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DESEGREGATION ON PUBLIC CONVEYANCES; SECRET INFORMATION; COMPULSORY INDEMNIFICATION LAW URGED; AMERICAN BAR ASSOCIATION; MILITARY JUSTICE; WIRETAPPING IN NEW YORK; TRADE NAMES; CIVIL RIGHTS LAW; WORK LAW TEST; MURDER TRIAL TO BE TELECAST; CONFLICT-OF-INTEREST BAR PROPOSED; IMMUNITY ACT OF 1954

THE PROGRESS OF THE LAW

DESEGREGATION ON PUBLIC CONVEYANCES

SINCE the establishment of the Interstate Commerce Commission in 1887, it has consistently followed the "separate but equal" doctrine established by the Supreme Court in *Plessy* v. *Ferguson.* Accordingly, as long as comparable transportation facilities were available to both Negroes and whites, it would take no action against racial discrimination on public carriers.

However, the gradual erosion of the "separate but equal" doctrine by Supreme Court decisions banning segregation in public schools, parks, beaches and other public facilities as well as striking down state laws compelling interstate carriers to segregate passengers, have made it apparent that it was only a matter of time before the field of transportation was involved. Accordingly, it is no surprise that the I. C. C. has now banned all racial segregation after January 10, 1956 in interstate trains, busses, and depots.

The Commission's ruling, from which only one member of the nine who voted dissented, indicated that a traveler was entitled to be free of the annoyances that necessarily accompany segregation despite the fact that individual carriers sincerely tried to provide all races with equal facilities.

The ruling does not affect intrastate travel and it is expected that complicated situations will arise in the case of interstate carriers which also pick up and discharge passengers within the borders of a single state. If any of the fourteen carriers affected by the Commission's ruling appeals to the Supreme Court, that tribunal may have to decide whether it is going to overturn the *Plessy* v. *Ferguson* doctrine as it applies to transportation.

SECRET INFORMATION

LAST June the authority of the Secretary of State to withhold the issuance of passports was sharply circumscribed when the United States Court of Appeals for the District of Columbia held that a citizen could not be denied a passport without, as a minimum, a quasi-judicial hearing on the merits of his case. This authority has been further limited in a recent case (*Boudin* v. *Dulles*) in which a Federal district court ruled that the State Department could not cite "confidential information" as a reason for withholding a passport. In so holding, Judge Youngdahl stated as follows:

"The right to a quasi-judicial hearing must mean more than the right to permit an applicant to testify and present evidence. It must also include the right to know that the decision will be reached upon evidence of which he is aware and can refute directly. . . . More and more the courts have become aware of the irreparable damage which may be, has been and is wrought by the secret

informer and the faceless talebearer whose identity and testimony remain locked in confidential files".

This decision may have implications far beyond the passport question inasmuch as the issue of secret informers has arisen in many aspects of the Federal security program. This question has never been passed upon by the Supreme Court and it may be that Judge Youngdahl's decision may force such a test.

COMPULSORY INDEMNIFICATION LAW URGED

ON November 30, 1955, Leffert Holz, New York State Superintendent of insurance, recommended to the Joint Legislative Committee on unsatisfied judgments a compulsory indemnification law that would tax uninsured motorists to protect their victims. This plan is the third which Mr. Holz has proposed (see 1 N. Y. L. F. 334, 342 (1955)), as an alternative for compulsory automobile insurance which he does not favor. Under the proposed law every motorist would be required at the time of registering his car to provide proof of adequate financial responsibility or pay an additional assessment beyond the ordinary registration costs. Possession of certain minimal automobile liability insurance would be deemed adequate proof of financial responsibility. All assessments collected would be placed in a special fund to be used solely for the purpose of indemnifying persons injured by uninsured financially irresponsible motorists.

This plan is somewhat similar to legislation establishing a fund in New Jersey for the same purposes. However, the New Jersey statute taxes both insured and uninsured motorists as well as insurance companies while Mr. Holz's plan would levy the additional assessments only upon the financially irresponsible motorists. Mr. Holz did not make known the amount of the additional assessment, indicating that he was content to leave this matter to the legislature.

For the first time, the united opposition of casualty insurance underwriters to compulsory automobile insurance was broken by a proposal advanced in behalf of the 118 companies in the American Mutual Alliance. This plan, which is at direct variance with the attitude of the stock companies, would force all car owners in the state either to carry insurance, post a bond of $25,000.00 or carry certification of self insurance.

A spokesman for the Alliance described the plan as an "equal responsibility law" that would eliminate the "free bite" which is now available to car owners inasmuch as they are not required to have insurance until they have been involved in at least one accident.

Under the Alliance's plan, heavy penalties including a fine of $1000. or a year's imprisonment would be written into the proposed act.

This plan had been previously submitted to the Joint Legislative

Committee on Unsatisfied Judgments. At that time, Mr. Holz had opposed it and offered the plan which is reported above.

AMERICAN BAR ASSOCIATION

THE American Bar Association recently announced that it plans to increase its membership by at least 50,000 by March of 1956. It claims that this membership drive will be the largest ever conducted by the national professional group. The campaign, which has already commenced, will be climaxed in February when hundreds of recruiting teams will make simultaneous canvass to contact prospective members throughout the country.

Statistics reveal that the American Bar Association, which is the only national association of lawyers, has only 24% of its potential membership while other professional organizations have much larger percentages. The following table dramatically indicates this disparity:

	Potential Membership	Actual Membership	Percentage of Membership
Am. Medical Assn.	180,000	150,000	83%
Am. Dental Assn.	84,000	72,000	86%
Am. Inst. of Accts.	50,000	25,000	50%
Am. Osteopath Assn.	12,371	8,900	72%
Am. Bar Association	220,000	53,000	24%

MILITARY JUSTICE

SOME time ago, the United States Supreme Court invalidated Article 3(a) of the Uniform Code of Military Justice which had provided that persons in military service could be court-martialed after their separation for certain crimes committed while in service. This decision was recently applied in the case of Mrs. Clarice Covert, the wife of an Air Force enlisted man whom she accompanied on his assignment to Great Britain where she hacked him to death with an axe.

Prior to this incident, England and the United States had entered into an agreement by which the former waived its right to try certain American citizens such as Mrs. Covert in its Civil Courts. Accordingly, Mrs. Covert was court-martialed under the authority of the Uniform Code of Military Justice which conferred jurisdiction to military tribunals over "all persons serving with, employed by or accompanying" the Armed Forces overseas. After her trial, Mrs. Covert was sentenced to life in prison and appealed to the District Court for the District of Columbia claiming that this provision of the Uniform Code was unconstitutional.

In sustaining her contention, District Judge Edward A. Tamm made his ruling on the basis of the case of *Toth* v. *Quarles* (see 1 N. Y. L. F. 101, 472 (1955)) which invalidated Article 3(a). He reasoned that, since the Supreme Court had

held that ex-servicemen could not be tried by court-martial for crimes committed while in the armed forces, military tribunals could have no jurisdiction over persons who had never been anything but civilians.

This decision will undoubtedly raise many problems as to what tribunal would have jurisdiction to try American civilians abroad. It may be that the United States will relinquish such jurisdiction to the foreign countries like Great Britain and France which have surrendered it. However, it would seem that the best solution might be that suggested by Mr. Justice Black in the *Toth* case where he indicated that Congress should enact legislation giving the United States Civil Courts jurisdiction over certain civilians who are exempted by treaty or otherwise from the jurisdiction of foreign courts.

WIRETAPPING IN NEW YORK

THE recent trial of a New York private detective for wire-tapping has focused attention on the legal aspects of the involuntary interception of telephonic communication. For more than nine months a joint committee of the State Legislature, headed by Assemblyman Anthony P. Savarese, has been investigating wire-tapping and all its ramifications. This committee has now held its first public hearings limiting testimony to "private" as distinguished from "official" taps.

The results of these first hearings indicate that most of the wire-tappers are private detectives trying to amass evidence for subsequent matrimonial litigation or to discover trade secrets of business firms. The courts have held that it is legal for a man to tap his own telephone, thus permitting the tapper to learn the intimate secrets of the innocent caller as well as the suspect. Furthermore, even in those cases where it is plainly illegal, the Savarese committee indicated that very little could be done to prosecute tappers. In New York State, for example, there has been only one successful prosecution and according to Chairman Savarese, the New York Telephone Company has ignored the problem because it does not want the public to become skittish of using telephones. The Committee will continue hearings and expand the testimony to cover official or police tapping.

TRADE NAMES

RECENTLY, the Supreme Court, New York County, had occasion to consider whether a nationally known television personality could obtain an injunction pendente lite to restrain a corporation from using his name in its corporate name. In denying the application, the court held that, inasmuch as the principal stockholder in the defendant corporation had the same name as the plaintiff and there was no evidence of any

intent to mislead the public, sufficient cause for granting the injunction did not exist.

The plaintiff, Ed Sullivan, insisted that his name had become identified with his personality and that he alone was entitled to its use. Mr. Justice Lynch, waxing a bit philosophical, insisted that

"Be he the lowest rung of the ladder of success, a person has an equal right to the honest use of his own name, as has he who has scaled the heights."

CIVIL RIGHTS LAW

AN interesting decision was recently rendered by the Municipal Court of the City of New York when Mr. Justice Wahl decided in favor of a Negro and his white wife in a suit brought under § 40 of the Civil Rights Law to recover a statutory penalty for refusal of the defendant to rent a room to the couple.

The wife reserved a room in the defendant's hotel and paid a deposit of $5.00 to the desk clerk. When she returned with her husband, the couple was informed that the hotel did not want "white and colored" living together in view of the fact that another interracial couple who had resided there previously fought all the time. The desk clerk returned the deposit and the instant suit was brought by the couple.

Mr. Justice Wahl had no difficulty in finding for the Negro husband. However, he questioned whether this section of the Civil Rights Law was applicable to persons of the white race. Both on authority and common sense, he decided that a white woman may be discriminated against because she has elected to marry a Negro, and that the refusal of the hotel to furnish her lodging because of her husband's color is "a rejection of her because of her color."

Incidentally, this case was tried by a former student of New York Law School, Bruce McM. Wright, who is presently serving as secretary of the Alumni Association.

WORK LAW TEST

ON Monday, December 5, 1955, the Supreme Court granted a Writ of Certiorari to hear a test of Nebraska's "right-to-work" law. Since seventeen other states have similar laws, the Court's decision will be of extreme importance.

The instant case arose when five employees of the Union Pacific Railroad refused to become members of any union. These men were defined as "clerical, office, station and storehouse" employees, according to union definitions, and should have joined the Brotherhood of Railway and Steamship Clerks, Freighthandlers, Express and Station Employees.

The Railway Labor Act as amended on January 10, 1951, permitted union shop agreements under which all employees covered by basic col-

lective bargaining agreements are required, as a condition of keeping their jobs, to become members of the appropriate union. These five employees brought suit to enjoin the enforcement of such an agreement on the ground that it violated Nebraska's "right-to-work" law. Both the union and the railroad contended that the Nebraska law was inapplicable because of the federal statute.

The Nebraska state courts held that union shop agreements were invalid under Nebraska law and granted a permanent injunction in favor of the plaintiff, restraining Union Pacific from denying employment to any person in that state because of his resignation or expulsion from or refusal to join a labor organization. The lower court's decision was affirmed by the Nebraska Supreme Court which held that the congressional action in overriding the state laws violated due process and was therefore inapplicable in Nebraska. The granting of the Writ of Certiorari by the Supreme Court recognizes that the conflict between the two statutes presents a substantial federal question.

MURDER TRIAL TO BE TELECAST

FOR the first time a criminal trial is being broadcast over television as it occurs. In Waco, Texas, the trial of Harry L. Washburn for the murder of his mother-in-law is being televised live over KWTX-TV, with a camera in the balcony of the 54th District Court and microphones at the witness stand and the bench. Initially, the station plans to carry the entire daily proceedings utilizing existing lights only.

CONFLICT-OF-INTEREST BAR PROPOSED

THE Department of Justice has recommended to the White House a proposed executive order which would delineate the permissible activity of scores of business advisory groups that have intimate contacts with Federal agencies. This order originated in the department's Antitrust Division and is presently being circulated among government agencies.

The order is said to incorporate much of the Department's recommendations concerning the use of advisory groups, the members of which receive no government pay and travel at their own expense and includes the following:

1. There should be specific legal authority for setting up such a group or, in the alternative, an administrative finding that it is absolutely necessary in order for the agency concerned to carry out its functions.
2. The government should draw up the group's agenda.
3. Meetings should be held at the call of the chairman who should be a full-time government official.
4. Complete minutes of all meetings should be kept.
5. The groups should be purely advisory with necessary action taken by the government representative only.

IMMUNITY ACT OF 1954

THE first constitutional test of the Immunity Act of 1954 began with argument before the United States Supreme Court on December 6, 1955. This act provides that the Attorney General may request a Federal court to force a witness to answer despite the fact that the latter has refused on constitutional grounds. However, such a witness cannot be prosecuted on any testimony which he is forced to give.

William L. Ullman, a former Treasury Department official, refused to answer questions last year when he testified before a Federal grand jury in New York which was investigating communist subversion, claiming that his answers might tend to incriminate him. A District Judge, at the request of the Attorney General, ordered the witness to answer the questions under the immunity statute. When Mr. Ullman refused, he was sentenced to six months' imprisonment for contempt, which was affirmed by the Court of Appeals for the Second Circuit. (See 1 N. Y. L. F. 254 (1955)).

It is Mr. Ullman's contention that the Fifth Amendment prohibits compulsory bargains when dealing with First Amendment Rights, although voluntary bargains are constitutional. Although the First Amendment does not mention political beliefs, it has been construed to include these under the guarantee of free speech, and the Supreme Court has held on many occasions that such rights are not subject to congressional regulation.

The Government's position is that the Fifth Amendment does not guarantee the right of absolute silence and that the Constitution gives Congress the power to protect the security of the country provided it used reasonable means commensurate with the threat involved. It stressed the fact that the Immunity Act of 1954 was an exercise of an "allowable judgment" that the Court should not set aside.