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Dangerous Precedent

Joseph P. McNamara

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"Law is the perfection of human reason"

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CONTRIBUTORS TO THIS ISSUE

Clarence J. Ruddy, one of the founders, and for the past two years editor-in-chief of the NOTRE DAME LAWYER is now practicing the law, at Aurora, Illinois. His work "Compulsory Sterilization: An Unwarranted Extension of the Powers of Government" won the Nicholas Feltes Prize at the Notre Dame College of Law in June, 1927.

Paul M. Butler, an attorney in the city of South Bend, one of last year's graduates of the University of Notre Dame College of Law.

Edwin W. Hadley, is at present professor of Equity, Domestic Relations and Trusts at the University of Kansas. For several years he was a member of the faculty of the College of Law at the University of Notre Dame.

A DANGEROUS PRECEDENT

The recent decision of the Supreme Court of the United States in the "hip flask case" brings to the fore an important consideration no matter what view one may hold regarding the law or facts before the court. In deciding the case the Supreme Court did so without rendering a written decision setting forth its reasoning and explaining the principles upon which the cause turned and it is that point that elicits our interest rather than the disposal of the propositions argued.

When it is remembered that we depend upon the decisions of the court for the law regarding constitutional matters, the danger of having a court that merely decides in favor of one or the other of the litigants and goes no further becomes real. How the law student, or the attorney, is to know how far these principles are to be carried, or even upon what considerations the

care was decided, if the justices merely blow a whistle or give a signal of their approval or disapproval much in the manner of a referee in a game, is beyond our comprehension.

The decision handed down last Thursday is, to the best of our knowledge, the second one in which the United States Supreme court when dealing with a new and important matter refused or abstained from disclosing its reasoning to the people. In the great majority of cases the constitutional principle involved are clearly set forth, and are then there to serve as a guide. The first example of deciding without giving reasoning was given in the old prohibition cases. *(253 U. S. 350.)* That the procedure was considered new at that time was admitted by Justice McKenna who then added that the innovation "would decrease the literature of the court if it did not increase its lucidity".

It happens, however, that it is not the bulk of the court's literature that interests us, but rather, the lucidity. It is vastly more important to know where we can go to get the law than to compress the number of pages or even volumes of the Supreme Court Reporter. From the standpoint of the law student, this proposition of having the court merely say Ies or no, will leave him at a total loss to describe the principle involved or to form any opinion of what the law on the matter really is.

Nor was this the manner in which the constitutional law of the nation was built up. The decisions of John Marshall abound with constitutional law. They went further than to merely affirm or deny. In the case of Chief Justice Taney and the court that rendered the famous Dredd Scott decision, the ideal that the court should present its reasonings finds excellent exemplification. In that cause, the justices felt that the country was entitled to the reasons for its holdings although giving them was equivalent to waving a red flag in the face of a bull. They were not so tender with regard to adding to the literature of the Supreme Court but they did not conribute to its lucidity. Such a stand would be a more creditable one for the present court to assume.

—J. P. M.