NORTH CAROLINA LAW REVIEW

Volume 49 | Number 4 Article 11

6-1-1971

Constitutional Law -- Equal Protection and Residence Requirements

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rules like the act of state doctrine in mind when it decided *Erie R. Co. v. Tompkins*."[40] The Court also stated that "an issue concerned with a basic choice regarding the competence and function of the Judiciary and the National Executive in ordering our relationships with other members of the international community must be treated exclusively as an aspect of federal law."[41] There is in this statement at least the implication that questions concerning foreign relations are issues of federal common law.[42]

Arguably, *Banco Nacional* affords a springboard for the application of federal common law in *Somportex*. The Court in *Banco Nacional* used federal common law because the rule it was concerned with affected our affairs with foreign nations, and it saw in the Constitution and federal laws a concern for uniformity in this area.[43] *Somportex*, too, could be thought to have international ramifications. Encouraging nations to give our judgments effect in their courts is a legitimate federal objective which would be advanced by a national policy of reciprocity. In *Banco Nacional*, there was no federal law directly involved nor any firm indication from Congress that federal decisions were desired in this area, but the Court applied federal common law nevertheless.[44]

If the court in *Somportex* had considered the course indicated by *Banco Nacional*, it could have decided that the issue of whether to require reciprocity for enforcement of foreign judgments is a federal question. The states would then be bound by the federal rule, forum shopping would be prevented, and a uniform approach in an area of national interest would be facilitated.

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Constitutional Law—Equal Protection and Residence Requirements

The United States Supreme Court in *Shapiro v. Thompson*[1] held that a one-year residence requirement which denied otherwise qualified

sit in judgment on the acts of the government of another done within its own territory.'" *Id.* at 416.

[40] 376 U.S. at 425.

[41] *Id.*

[42] See Comment, *Federal Common Law and Article III: A Jurisdictional Approach to Erie*, 74 YALE L.J. 325 (1964).

[43] 376 U.S. at 427 n.25.

[44] *Id.* at 416-27.

[1] 394 U.S. 618 (1969).

applicants welfare benefits was unconstitutional as an impermissible burden on interstate travel. The Court specifically left unresolved the validity of other state residence requirements including residence for the bar.[2] Recently, however, in *Keenan v. Board of Law Examiners*[3] a three-judge federal court used a two-fold equal protection approach[4] involving "traditional" equal protection on the one hand and the *Shapiro* rationale on the other to find North Carolina's one-year residence requirement for the state bar examination unconstitutional.[5] The purpose of this note is to examine the decision in *Keenan* and to relate both *Keenan* and *Shapiro* to some other North Carolina waiting periods and residence requirements.

Keenan was a class action seeking a declaratory judgment that Rule VI(6) of the Rules Governing Admission to the Practice of Law in North Carolina, which required one year's residence in North Carolina prior to the date of the bar examination, was unconstitutional.[6] The two successful plaintiffs were graduates of accredited law schools and had been admitted to and had practiced before the bar in other states.[7] Following the order of a preliminary injunction, the North Carolina Board of Law Examiners treated the plaintiffs' applications as though the plaintiffs were in compliance with the residence requirements and admitted them to the bar examination since they were otherwise qualified.[8]

The first standard of review used by the court[9] was the "traditional" equal protection standard which required that the distinctions drawn by a state's classification have "*some relevance* to the purpose for which the

[2] "We imply no view of the validity of waiting-period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth." *Id.* at 638 n.21.

[3] 317 F. Supp. 1350 (E.D.N.C. 1970).

[4] *See* text at notes 9 & 20 *infra.*

[5] Another three-judge federal court held that Georgia's one-year residence requirement for admission to the bar was so discriminatory in light of the meager state interest served as to deny due process and equal protection of the laws. Webster v. Wofford, 39 U.S.L.W. 2382 (N.D. Ga. Dec. 31, 1970).

[6] Comity applicants for the bar were also required to be residents of North Carolina for one year prior to the approval of their applications. This rule was not challenged in *Keenan* but was subsequently changed to a sixty-day residence requirement. *See* THE BOARD OF LAW EXAMINERS, RULES GOVERNING ADMISSION TO THE PRACTICE OF LAW IN THE STATE OF NORTH CAROLINA, Rule VII, § 1(4) (1970) [hereinafter cited as LAW EXAMINERS].

[7] A third plaintiff failed to apply for the examination as required by another unchallenged requirement. 317 F. Supp. at 1352.

[8] *Id.*

[9] *Id.* at 1359. *See Developments in the Law: Equal Protection*, 82 HARV. L. REV. 1065 (1969).

classification is made."[10] Borrowing language from the Supreme Court in *Schware v. Bar Examiners*[11] the court in *Keenan* pointed out that

> [i]n licensing attorneys there is but one constitutionally permissible state objective: the assurance that the applicant is capable and fit to practice law and that . . . [w]hile a state can require high standards of qualification . . . before it admits an applicant to the bar, *any qualification must have a rational connection with the applicant's fitness or capacity to practice law.*[12]

Using this standard the court was unable to find a sufficient connection between the reasons given for the residence requirement and "fitness or capacity to practice law."

The first reason offered by the state in relating the rule to the proper objective was that a residence period allowed the applicant to acquire "a modicum of knowledge about the state's governmental structure and its local customs."[13] Suggesting that "legal usage and practices" are mostly learned in active practice, the court brushed aside any relevance of knowledge of local custom with the statement that "[n]either legal competence nor ethical fitness depends upon cultural provincialism."[14]

The second reason advanced by the state was that one-year local residence gives fellow residents an opportunity "to observe the applicant 'in action' " before judging his character and moral reputation. The state felt "that those most capable of judging and passing upon the character of an individual are those who actually live in the community where the

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[10] Rinaldi v. Yeager, 384 U.S. 305, 309 (1966) (emphasis added).

[11] 353 U.S. 232, 239 (1957).

[12] 317 F. Supp. at 1359 (emphasis by the court). *See also* Konigsberg v. State Bar, 366 U.S. 36 (1961).

[13] 317 F. Supp. at 1359.

[14] *Id.* In view of the growing demand for more local control of government and for policemen to live within their department's district, knowledge of local custom and conditions probably has more relevance to the practice of law than the court acknowledges. Indeed, the Hawaii Supreme Court has recently upheld a three-year residence requirement for state legislators on these grounds and noted that at least three states have residence requirements of five years for candidates for their state legislatures. Hayes v. Gill, — Hawaii —, —, 473 P.2d 872, 878 (1970), *appeal dismissed as moot sub nom.* Hayes v. Lieutenant Gov. of Hawaii, 91 S. Ct. 1200 (1971). In another case the Supreme Court affirmed a ruling holding Alabama's requirement that state circuit judges reside in the circuit one year prior to their election constitutional. Hadnot v. Amos, 320 F. Supp. 107 (M.D. Ala. 1970), *aff'd*, 91 S. Ct. 1189 (1971). Nonetheless it is also true, as the court in *Keenan* and the dissent in *Hayes* conclude, that regardless of whether or not the knowledge is relevant, residence is not adequate as a test of whether a particular applicant has the knowledge, 317 F. Supp. at 1359; — Hawaii at —, 473 P.2d at 884.

applicant resides."[15] The court rejected this argument and found that there were less onerous and more effective methods of determining character. Acknowledging the nationwide investigating service of the National Conference of Bar Examiners, and the bar examiners' power to require the applicant's cooperation, the court concluded that a nonresident's fitness to practice law "can be accurately determined in each case only by investigation of the applicant's out of state background."[16] Thus, since an out-of-state background investigation would be necessary, the court suggested that a "reasonable" fee could be charged the nonresident applicant to cover the additional costs and that the date for filing applications could be set far enough in advance of the examination to insure adequate time for review.[17]

The third reason for the one-year residence rule was that it "evidences a bona fide intent to become a permanent resident of the community, such permanence being desirable for an attorney."[18] Here the court did not dispute the desirability of permanence but rather discounted the value of the requirement since "[i]n our highly mobile society, one who has lived in a particular locale for one year may be firmly rooted in the community or he may be ready to move on tomorrow."[19]

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[15] Supplemental Memorandum for Defendant at 17.

[16] 317 F. Supp. at 1362. *See* Cohen v. Hurley, 366 U.S. 117 (1961); Konigsberg v. State Bar, 366 U.S. 36 (1961). Viewed against the arguments of those who suggest that the only purpose of such residence requirements is to protect the economic interests of the local attorneys, the state's arguments for the rule seem even weaker. *See* 317 F. Supp. at 1360 n.12; State v. Johnston, — Hawaii —, —, 456 P.2d 805, 812 (1969) (dissenting opinion); Barron, *Business and Professional Licensing—California, A Representative Example*, 18 STAN. L. REV. 640 (1966); Mann, *Not for Lucre or Malice: The Southern Negro's Right to Out-of-State Counsel*, 64 NW. U.L. REV. 143 (1969); Note, *Attorneys: Interstate and Federal Practice*, 80 HARV. L. REV. 1711 (1967); Note, *Admission to the Bar: By-Product of Federalism*, 98 U. PA. L. REV. 710 (1950).

[17] 317 F. Supp. at 1360-61. The Board of Law Examiners has adopted both measures. *See* LAW EXAMINERS Rule V, § 2 (moving filing date ahead two months to six months before the bar examination) and Rule V, § 3 (authorizing fee).

[18] 317 F. Supp. at 1359.

[19] *Id.* Interestingly, the best example of the problem is James Keenan, one of the plaintiffs. After six months residence he was admitted to the bar in Texas on May 13, 1969, but only several days later left the state to work for an OEO Office in New Orleans. *See* Supplementary Memorandum for Defendant at 19. The answer for the state is to restrain or punish those who interfere with the court system after their admission to the bar rather than trying to anticipate which bar applicants will become transients. *See* LAW EXAMINERS Rule VI(6); Mann, *supra* note 16, at 154; Note, *Constitutional Right to Engage an Out-of-State Attorney*, 19 STAN. L. REV. 856 (1967). Sanctions against transients can be insured by requirements of bonding and the use of long arm statutes. *See, e.g.*, N.C. GEN. STAT. § 85-2 (1965) (requiring bonding for resident auctioneers); N.C. GEN. STAT.

The second standard used to review the issue of equal protection was the more stringent rule requiring a "compelling" state interest to be shown to justify a regulation infringing on a constitutional right.[20] In this case the court found that the one-year residence requirement undoubtedly deterred attorneys from other states from exercising their right to interstate travel while, as noted above, it did not promote a compelling state interest or objective.[21] Indeed the residence requirement in *Keenan* is in many respects a greater infringement on the right to travel than the residence requirement in *Shapiro*. An indigent does not necessarily expect welfare in a new state and may have other reasons for moving there which will cause him to remain even without welfare. A lawyer on the other hand expects to practice law and is unlikely to move to or remain where he cannot practice.

The court in *Keenan* noted other residence requirements for the bar such as residence at the time of examination, at the time of admission, or for a short term before admission to insure personal interviews and contact with the applicant, but specifically withheld an opinion as to their validity.[22] Thus the door was not completely closed on state regulation in the form of some lesser residence requirement.

The North Carolina Board of Law Examiners meet and pass on all of the applications during a six-to-eight-week period before the bar examination. Under their rules all applications must be complete by January 10th of the year of the examination in order that preliminary investigation may be completed before the whole board meets.[23] Since *Keenan*, a new rule requires that a general applicant shall:

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§ 84-4.1(3) (Supp. 1969) (requiring out-of-state attorneys practicing in North Carolina to submit to service of process within the state).

[20] 317 F. Supp. at 1361-62. *See* Shapiro v. Thompson, 394 U.S. 618, 634 (1969); *Developments in the Law: Equal Protection*, 82 HARV. L. REV. 1065 (1969).

[21] 317 F. Supp. at 1361-62.

[22] *Id.* at 1362 n.17. Residence after admission to the bar is not required by North Carolina so it is difficult to imagine a state interest in requiring residence at the time of admission to the bar. Residence for the bar examination or to insure presence for interviews, in either case, serves only administrative convenience and that only indirectly. While the Bar Examiners can clearly require in-state presence for the exams and interviews, to require the applicant to move his residence before he knows he will be admitted to the bar is an intolerable burden on the applicant when compared to the meager benefit to the state. One plaintiff in *Keenan* suggested that the rule requiring residence but not permitting the practice of law was a burden not only on his family but also on his future clients. The ambiguity of insuring the quality of attorneys in this fashion does not seem to have occurred to the Law Examiners. Affidavit of Loren Mitchell, Plaintiff's Exhibit E.

[23] Supplemental Memorandum for Defendant at 11.

> Be and *continuously* have been domiciled and *physically* present in the State of North Carolina from the 15th day of June to the 15th day of August of the year in which the applicant takes the bar examination.[24]

Obviously the Board wants the applicants available for interviews during final consideration of their applications, and the rule is written strictly to impress upon the applicant the importance of the interview. But while the harshness of the rule is mitigated by the fact that those taking the bar examination will probably be in North Carolina anyway, attending a bar review course which begins the first week in June, the rule would seem clearly unconstitutional. Mere domicile and presence within the state does not necessarily make one more accessible to the Board of Examiners. An applicant from South Hill, Virginia, is more accessible than one who lives on the Outer Banks of North Carolina. Furthermore, no legitimate state interest is served by preventing, for example, weekend trips to Myrtle Beach, South Carolina. A more reasonable interpretation of the rule would be that the Board will require the applicant to be physically available at specific times and will send notice to an in-state location where the applicant is to be "constructively" present for the entire review period. Whatever the Board's intent the rule should be rewritten to make its meaning clear to all bar applicants.

Residence requirements for other professions are as suspect as those for the bar. North Carolina, for example, has a one-year residence requirement before one can take the examination administered by the Board of Certified Public Accountant Examiners.[25] As in all occupational licensing, the state's interest in licensing accountants is in protecting the public by certifying those with the "capacity and fitness" to practice as an accountant.[26] The residence requirement for accountants, like the residence requirement for the bar, does not test the applicant's "capacity or fitness" to practice. Indeed the Florida Supreme Court has already struck down a similar residence requirement for public accountants in that state.[27]

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[24] LAW EXAMINERS Rule VI(6) (emphasis added). The rule for comity applicants requires only continuous residence and bona fide citizenship. LAW EXAMINERS Rule VII(4).

[25] N.C. GEN. STAT. § 93-12(5) (1965). North Carolina also has a two-year residence requirement for auctioneers, N.C. GEN. STAT. § 85-2 (1965), and a one-year requirement for bail bondsmen, N.C. GEN. STAT. § 85A-11 (1965). Other residence requirements for other occupational licenses are not statutory, but, like the bar requirement, are set by the licensing boards.

[26] *See* COUNCIL OF STATE GOVERNMENTS, OCCUPATIONAL LICENSING LEGISLATION IN THE STATES 1-4 (1952); W. HOROWITZ, OCCUPATIONAL LICENSING IN ARIZONA 7-10 (1966).

[27] Mercer v. Hemmings, 194 So. 2d 579 (Fla. 1967) (two-year requirement).

Other residence requirements for occupational licenses have the same failings and should continue to be struck down.[28]

Most other state residence requirements are designed to prevent overloading of state programs by an influx of out-of-state residents. North Carolina, for example, formerly imposed a four-month residence requirement before a woman could obtain a therapeutic abortion[29] apparently to prevent the overloading of its hospitals. Since the Supreme Court in *Shapiro* said that "a State may no more try to fence out those indigents who seek higher welfare benefits than it may try to fence out indigents generally,"[30] it would seem that a state cannot discriminate against those who *may* have entered the state for the public benefits it offers. Indeed, the recent decision in *Corkey v. Edwards*,[31] striking down the residence requirement of the North Carolina abortion statute, pointed out that it was an undue infringement on the right to travel that penalized those with the bona fide intent of making the state their permanent residence, which effect was not outweighed by a legitimate state interest. The decision in *Corkey* was influenced by the realization that the state's abortion statute, while being progressive, would still not draw a large number of out-of-state patients.[32] It is nonetheless consistent with the declaration in *Shapiro* that "deterrence of indigents from migrating to the state . . . is [not] a constitutionally permissible state objective."[33]

As state welfare benefits continue to improve at different rates and

[28] State *ex rel.* James v. Gerrell, 137 Fla. 324, 188 So. 812 (1939) (striking down requirement for auctioneers); Wormsen v. Moss, 177 Misc. 19, 29 N.Y.S.2d 798 (Sup. Ct. 1941) (striking down requirement for massage parlor operators).

[29] N.C. GEN. STAT. § 14-45.1 (1969).

[30] 394 U.S. at 631.

[31] 322 F. Supp. 1248 (W.D.N.C. 1971).

[32] "The state expresses a fear that has not materialized: taxation of our hospital facilities by an influx of out-of-state patients seeking abortions. We think our law is not so liberal." *Id.* at 1254. There was, however, a very liberal abortion statute before the state legislature which would have permitted termination of pregnancy during the first twelve weeks of pregnancy on request of the mother. The proposed statute would have required the mother to have been a resident for thirty days before the abortion, thereby precluding those who might have come to the state for the sole purpose of obtaining an abortion. H. 5 (1971 Sess.) (now tabled in the Senate). This statute would have been liberal enough to draw sufficient numbers of patients to overburden the state's hospital facilities, in addition to adversely affecting the abortion policies of neighboring states. The state's interests in this residence requirement were greater than in *Corkey* but the statute would still have unreasonably discriminated against new bona fide residents as does a proposed thirty-day residence requirement offered to replace the one struck down in *Corkey*. H. 626 (1971 Sess.).

[33] 394 U.S. at 633.

residence requirements for different programs are struck down,[34] the problem of new residents overloading welfare systems will continue to grow. However, as long as the Court is willing to sustain its declaration in *Shapiro*, states will have to find methods for reducing the burden other than by imposing durational residence requirements.[35]

Another state program which has durational residence requirements is higher education. The University of North Carolina, for example, requires six-months residence preceding enrollment to entitle a student to the lower in-state tuition rate.[36] The state's interest is to protect its facilities from an influx of nonresidents attracted by the low tuition costs.[37] Here again the problem with the durational residence requirement is that it discriminates against those residents who enter the state with the bona fide intent of making the state their permanent residence. In several states this discrimination is limited to one year after which the student may present evidence that he is a bona fide resident.[38] In North Carolina, however, the student must prove six-months residence "preceding the date of enrollment or re-enrollment, exclusive of any time spent in attendance at *any* institution of higher education."[39]

[34] Programs for which durational residence requirements have been struck down include: King v. Housing Auth., 314 F. Supp. 427 (S.D.N.Y. 1970) *and* Cole v. Housing Auth., 312 F. Supp. 692 (D.R.I. 1970) (public housing); Richardson v. Graham, 313 F. Supp. 34 (D. Ariz. 1970) *and* Sheard v. Department of Social Welfare, 310 F. Supp. 544 (N.D. Iowa 1969) (old age benefits); Crapps v. Hospital Auth., 314 F. Supp. 181 (M.D. Fla. 1970) *and* Board of Supervisors v. Robinson, 10 Ariz. App. 238, 457 P.2d 951 (1969) (indigent hospital care).

[35] The Governor of New York recently asked that state's legislature to enact a one-year residence requirement for welfare benefits which would be effective only during a five-year "emergency" period. The Governor, recognizing the Supreme Court ruling in *Shapiro*, asserted that the conditions that now exist in that state, which has the highest tax burden in the country and an acute housing shortage, constitute a "compelling" state interest for the imposition of such a requirement. He concluded that "[t]his step is essential to protect the state's economic and social viability." N.Y. Times, Mar. 28, 1971, § 1, at 1, col. 1.

[36] RECORD OF THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL, SCHOOL OF LAW 18-19 (1970) [hereinafter cited as RECORD].

[37] For example, tuition for the Law School is 112.50 dollars per semester for residents and 475 dollars per semester for nonresidents. *Id.* at 18.

[38] *See* Kirk v. Board of Regents, 273 Cal. App. 2d 430, —, 78 Cal. Rptr. 260, 267 (1969), *appeal dismissed*, 396 U.S. 554 (1970); COLO. REV. STAT. ANN. § 124-18-3 (Supp. 1967); Comment, *Residency, Tuition, and the Twelve-Month Dilemma*, 7 HOUSTON L. REV. 241 (1969). *But see* Comment, *Nonresident Tuition Charged By State Universities in Review*, 38 U.M.K.C.L. REV. 341 (1970).

[39] RECORD 19 (emphasis added). This rule applies to students over twenty-one. Under this rule one who comes to the state to attend Duke University undergraduate and law schools would still be considered a nonresident for tuition purposes if he then entered graduate school at the state university even though he had been a resident of North Carolina for seven years. There is a different set of rules for minors. *Id.* at 18.

Since the state's main bulwark against an influx of nonresidents is to impose quotas on nonresident students by a set percentage, or to enforce higher admission standards for such students, it is hard to justify the strictness of the North Carolina rule. In fact courts have generally looked with disfavor on this kind of rule. In *Newman v. Graham*[40] the Idaho Court of Appeals struck down a rule nearly identical to North Carolina's as arbitrary, capricious and unreasonable.[41] While one court may have ruled out *any* durational requirement for in-state tuition,[42] the Supreme Court has summarily affirmed a district court decision upholding the residence requirement at the University of Minnesota.[43] This rule required one-year in-state residence to qualify for the lower tuition rate, but did not preclude a student from attaining resident status while attending school.[44] Another court has justified such a rule on the grounds that it is a "reasonable attempt to achieve a partial cost equalization by collecting lower tuition fees from those persons who, directly or indirectly, have recently made some contribution to the economy of the state . . . ."[45] However, if the holding in *Shapiro* that state benefits cannot be apportioned on the basis of the individual's tax contribution to the state is to be upheld,[46] a durational residence requirement for tuition purposes is difficult to justify.[47]

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[40] 82 Idaho 90, 349 P.2d 716 (Ct. App. 1960).

[41] *Id.* at 95, 349 P.2d at 719. *But see* Landwehr v. Board of Regents, 156 Colo. 1, 396 P.2d 451 (1964). *Landwehr* is probably distinguishable since the plaintiff was challenging the statute in an action for back tuition after he had already completed school.

[42] Unreported lower court decision in Arizona.

[43] Starns v. Malkerson, 91, S. Ct. 1231 (1971).

[44] The completion of a year's stay in Minnesota does not in and of itself establish residence for University purposes; a person who moves to Minnesota coincident with attending school may not be able to demonstrate that he is acquiring Minnesota residence.

The student from out of state who proposes to establish residence must assume the burden of proving conclusively that he has been a resident the required time and intends to make his permanent home in the state.

UNIVERSITY OF MINNESOTA, DULUTH BULLITIN, June 30, 1970, at 29.

[45] Kirk v. Board of Regents, 273 Cal. App. 2d 430, —, 78 Cal. Reptr. 260, 269 (1969), *appeal dismissed*, 396 U.S. 554 (1970).

[46] 394 U.S. at 632.

[47] Indeed the Supreme Court appeared to speak directly to the North Carolina situation when it said that there is "[n]o need for a state to use the one-year waiting period as a safeguard against fraudulent receipt of benefits; for less drastic means are available and are employed, to minimize that hazard." 394 U.S. at 637. The lack of a reported opinion in *Starns* makes it difficult to distinguish it from *Shapiro*. A better solution would be to make nonresidence a rebuttable presumption. That is, all newcomers to the state are presumed nonresidents for a period of time unless otherwise shown to be residents. *See* Clark v. Redeker, 259 F. Supp. 117 (S.D. Iowa 1966). The problem with this kind of provision is that rebuttal often

The one area where residence requirements have been recognized as relevant to the state's interests is in voting requirements. North Carolina, for example, requires one year's residence in the state and thirty days in the precinct preceding an election.[48] Such a rule seems relevant to the purposes of identifying the voter, protecting against fraud, and insuring that the voter " '[w]ill in fact become a member of the community and as such have a common interest in all matters pertaining to its government.' "[49] Maryland's similar requirements have so been sustained by a three judge federal court.[50] Since *Shapiro* and other challenges to residence requirements, however, such residence requirements have come under even greater challenge. At least three courts have held that a rule setting different requirements for interstate travelers discriminates against the interstate travelers and therefore is unconstitutional.[51] One who moves from Charlotte, North Carolina, to Raleigh, North Carolina, will not necessarily understand local conditions faster than someone who moves to Raleigh from Richmond, Virginia.[52] Accordingly, those legitimate state interests which are served by a residence requirement for voting can be served as well by a uniform requirement which does not discriminate against the individual who moves across a state line.[53]

Durational residence requirements seek to forecast future behavior on the basis of past residence alone; yet as to this objective, they are highly inaccurate and tend only to penalize the new bona fide permanent resident.

becomes a mere test of the applicant's ingenuity in finding ways to demonstrate residence.

[48] N.C. GEN. STAT. § 163-55 (Supp. 1970).

[49] Drueding v. Devlin, 234 F. Supp. 721, 724 (D. Md. 1964).

[50] *Id.*

[51] Hadnot v. Amos, 320 F. Supp. 107 (M.D. Ala. 1970), *aff'd*, 39 U.S.L.W. 3413 (U.S. Mar. 23, 1971); Ellington v. Blumstein, — F. Supp. — (M.D. Tenn. Sept. 9, 1970), *jurisdiction noted*, 91 S. Ct. 920 (1971). Canniffe v. Burg, 315 F. Supp. 380 (D. Mass. 1970), *appeal filed*, 39 U.S.L.W. 3229 (U.S. Oct. 6, 1970) (No. 811). *Contra*, Fitzpatrick v. Board of Election Comm'rs, 39 U.S.L.W. 2356 (N.D. Ill. Dec. 15, 1970), *appeal filed*, 39 U.S.L.W. 3362 (U.S. Feb. 12, 1971) (No. 1344). *Compare* Kohn v. Davis, 320 F. Supp. 246 (D. Vt. 1970), *appeal filed*, 39 U.S.L.W. 3347 (U.S. Feb. 10, 1971) (No. 1336) (striking down Vermont's one-year residence requirement for voting), *and* Bufford v. Holton, 319 F. Supp. 843 (E.D. Va.), *appeal filed*, 39 U.S.L.W. 3333 (U.S. Jan. 25, 1970) (No. 1270) (holding Virginia's one-year residence requirement for voting unconstitutional), *with* Pope v. Williams, 193 U.S. 621 (1904) (upholding the constitutionality of Maryland's one-year residence requirement for voting), *and* Cocanower v. Marston, 318 F. Supp. 402 (D. Ariz.), *appeal filed*, 39 U.S.L.W. 3229 (U.S. Oct. 3, 1970) (No. 799) (upholding Arizona's one-year residence requirement for voting).

[52] *See* 317 F. Supp. at 1359 & note 14 *supra.*

[53] *See* Carrington v. Rash, 380 U.S. 89 (1965).

In light of the decisions in *Shapiro* and *Keenan* and the questions raised therein, the states should re-examine all of their residence requirements, especially those for professional licenses, to insure that they protect not only legitimate state interests but also the rights of new residents.

ANTHONY B. LAMB

Constitutional Law—Prejudgment Attachment and Garnishment—The Progeny of the Sniadach-Kelly Marriage

In the summer of 1969, the Supreme Court held in *Sniadach v. Family Finance Corp.*[1] that a prejudgment garnishment of wages under the facts involved in the case constituted a taking of property without due process of law unless the wage earner was afforded a hearing prior to the garnishment. The Wisconsin garnishment procedure involved in *Sniadach* entitled one with a claim against a wage earner to a court order freezing one half of the worker's wages until the merits of the claim could be litigated.[2] Mr. Justice Douglas, speaking for the Court, stated that "[s]uch summary procedure may well meet the requirements of due process in extraordinary situations. . . . But in the present case no situation requiring special protection to a state or creditor interest is presented by the facts . . . ."[3] The opinion noted that "[w]e deal here with wages —a specialized type of property presenting distinct problems in our economic system,"[4] stressed the serious harm that wage garnishment could cause, and concluded that the Wisconsin garnishment procedure and others like it "may as a practical matter drive a wage-earning family to the wall."[5]

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[1] 395 U.S. 337 (1969).

[2] The statutes involved in *Sniadach* were Ch. 507, [1965] Wis. Sess. L. — which were codified as WIS. STAT. ANN. §§ 267.01-.24 (Supp. 1969). These statutes have been amended and are presently codified as WIS. STAT. ANN. §§ 267.01-.24 (Supp. 1970).

[3] *Id.* at 339. As examples of "extraordinary circumstances" which would justify summary procedures, Justice Douglas cited Ewing v. Mytinger & Casselberry, Inc., 339 U.S. 594 (1950) (federal statute authorizing seizure of misbranded articles without a prior hearing); Fahey v. Mallonee, 332 U.S. 245 (1947) (appointment of a conservator to take possession of a federal savings and loan association prior to a hearing); Coffin Bros. v. Bennett, 277 U.S. 29 (1928) (state statute authorizing prejudgment liens on the property of stockholders of insolvent banks); Owenby v. Morgan, 256 U.S. 94 (1921) (state statute conditioning the opportunity to appear and defend in foreign attachment proceedings upon the posting of a bond).

[4] *Id.* at 340.

[5] *Id.* at 341-42.