

The High Court and "Shufflin' Sam"

"The finest of American traditions was fulfilled when the Supreme Court took time to hear the petition of a man to whom others had turned a deaf ear."

—Indianapolis Star

BY JOSEPH P. BLANK

UNTIL the last hour of the session, Monday, January 11, 1960, was a routine day in the great marble and mahogany courtroom of the Supreme Court of the United States. Since Monday is "decisions" day, the Court first delivered opinions on cases argued at previous sessions. Then the nine black-robed justices alerted themselves to hear arguments in new cases. Chief Justice Earl Warren said, "Sam Thompson versus City of Louisville." Thompson's attorney, 45-year-old Louis Lusky, former law clerk to the late Supreme Court Justice Harlan F. Stone, rose to address the bench.

Lusky was one of the few people who had believed that Sam Thompson's case could be brought to the

Supreme Court. In one long legal leap he had carried his client's problem from a police court, the lowest court in Kentucky, to the nation's highest court. The case involved a fine of \$10 on each of two convictions. The last time the Supreme Court had accepted so seemingly trivial a case was in 1886.

But the fines were not the true issue. "The time has not yet come when Americans can be dealt with as economic men. Their needs and rights are not measurable in purely monetary terms," Lusky had written in his brief to the Court, asking to be heard. "One of their needs is justice, and in this country they have a legal right to receive it." Although the justices had refused to hear many cases in this term because

the issues did not involve the Court's interpretation of the Constitution, they had agreed that a constitutional question hung over Sam Thompson's convictions.

The 46-year-old petitioner was a general handyman in Louisville. Slim, dignified, with direct eyes, he lived alone in a small house in the suburbs. His income came mostly from odd jobs, like painting and carpentry. His problems grew out of his frequent arrests on charges of loitering, vagrancy or disorderly conduct.

Sam Thompson had always felt overwhelmed by the towering authority of the police. But after his most recent arrest for disorderly conduct, he decided that he had taken enough. "If you are being continually beaten on the shoulder," Sam explained, "that shoulder gets tired after a while. I felt something should be done about it."

From jail he telephoned Dr. Wynant Dean, for whose family he had worked off and on for 30 years, and asked for help. Dr. Dean called attorney Louis Lusky. After talking with Sam, who insisted that he wasn't guilty, Lusky appeared at the police-court hearing and demanded a trial for his client.

Before this trial, however, Sam got arrested again, this time while sitting in a bus station, waiting to take a bus home. He was charged with vagrancy and loitering. The police-court judge heard testimony and found Sam guilty.

Lusky insisted that the facts

proved his client innocent and demanded the right to file an objection to the decision. The prosecutor opposed Lusky's motion with an unwitting prophecy about subsequent events: "He wants to make a federal case out of it, and this is nothing but a two-bit case." The judge fined Sam \$20 for loitering and gave him 30 days in jail for vagrancy. Lusky appealed the case and obtained a jury trial in another court, where Sam was quickly acquitted.

To keep him out of any more trouble, Lusky advised his client to stay away from the bus station. Ten days later Sam was in the Liberty End Café waiting for his bus, which stopped at a nearby corner. To pass the time he put a coin in the juke box. As the music blared, he shuffled a foot to the rhythm. In walked two policemen. They accused him of hanging around and dancing in an establishment that had no license for dancing, and arrested him for loitering. When Sam protested the arrest, the police added a charge of disorderly conduct.

At the police-court trial, the judge fined Sam \$10 on each charge. In Kentucky there is no appeal for fines below \$20, and thus no legal machinery existed for taking the case to a superior court in the state. Lusky made a motion to dismiss the case. The judge overruled him. He made a motion for bail. Overruled. He made a motion for a new trial. Overruled.

Lusky spoke to Sam. "If it's necessary, I'll go the limit—to the U.S.

Supreme Court. Are you agreeable?" Sam said he was.

When Lusky announced in court that he intended to appeal the case to the Supreme Court, other lawyers there laughed derisively. But the attorney was on sound legal ground. Under federal statutes the Supreme Court may review "final judgments or decrees rendered by the highest state court in which a decision could be had." In this case, the highest such court was the lowest, the police court.

Lusky said later, "My client had been deprived of his rights under the 14th Amendment of the Constitution, which says, 'Nor shall any state deprive any person of life, liberty or property, without due process of law.' I had to do everything possible to restore these rights to him."

The judge agreed to suspend the execution of Sam Thompson's sentence for the legal limit of 24 hours. This gave Lusky just one day to obtain court action for a longer suspension of Sam's sentence, which would provide time to present the case to the Supreme Court. Once the fine was paid or the jail sentence served, the attorney knew, the case would be finished, and the Supreme Court would not consider it.

Lusky quickly went to the circuit court of Jefferson County and laid out his case in request for a suspension of sentence. On the 23rd hour Judge Lawrence S. Grauman announced his decision: "The petitioner has a federal constitutional

right to present his claims to the only court which has the jurisdiction to entertain them—the United States Supreme Court." Judge Grauman granted a 90-day stay.

Now Lusky, with his associate Marvin Morse, submitted papers to the Supreme Court, arguing that it should hear the case. Analyzing the legal issues, the attorney said:

"The hurt done by a denial of justice is not easy to describe, but it is nonetheless real. A man's innate sense of dignity, his conception of himself as a person unique yet part of a community, his feeling of proud security in the impartiality of the law—impairment or destruction of these values cannot be measured in money. Yet such a hurt can shatter a man. And that is the hurt which is done when justice is denied."

After studying the records and briefs submitted by both sides, the Supreme Court decided to hear the case.

No one except the justices knows precisely why the Court agreed to look into Sam Thompson's case. Implicit in the decision was acknowledgment of a growing problem in many parts of the country where police use the disorderly conduct, loitering and vagrancy laws to arrest persons, not for breaking the law, but simply for being a minor nuisance.

When Lusky stood before the Court to launch his arguments, he was permitted only a few sentences before the justices began throwing

questions at him and at Herman E. Frick, counsel for the City of Louisville. They queried Lusky about his motive in bringing the case to the Supreme Court. "The compelling reason," Lusky said, "is that it's the only practical way of preserving the rights of my client."

Frick, an able attorney, had a hard time. One of the alleged reasons for Sam's arrest was that "he could not give a satisfactory account of himself." Justice Felix Frankfurter said, "Would it not have been within Thompson's constitutional rights to tell the interrogating officer, 'It's none of your business what I'm doing?'" Frick made no reply.

"Is a man guilty of disorderly conduct and loitering," asked Justice Charles E. Whittaker, "simply because he shuffles his foot to music as he waits for a bus on a cold winter night?"

"That's very dramatic," Frick said, "but he was doing a shuffle dance."

Justice Potter Stewart interjected: "What is a shuffle dance?"

Frick pondered this, then said, "It's some form of dancing which uses a system of shuffling."

Justice Frankfurter asked, "Is shuffling illegal in Louisville?"

"No, sir, but the tavern owner's license did not permit dancing," Frick said, "and the license holder is responsible."

If so, and if Thompson was actually dancing, Justice Frankfurter implied, then the City of Louisville

should have charged the tavern owner, not Thompson.

Examining the disorderly conduct charge, Chief Justice Warren asked Frick, "Do you really put a man in jail for arguing with a police officer?"

"That's what happened in this case, Your Honor."

Justice William J. Brennan, Jr., wanted to know when an argument becomes disorderly conduct.

"Any argument tends to lead to disorder," Frick replied.

"You are making an argument now, aren't you?" Justice Brennan pressed. "Do you see any signs of disorder?"

The Court, interested in the implications of the case, allowed arguments to extend beyond the allotted time of one hour and continued its questioning on the following afternoon.

On Monday, March 21, 1960, ten weeks after hearing the Thompson case, the Supreme Court read its decision. Justice Hugo L. Black wrote and delivered the unanimous opinion of the Court.

In an eight-page, carefully reasoned document he said: "There simply is no semblance of evidence" to support the charge of loitering. The charge of disorderly conduct for arguing with the police was without legal foundation. "Thus we find no evidence whatever in the record to support these convictions." He reversed the Louisville police-court convictions.

Of all the cases involving a con-

stitutional issue in the 1959-60 Court term, "Sam Thompson v. City of Louisville" was the only one in which all nine justices joined in a single opinion. And that opinion established a legal precedent: it is unconstitutional to convict a man without evidence.

Sam Thompson wasn't much awed by the fact that his case had made legal history. "It just made me feel good to know that my rights were being taken care of," he said.

It made a great many other people feel good, too. Grenville Clark, one of the great lawyers of our time, told Lusky, "You deserve a couple of medals for what you did in this case." Erwin N. Griswold, dean of Harvard Law School, said, "This is a real contribution to the law. All of us who are interested in justice

are greatly indebted to you." Dozens of Louisville attorneys congratulated Lusky.

The Louisville *Courier-Journal* said, "The case of Sam Thompson may mean much to future Sam Thompsons, who never again will be quite as defenseless before hasty policemen and indifferent prosecutors as they have been heretofore." The Boston *Herald* heard the sweet music of liberty in the Supreme Court decision and editorialized, "We are, in a manner of speaking, shuffling our feet in rhythm to a great and pervading melody to be heard about this land."

To Sam Thompson, the melody has a highly personal meaning. "When I see the police now," he says, "we say hello to each other, and that's all."

