

WHEN AN ALIEN MAY BE DEPORTED

Since the deportation of Harry Stonehill and Robert Brooks and the recent filing of deportation proceedings against Bob Stewart, owner of the Republic Broadcasting Station, public curiosity has been aroused regarding the meaning, nature and implications of deportation.

The popular concept is that deportation merely involves the sending back of an undesirable alien to the country of his origin or to the country where he was born or of which he is a citizen or subject. This is not necessarily so for there are other alternatives. A deportee may also be sent to the foreign port at which he resided prior to his residence in the Philippines.

Another popular concept is that all deportation proceedings partake of the same nature. Deportation proceedings, however, are of two types. The first type of deportation proceeding is governed by the Philippine Immigration Act of 1940 as amended, the second type, by the Revised Administrative Code. Authority to deport under the first type is vested in the Bureau of Immigration and the proceedings are undertaken by the Bureau's Board of Special Inquiry. On the other hand, authority to deport under the second type lies in the President, the proceedings being undertaken by the Deportation Board of the Department of Justice. (The deportation of Stonehill and Brooks and the deportation proceedings against Stewart fall under the second type.)

The grounds for deportation under the first type of which there are thirteen, are found in Section 37 of the Immigration Act. On the other hand, there are "no hard and fast rules in determining who are undesirable aliens" under the second type of deportation.

The following are the grounds for deportation under the first type:

1. Entry to the country "by means of false and misleading statements or without inspection and admission by the immigration authorities."
2. Entry although not lawfully admissible.
3. Conviction for a violation of the law governing prohibited drugs.
4. Conviction for a crime involving moral turpitude.
5. Practice of prostitution, connection with the management of a house of prostitution, or being a procurer.
6. Becoming a public charge.
7. Violation of any condition of admission as a non-immigrant.
8. Belief in or advocacy of the overthrow of the government by force; disbelief in or opposition to organized government; advocacy of assault or assassination of public officials; unlawful destruction of property; affiliation with any organization teaching such doctrines.
9. (a) Personation of another individual while applying for an immigration document or assuming a fictitious name to evade the immigration laws.
(b) Issuing or disposing of an immigration document to an unauthorized person.
(c) Knowingly obtaining, accepting or using a false immigration document.
(d) Entry to the country without inspection and admission by immigration officials, or by fraudulent representation or wilful concealment of a material fact.
(e) Posing as a Philippine citizen in order to evade immigration laws and requirements.
(f) Making false statements under oath.
(g) Departure from the country without an immigration clearance certificate.
(h) Attempt or conspiracy with another to commit any of the foregoing acts.
(i) Bringing in, concealing, or harboring ineligible aliens.
10. Conviction of having violated the Philippine Registration Act of 1941.

11. Engaging in profiteering, hoarding or blackmarketing.
12. Conviction of any offense penalized under the Revised Naturalization Laws or any law relating to the acquisition of Philippine citizenship.

13. Defrauding his creditor by absconding or alienation of properties to prevent them from being attached or executed.

What are the grounds for deportation under the second type? As we have already mentioned, there are "no hard and fast rules in determining who are undesirable aliens" under the second type of deportation. However, the case of a German parish priest by the name of George Koschinski who is facing deportation after having allegedly torn the Filipino flag may be cited.

A Swiss was charged with deportation for uttering words against an Indian minister to the Philippines. This Swiss uttered something which is likely to disturb the good relations between Indian and Philippine governments.

Other grounds for deportation are the following:

1. Tax evasion under the special law called Republic Act 1093.
2. Violation of the gambling law.
3. Violation of the opium law.
4. Violation of the usury law.
5. Smuggling.
6. Prostitution.
7. Conviction of crimes involving moral turpitude.

It will be noted that the last two mentioned grounds for deportation are the same as those found in Section 37 of the Immigration Act. Although a deportation case has already been filed in the Bureau of Immigration, the same may be filed with the Deportation Board.

How does the Board conduct deportation proceedings? An alien may be charged before the Deportation Board on complaint of anybody or by the board itself, *motu proprio*. Upon receipt of the complaint, the Office of the Special Prosecutor of the board conducts an investigation of the case. If satisfied that there is a *prima facie* case against the respondent, the Special Prosecutor files charges which corresponds to the information filed by the fiscal in criminal cases. A warrant of arrest signed by the Chairman of the board is then issued for the arrest of respondent. As soon as the respondent is arrested, he may file a petition for bail. Thereafter the case may be set for trial, on its merits, before the board. Trial proceeds as in the ordinary court of justice where the prosecuting officer of the government first introduces his evidence to be followed by the respondent. As soon as the hearing of the case is terminated, the case is considered submitted to the board, which will then prepare its report and recommendations to the President of the Philippines.

The Deportation Board is the authorized agent of the President to conduct investigations and make recommendations for deportation to the President. The board was created by Executive Order No. 33 of May 29, 1936. This has been amended by various Executive Orders, the latest amendment being Executive Order No. 455, which determines the present composition of the board. Three members compose the present board, namely, Undersecretary of Justice Magno S. Gatmaitan, Solicitor General Arturo Alfriz, and Col. Manuel Reyes, the authorized representative of the Secretary of National Defense.

Aside from its primary function of hearing deportation cases, the Deportation Board can also inquire into and decide questions of citizenship. In such cases, if the respondent does not agree with the findings of the board, he can always bring the matter to the court in order that the question of his citizenship may be determined. Whenever doubt exists, the doubt is always resolved in favor of the government and against the alien.

When can an undesirable alien not be deported?

Although a deportation order has been issued against an un-

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UNITED STATES SUPREME COURT

Advance Opinion

EMIL RECK, Petitioner,

v

FRANK J. PATE, Warden

— US —, 6 L ed 2d 948, 81 S Ct —

[No. 181]

Argued April 19, 1961. Decided May 12, 1961.

SUMMARY

Under circumstances detailed in headnote 4, *infra*, an accused confessed to and was convicted of murder in a state court, and was sentenced to a 199-year prison term. Several years later, the accused filed a petition for habeas corpus in the United States District Court for the Northern District of Illinois, asserting that he was denied due process of law under the Fourteenth Amendment by the admission into evidence at the trial of his allegedly coerced confession. The writ issued, but after reviewing the circumstances surrounding the confession, the District Court ordered the writ quashed. (172 F Supp 734.) The Court of Appeals for the Seventh Circuit affirmed. (274 F2nd 250.)

On certiorari, the Supreme Court vacated the judgments of the District Court and the Court of Appeals and remanded the case to the District Court. In an opinion by STEWART, J., expressing the view of six members of the Court, it was held that under the circumstances the confession was coerced and that its admission into evidence at the state trial violated the due process clause of the Fourteenth Amendment.

DOUGLAS, J., joined by WHITTAKER, J., dissented on the ground that the confession was not coerced.

Constitutional Law Sec. 840.5 — due process — involuntary confession.

1. The question whether there has been a violation of the due process clause of the Fourteenth Amendment by the introduction of an involuntary confession into evidence is one which it is the ultimate responsibility of the United States Supreme Court to determine.

Evidence Sec. 682 — confession — coercion.

2. The question whether a confession was coerced depends upon whether the defendant's will was overborne at the time he confessed, for if such was the case, his confession cannot be deemed the product of a rational intellect and a free will.

Evidence Sec. 682 — confession — coercion.

3. In resolving the question whether a confession was coerced, physical mistreatment is but one circumstance, albeit a circumstance which by itself weighs heavily; other circumstances may

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desirable alien, it may be difficult or impossible to execute the order. For instance, if the said alien is "stateless," meaning he is "a man without a country," he cannot be deported. In such a case, he should be released from imprisonment, provided, however, that he posts the necessary bond and submits himself to reasonable surveillance of the immigration authorities. Such a person is entitled to release from imprisonment because of the theory that "after a reasonable length of time and in default of specific charges placed against him other than that he is undesirable alien, a vagrant, or the like, the deportation order becomes *functus officio* (cannot be executed or made effective) for lack of ability to execute it and there is no authority for further incarceration."

In almost all cases, the cost of deportation is shouldered by the government. However, when deportation proceedings are instituted within five years after the alien's entry, except when the reason for deportation arises subsequent to his entry, Section 39

combine to produce an effect just as impellingly coercive as the deliberate use of the third degree.

Evidence Sec. 685 — confession — coercion — interrogation.

4. The due process clause of the Fourteenth Amendment is violated by the admission into evidence in a state murder prosecution of confessions obtained from the accused, a 19-year-old youth of subnormal intelligence and without previous experience with the police, who was, for all practical purposes, held incommunicado for the four days preceding his first confession, during which time he was subjected daily to 6- or 7-hour stretches of relentless and incessant interrogation, and was intermittently placed on public exhibition in police "show-ups," where during the entire period he was physically weakened and in intense pain, and without adequate food, without counsel, and without the assistance of family or friends.

Constitutional Law Sec. 840.5; Courts Sec. 766 — due process — confession — precedents.

5. The determination of whether the confession of an accused was coerced, so as to render its admission into evidence in a state criminal trial a violation of the due process clause of the Fourteenth Amendment, requires more than a mere color-matching of cases.

Appeal and Error Sec. 1689 — remand — for re-trial — habeas corpus — coerced confession.

6. When vacating judgments of a Court of Appeals and a District Court denying a state prisoner's application for habeas corpus in a coerced confession case, the United States Supreme Court will remand the case to the District Court with directions to the District Court to enter such orders as are appropriate and consistent with the Supreme Court's opinion, allowing the state a reasonable time in which to re-try the prisoner.

APPEARANCES OF COUNSEL

Donald Page Moore argued the case for petitioner.

William C. Wines argued the case for respondent.

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of the Philippine Immigration Act of 1940 as amended provides that the cost of deportation from the port of deportation shall be at the expense of the owner or owners of the vessel by which the alien came. In case that is not practicable, the government foots the bill.

A procedure similar to deportation is exclusion. Should an alien brought to the Philippines be excluded, he would be sent back immediately to the country from where he came, on the same vessel that has brought him, and in accommodations of the same class by which he arrived. The owner or owners of such vessel is required to shoulder the expense of his return. In the event that the said vessel has left and if it should not be possible to return the alien within a reasonable time by means of another vessel owned by the same interests, the government may pay the cost of return and later charge it against the owner, agent, or consignee of the vessel.

Contrary to popular belief, deportation proceedings are not criminal in nature and therefore deportation is not a punishment.