CONSTITUTIONAL LAW

God & Courts in Maryland

Although they guaranteed to maintain religious tolerance in Maryland, the state's Roman Catholic founders also guaranteed death for anyone "who shall deny the Holy Trinity." Vestiges of that 1649 paradox have hung on ever since, involving Maryland in more church-state lawsuits than any other state in the Union. Nothing, though, quite beats the current snarl that Attorney General Thomas B. Finan calls "the gravest crisis in the administration of criminal law in my experience."

Most of the trouble can be traced to the fact that the U.S. Constitution forbids religious test oaths for any public official. Maryland's constitution does the same—but it also orders officials to declare "belief in the existence of God." In 1961, the U.S. Supreme Court unanimously upheld Maryland Notary Public Roy R. Torcaso, who refused to sign such a declaration because he was an atheist. The religious requirement, said the court, "unconstitutionally invades freedom of belief and religion."

Cynics' Escape. Despite that decision, Maryland retained the God requirement in its 98-year-old constitution, as do six other states (Arkansas, Mississippi, Pennsylvania, Texas, North and South Carolina). Maryland, though, was the only state requiring jurors to swear that God holds them "morally accountable," that they will be "rewarded or punished therefor either in this world or the world to come." All this gave cynics an easy escape from jury duty. But it also denied sincere nonbelievers "equal protection of the laws."

Not until this fall did the Maryland Court of Appeals finally bow to the "inevitable result" of the 1961 *Torcaso* decision. Then it bowed with a vengeance. The court reversed the murder conviction of a Buddhist named Lidge Schowgurow, who claimed that he had been denied equal protection while on trial for killing his wife (TIME, Oct. 22). Since Buddhists do not believe in God, he argued that members of his faith were automatically excluded from his jury. Even though no Buddhist would-be jurors were involved, the court upheld Schowgurow and voided the "belief in God" requirement for jurors throughout the state.

Judges Too. Had the decision been made retroactive the court might well have declared that Maryland has done nothing legal in its courtrooms for 98 years. But even without retroactivity, the decision brought to a halt every current criminal case in the entire state. Did it also void every current indictment issued by grand juries that had been forced to swear their belief in God? On Oct. 21, the court said yes in the case of a 16-year-old Seventh-day Adventist charged with rape—thus tossing 3,000 cases back for reindictment, 1,000 of them for retrial as well.

Last week the court issued two more decisions—one allowing defendants to waive reindictments, thereby avoiding delay in trial, the other permitting prisoners to use the religious oath as a challenge to jury convictions that are still open to appeal. But judges, too, must declare belief in God. Are nonjury trials before such judges also illegal? Answers to such questions are yet to come—and they are eagerly awaited by Maryland's 5,600 convicts.

Attorney General Finan, 51, wearily insists that "we have no regret over citizens resorting to the courts to resolve important constitutional questions."

Art. 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain, any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come.

FROM MARYLAND'S CONSTITUTION

Snarled in vestiges of a paradox.

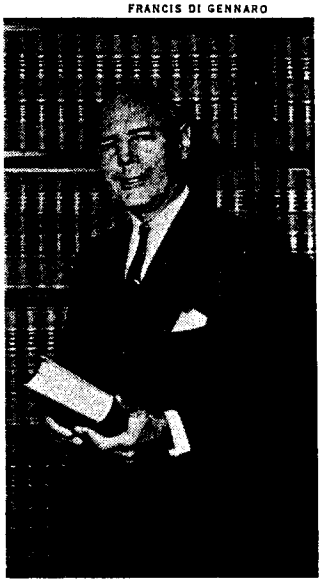
LIBEL

A Needed Limit

When local right-wing extremists attacked him as a "Communist collaborator" during his campaign for the Minnesota state legislature in 1962, Sociologist Arnold M. Rose paid little attention. Neither did the voters who elected him. But when the attacks continued in a newsletter put out by Christian Research Inc., a Minneapolis outfit run by ex-Schoolteacher Gerda Koch, who says she belongs to the John Birch Society, Rose was deluged with bitter letters, unordered merchandise and anonymous, late-night phone calls. After he decided not to run for re-election and returned to teaching at the University of Minnesota in 1964, Miss Koch attacked him so often that the state legislature was moved to probe "Communists" on the campus—and Rose was moved to sue for libel.

Organization X. Although the "proof" of his Communism consisted of nothing more than that he had helped Swedish Economist Gunnar Myrdal write *An American Dilemma*—the famous study of U.S. Negroes that was cited by the Supreme Court in its 1954 school segregation decision—Rose had a tough legal precedent to contend with. Last year, in *New York Times Co.* v. *Sullivan*, the Supreme Court ruled that false criticism of a public official is not libelous unless the official proves actual malice. And since the court did not define "public official," lower courts have been moving toward an inclusive definition that would cover just about anyone in any capacity who becomes a figure in "public debate."

FRANCIS DI GENNARO



ATTORNEY GENERAL FINAN

For the defense, Lawyer Jerome Daly argued that under the *Times* decision, Rose was a public figure both as legislator and professor. Daly declared that Rose was a member of "the Jewish usury element" which is "part of the Communist conspiracy" that is taking over Federal Reserve Banks. In her testimony, Miss Koch accused President Kennedy of "treason" for investigating disarmament and said that President Eisenhower was "engineered" into office by "them"—not Communists, exactly, but something more sinister called "Organization X."

Exaggerated Language. After 3½ weeks of such rambling, which was countered by a dozen eminent witnesses who testified that Rose had no Communist connection whatever, District Court Judge Donald T. Barbeau instructed the jury that actual malice may be inferred from "exaggerated language" as well as from repeated publication after the victim's denial. More important, he ruled out the need to find actual malice after Rose left the legislature: Rose's professorship at the state university did not make him a public official. Thus advised, the jury awarded Rose $20,000 from Gerda Koch and Christian Research Inc. "I told my friends I would stand by the truth and sing praises to the Lord no matter what," said the defendant as she promised to appeal. If

she keeps her promise, she may give the Supreme Court a chance to set some needed limits on libel by clarifying what the *Times* decision meant by "public official."

LAWYERS

Prodigious Professor

Not long ago, U.S. law schools were dominated by aging scholars, experts in the traditional legalisms of writs, torts, contracts and real property. The civil rights revolution has helped to change all that. Led largely by lawyers, it has spawned a new breed of young law professors—awesome activists in the courtroom as well as the classroom. None is more awesome or more activist than Anthony G. Amsterdam of the University of Pennsylvania.

Tony Amsterdam is 30. Toiling 20 hours a day, he spends 40% of his time teaching criminal law at Penn, most of the rest traveling around the country trying civil rights cases for which he gets no fee. Last month he hit New Orleans to argue his umpteenth case before the U.S. Court of Appeals for the Fifth Circuit. He next surfaced in Washington, advising the White House Conference on Civil Rights. Last week he filed another Supreme Court petition involving Negro rioters in Los Angeles.

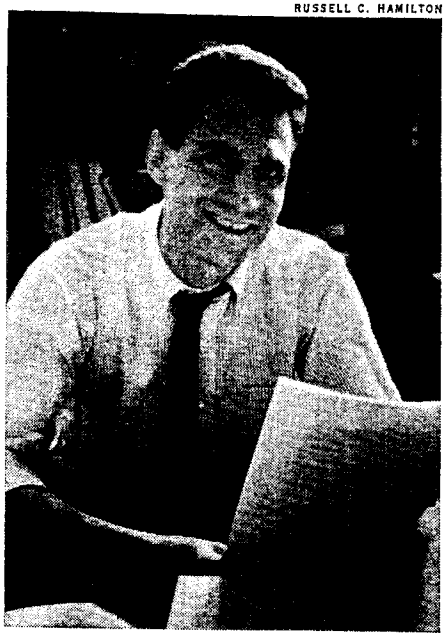
Of necessity, Amsterdam has learned to work 72 hours without sleep. Last summer he drove across the U.S. without stopping to rest—twice. He is a part-time poet, playwright and novelist; he is equally versed in poker, tennis, two foreign languages (French, Spanish), and he has mastered the arts of advocacy from the Supreme Court to the police courts of Mississippi. "He is," says one federal judge, "the most dazzling person I have ever met in my entire life."

The tall, intense, totally organized son of a prosperous Philadelphia lawyer, Amsterdam graduated from Haverford College *summa cum laude* in 1957, determined "to learn everything in the world." He pursued a graduate degree in art history at Bryn Mawr while he went to Penn law school, stood No. 1 in his class, edited the law review and sharpened the "void for vagueness" doctrine (meaning failure to specify an offense) that has since invalidated many an unjust Southern law.

Astounding Memory. In 1960, Justice Felix Frankfurter chose Amsterdam as his Supreme Court law clerk, the only non-Harvard man Frankfurter ever picked. It was a meeting of two omnivorous minds. "He was a man committed to the breadth of life," recalls Amsterdam, who edited Frankfurter's unpublished memoirs. "We got along marvelously."

In 1962, after a frenetic year as a U.S. prosecutor in Washington, Amsterdam joined the Penn law faculty and started moonlighting as a top tactician for the N.A.A.C.P. Legal Defense Fund. In case after case he has astounded judges with his ability to remember hundreds of citations going back to the birth of the Republic. At one hearing, when the judge could not find one of Amsterdam's citations, an unruffled Amsterdam suggested: "Your Honor, your book must be misbound." It was. In New Orleans last winter, he flipped through the apparently hopeless appeal of a Mississippi Negro accused of possessing whisky, and turned the case into a legal landmark—the first federal court decision extending the Sixth Amendment right to counsel from felony cases to misdemeanors (TIME, Jan. 29).

RUSSELL C. HAMILTON



TONY AMSTERDAM

Also poker, poetry and the police courts.

Unfolding Technique. Last summer Amsterdam led 30 law students through 250 counties in eleven Southern states to analyze a 25-year collection of 2,600 rape cases—a major study of Southern "dual justice." Last spring Amsterdam also produced a memorable 119-page article in the Penn law review on the "removal" of civil rights cases from state to federal courts. Indeed, Amsterdam is the leading scholar of that unfolding technique, one of the big developments in U.S. law. While honing dozens of Legal Defense Fund briefs, he is also writing a lengthy trial manual for all U.S. defense lawyers, to be distributed by the American Bar Association and the American Law Institute.

Amsterdam is not so much an advocate of more civil rights as he is a crack criminal lawyer seeking better protection of existing rights. The rights themselves have been won—from free expression in 1789 to equal voting in 1965. And yet, he says, the American citizen may still be "arrested, jailed, fined under guise of bail and put to every risk and rancor of the criminal process if he expresses himself unpopularly." In the years ahead, Amsterdam intends to concentrate on making "the paper right a practical protection."