of the court in this case will go a long way in supporting its continuance as long as the civil courts are open and functioning. The court said:

"But the detention and trial of petitioners ordered by the President in the declared exercise of his powers as Commander in Chief of the Army in time of war and of grave public danger are not to be set aside by the courts without the clear conviction that they are in conflict with the Constitution or laws of Congress constitutionally enacted."

In the march of time this case will no doubt be found with other leading and remarkable cases in "The American State Trials," and it would be profitable to compare it with two of the most famous trials by a Military Commission that arose in time of war long past; that is, the trial of "The Lincoln Conspirators," before a Military Commission in Washington, D. C., and the trial of John Y. Beall, before a Military Commission in New York City.

One more word in conclusion: Colonel John H. Wigmore, in a preface to "A Source Book of Military Law and War-Time Legislation (1919)" said "... The facts are this: a nation in arms; that the war laws have changed parts of both the military law and the civil law; that every department of the Government and every civil interest comes into contact with this war law in both aspects; and that no intelligent lawyer can wish to remain uninformed as to any important part of it."

*United States ex rel Quirin v. Cox*, 63 S. Ct. Rep. 1 (1942), should be added to your reading list.—John W. Curran.

**Paternity: Admissibility of Results of Blood Grouping Tests.**—The parties to this proceeding separated in September 1940. Twelve months later the defendant wife gave birth to a son. The plaintiff husband then filed suit for divorce on the ground of adultery, alleging that he was not the father of the baby born in 1941. The case was heard in the supreme court, Monroe County, New York.

At the trial the plaintiff denied having had sexual intercourse with the defendant after the separation in 1940. The defendant, on the other hand, testified to the contrary. During the pendency of this action, the plaintiff was granted an order, under section 306-a of the Civil Practice Act, requiring the defendant to submit the child to a physician appointed by the court, who made a blood grouping test of the blood of the child and the plaintiff. The physician testified as to his qualifications and experience and as to the advance of medical science in this field and then stated that, from the examination of blood which he made, the plaintiff could not possibly have been the father of the child born to the defendant in 1941.

To deny to the plaintiff a decree in this action, the court said, would be tantamount to a holding either that the testimony of the physician was not worthy of belief or that the procedure for a blood test authorized by the Civil Practice Act is futile so far as having any probative value is concerned. No testimony was offered to impeach the physician's credibility or his ability and standing as a physician. He was selected by the court as a physician of experience qualified to make the tests.

In view of the circumstances of the case, the court felt justified in giving the testimony of the physician full weight. Accordingly, the defendant's motion to strike out the testimony of the physician was denied and the plaintiff's prayer for absolute divorce was granted.—Schulze v. Schulze,
Law Enforcement Officials of the Northwest—The annual conference of Pacific northwest law enforcement officials met at the State College in Pullman, Washington, on December 30-31. The police, prosecutors, courts, public institutions and military institutions of Washington, Oregon, Idaho and western Canada were represented. The conference was inaugurated as a public service four years ago by the State College and it has always been held on the college grounds.

The Department of Police Science and Administration in the College, under the direction of Professor V. A. Leonard, was the active host. The police science laboratory that was established there by Professor Leonard a little more than a year ago came in for a deal of attention.

A strong undercurrent in the conference was toward planning for enforcement and training for the post-war period.

One feature of the conference, as arranged, was a concurrent meeting of the Association of College and University Police Training Officials for informal round table discussion of educational problems under the direction of the Editor of this JOURNAL.

The Conference appointed a committee to work in Washington for a state appropriation for police training and education to be matched by Federal funds as provided under the George-Deen Act.

Another important result of the Conference is a movement toward providing for the education and training of men and women to fit them for assuming positions of responsibility in the public institutions of the state—especially in the penal institutions. A tentative draft of a four year undergraduate curriculum is being prepared and will soon be ready for distribution and criticism.

The program follows:

TUESDAY, December 29, 1942.

Registration.
Joint luncheon with the Pullman Chamber of Commerce.
The Rev. Ernest P. Goulder, Vice-President of the Pullman Chamber of Commerce, presiding.
Assistant Professor of History, State College of Washington.
Address: by DR. ROBERT H. GAULT, Editor of the Journal of Criminal Law and Criminology.
General Session.
DR. CLAUDIUS O. JOHNSON, Head of the Department of History and Political Science, presiding.
"The Administration of Public Institutions," by RICHARD A. McGEE, Supervisor of Public Institutions, Olympia.
Informal dinner.
Address: "In-Service Police Training," by CARL C. QUACKENBUSH, Prosecuting Attorney of Spokane County, Spokane, Washington.

WEDNESDAY, December 30, 1942.

OTIS C. McCREERY, Dean of Men, the State College of Washington, presiding.
The War, the Prosecutor, and Law Enforcement," by Warren A. McMinimee, President of the Oregon State District Attorneys' Association.


Informal Luncheon.

Address: "Problems of Post-War International Reconstruction," by Dr. Fred R. Yoder, Professor and Head of the Department of Sociology, State College of Washington.

Dr. Herman J. Deutsch, Associate Professor of History, State College of Washington, presiding.


"The Plant Protection Services," by Lieutenant T. S. Alexieff, of the Ninth Service Command Headquarters.

"Law and Order in the Post-War World," by Dr. William M. Landeen, Assistant Professor of History, State College of Washington.

The Prison Association's Committee on Crime Prevention—At the meeting of the American Prison Association in San Francisco in August, 1941 a Committee on Crime Prevention was appointed composed as follows: Professor Sheldon Glueck, (Chairman); Mr. Saul Alinsky, Dr. Eleanor T. Glueck, Mr. Leonard V. Harrison, Mr. E. L. Johnstone, Mr. Morris Ploscowe, Professor Frederic M. Thrasher and Mr. August Vollmer.

The function of the committee was to devote their efforts "toward a proper appraisal and evaluation of community programs now operating in this country and... ultimately to produce a manual of standards and procedures for the information and guidance of those who seek advice upon the prevention of crime and delinquency on a community basis, and that this manual shall be issued by and with approval of the American Prison Association."

It was designed to be a continuing committee.

A report was presented at the 72nd Congress of Correction at its meeting in Asheville, North Carolina, October 18-23, 1942.

It summarizes the most interesting approaches to prevention under the following heads: (a) Coordinated Community Programs, (b) School Programs, (c) Police Programs, (d) Intra-Mural Guidance, (e) Extra-Mural Guidance, (f) Boys’ Clubs and Recreational Programs, and concludes:

"Your Committee wishes to point out that the mandate given it by the Association in the Resolution quoted at the beginning of this report is a 'large order'. The job is not one that can be done by a Committee composed of very busy people who are already overloaded. Your Committee, therefore, recommends that it be transformed into an Advisory Committee to give counsel to a staff of full-time experts who can devote themselves to the task envisaged by the resolution.

"Your Committee recommends that there be established, in the offices of the Association, a Bureau of Crime Prevention, in charge of a full-time trained executive; that he be assisted by at least one full-time investigator and a secretary; that the job of this staff should be, first, to establish—a clearing house of information on crime prevention activities throughout the country; secondly, to make field investigations to check up on the methods and efficacy of the most promising crime preventive enterprises; thirdly, to prepare a biennial directory of crime preventive agencies; fourthly, to prepare a handbook of instructions regarding the establishment of different types of crime preventive organizations."

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