NEW YORK LAW SCHOOL

NYLS Law Review
Vols. 22-63 (1976-2019)

Volume 2 | Issue 3 Article 4

July 1956

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THE PROGRESS OF THE LAW

POWER OF CONGRESSIONAL COMMITTEES

IN the New York Law Forum for April, 1956 (2 N. Y. L. F. —), a decision of the United States Court of Appeals for the District of Columbia that Congressional Committees have no power to compel witnesses before them to expose former communists simply for the sake of exposure was discussed. The case involved the reversal of the contempt of Congress conviction of John T. Watkins, a labor union organizer. In that decision, the majority held that questions put to Mr. Watkins were not pertinent to a valid legislative purpose and were asked solely for the sake of "exposure".

On February 20, 1956, the same court granted a motion by the government to have the case reheard by all eight of its judges. To grant this motion a majority vote was necessary.

This case is developing as an extremely important one in defining the constitutional limits of congressional investigation. It is certain that any subsequent decision by the Court of Appeals will be taken to the Supreme Court.

PRODUCTION OF RECORDS

ON July 13, 1955, Martin Solow, the assistant to the publisher of The Nation was indicted on the government's charge that he had destroyed four letters between The Nation and a labor union discussing Harvey M. Matusow at a time when a Federal Grand Jury was investigating the latter's recantations as a former witness. At the time of the destructions of the letters, neither Mr. Solow nor the correspondence was under a Grand Jury subpoena.

Mr. Solow recently moved for a dismissal of the indictment on the ground that any other course would place an "intolerable burden" on individuals to preserve indefinitely documents a Grand Jury might or might not eventually request. In refusing to dismiss the indictment, United States District Judge Edward Weinfeld held that to uphold Mr. Solow's position would "destroy the effectiveness of a Grand Jury inquiry". He maintained that unless he upheld the indictment against Mr. Solow, the government would run the risk that investigations might be frustrated because of the non-service of process "with the obstructor immunized from prosecution for his conduct".

COURT DELAY

OSWALD D. HECK, Speaker of the Assembly, recently criticized both bench and bar with reference to court congestion. He warned that the legislature might have to take drastic action to end what he termed

"almost intolerable" delays in bringing cases to trial.

With reference to the judiciary, Mr. Heck criticized the three-month summer vacation and called for trial and settlement of negligence cases on a year-round basis. Furthermore, judges should adopt a tougher attitude in compelling settlements and the waiving of jury trials. Although he did not think that an increase in the number of Supreme Court Justices would solve the problem, he indicated that the legislature would seriously consider additions.

As far as lawyers are concerned, Mr. Heck was of the opinion that the small number of attorneys who handle almost all of the negligence cases contributed to the delay by being forced to request frequent postponements. He urged judges to be far stricter about granting such requests.

AMERICAN BAR ASSOCIATION

THE American Bar Association is engaged in an extensive membership drive, calculated to double its members. Its membership application contains a requirement that an applicant indicate whether he is "Caucasian, Mongolian, Indian or Negro". The Harlem Lawyers Association has declared that such a requirement "is an insult to the dignity of being a lawyer". It has asked the Association to strike this requirement from the application blanks and has appealed to lawyers "to refrain from seeking membership in the American Bar Association until such a question is stricken".

The American Bar Association denied that it practiced discrimination among applicants for membership and that this requirement had appeared on the Association's membership application blanks since its founding seventy-eight years ago. Furthermore, a spokesman indicated that qualified Negro lawyers had been admitted to the organization and that the number of Negro members was "in the hundreds". Paul De Witt, the Executive Secretary of the Association of the Bar of the City of New York stated that it had tried for years to have the American Bar Association remove the requirement.

PLEADINGS IN CIVIL SUITS

THE Judicial Conference of the State of New York, which is composed of the Chief Judge of the Court of Appeals, the Presiding Justices of the Appellate Divisions and four justices from the Trial Bench of the Supreme Court, recently announced that it would recommend to the legislature the enactment of a bill to eliminate formal pleadings in civil suits. This act would prompt a statement which would incorporate all claims, defenses and relief sought to constitute a joinder of issue. This statement, of course, would have to be signed by all parties to the action.

The above procedure would elimi-

nate the involved paper work which now necessarily consumes a great deal of time prior to placing a case on the trial calendar. It would not change the actual conduct of the trial but it would eliminate much of the time consuming preliminaries.

SUFFOLK COUNTY COURT REFORM

IN view of the results of the investigation of the Justice of the Peace Courts in Suffolk County by the State of New York, it has been proposed that jurisdiction over traffic offenses presently entertained by them be transferred to a state-wide Magistrate's Court. J. Irwin Shapiro, State Commissioner of Investigation, urges that this step be taken as previously proposed by the State Temporary Commission on the courts.

Mr. Shapiro also recommended that these new courts be manned by lawyers only. Under the present system, Justices of the Peace are not required to be lawyers and are elected for a four-year term.

Late in 1955, Suffolk Republicans drafted a proposed charter for the county which would retain the Justice of the Peace system as it now exists. Democrats supported the general proposal for a new charter but they specifically opposed retention of the Justices Courts and urged that the District Court system of neighboring Nassau County be substituted. Under the Nassau system, District Courts handle traffic cases and have limited civil and criminal jurisdiction. Judges must be lawyers and are elected for six-year terms with nine elected by district and the tenth, who runs county-wide, acting as president of the court.

Commissioner Shapiro recently seized the records of thirty-five present and former Justices of the Peace in Suffolk County and released a report which indicated that favoritism and political influence had been used in the handling of motor vehicle cases. The records of both Democratic as well as Republican justices were involved.

LOUISIANA SEGREGATION LAW VOIDED

IN 1954, after the Supreme Court decision which found segregation in the public schools unconstitutional, Louisiana passed a series of laws that segregated schools under the state police powers. One act ordered separate white and Negro schools in order to "promote and protect public health, morals, better education and the peace and good order in the state." By its terms, this act specifically declared that segregation was not because of race.

The Court of Appeals for the Fifth Circuit invalidated these laws on the ground that the police power provision was only a device to sidestep the decision of the Supreme Court and that, as such, they were unconstitutional. Immediately after

the decision, the Federal District Court ordered New Orleans to desegregate its public schools "with all deliberate speed."

NO GRADUAL INTEGRATION IN GRADUATE SCHOOLS

ON MARCH 12, 1956, the United States Supreme Court ordered the University of Florida to admit to its law school without delay a Negro applicant who has been seeking admission for seven years.

In a unanimous per curiam opinion, the Court reversed a ruling of the Florida Supreme Court which had sanctioned a procedure that might have delayed the applicant's admission indefinitely.

In April, 1949, Virgil D. Hawkins applied for admission to the University's law school. A month later the University's Board of Control refused him admittance because of his race but offered to pay his tuition in some school outside of the state. Mr. Hawkins appealed from this ruling to the courts and on August 1, 1950 the state Supreme Court held that the state's constitutional obligation to furnish equal educational opportunities had been satisfied because the Board of Control had ordered the establishment of a law school for Negroes and had offered to pay Mr. Hawkins' out-of-state tuition until it was established.

Because the Florida court did not enter a final order, the United States Supreme Court rejected an appeal from its ruling. Two years later, however, the Florida high court entered a final judgment, following which the Supreme Court vacated the state court's ruling and sent the case back for reconsideration in the light of its decision of May 17, 1954, on public school segregation.

The Florida Supreme Court, after reconsideration, entered a judgment on October 19, 1956 holding that the exclusion of Mr. Hawkins solely because of his race was unconstitutional. It appointed a state judge to take evidence that it could use in determining the circumstances under which Mr. Hawkins and other Negroes would be admitted to the law school.

Mr. Hawkins again appealed to the Supreme Court, insisting that this survey procedure constituted a denial of his rights in that it would be so dragged out that he would in effect never gain admittance to the law school. The high court agreed with him, vacating the Florida judgment and ordering the University to admit Mr. Hawkins "without delay".

SUFFOLK COUNTY INQUIRY

THE Appellate Division, Second Department, recently ordered a secret inquiry into allegedly corrupt and unethical conduct of a group of Suffolk County attorneys. The inquiry was ordered after the Appellate Division justices had studied a report submitted by a Supreme Court Referee who had been questioning witnesses for more than

three months. Two Republicans, Supreme Court Justice Marcus G. Christ, and former Nassau County District Attorney Edward J. Neary were assigned to conduct the inquiry.

The Appellate Division directed that among others the following subjects are to be studied: (1) Improper practices of attorneys; (2) Condition of Suffolk Court Calendars; (3) Corrupt and unethical practices in the obtaining of cases by attorneys.

OUIJA BOARD HEIRS

A CONNECTICUT Probate Judge has been asked to decide whether the disposition of an $180,000 estate can be determined by a Ouija Board.

The Will of Mrs. Helen Peck of Bethel, Conn., provides that, with the exception of $2000.00, her entire estate shall go to one John Gale Forbes, otherwise unidentified and unknown. Mrs. Peck said before her death that this man's name had appeared to her on a Ouija Board she used with her husband in 1919 when such boards were the rage. A court-appointed investigator has been unable to trace any John Gale Forbes.

The Will is being contested by nine nieces and nephews of Mrs. Peck on the ground that it is invalid because she lacked testamentary capacity. In their briefs they indicated Mrs. Peck and her late husband used the Ouija Board from December 1919 to the last week in 1921. They quoted from many autobiographical notes found in Mrs. Peck's effects, none of which identified anybody by the name of Forbes. However, some stated that Mr. Peck had become very much angered with one John Gale, "one of our spirit friends".

Mrs. Peck had been ruled incompetent on June 20, 1955 and committed to a private psychiatric hospital where she died on September 7, 1955 at the age of 84.

NOT SLANDER PER SE TO CALL MAN A COMMUNIST

THE Court of Appeals has ruled that it is not slander per se to call a person a communist. In a unanimous decision, the court dismissed a $100,000 suit brought by Roman Gurther against the president of a company which had employed him for twelve years and who had allegedly said to him in the presence of others "you are a communist".

In previous decisions, the New York courts have taken the position that it was libelous per se to falsely accuse another in writing of being a communist.

HANGMAN'S END?

RECENTLY the question of ending capital punishment in England was debated in the House of Commons. A motion calling upon the Government to introduce legislation abolishing or suspending the death

penalty was carried by a vote of 293 to 262, with 37 Conservatives voting against the Government.

As a result of the vote, the Government suspended all executions, and Prime Minister Eden promised to give "full weight at once" to the House vote, but indicated that he would also emphasize the consequences of the abolition of capital punishment.

CIVIL DEFENSE ACT HELD CONSTITUTIONAL

A NEW YORK CITY Magistrate has found 19 persons guilty of violating a section of the New York State Defense Emergency Act which makes it a misdemeanor to disobey any official order of a duly authorized person concerning the conduct of civilians during air raids.

The defendants had refused to take shelter during an air raid drill on June 15, 1955. During the trial, Dr. Abraham J. Muste, a Quaker, testified generally for all the defendants. He stated that in a real air raid, pacifists would "do everything in our power to save human life, to rescue the suffering, but we would not do it as part of a military machine or under the Military Conscription Act."

The briefs filed on behalf of the defendants urged that the act as applied to these defendants violated both the federal and state constitutions in that they were denied, among others, freedom of religion or conscience, freedom of speech, press and assembly and the equal protection of the laws. Magistrate Hyman Bushel, in convicting the defendants, held that religious activities as distinguished from religious beliefs could give rise to criminal charges where they conflicted with the peace or safety of the state.

BLUE RIBBON JURIES

THE New York State Legislature is presently considering a bill that would end Blue Ribbon Trial Juries in New York City.

The Judiciary Law now permits the impanelling of special juries in counties with populations of one million or more. At present, only the counties of New York, Brooklyn, Bronx and Queens exceed that figure.

In the words of Assemblyman William C. Brenner of Queens, who introduced the measure in the lower house there was "general resentment against super-type citizens chosen for Blue Ribbon Juries."