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# **Civil Liberties Docket**

**Vol. II, No. 1**

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**National Lawyers Guild, National Committee on Constitutional Rights and Liberties**

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## Highlights of this Issue

### "Loyalty-Security" in Private Employment

The recent decisions in *Parker v. Lester* (268.1) have provided the most extended review to date of the Government's loyalty-security program as applied in private industry. A year ago the Court of Appeals for the Ninth Circuit (at 227 F. 2d 708) held that the loyalty-security regulations adopted by the Coast Guard for the purpose of screening merchant seamen were unconstitutional in that under them procedural due process, as required by the U. S. Constitution, was impossible. The Court considered the Coast Guard's argument that security considerations made impossible the presentation of full evidence and an open hearing, discussed the kind of evidence customarily found in "confidential files", and posed the question: "Is this system of secret informers, whisperers and tale bearers of such vital importance to the public welfare that it must be preserved at the cost of denying to the citizen even a modicum of the protection traditionally associated with due process?"

Answering in the negative, the Court remanded the case to the District Court for entry of an appropriate order enjoining the Coast Guard from enforcing the regulations against plaintiffs. The Coast Guard did not apply for certiorari but, instead, on May 1, 1956 amended its regulations to provide that an open "due process" hearing *might* be provided to the seamen. It then argued that the screened seamen should be required to file applications under the new regulations. The District Court disagreed and directed the immediate reinstatement of all seamen screened under the old, illegal regulations, without prejudice to the right of the Coast Guard to proceed under the new regulations to remove them from their positions *after* a full hearing. The Court of Appeals again affirmed (235 F. 2d 787). The Coast Guard obtained a stay until Oct. 31st pending its decision on whether to apply for certiorari.

The decision is in terms applicable only to the West Coast but it may be that national application will be necessary as an administrative matter. This is the first decision in an appellate court in which the due process requirement of cases such as *Morgan* (304 U. S. 1), and *Ohio Bell Telephone Co.* (301 U. S. 292) have been applied to the current loyalty-security program.

And see *Kasik* (268.2) and *Mulsac* (268.3).

### Teachers Need Not "Inform or Else"

On March 17, 1955 the N. Y. Board of Education passed a resolution authorizing the Superintendent of Schools to terminate the employment of those who, in the course of an investigation under New York's Feinberg Law, refused to inform on other members of the teaching staff who may have been members of the Communist Party. In August, 1955, five teachers were discharged for their refusal to inform (*Adler*; 280.3). They appealed to the State Commissioner of Education, who, in August, 1956, held the City's "inform or else" resolution illegal.

The Commissioner cited widespread public criticism of the Board's resolution from both professional organizations and responsible public sources. He held that enforcement of the ruling would so destroy teacher morale as to interfere seriously with the operation of the educational system, and pointed out that the requirement that teachers inform would result in tale-bearing and other destructive practices.

The Corporation Counsel of the City of New York has announced he will seek judicial review of the ruling, but no action has been filed to date.

## The Powers of Senator McCarthy

Corliss Lamont, Albert Shadowitz and Abraham Unger were indicted for contempt of Congress for refusing to answer questions put by the McCarthy Committee in three separate Congressional investigations. They had not pleaded the Fifth Amendment; all had raised questions as to the jurisdiction of the Committee and had urged that the First Amendment protected them in their refusal to answer questions relating to political views and activities. The District Court (SD NY) dismissed the indictments (18 F.R.D. 27); the Court of Appeals affirmed in August, 1956.

In a unanimous decision, the Court held that it was clear that the Committee on Government Operations (Sen. McCarthy, Chairman), did not have authority to inquire into alleged subversive activities of non-governmental personnel. Chief Judge Clark, for the Court, pointed out that the Committee's jurisdiction was limited by the terms of the Legislative Reorganization Act and the Senate Rules and that nothing in those enactments gave to the Committee the broad power it asserted to investigate subversive activities at large.

The decision struck a severe blow at the powers of the McCarthy Committee. Dr. Lamont was called as a witness in a hearing which purported to relate to Army information and education; Mr. Unger in an investigation re the United Nations; Mr. Shadowitz in an investigation re Fort Monmouth. Under this decision, all three investigations were illegal, at least in so far as they called non-governmental witnesses. In fact, few, if any, of the witnesses called at those hearings were employees of the Federal Government. The Government has not appealed.

And see cases at 271.

## Government Witnesses Held Unreliable

In an unusual decision from the Bench during argument of the *Mesarosh* Smith Act conspiracy case (241.2), the Supreme Court sent the case back for new trial because the Government had confessed that it could not vouch for the credibility of its paid witness, Mazzei. This witness had also testified against two attorneys involved in disciplinary actions: *Sheiner* (265.3) and *Schlesinger* (265.4).

And see *Kusnitz* (355.3).

## Civil Liberties on Supreme Court Docket

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*Scales* (242.2)  
*Watkins* (271.14)  
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Cases pending:

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## About the Civil Liberties Docket

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### DOCKET

#### I. FREEDOM OF EXPRESSION AND ASSOCIATION (FIRST AMENDMENT RIGHTS) (10-299)

**Book:**

Walter Gellhorn, Individual Freedom and Governmental Restraints, La. State Univ. Press, 1956 (260 pp., \$3.75).

#### **SPEECH AND PRESS (10-99) See also Association (200-299)**

**Law review articles:**

Nanette Dembitz, Congressional investigation of newspapermen, authors, and others in the opinion field—Its legality under the First Amendment, 40 Minnesota L. R. 517-560 (April, 1956).

Paul A. Freund, Constitution law, in Law and the future: A symposium, 51 Northwestern Univ. L. R. 187-195 (May-June, 1956).

George K. Gardner, Free speech in public places, 36 Boston Univ. L. R. 239-252 (Spring, 1956).

#### **10. Licensing**

##### **11. Meetings**

##### **12. Motion Pictures**

12.1. *Times Film Corp. v. Chicago.* (CA 7.) (DC Ill., 55 C 1006, 1955.) Suit to enjoin Def.-City from interfering with showing of film, "The Game of Love", after Censorship Bd. refused permit. Dist. Ct. *overruled* Master who reported favorably on picture and recommended holding ordinance unconstitutional, *upheld* advisory jury, *held* statutory terms "immoral" and "obscene" not vague and uncertain; *held* movie came within statutory proscription. On appeal.

Abner Mikva, Esq., 231 S. LaSalle St. Chicago.

12.2. *Kingsley Intl. Pictures Corp. v. N. Y. Bd. of Regents.* (N. Y. Sup. Ct., Albany Co.) Suit by distributors of "Lady Chatterley's Lover" testing

constitutionality of Sec. 122-122a, NY Educ. Law and refusal of NY Bd. of Regents to grant state license to movie. On appeal. Ephraim London, Esq., 150 Broadway, NYC.

**Law review notes:**

Motion picture censorship—Social control and the Constitution, 17 Ohio State L. J. 227-239 (Spring, 1956).

Constitutional censorship of motion pictures—An iconoclastic view, 4 Univ. of Pittsburgh L. R. 637-659 (Summer, 1956).

**13. Peddlers**

**14. Miscellaneous**

**20. Administrative Restrictions**

**21. Customs**

- 21.1. *U. S. v. 31 Photographs, et al.* (SD NY, #AD 189 50.) Libel filed by U. S. Customs to gain permanent possession, in order to destroy, collection of photos, books, etc. shipped from Europe and Far East to late Dr. Kinsey's Institute for Sex Research, U. of Ind., on ground they constitute "obscene material". Def.-Institute filing claim for possession, and answer.

Harriet F. Pilpel of Greenbaum, Wolff & Ernst, 285 Madison Ave., NYC.

**22. Post Office**

**23. Miscellaneous**

- 23.1. *Daily Worker v. Moysey.* (CA 2.) Newspaper seized on alleged deficiency tax for year 1951, simultaneously with seizure of *Communist Party* (202.1). Tax imposed on moneys received as gifts (which under law are non-taxable), because names of donors not supplied. Dist. Ct. *denied* injunction pendente lite to enjoin collection of tax on claim that levy was deliberate and intentional interference with publication of newspaper in violation of First Amendment, holding law does not permit enjoining tax levy. Appeal pending.

Harry Sacher, Esq., 342 Madison Ave., NYC.

- 23.2. *Walker v. Mayor D'Alesandro.* (Md. Ct. of App.) Pl.-artist suing Baltimore's Mayor for forcing removal of Pl.'s

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painting from Peale Museum as "morally objectionable, obscene, indecent". Super. Ct. *held* Mayor immune from civil suits filed re acts done in official capacity, that he had authority to act as "conservator of the peace". Issues: can such "conservator" censor?

Fred E. Weisgal and Stanley Sollins, Esqs., both of 817 Fidelity Bldg.; H. Warren Buckler, Jr., and Robert C. Prem, Esqs., both of 800 Balt. Life Bldg., all of Baltimore, Md.

### **30. Economic Restrictions**

- 30.1. *Independent Productions Corp. and I.P.C. Distributors, Inc. v. Loew's, Inc., et al.* (SD NY, Civ. #110-304.) Pls.-producers of movie "Salt of the Earth" (re strike of *Mine, Mill Union*, see 203.1) brought action against 62 producing, distributing, exhibiting and processing companies charging violation of U. S. anti-trust acts. Pls. allege Defs. black-listed 3 persons engaged in production of movie and thus made it impossible to obtain adequate distribution of film. Pending.

Rosston, Hort and Brussel, Esqs., 141 Broadway, NYC.

### **40. Contempt**

#### **41. Federal Courts**

#### **42. State Courts**

#### **43. Other agencies**

### **50. Criminal Sanctions**

#### **51. Disorderly conduct**

#### **52. Obscenity (see also 12)**

- 52.1. *Butler v. Michigan.* (U.S.S.C., #548, Oct. Term, 1955.) App't fined \$100 for selling book, "The Devil Rides Outside", under Mich. statute outlawing sale or distribution of books "containing obscene, immoral, lewd or lascivious language" tending to incite minors to violent or immoral acts. Appeal raises question as to 1) vagueness of state statute; 2) unconstitutional limitations on freedom of press. To be argued Fall, 1956.

Manuel Lee Robbins, Esq., 30 Broad St., NYC; William G. Comb, Esq., Detroit, Michigan.

- 52.2. *Alberts v. California.* (U.S.S.C.) Def. *convicted* on 2 charges under Calif. Penal Code, Sec. 311: lewdly keeping for sale "obscene and indecent" books; advertising them. Calif. Sup. Ct. *affirmed*, holding: statute "not unconstitutionally indefinite"; fact that literature was distributed by mail did not render statute inoperative. Appeal to U.S.S.C. pending on ground that Calif. statute is in violation of due process and freedom of press provisions of U. S. Constitution and inapplicable to the *mailing* of or sale by *mail* of circulars, a sphere of activity reserved exclusively to Federal Gov't.

Stanley Fleishman, 174 North Ivar Ave., Los Angeles.

Motion for A.C.L.U. of S. Calif. to file amicus brief *denied* Oct. 8.

#### **53. Defamation**

#### **54. Sediton (see also 241-4)**

- 54.1. *U. S. v. Powell, et al.* (ND Calif., S. Div., #35065.) Indictment under 50

U.S.C., Sec. 2388, charging Defs. with wartime sedition during Korean conflict: interfering with operation and success of U.S. military forces; promoting success of its enemies, insubordination, disloyalty, mutiny, refusal of duty, obstruction of recruiting and enlistment; reporting on "bacteriological warfare", war casualties and "American sabotage of Korean peace talks", while publishing *China Monthly*.

Motions to dismiss *denied*; motions to take depositions of witnesses in China *granted*.

McMurray, Brotsky, Walker, Bancroft & Tepper, Esqs., 785 Market St., San Francisco; Stanley Faulkner, Esq., 9 East 40th St., NYC; A. L. Wirin, Esq., 257 S. Spring St., Los Angeles.

## 55. Picketing

- 55.1. *People of New York v. Carcel and Collazo*. (N. Y. Ct. of Spec. Sess., App. Part.) Defs. convicted for breach of peace (NY Penal Law, Sec. 722(2)) for picketing and distributing leaflets on independence of Puerto Rico, freedom for political prisoners, on sidewalk entrance to UN grounds. During trial, UN Deputy disavowed UN jurisdiction over sidewalk but appeared amicus to support prosecution. Issues: jurisdiction of NYC over sidewalk; right to picket. Appeal argued Oct. 5.

Conrad J. Lynn, Esq., 141 Broadway, NYC.

Amicus brief filed by N.Y.C. Civil Liberties Union, by George Rachlin, Esq., 46-10 11th, L. I. City and Lester C. Migdal, Esq., 11 W. 42nd, NYC.

## 56. "Corrupt Practices"

- 56.1. *U. S. v. UAW-CIO*. (U.S.S.C.) Dist. Ct. *dismissed* 4-count indictment charging Def.-union with violating fedl. Corrupt Practices Act (18 USC 610) by spending \$5,985 for TV broadcasts endorsing candidates in Democratic primary and general election in Nov., 1954, held statute did not apply to Def. as payments did not constitute "expenditures in connection with" the elections, as contemplated in law. Ct. did not pass on whether Act violates First Amendment. Govt.'s petition for cert. *granted*; briefs filed.

Harold A. Cranefield, U.A.W. General Counsel, 8000 E. Jefferson Ave., Detroit 14.

## 57. Miscellaneous

- 57.1. *People of New York ex rel. Hearn v. Muste, et al.* (Spec. Sess., App. Term, NY Co.) 19 Def.-pacifists convicted of misdemeanor under NY State Emergency Defense Act, Sec. 102, for refusal to participate in air raid drill. Sentences suspended. Issues on appeal: statute unlawful delegation of war power by Congress to states and municipalities; Congress had no war power at time of Defs.' action; statute says on its face it will interfere with First Amdt. rights and is unconstitutional therefore; arrests denied Defs.' equal protection since others (incl. patrons at Yankee Stadium) were exempt from arrest for non-participation in

Air Raid drill; Defs. should have been treated as exempt persons under statutory exemption applied to persons of "recognized" religious persuasions. Pending.

Kenneth Greenawalt, Esq., 1 Wall St., NYC; Prof. Harrop Freeman, Cornell University, Ithaca, NY.

- 57.2. *People of New York v. Peck, et al.* (NYC Magis. Ct.) 19 pacifists arrested for refusal to take shelter in air raid drill. Facts and issues similar to *Muste* (57.1). Def.-physicist physicist claimed: "An officer said to take shelter. Shelter means protection, and there is no protection in NYC now against H-bomb." Trial adjourned until appeal in *Muste* argued.

Kenneth Greenawalt, Esq., 1 Wall St., NYC.

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- 57.3. *People of New York v. Panagakos.* (NY Ct. of App.) After arrest, Def. pleaded guilty under NY Vagrancy Law, which punishes those over 16 yrs. of age who have not been county residents for 6 mths., have no apparent means of support and do not work. Def. incorrectly sentenced to 6 mths. and \$500 fine. After release on habeas corpus for this reason, action brought to vacate judgment on ground of unconstitutionality of statute. Ct. Ct. *denied* motion to vacate. Appeal pending.

Emanuel Redfield, Esq., 60 Wall St., NYC.

- 57.4. *People of California v. Aykens and Wallace.* (App. Dept., Super. Ct., San Mateo.) Appeal from Defs.' conviction under Calif. vagrancy law. Issue: constitutionality of statute. Pending.

## 60. Civil Sanctions

### 61. Defamation

### 62. Injunctions in labor disputes

### 63. Other injunctions

- 63.1. *Krebiozen Research Foundation v. Beacon Press, Inc.* (U.S.S.C., #286.) Pls., interested in production and sale of drug "krebiozen", sought injunction to prevent Def.'s publication of book "Krebiozen, The Great Cancer Mystery", alleging it would assert drug was worthless and would assail Pl.'s motives and practices. Issue: would injunction constitute prior restraint of publication in violation of state and fedl. guarantees of free press? Def.'s demurrer sustained; Sup. Jud. Ct. *denied* injunction. Oct. 8: U.S.S.C. *denied* cert.

Frank B. Frederick, Hervey W. King, Victor H. Kazanjian, Esqs., 50 State, Boston.

## FREEDOM OF RELIGION (100-199)

### 110. Separation of Church and State

### 120. Pacifists and Conscientious Objectors

See *Lumpkin* (502.1).

## 130. Denial of Tax Exemptions

- 130.1. *People's Church of San Fernando Valley, Inc. v. County of Los Angeles.* (Calif. Sup. Ct.) Pl.-church filed claim for customary religious tax exemption, striking out "loyalty declaration" required by statute and recent constitutional amendment (Calif. Const., Art. XX, Sec. 19). Tax Collector sent tax bill; church paid first installment under protest; brought action to recover on ground assessment illegal and invalid as violation of 1st Amdt. rights to freedom of religion and expression. L. A. Co. Super. Ct. *held*: statute is discriminatory. On appeal, together with 130.2 and 130.3. Pending. Wirin, Rissman & Okrand, Esqs., 257 S. Spring, Los Angeles.
- 130.2. *First Methodist Church of San Leandro v. Horstmann, et al.* (Calif. Sup. Ct.) Consolidated on appeal with 130.1 and 130.3. William T. Belcher, Esq., Fox-Oakland Bldg., Oakland; Lawrence Speiser, Esq., for A.C.L.U. of N. Calif., 503 Market St., San Francisco.
- 130.3. *First Unitarian Church of Berkeley v. Horstmann, et al.* (Calif. Sup. Ct.) Consolidated on appeal with 130.1 and 130.2. Phillips, Avakian & Johnston, Esqs., Financial Center Bldg., Oakland; Lawrence Speiser, Esq., for A.C.L.U. of N. Calif., 503 Market St., San Francisco.
- 130.4. *American Unitarian Assn., et al. v. County of Santa Clara, et al.* (Santa Clara Co. Super. Ct., Calif.) Facts and issues similar to *People's Church* (130.1). Pending. Landels & Weigel, Esqs., 275 Bush St., San Francisco.
- 130.5. *Fellowship of Humanity v. Co. of Alameda and City of Oakland.* (Super. Ct., Alameda Co., #250074.) Pl.-Humanist Church denied real property tax exemption on ground its property not used "solely and exclusively for religious worship", constitutional test for church tax exemption. At trial of Pl.'s suit to recover taxes paid, Defs. introduced evidence to show: discussion topics "leftist" in content; property also used by outside "subversive" organizations; Humanism not a religion. Trial ct. *found* inter alia, other churches discussed similar topics, permitted use of premises by outside organizations. Ct. *held* Pl.'s property used "solely and exclusively for religious worship"; Pl. entitled to church exemption. Def.'s appeal pending. McMurray, Brotsky, Walker, Bancroft & Tepper, 785 Market St., and George Olshausen, Esq., 1238 Pacific Ave., all of San Francisco.

## 140. Miscellaneous Restrictions

- 140.1. *Rev. Dawkins v. Station KGFJ.* (Calif. Super. Ct., Los Angeles County.) After Def.-radio station wrote Pl.-Negro minister a letter warning him his religious services would be taken off the air if he continued to discuss "racism", Pl. filed suit to enjoin Def. from censoring his radio sermons against racial segregation. Pending. George L. Vaughan, Jr., Esq., and Loren Miller, Esq., 524 S. Spring St.; A. L. Wirin, Esq., 257 S. Spring St., all of Los Angeles.

## ASSOCIATION: As affecting the organization itself (200-239)

### 200. Privileges

#### 201. Meetings

#### 202. Tax exemption

202.1. *Communist Party v. Moysey*. (U. S. Tax Ct.) Without prior notice or warning, Def. Internal Revenue Dir. seized Pl.'s offices and those of affiliated state organizations, appropriating property and cash found on premises against deficiency income tax for 1951. Pl. suing to enjoin collection of tax until appeal from assessment tried in Tax Ct. Dist. Ct. *denied* motion for temporary injunction on ground law provides no such remedy and unique treatment of Pl. as political party immaterial. Issues: Whether Pl. has any taxable income; whether political parties are required to file income tax returns or pay taxes; whether Pl.'s refusal to furnish Def. with names of donors makes all money received taxable. Petition in Tax Ct. to set aside assessment pending.

John Abt, Esq., 11 Park Pl., NYC.

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202.2. *Green v. Javits, et al.* (NY Spec. Term.) (350 U. S. 910, NYLJ Mar. 30, 1956, p. 5.) Action against NY Atty. Genl. to enjoin enforcement against Pl. of NY State Social Welfare Law, Art. 10 (requiring annual registration and reporting by all charitable organizations, authorizing Atty. Genl. to obtain order for examination of organization and witnesses before trial as basis for prosecution for failure to comply). Such order obtained for examination of Pl. as sec'y, Am. Comm. for Protection of Foreign Born. Issues: application of law to organization which is political, not charitable; does law interfere with its federally-protected rights of free speech, press and petition. N. Y. App. Div. *returned* case to Referee in Spec. Term for hearing on character of Comm. Pending.

Blanch Freedman and Gloria Agrin, Esqs., 220 Broadway, NYC.

#### 203. N.L.R.B. certification

203.1. *Leedom, et al. v. Intl. Union of Mine, Mill & Smelter Workers*. (U.S.S.C., #57.) (351 U. S. 949, 226 F. 2d 194.) Feb., 1954, N.L.R.B. issued order directing "administrative investigation" re truth or falsity of 5 Taft-Hartley non-Communist affidavits executed by secy.-treas. between 1949-1953. (See *Travis*, 291.4.) Feb., 1955: N.L.R.B. issued order finding affidavits false, that members of union were aware of their falsity, therefore union had not been in compliance with requirements of 9h. Finding based on public statement of Travis resigning from Communist Party prior to signing first oath, which Bd. held was in fact statement that he did still believe in and support Comm. Party in its advocacy of violent overthrow of Gov't. Pl.-union sought preliminary injunction. Feb., 1955: DC DC *denied* certification to Union. Nov., 1955: CA DC *reversed*, citing *Farmer* (221 F. 2d 862.) Argument in U.S.S.C. 1956 Term with 203.2.

Nathan Witt, Esq., P.O. Box 156, Ansonia Sta., NYC.

- 203.2. *Amalg. Meat Cutters & Butcher Workmen of N. Am. v. N.L.R.B.* (U.S.S.C., #40.) (351 U. S. 905, 226 F. 2d 194.) Facts and issues similar to 203.1. CA 6 refused to consider N.L.R.B. enforcement petition for reinstatement of 24 workers, *holding* Union retroactively decomplicated (as of 1952) because of officer's conviction for filing false affidavit in 1950. (See *Gold*, 291.2). 1950 affidavit *functus officio* in 1952; Union's 1952 compliance status based on Gold's uncontested 1951 affidavit. Added issue: whether punishment for officer's guilt may be extended to 24 workers in same union. Argument in U.S.S.C. 1956 Term with 203.1.
- Harold Cammer, Esq., 9 E. 40th, NYC.

## 204. Continued existence

- 204.1. *Alabama ex rel. Atty. Genl. Patterson v. N.A.A.C.P.* (Ala. Ct. of App.) Pet. accused N.A.A.C.P. of organizing and supporting Montgomery bus boycott (see *Rev. King*, 244.4), providing financial assistance to Pls. *Lucy, Hudson* (522. Ala. 1), being out-of-state corporation engaged in business in Ala. without complying with Ala. laws. June 1: Temporary restraining order issued, ex parte, against N.A.A.C.P. prohibiting it from conducting further business in the state, organizing new chapters, collecting funds, or complying with foreign corp. registration law. Jy.: Cir. Judge *granted* Atty. Genl. permission to examine N.A.A.C.P. files showing membership lists, names of persons authorized to solicit members and funds, bank and property data, and copies of charters. On Def's. refusal to produce these records, because of fear of economic and physical reprisals against members, \$10,000. fine imposed, increased to \$100,000. for continued refusal. On appeal, Ala. S. Ct. *refused* to suspend fine while appeal pending; *refused* extraordinary writ to permit appeal directly to Ala. S. Ct. Oral argument in Ala. Ct. of Appeals to be set.
- Robert Carter, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

- 204.2. *Texas v. N.A.A.C.P., a Corp., and N.A.A.C.P. Legal Defense & Educational Fund, Inc.* (Tex. 7th & 11th Jud. Dist. Cts., #56-649.) Smith Co. Ct. granted Atty. Genl. Shepperd temporary restraining order enjoining Defs. from conducting any business in state on charges of violation of Tex. statutes requiring corps. doing business in state to pay franchise tax and forbidding barratry. At hearing on Def's. motion to vacate order and against issuance of temporary injunction, Def. argued proceeding not brought in compliance with statute which requires such suits to be brought in capitol county or co. where corp. has principal office.
- W. J. Durham, Esq., 2000 Flora St., Dallas, Tex.; Thurgood Marshall, Esq., N.A.A.C.P. Legal Defense & Educational Fund, 107 W. 43rd., NYC.

## 210. Compulsory Registration

### 211. 1950 Internal Security Act



211.1. *Communist Party of U. S. v. Subversive Activities Control Bd.* (S.A.C.B.) (351 U. S. 115 *reversing* 223 F. 2d 531.) Bd. *held* Pet. a "Communist action" organization and required it to register. *Reversal* by U.S.S.C. based on holding that Pet's. application to adduce additional testimony showing that 3 key Gov't. witnesses were untrustworthy and had committed perjury should have been granted. *Remanded* to Bd. with instructions to permit proposed testimony to be introduced or to re-evaluate original testimony without considering evidence of witnesses attacked. Aug. 10: Bd. *denied* Pet's. motion to reopen hearings for supplemental proof, ordered testimony of 3 witnesses expunged without hearing. Aug. 17: Pet. filed motion in CA DC for leave to adduce additional evidence Bd. had refused to hear; argued Oct. 4. Sept. 18: Bd. heard argument on whether record as expurgated supports its registration order. Decision reserved.

John Abt, Esq., 11 Park Pl., NYC; Joseph Forer, Esq., 711—14th St. NW, Washington, D.C.

211.2. *Brownell v. Jefferson School.* (CA DC.) S.A.C.B. ordered Def.-School to be registered as "Communist-front" organization. Action of Bd. based on finding that Communist Party is "Communist-action" organization and School's activities are related to it. U.S.S.C. reversal of that order and pending proceedings before Bd. in *C.P. v. S.A.C.B.* (211.1) have operated to stay further proceedings in this appeal until issues in that case are disposed of.

Harry Sacher, Esq., 342 Madison Ave., NYC.

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211.3. *Brownell v. Labor Youth League.* (CA DC.) Facts and status similar to that in *Jefferson School* (211.2).

Gruber and Turkel, Esqs., 1 Bank St. Stamford, Conn.

211.4. *Brownell v. Natl Council of American-Soviet Friendship.* (CA DC.) Council ordered by S.A.C.B. to register as "Communist-front" organization. CA DC *denied* Def's. motion to set aside order summarily under *C.P. v. S.A.C.B.* (211.1) decision. Pending.

Forer & Rein, Esqs., 711 14th St. NW, Washington, DC.

211.5. *Brownell v. Civil Rights Congress.* (SACB #106-53.) Hearing concluded, decision of Bd. awaited on recommendation of hearing officer that organization be designated a "Communist front" and required to register, to which exceptions were filed Feb., 1956. Def. dissolved at Convention in Jan., 1956. Decision of Bd. pending also on motion to dismiss on ground of mootness.

Rhoda Laks, Esq., 615 Columbus Ave., NYC; Ralph E. Powe, Esq., 700 Macon St., Brooklyn, N.Y.

211.6. *Brownell v. Washington Pension Union.* (SACB #114-55.) Proceeding to designate organization a "Communist front". During proceedings, applications made first by Def.-organization and later by Gov't to disqualify hearing officer Harry P. Cain, Bd. member, as biased. Motions

*denied* by Bd. Hearings completed, hearing officer recommended finding that organization is a "communist front". Decision by Bd. on this recommendation pending. Resp. asked Cain, whose term on Bd. has expired, to submit amicus brief on constitutional questions should case go to Ct., following Cain's statement that Act violates First and Fifth Amdts. and is so worded no Resp.-organization could secure "acquittal".

Jay G. Sykes, Esq., 1708 Smith Tower, Seattle, Wash.

- 211.7. *Brownell v. American Peace Crusade*. (SACB #117-56.) Proceeding pending before S.A.C.B. to have organization declared a "Communist front".

Joseph Forer, Esq., for Intervenor, 711 14th St. NW, Washington, D.C.

- 211.8. *Brownell v. California Labor School in San Francisco*. (SACB.) Proceeding pending before S.A.C.B. to have organization declared "Communist front".

Gladstein, Andersen & Leonard, Esqs., 240 Montgomery St., San Francisco.

- 211.9. *Brownell v. Am. Comm. for Protection of Foreign Born*. (SACB.) Proceeding pending before S.A.C.B. to have organization declared "Communist front".

Joseph Forer, Esq., 711 14th St. NW, Washington, DC.

## **212. 1954 Communist Control Act**

- 212.1. *Brownell v. Intl. Union of Mine, Mill & Smelter Workers*. (S.A.C.B.) First petition filed (July 1955) under Communist Control Act of 1954 to have a union declared a "Communist-infiltrated" organization. Petition charges group in leadership has used Union for "Communist-inspired purposes". Hearing before S.A.C.B. postponed pending proceedings in *C.P. v. S.A.C.B.* (211.1).

Nathan Witt, Esq., 9 E. 40th, NYC; Joseph Forer, Esq., 711 14th St., Washington, D. C.

- 212.2. *Brownell v. United Electrical, Radio & Machine Workers*. (S.A.C.B.) Facts, issues and status similar to 212.1.

Donner, Kinoy and Perlin, Esqs., 342 Madison Ave., NYC.

## **213. State Laws**

- 213.1. *La. ex rel. LeBlanc, Atty. Genl. v. Lewis, et al. and N.A.A.C.P.* (La. Ct. of App.) State trial ct. *granted* Atty. Genl's. motion for permanent injunction to dissolve state N.A.A.C.P. and all branches for failure to file annually with Secy. of State full certified list of names, addresses of all members and officers in state, members and officers of all chapters, under La. Rev. Stats. 401-409. Ct. *denied* N.A.A.C.P. motion to remove case to Fedl. Ct. Def's. appeal argued Oct. 4-5 on whether, under 28 USC 1443, 1446(e). state cts. didn't lose jurisdiction to issue order or entertain any action because application for removal to Fedl. Ct. properly filed. Pending.

Alex L. Pitcher, Jr., Esq., 1501 East Blvd., Baton Rouge, La.; A. P. Tureaud, Sr., A. M. Tureaud, Jr., Esqs., 1821 Orleans Ave., Jessie N. Stone, Esq., Richard B. Millspaugh, Esq., all of New Orleans, La.

213.2. *Lewis, et al. & N.A.A.C.P. v. LeBlanc, Atty. Genl.* (DC La.) For facts, see *LeBlanc* (213.1). Apr. 4: Fedl. Judge Wright *held* Dist. Ct. lacked power to issue order setting aside state ct. injunction issued in *LeBlanc*; ordered Pl.-Atty. Genl. to stop all further proceedings against Def.-N.A.A.C.P. pending La. appellate ct. decision in *LeBlanc*. Pending.

213.3. *N.A.A.C.P., a Corp. v. Eure, Secy. of State, et ano.* (N.C. Sup. Ct., #449.) Pl. seeking declaratory judgment re construction and constitutionality of G.A. 55-118 re civil penalty to foreign corps. engaged in business in N.C. for failure to file with Secy. of State copy of charter, list of members and officers. Appeal pending.

C. O. Pearson and William A. Marsh, Jr., Esqs., Box 125, Durham, N.C.; Thurgood Marshall and Robert Carter, N.A.A.C.P., 107 W. 43rd, NYC.

## 220. Listing

### 221. By the Attorney General of the United States

221.1. *National Lawyers Guild v. Brownell.* (Dept. of Justice.) (225 F. 2d 552, 351 U. S. 927.) Action for injunction against Att'y Gen'l's proceeding toward determination of whether Guild should be placed on list of subversive organizations pursuant to Exec. Order 10450 on grounds that (1) asserted power to list is unconstitutional under First and Fifth Amendments; (2) procedures set up by Att'y Gen'l do not afford "due process"; (3) Att'y Gen'l has so prejudged the issue as to render himself unfit to provide an impartial hearing. D.C. granted Def.'s motion for summary judgment Nov., 1954. *Aff'd* by CA-DC July 14, 1955; petition for rehearing en banc *denied* Oct. 4. Application for cert. *denied*. Administrative proceedings pending on Guild's motion to modify interrogatories and for answers to cross-interrogatories.

Osmond K. Fraenkel, Esq., 120 Broadway, NYC; Joseph Forer, Esq., 711 14th St. NW, Washington, D. C.; Earl B. Dickerson, Esq., 3501 S. Parkway, Chicago.

221.2. *Natl. Council of Am.-Soviet Friendship v. Brownell.* (CA DC) Issues similar to *Guild* (221.1.) Dist. Ct. *granted* Gov't's. motion to dismiss for failure to exhaust administrative remedies. Appeal pending.

Forer and Rein, Esqs., 711 14th St. NW, Washington, D.C.

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221.3. *Assn. of Lithuanian Workers v. Brownell.* (CA DC.) Issues similar to *Guild* (221.1.) Dist. Ct. *granted* Gov't's. motion for summary judgment for failure to exhaust administrative remedies. Appeal pending.

Nathan Witt, Esq., P.O. Box 156, Ansonia Sta., NYC; Joseph Forer, Esq., 711 14th St. NW, Washington, D.C.

221.4. *Brownell v. Independent Socialist League.* (Dept. of Justice.) First

hearing under procedure permitting organization to contest inclusion on Atty. Gen'l's list. Hearings held spring, 1956; decision pending.

Joseph L. Rauh, Esq., 1631 K St., NW, Washington, D.C.

- 221.5. *Brownell v. Californians for the Bill of Rights*. (Dept. of Justice.) In reply to proposed inclusion on Atty. Gen'l's list, Def. requested detailed, specific charges of wrongdoing, list of acts and policies of Communist Party which Def. allegedly implemented and supported, and that hearings be held in San Francisco, not Washington, D.C. Pending.

Charles R. Garry, Esq., 470 Central Tower, San Francisco.

- 221.6. *Brownell v. Natl. Council of Arts, Sciences and Professions*. (Dept. of Justice.) Facts somewhat similar to 221.5. Atty. Genl. assigned Hearing Officer. Pending.

Stanley Faulkner, Esq., 9 E. 40th, NYC.

## **222. By Congressional Committees**

### **223. By State authorities**

- 223.1. *Luscomb v. Bowker, et al.* (Suffolk Co. Ct.) (1956 Mass. Adv. Sheets 1009.) Action for injunction to restrain distribution of report of Special Comm. to Study and Investigate Communism and Subversive Activities and Related Matters in Mass. referring to Pl. as associating with persons listed as Communist Party members, and to declare Resolutions creating Comm. unconstitutional. Issues: (1) is finding of Communist Party membership a legislative declaration of guilt of felony (since such membership is crime under Mass. Law) in violation of Mass. Const., Art. XXV; (2) is such finding an exercise of judicial power in violation of Mass. Const., Art. XXX, and (3) invalid since publishing names has no legislative purpose, and (4) purpose of hearings and lists is to promulgate official blacklist; (5) does this constitute prior restraint on free speech and assembly in violation of Mass. Const., Art. XVI and Fourteenth Amendment; (6) is this denial of due process, interfering with Pl.'s work and right to employment and to represent workers in industry. Jy. 25, 1956: Mass. Sup. Jud. Ct. *reversed* lower Ct. decision, *held* members or officers of legislature had no immunity from service of civil process where no arrest was made. *Remanded* for further proceedings in trial ct.

Allen and Allen, Esqs., 6 Beacon St.; Larry Shubow, Esq., 10 Tremont, both of Boston.

- 223.2. *Tormey v. Bowker, et al.* (Suffolk Co. Ct.) Facts and issues similar to *Luscomb* (223.1). Pending.

Allan R. Rosemberg, Esq., 10 Tremont, Boston.

## **ASSOCIATION: As affecting members (240-299)**

### **240. Criminal Penalties for Membership**

#### **241. Smith Act: conspiracy**

- 241.1. *Yates, et al. v. U. S.* (U.S.S.C.) (225 F. 2d 146.) Appeal by 14 Defs. Issues: constitutionality of Smith Act conspiracy sections; Defs'. First Amdt. rights; applicability of Dennis decision (341 U. S. 494) finding of "clear and present danger" to future Smith Act cases. Argued: week of Oct. 8th.
- Augustin Donovan, Esq., Bank of America Bldg., Oakland; Robert W. Kenny, Esq., 250 N. Hope St., Ben Margolis and Leo Branton, Esqs., 112-W. 9th, Alexander H. Schullman, Esq., 417 S. Hill, A. L. Wirin, Esq., 257 S. Spring, all of Los Angeles; Benjamin Dreyfus, Esq., 57 Post St. and Norman Leonard, Esq., 240 Montgomery St., both of San Francisco.
- Amicus brief filed by American Civil Liberties Union, by David I. Shapiro, Esq., 350 Fifth Ave., Rowland Watts, General Counsel, 170 Fifth Ave., and Osmond K. Fraenkel, Esq., 120 Broadway, all of NYC; Fred Okrand, Esq., 257 S. Spring St., Los Angeles.
- 241.2. *Mesarosh, et al. v. U. S.* (U.S.S.C.) (223 F. 2d 449.) Appeal by 5 Defs. Facts and issues similar to *Yates* (241.1). Argued: week of Oct. 8th. Sept. 28, 1956: Justice Dept. moved U.S.S.C. to remand case to Dist. Ct. for examination by Trial Judge of credibility of testimony by Gov't. witness Mazzei, who has frequently testified for Gov't. since appearance in *Mesarosh* and whose testimony is open to question as perjurious. Def. opposed motion, urging U.S.S.C. to hear and decide constitutionality of convictions under Smith Act based on material in books. If motion granted, Def. asked that case go back for retrial since issue of weight to give to witness' testimony should go to jury. Oct. 8: U.S.S.C. *decided* to hear argument on motion with argument on merits, Frankfurter, J., dissenting. Oct. 10: during argument on motion, U.S.S.C. *sent* case back for new trial.
- Frank J. Donner, Esq., 342 Madison, NYC; Ralph E. Powe, Esq., 700 Macon St., Brooklyn; Thomas D. McBride, Esq., 1529 Walnut St., Philadelphia.
- 241.3. *Wellman, et al. v. U. S.* (U.S.S.C.) Appeal by 6 Defs. Issues: similar to *Yates* (241.1), plus claimed prejudice resulting from "inflammatory evidence" admitted under "organizing" sec. of indictment as "background". Petition for cert. pending.
- Ernest Goodman, Esq., 3220 Cadillac Tower, Detroit.
- 241.4. *Fujimoto, et al. v. U. S.* (CA 9.) Appeal by 7 Defs. Issues: similar to *Yates* (241.1). Argued July 12, 1956; decision awaited.
- Richard Gladstein, Esq., 240 Montgomery, San Francisco; Harriet Bouslog, Esq., 63 Merchant St., Honolulu, T.H.; A. L. Wirin, Esq., 257 S. Spring, Los Angeles; Telford Taylor, Esq., 400 Madison Ave., NYC.
- And see *Bouslog* (373.2 and 3) and *Gladstein* (373.1).
- 241.5. *Huff, et al. v. U. S.* (CA 9, #14320.) Appeal of 4 Defs. Issues: similar to *Yates* (241.1). Pending.
- John Caughlin, Esq., 702 Lowman Bldg., Seattle, Wash.; Irvin Goodman, Esq., Portland Trust Bldg., Portland, Ore.

241.6. *Sentner, et al. v. U. S.* (CA 8.) 5 Defs. allowed to appeal to CA in forma pauperis. (348 U. S. 935.) Issues: similar to *Yates* (241.1), plus denial of due process through Gov't. witness' presence at defense consultations during trial. To be argued: Fall, 1956.

Sydney L. Berger, Esq., 7 Koenig Bldg., Evansville 8, Ind.; R. L. Witherspoon, Esq., 1518 N. Sarah St., St. Louis, Mo.; Mary Kaufman, Esq., 201 W. 85th, NYC.

*Kuzma, et al. v. U. S.* (CA 3.) Appeal by 9 Defs. Issues: similar to *Yates* (241.1). Pending.

Thomas D. McBride, Esq., 2015 Land Title Bldg. and Joseph S. Lord, III, Esq., 121 S. Broad St., Philadelphia, Pa.

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241.8. *Bary, et al. v. U. S.* (CA 10.) Appeal by 7 Defs. Issues: similar to *Yates* (241.1). Argued Sept. 4, 1956; decision awaited.

Forrest C. O'Dell, Esq., Symes Bldg., Denver; Mary Kaufman, Esq., 201 W. 85th, NYC.

241.9. *Brandt, et al. v. U. S.* (CA 6.) Jury acquitted 4 Defs.; appeal by 6 convicted Defs. Issues: similar to *Yates* (241.1). Pending.

Martin A. McCormack, Engineers Bldg., George Farr, Jr., 1857 Union Commerce Bldg., Fred Mandel, Standard Bldg., Wm. J. McDermott, Williamson Bldg., Warren Briggs, Park Bldg., Ralph Rudd, Natl. City Bank Bldg., Wm. K. Gardner, Union Commerce Bldg., Esqs., all of Cleveland; Yetta Land, Esq., Phoenix, Ariz.; Hymen Schlesinger, Esq., 808 Renshaw Bldg., Pittsburgh; Reuben Terris, Esq., 150 Nassau, NYC.

241.10. *Silverman, et al. v. U. S.* (CA 2.) Jury acquitted 1 Def.; disagreed re 1 Def. 6 convicted Defs. appeal pending. Issues: similar to *Yates* (241.1).

Frank J. Donner, Esq., 342 Madison Ave., NYC; George F. Lowner, Esq., Stamford, Conn.; Francis A. Smith, Jr., Esq., Bridgeport, Conn.

241.11. *Charney, et al. v. U. S.* (CA 2.) Appeal by 6 Defs. Issues: similar to *Yates* (241.1).

Mary Kaufman, Esq., 201 W. 85th, NYC.

241.12. *U. S. v. Russo, et al.* (DC Mass.) Trial of 7 Defs. to be scheduled. Court assisting Defs. in securing counsel.

241.13. *U. S. v. Mirabel, et al.* (DC Puerto Rico.) Trial of 11 Defs. to start Nov., 1956, following *denial* of defense motions: (1) to quash indictments because rule that grand jurors read and write English bars majority of population, esp. workers and poor persons; (2) to dismiss because Commonwealth status of P. R. makes Smith Act inapplicable and causes Dist. Ct. to lack jurisdiction; (3) to change requirement that all trial proceedings be in English since several Defs. do not understand that language.

Ramon H. Vargas, Esq., Box 1522, San Juan; Prof. Santos Amadeo, Law School, Univ. of San Juan, Rio Piedras; Perez Marchand, Marcos Ramirez, Arturo Ortiz Toro, Carlos J. Faure, Tomas I. Nidd, Manuel Cruz

Horte, and Jose Manuel, Ramos, Barroso, Esqs., all of San Juan, Puerto Rico; David Shapiro, Esq., NYC.

## **242. Smith Act: mere membership**

- 242.1. *Lightfoot v. U. S.* (U.S.S.C.) (228 F. 2d 861.) Def. convicted under membership section of Smith Act. First case to go to U.S.S.C. Issues: constitutionality of section; scope of Def's. First Amtd. rights. Argued: week of Oct. 8.  
John J. Abt, Esq., 11 Park Pl., NYC; George W. Crockett, Jr., 3220 Cadillac Tower, Detroit.
- 242.2. *Scales v. U. S.* (U.S.S.C.) (227 U. S. 581.) Facts, issues and status similar to *Lightfoot* (242.1). Argued: week of Oct. 8.  
Telford Taylor, Esq., 400 Madison Ave., NYC.
- 242.3. *Blumberg v. U. S.* (CA 3.) Facts and issues similar to *Lightfoot* (242.1). Pending.  
Frank Donner, Esq., 342 Madison Ave., NYC.
- 242.4. *Noto v. U. S.* (CA 2.) Facts and issues similar to *Lightfoot* (242.1). Pending.  
Charles J. McDonough, Esq., Walbridge Bldg., Buffalo, NY.
- 242.5. *U. S. v. Weiss.* (ND Ill. E.D.) Awaiting trial.  
Wm. Scott Stewart, Esq., 77 W. Washington, Chicago.
- 242.6. *U. S. v. Blum.* (ND Ill. E.D.) Awaiting trial.
- 242.7. *U. S. v. Russo.* (DC Mass.) Awaiting trial.
- 242.8. *U. S. v. Hellman.* (DC Mont.) Awaiting trial.  
W. E. Coyle and Robert Poor, Esqs., Butte, Montana.

## **243. 18 U. S. C. 2384**

### **244. State laws**

- 244.1. *Pennsylvania v. Dolsen* (Pa. Super. Ct.) Def. convicted of violation of Pa. Sedition Law; 20-year sentence. Before appeal heard, U.S.S.C. in *Nelson* (350 U. S. 497) held statute unconstitutional. Application pending to dismiss indictment on ground of *Nelson*.  
Reuben Terris, Esq., 150 Nassau St., NYC.
- 244.2. *Pennsylvania v. Onda.* (Pa. Ct. of Common Pleas.) Def. convicted of violation of Pa. Sedition Law; sentence held up pending decision by U.S.S.C. in *Nelson* (350 U. S. 497) re constitutionality of statute.  
Reuben Terris, Esq., 150 Nassau St., NYC.
- 244.3. *Kentucky v. Anne Braden, et al.* (Louisville Crim. Ct., Ky.) After bombing of home in white neighborhood purchased by two Defs. for Negro family, 6 arrested under Ky. sedition statute, also charged with conspiracy, contempt, bombing. June 23, 1956: Ky. Ct. of App. *reversed* conviction of C. Braden under U.S.S.C. *Nelson* decision (350 U. S. 497).

Nov. 12, 1956: Hearing on remaining Defs. motions for dismissal of indictments, return of papers, books seized at time of arrest.

Louis Lusky, Esq., Hoffman Bldg., and Robert Zollinger, Esq., Realty Bldg., both of Louisville, Ky.

- 244.4. *Alabama v. Rev. King, et al.* (Ala. S. Ct.) Feb. 22, 1956: 93 Negroes (incl. 25 Ministers) indicted under Ala. Title 18, Sec. 54 for participation in Montgomery bus boycott. Motion for separate trials granted. Cir. Ct. held statute constitutional as not violating First Amdt. rights; found Def. guilty; \$500 fine converted into jail sentence of 386 days. Appeal pending. Other cases continued pending appeal.

Arthur D. Shores, Esq., 1630-4 Ave., Birmingham, Ala.; Fred D. Gray, Chas. Langford, Esqs., Montgomery, Ala.; Orzell Bellingsley, Peter Hall, Esqs., Birmingham, Ala.; Eubank Tucker, Esq., Kentucky; Edmund Ragan, Esq., Chicago; Robert Carter, Esq., N.A.A.C.P., 107 West 43rd St., NYC.

And see *Parks* (542.Ala1), *Browder* (542.Ala2).

## 250. Civil Disabilities: Federal

### 251. Federal employment

- 251.1. *Leff, Duberg and Wilcox v. Evans.* (Int'l. Ct. of Justice, the Hague.) Admv. Tribunal of Intl. Labor Organization ordered, on April 26, 1955, UNESCO to reinstate 3 dismissed American-Pls. or pay \$43,800. damages and attorneys' fees. Held: "abuse of rights" for UNESCO directorgen'l to refuse new contracts to Pls. because of their refusal to appear before U.S. loyalty board. "Loyalty toward a state is entirely different from the idea of 'integrity' as embodied in the [UNESCO] staff regulations and rules." UNESCO appeal pending.

Leonard Boudin, Esq., 25 Broad St., NYC; Jacques Mercier, 36 Rue de Bellechase, Paris, France.

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- 251.2. *Berman v. Summerfield.* (DC DC, #4475-55.) Pl.-Post Office employee dismissed under Gov't's loyalty program. Issues similar to *Cole* (351 U. S. 536), including application of security program to employees in non-sensitive agencies and right of employee to confront and cross-examine those who bring charges against him. As in *Cole*, Pl. entitled to veterans' benefits. Reinstated to employment on basis of *Cole* decision.

David I. Shapiro, Esq., 350 5th Ave., NYC.

- 251.3. *Liner v. Summerfield.* (DC DC, #4473-55.) Facts and issues similar to *Berman* (251.2) except that Pl. not a veteran. Reinstated to employment on basis of *Cole* (351 U. S. 536).

David I. Shapiro, Esq., 350 5th Ave., NYC.

- 251.4. *Service v. Dulles, et al.* (U.S.S.C., #407.) Suit by former State Dept. official against Loyalty Rev. Bd., Civil Service Comm. and Secy. of State for reinstatement in former position and back pay since 1951 dismissal.



Dist. Ct. *granted* Defs'. motion for summary judgment; CA DC *affirmed* dismissal and Dist. Ct's. direction to Civil Service Comm. to expunge from its records finding of now-defunct Loyalty Review Bd. that there was reasonable doubt as to Pl's. loyalty. Petition for cert. pending.

Warner W. Gardner, Esq., 734 15th Street NW, Washington, D.C.; C. E. Rhetts, Esq., Salem, Ind.

## 252. Deprivation of passport rights

252.1. *Boudin v. Dulles*. After Passport Office denied Pl. a passport, despite Pl's. filing non-Communist affidavit, complaint filed Aug., 1955. On parties' motions for summary judgment, Nov. 22: Judge Youngdahl *sent* case back to Passport Office for "quasi-judicial" hearing within 20 days, with disclosure by Def. of evidence on which its denial of passport was based. Both parties appealed. June 28, 1956: CA *remanded* to State Dept., *holding* that findings of Def. were not sufficient for denial of passport under Dept. regulations. Decision on validity of regulations postponed pending further findings by Def.-Secy. of State. Aug. 30, 1956: passport issued.

Harry I. Rand, Esq., Wyatt Bldg., Washington, D. C. Law review note in 2 Wayne L. R. 149-153 (Spring, 1956).

252.2. *Dayton v. Dulles*. (DC DC.) Facts substantially the same as *Boudin* (252.1). Fedl. Judge McGarraghy refused to follow Judge Youngdahl's decision in *Boudin*, *holding* that denial of passport application was reasonable exercise of discretion by Def. under valid regulations. Sept. 13, 1956: CA DC *remanded* case to State Dept., *holding*, as in *Boudin*, that departmental findings were insufficient to justify denial of passport.

Harry I. Rand, Esq., Wyatt Bldg., Washington, D.C.

252.3. *Stewart v. Dulles*. (CA DC.) Action to compel issuance of passport; issues substantially the same as *Boudin* (252.1) except that Pl's. affidavit stated Communist Party membership for 15 yrs. Gov't's motion for summary judgment *granted*. Appeal pending.

Harry I. Rand, Esq., Wyatt Bldg., Washington, D. C.; Leonard B. Boudin, Esq., 25 Broad Street, NYC.

252.4. *Chodorov v. Dulles*. (CA DC.) Action to compel issuance of passport; issues substantially the same as *Boudin* (252.1). Motion for preliminary injunction *denied*; appeal pending.

Frank J. Delaney, Esq., 1317 F St., N.W., Washington, D. C.

252.5. *McIntire v. Dulles*. (DC DC.) Pl. released by UN Food and Agric. Org. 1953 for lack of U. S. loyalty clearance. 1954: State Dept. canceled passport. While suit pending, 2 temporary passports issued. July, 1956: unrestricted passport *issued*.

Leonard Boudin, Esq., 25 Broad St., NYC; David Rein, Esq., 711 14th St. NW, Washington, D. C.

252.20. *Robeson v. Dulles*. (U. S. S. C.) Motion to compel issuance of passport and to enjoin Secy. of State from interfering with Pl.'s right to leave

continental U. S. although Pl. refused to file non-Communist affidavit. Temporary injunction *denied* on ground Pl. had failed to exhaust administrative remedies; Gov't's motion for summary judgment *granted*. CA *affirmed* because Pl. had refused to attend hearing before Def. Passport Office which made filing affidavit re political affiliations a prerequisite to decision under agency rules. Petition for certiorari pending.

Leonard Boudin, Esq., 25 Broad St., NYC.

- 252.21. *Kent v. Dulles*. (CA DC.) Facts same as *Robeson* (252.20) except that *Kent* did go to hearing. Passport Office refused to decide case because of absence of affidavit. Dist. Ct. *granted* Gov't's motion for summary judgment granted. Appeal pending.

Leonard Boudin, Esq., 25 Broad St., NYC; Forer and Rein, Esqs., 711 14th St. NW, Washington, D.C.

- 252.22. *Briehl v. Dulles*. (CA DC.) Facts and issues similar to *Kent* (252.21). Appeal pending.

Leonard Boudin, Esq., 25 Broad St., NYC.

- 252.23. *Leff v. Dulles*. (DC DC.) Facts and issues similar to *Robeson* (252.20).

Leonard Boudin, Esq., 25 Broad St., NYC; Harry I. Rand, Esq., Wyatt Bldg., Washington, D.C.

- 252.24. *DuBerg v. Dulles*. (DC DC.) Facts and issues similar to *Robeson* (252.20).

Leonard Boudin, Esq., 25 Broad St., NYC; Harry I. Rand, Esq., Wyatt Bldg., Washington, D. C.

### **253. Unfavorable Army discharges**

- 253.1. *Re Jensen*. (U.S. Army.) Administrative proceeding to determine whether to issue less-than-honorable discharge for loyalty-security reasons. Gov't informants did not appear at hearing, nor were their names supplied. Charges based on pre-induction membership in various organizations. Decision awaited.

Wyman Smith, Esq., 311 Produce Bank Bldg., Minneapolis, Minnesota.

- 253.2. *Schustack v. Lt. Gen. Herren, et al.* (S.D. N. Y., Civ. #103-137.) (234 F. 2d 134.) Application to enjoin Army field bd. from proceeding with security risk case against draftee who has already completed his 2 yrs.' active duty, and whose clearance form gives him "excellent" character and efficiency rating. After return to civilian life, Pl. served with charges: reading *Daily Worker* before induction, associating with mother and brothers. Issues: 1) whether whole Army "security" program void and never properly authorized; 2) whether "honorable discharge" is valuable personal and property right; 3) First Amdt. right to associate with relatives; 4) right to due process; 5) right to judicial trial before punishment Sixth Amdt. Dist. Ct. ruled against Pl. on ground he must first exhaust administrative remedies. CA 2 *affirmed* Dist. Ct. dismissal of complaint on ground of failure to join Sec'y of War as Def. Motion to

stay mandate until U.S.S.C. acts on petition for certiorari *denied*.

David I. Shapiro, Esq., 350 5th Ave., NYC.

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- 253.3. *Bernstein, et al. v. Lt. Gen. Herren*. (U.S.S.C., #255.) (234 F. 2d 434.) Declaratory judgment action by 8 soldiers to prevent Army from granting them any discharge other than honorable as result of proceedings under AR 604-10 (Security Reg.). Issues similar to *Schustack* (253.2) plus question whether, insofar as the deprivation is by reason of prior civilian political activities, the Reg. is in conflict with prohibition against *ex post facto* laws. 2 Pls. have received honorable discharges and 4 others indeterminate discharges. Oct. 8: U.S.S.C. *denied* cert.

Stanley Faulkner, Esq., 9 E. 40th; Albert L. Colloms, Esq., 342 Madison Ave., and Victor Rabinowitz, Esq., 25 Broad, all of NYC.

- 253.4. *Harmon v. Stevens*. (CA DC.) After appealing less than honorable discharge to Army field bd., Discharge Review Bd. and Bd. for Correction of Military Records without success, Pl.-law student brought suit, insisting he has never been a Communist. Gov't's motion for summary judgment *granted* on ground that federal courts have no jurisdiction to review nature of discharge. Appeal pending.

David I. Shapiro, Esq., 350 Fifth Ave., N.Y.C.

- 253.5. *Marshall v. Brucker*. (CA DC.) After Pl. brought suit to review undesirable discharge, Army Discharge Review Bd. changed to "general discharge under honorable conditions." Gov't's. motion for summary judgment granted. Charges: Pl. a communist sympathizer; Pl. claimed Fifth Amdt. privilege on Army's loyalty certificate; Pl's. parents allegedly communist sympathizers. Appeal pending.

Charles H. Marshall, pro se, 4041 Marlton Ave., Suite 260, Los Angeles.

- 253.6. *Abramowitz v. Brucker*. (DC DC, #2140—1956.) Pl., Korean veteran with honorable separation from active service, received undesirable discharge from Army Reserves two years later on basis of charges of pre-induction "subversive activity." Action to review validity of Army regulations re discharge of soldiers on basis of pre-induction conduct. Gov't's motion for summary judgment *granted* on ground that Dist. Ct. has no jurisdiction to review action of Army. Appeal pending.

Victor Rabinowitz, Esq., 25 Broad, NYC; David Rein, Esq., 711—14th St., NW, Washington, D.C.

- 253.7. *Bland v. Hartman, et al.* (CA 9, #15155.) Pl., Naval Reserve Officer, filed action for injunctive relief and declaratory judgment against Naval Security Bd. seeking to separate him from Reserves under conditions other than honorable on basis of charges that, after completion of active duty, Pl. and wife were involved in activities in organizations on Attorney General's list. (See 221.) Defs'. motion to dismiss for lack of jurisdiction, failure to join Secy. of War, and failure to exhaust administrative remedies *granted*. Appeal pending.

Daniel G. Marshall, Esq., 4041 Marlton Ave., Los Angeles, Calif.

## 254. Deprivation of veterans disability payments

254.1. *Wellman v. Higley, Admr. Veterans Affairs.* (DC DC, #3542—56.) 1954: Def. notified Pl.-disabled veteran that he had forfeited all accrued or future veterans benefits by reason of his conviction under the Smith Act (see *Wellman*, 241.3). Bd. of Veterans' Appeals *denied* Pl's. appeal. Pl. now suing on ground that forfeiture under 38 USCA 728 requires showing that veteran was guilty of mutiny, treason, sabotage, etc., and that no such charge or proof arose in Smith Act trial. Pending.

James H. Heller, Esq., 1026 Woodward Bldg., Washington, D. C.;  
Osmond K. Fraenkel, Esq., 120 Broadway, NYC. American Civil Liberties Union of Counsel.

254.2. *Thompson v. Veterans Admin.* (VA Bd. of App.) Facts and issues similar to *Wellman* (254.1). On appeal, wife's payments reinstated, Pl's. payments discontinued.

Robert Z. Lewis, Esq., 615 Columbus Ave., NYC.

## 255. Deprivation of Social Security rights

## 256. Deprivation of housing rights

NOTE: Aug. 3, 1956: Justice Dep't announced that, in the future, it will *not* enforce the 1952 Gwinn Amdt., requiring tenants of federally-aided housing projects to sign oaths that they are not members of organizations on the Atty. Gen'l's list. The reason given: that the authority for the Amdt. expired in 1954. For decisions holding the Amdt. unconstitutional or unenforceable on other grounds, see I DOCKET 18, 41, 58, 77, 96 (12 cases).

### Law review note:

Constitutional law—The Gwinn Amendment: Practical and constitutional problems in its enforcement, 104 Univ. of Penna. L. R. 694-702 (Mar., 1956).

## 257. Deprivation of Federal licenses

257.1. *In re Application of Lamb for Renewal of TV License.* (Fedl. Comm. Comm., #11048, File BRCT-42.) Application filed 1953. March 1954: FCC charged Lamb had once associated with Communists, contributed funds to Communist causes, was himself Comm. Party member 1944-48. Third charge dropped by Comm. without explanation. 2 of Gov't's witnesses at hearing later recanted testimony. FCC H'g Exam. Sharfman *recommended* renewal of license, *ruling* "there is no proof that Lamb personally engaged in any subversive activity", disbelieved some Gov't "expert" witnesses, doubted witness Budenz' "prodigious powers" to recall events, but held FCC had been justified in conducting investigation. Pending on review before FCC.

J. Howard McGrath and Russell Morton Brown, Esqs., Southern Bldg., Washington, D. C.

257.2. *In re Application of Lafferty for Renewal of Radio Operator's License.* (Fedl. Comm. Comm.) After filling out application for renewal of license, Lafferty was asked to answer further questions (re past or present

membership in Communist Party or "Communist organizations") not asked of other applicants. At hearing before FCC, Comm. counsel refused to state why questions were asked, but stipulated that FCC files indicate that Lafferty had never violated any FCC rule or been complained about. Hearing officer recommended that renewal be *denied* because of refusal to answer questions. Appeal to full Comm. pending. Lawrence Speiser, A.C.L.U. of N. Calif., 503 Market St., San Francisco.

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## 258. Deportation proceedings

- 258.1. *Rowoldt v. Perfetto*. (U.S.S.C., #34.) (228 F. 2d 109.) Pet.-72 yrs. old appealing from deportation order based on membership in Communist Party for 6 mths. in 1935. Issues: 1) whether Pet. was only "nominal" member within *Galvan* (347 U. S. 522); 2) constitutionality of Walter-McCarran Act. Argued Oct. 18, 1956.

Forer and Rein, Esqs., 711 14th St. NW, Washington, D. C. Amicus briefs filed by National Lawyers Guild, by Royal W. France, Esq., 40 Exchange Pl., Osmond K. Fraenkel, Esq., 120 Broadway, both of NYC; Hugh R. Manes, Esq., 6223 Selma Ave., and William B. Murrish, 6331 Hollywood Blvd., both of Hollywood, Calif., and by Intl. Longshoremen's and Warehousemen's Union, 150 Golden Gate Ave., San Francisco, Calif. Motion for leave to file briefs *denied* by U.S.S.C. Oct. 8.

## 259. Denaturalization proceedings

And see 358.

## 260. Civil Disabilities: State, Local and Private

### 261. State or local governmental employment

- 261.1. *Wilkins v. Carlander, et al.* (Super. Ct., Kings Co., #490844.) Pl.-warehouseman in cold storage plant of Port of Seattle brought action against Defs.-commr. and other officials of Port testing constitutionality of state law requiring state employees to take oath of non-membership in Communist Party and organizations on Atty. Gen'l's list. Issues: does statute violate First and Fifth Amdts., deprive Pl. of property in violation of Fourteenth Amdt. and constitute bill of attainder. Temporary restraining order preventing dismissal for refusal to sign oath granted for indefinite time, pending decision in *Savelle* (280.1).

John Caughlan, Esq., 702 Lowman Bldg., Seattle.

- 261.2. *Nagin v. Zurmuhlen*. (N.Y. Sup. Ct., N.Y. Co.) Pl. brought proceeding to review discharge and permit retirement after 32 yrs. as NYC civil engineer; charges: failure to cooperate with City's security program. Issues: NY Security Risk Law unconstitutional; Pl.'s not a sensitive position; alleged "failure to cooperate" actually caused by illness. Court *directed* reinstatement but only on condition that Pl. waive rights under Fifth Amdt., "cooperate" with investigation, withdraw application for

retirement. Motion for reargument pending.

Paul Ross, Esq., 160 Broadway, NYC.

- 261.3. *Hehir v. NYC Transit Authority, NY State Civil Service Commission, et ano.* (N.Y. Sup. Ct., Kings Co.) Action under Article 78 to review dismissal of employee of Transit Authority under N.Y. Security Risk Law. Issues: constitutionality of law, application to employee, effect of refusal to answer questions. Motion for reinstatement argued; decision pending.

Leonard B. Boudin, Esq., 25 Broad Ct., NYC.

- 261.4. *In the Matter of Hamilton, Resp. v. Monahan, NYC Police Comm'r.* (N.Y. Co. Sup. Ct.) (285 N.Y. App. Div. 692.) Resp. took and passed examination for patrolman in NYC Police Dept. Art. 78 proceeding to direct Civil Service Comm. to certify him successful; name put on list. When Resp.'s name reached, Def.-Police Comm'r refused to appoint, in exercise of his discretion, based on Resp.'s signing nominating petition for Comm. Party candidate 10 yrs. ago. Sup. Ct. *held*: Comm'r's refusal to appoint "arbitrary and capricious", directed Resp.'s appointment. App. Div., 1st Dept., remanded case back to Special Term for trial to decide whether Comm'r had acted capriciously and arbitrarily.

Weaver, Evans, Wingate & Wright, Esqs., 160 Broadway, NYC.

- 261.5. *Reif v. NYC Dept. of Hospitals.* (NY State Civil Service Comm.) Pl.-stenographer, Communist Party member 1939-41, suspended without pay 1955, dismissed May, 1956 by Bellevue Hospital under NY Security law. Oct. 4: Civil Service Comm. ordered hearing. Issue: can employee in non-sensitive post be dismissed as "endangering security" of US or NY? Oct. 16: hearing.

David I. Shapiro, Esq., 350 5th Ave., NYC.

## **262. Teaching**

And see 342.

## **263. Denial of State unemployment insurance rights**

## **264. Denial of State licenses**

## **265. Proceedings against attorneys and Bar applicants**

- 265.1. *Braverman v. Bar Assn. of Baltimore City.* (U.S.S.C., #151.) (121 A. 2d 473.) Petition for disbarment of Pl. based on oath taken as attorney when admitted to practice and fact of conviction under Smith Act. (103 F. Supp. 48, 198 F. 2d 679, cert. *denied* 344 U. S. 922.) On motion to dismiss petition, disbarment *ordered* by Balt. Sup. Bench without opinion; affirmed on appeal. Issues: does Smith Act conviction constitute crime involving moral turpitude; does disbarment order deprive Pl. of First and Fourteenth Amdt. rights and deny due process. (Oct. 8: U.S.S.C. *denied* cert.

Harold Buchman, Esq., 205 Tower Bldg., Baltimore, Md. And see 265.2.

- 265.2. *Re Braverman*. (DC Md.) Disbarment proceedings instituted by Fedl. Judge Thomsen on basis of similar proceedings in state ct. (see *Braverman*, 265.1). Stayed pending final disposition in 265.1.  
Harold Buchman, Esq., 205 Tower Bldg., Baltimore, Md.
- 265.3. *Florida v. Sheiner*. (Fla. Sup. Ct.) (82 So. 2d 657.) Disbarment proceeding commenced in 1954, based on alleged membership in Communist Party and other organizations on Atty. Gen'l's list (see 220) and for use of Fifth Amdt. in hearings before Sen. Comm. and Fla. grand jury. On trial, Def. *disbarred* by Cir. Judge for use of Fifth Amdt. when questioned by Ct. Fla. Sup. Ct. *reversed*, *holding* use of Amdt. not ground for disciplinary action; remanded for trial on issue of alleged membership. On retrial, Def. amended answer to deny membership since 1952. July 1956: trial held. On stand, Def. again asserted Fifth Amdt. on questions of membership prior to 1952. Ct. *ordered* disbarment, claiming that testimony showed Def. had engaged in Communist activities from 1946-1952 which were unprofessional and in violation of his oath, and that such testimony had not been rebutted or explained. One of Gov't's witnesses: Mazzei (see *Mesarosh*, 241.2). Appeal pending.  
Louis Jepeway. Esq., Biscayne Bldg., Miami; John M. Coe, Esq., 205 Bell Bldg., Pensacola, Fla.

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- 265.4. *In re Schlesinger*. (Sub-comm. of Comm. on Offenses of Allegheny Co., Common Pleas Ct., Pa.) Complaint filed June, 1950 charging alleged activities and membership in Communist Party. Hearing opened Jan. 1954. Main witnesses against Resp.: Cvetic and Mazzei (see *Mesarosh*, 241.2) re activities 5-10 yrs. ago. Sept. 22, 1956: argument held. Briefs filed Oct. 15. Decision awaited.  
John Buchanan, Charles F. C. Arensberg, Thomas Griggs, Louis Caplan, Richard Tucker, James C. Kuhn, John Tabor, and Louis Glasso, Esqs., all of Pittsburgh, Pa.
- 265.5. *In re Steinberg*. (Sub-comm. of Comm. on Offenses of Allegheny Co. Common Pleas Ct., Pa.) Complaint filed charging alleged membership in Communist Party. Pending.  
M. Y. Steinberg, Esq., 1010 Berger Bldg., Pittsburgh, Pa.
- 265.20. *Schware v. Bd. of Bar Examiners of N. Mex.* (U.S.S.C., #92.) (60 N.M. 304, 291 P. 2d 607.) Petition to review *denial* of application to take bar examination based on Pet.'s "failure to satisfy burden of proof" of his good moral character. Charges: Communist Party membership 1934-40; use of aliases while union organizer; arrests on political charges—all nolle prossed. Issues: (1) whether former Party membership permanently disqualifies one for admission; (2) whether N. Mex. S. Ct. had duty to examine confidential file of Def. which was not available to Pet. Oct. 8: Petition for cert. *granted*.  
Edward G. Parham, Esq., 124 Richmond Dr., SE, Albuquerque, N. Mex.; Herbert Monte Levy, Esq., 11 E. 44th, NYC.

- 265.21. *Konigsberg v. State Bar of California and Comm. of Bar Examiners.* (U.S.S.C.) (351 U. S. 936.) Suit by Pl.-applicant for admission to the Bar to reverse Def.'s refusal to admit, despite Pl.'s successfully passing Bar examination. Def.-Comm.'s refusal based on failure to show "good moral character" in that, during Comm. hearings Pl. was accused of former membership in Communist Party, was identified by witness as having participated in Comm. Party meetings, and refused to answer any questions re political activities on ground that this violated his rights under First Amdt. Cert. *granted*, with invitation to parties to brief several jurisdictional questions in addition to merits.  
Edward Mosk, Esq., 5305 Yucca St., Hollywood, Calif.  
Amicus brief filed by National Lawyers Guild, by Osmond K. Fraenkel, Esq., 120 Broadway, Jessica Davidson, Esq., 40 Exchange Pl., and Abraham Unger, Esq., 11 Park Pl., all of NYC.
- 265.22. *Patterson v. Oregon State Bd. of Bar Examiners.* (Ore. Sup. Ct.) Pet. passed 1953 bar examination, but Def. Bd. recommended he be *refused* admission for failure to possess requisite qualifications of character. 3-judge panel *affirmed*; Sept., 1956: Ore. Sup. Ct. *affirmed* because Pet. admitted Communist Party member and official 1946-49 but denied Party advocated violent overthrow of Gov't. *Held* Pet. "did not tell the truth" to Def. Bd. or panel "about the real character and aims" of Party "and his belief in them."

## 266. Deprivation of right to tax exemption

- 266.1. *Speiser v. Randall and Foley.* (Calif. Sup. Ct.) Pl., as honorably discharged veteran, entitled to state veteran's exemption from real property tax but for his refusal to sign "loyalty declaration" (Rev. & Tax Code, Sec. 32, Calif. Const., Art. XX, Sec. 19). Feb., 1955: Super. Ct. *held* provision unconstitutional under First Amdt.; making politically unorthodox pay higher taxes does not "reasonably tend to avert a clear and present danger to the state". Pending on appeal.  
Lawrence Speiser, Staff Counsel, Am. Civil Liberties Union of N. Calif., 503 Market St., San Francisco.
- 266.2. *Prince v. City and Co. of San Francisco.* (Calif. Sup. Ct.) Suit for recovery of property taxes paid under protest. Facts and issues similar to *Speiser* (266.1). Pending on appeal from decision *upholding* constitutionality of act.  
Ralph T. Wertheimer, Esq., and Lawrence Speiser, A.C.L.U. of N. Calif., 503 Market St., both of San Francisco.
- 266.3. *Lehrer v. Hall.* (Calif. Super. Ct., Marin Co.) Declaratory relief action; facts and issues similar to *Speiser* (266.1).  
John Douglas Short, Esq., Sausalito, and Lawrence Speiser, Staff Counsel, A.C.L.U. of N. Calif., 503 Market St., San Francisco.
- 266.4. *Bliss v. Quinn.* (Calif. Super. Ct., Los Angeles Co.) Facts and issues similar to *Speiser* (266.1).



## 267. Private employment—teaching

And see 262.

## 268. Private employment—defense establishments

268.1. *Parker, et al. v. Lester, et al.* (CA 9, #14081.) (112 F. Supp. 433.) Action brought by seamen to enjoin Coast Guard Commandant from enforcing regulations for screening seamen for merchant ships (Magnuson Act, 50 USCA 191-2-4, and Exec. Orders 10173-10277 and 10352). Regulations had no provision for full hearing or confrontation. Dist. Ct. *held* : even mindful of Gov't security, "due process" required that seaman be advised of basis for determination where clearance was denied, with such specificity as to afford him reasonable opportunity to refute; ruled Pls. entitled to bills of particulars, but that Gov't need not disclose identity or source of information on which it acted. Oct., 1955, CA 9 *held* : Dist. Ct. relief insufficient; right to employment a property right, constitutionally protected; need for Gov't security did not require denial of "due process" in traditional sense; seamen entitled to know charges, have right of confrontation and cross-examination; therefore *held* existing regulations invalid, granted injunction against their application. Court also *held*: no "exhaustion of administrative remedies" necessary since administrative lack of real appeal procedure and review made no relief there possible. On proceedings in Dist. Ct. for entry of order, Def. contended its new regulations provided adequate administrative review and Pls. should follow such regulations. Ct. *directed* immediate reinstatement of seamen and CA *affirmed*, Aug. 27, 1956; rehearing denied.

Gladstein, Andersen, Leonard & Sibbett, Esqs., 240 Montgomery, San Francisco.

Law review note in 104 Univ. of Penna. L. R. 703-707 (Mar., 1956).

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268.2. *Kasik v. Richmond.* (DC DC.) Action by 7 Pls. seeking review of screening procedures applicable to merchant seamen. Issues similar to *Parker* (268.1). Oct. 2: Dist. Ct. *denied* both parties' motions for summary judgment, but retained jurisdiction pending Pet.'s application for hearing under new Coast Guard regulations and in accordance with due process.

Victor Rabinowitz, Esq., 25 Broad St., NYC; Forer and Rein, Esqs., 711-14th St., N.W., Washington, D. C.

268.3. *Mulzac v. Richmond.* (DC DC.))Facts, issues and status similar to *Kasik* (268.2).

William L. Standard, Esq., 38 Park Row, NYC; Forer and Rein, Esqs., 711-14th St., N.W., Washington, D. C.

268.4. *Hutchin v. Rohr Aircraft Co.* (Calif. Super. Ct., San Diego.) Def. fired Pl.-employee after he distributed pamphlets for Socialist Labor Party

near Def. plant. Pl. sued employer for dismissal, claiming violation of Calif. Labor Code provision that "employer may not discharge or threaten to discharge an employee to coerce or influence the employee to refrain from political activity". Def. moved to dismiss. Judge Turrentine *ruled* for Pl., *holding* the right to political activity so fundamental that courts will protect it even in absence of legislation protecting it. Awaiting trial.

Marshall Ross and A. L. Wirin, Esqs., 257 S. Spring St., Los Angeles.

## 269. Private employment—other

- 269.1. *Faulk v. AWARE, Inc., et al.* (N.Y. Sup. Ct., N.Y. Co.) Suit for \$500,000 damages by Pl.-radio performer charging. Def. organization and directors with conspiracy to defame Pl. by circulating false matter seeking to link him with "Communist conspiracy"; attempting to blacklist Pl. and other radio and television artists. Pl. had filed non-Communist affidavit when elected officer in American Federation of Television and Radio Artists. Pl. also alleged Def. had caused loss of 19 commercial sponsors for his program per week and rendered him unemployable on TV and radio networks other than CBS. Aug., 1956: Ct. *dismissed* Def.'s answer that their statements were true, fair comment and privileged; *held* defenses not valid because Def.'s statements only conclusions, not facts.

Louis Nizer, Esq., Phillips, Nizer, Benjamin and Krim, 1501 Broadway, NYC.

### Law review article:

Harold W. Horowitz, Legal aspects of "political black listing" in the entertainment industry, 29 Southern Calif. L. R. 263-305 (Apr., 1956).

- 269.2. *Allen v. Local 1976, Carpenters Union—AFL-CIO.* (Los Angeles Co. Ct.) Suit by Pl.-former business agent in Def.-union for restoration to membership. Issue: Pl.'s expulsion for attending meetings in behalf of Defs. in Smith Act case (*Yates*, 241.1). Pending.

Abe Gorenfeld, Esq., Los Angeles.

## 270. Criminal Penalties for Non-disclosure

### 271. Congressional Committees

- 271.1. *U. S. v. Lamont.* (CA 2.) Indictment charged contempt of Senate subcommittee consisting of Sen. McCarthy only. Motion to dismiss *granted* because necessary elements of crime (2 USC Sec. 192) which must be set out in indictment include (1) that comm. in question was empowered by Congress to conduct particular inquiry and source of such power; (2) that inquiry being conducted was within conferred power; and (3) that witness' refusal to answer was wilful. On appeal, CA *held* McCarthy Comm. had no jurisdiction over alleged subversive activities of non-governmental persons; in circumstances here, no showing that any crime has been committed.

Philip Wittenberg, Esq., 70 W. 40th, NYC.

- 271.2. *U. S. v. Unger.* (CA 2.) Facts, issues and status similar to *Lamont* (271.1).  
David M. Freedman, Esq., 11 Park Pl., NYC.
- 271.3. *U. S. v. Shadowitz.* (CA 2.) Facts, issues and status similar to *Lamont* (271.1).  
Victor Rabinowitz, Esq., 25 Broad St., NYC.
- 271.4. *U. S. v. O'Connor.* (CA DC.) Def.-author convicted of contempt for refusal to answer questions of McCarthy sub-committee. Issues: jurisdiction of comm.; application of First Amdt. Ct. *held*: Comm. had jurisdiction; refused to apply First Amdt., citing *Lawson* (176 F. 2d 49). Appeal argued; decision awaited.  
Gerhard Van Arkel, Esq., 1830 Jefferson Pl., NW, Washington, D.C.; Leonard Boudin, Esq., 25 Broad St., NYC. Amicus brief filed by Am. Civil Liberties Union, 170 Fifth Ave., NYC.  
Law review note in 56 Columbia L. R. 798-801 (May, 1956).
- 271.5. *U. S. v. Davis.* (WD Mich.) Facts and issues similar to *O'Connor* (271.4) and *Lamont* (271.1). Motion to dismiss indictment *denied*. Case awaiting trial.  
Philip Wittenberg, 17 W. 40th, NYC.
- 271.6. *U. S. v. Watson.* (DC DC.) Def. refused to answer questions before House Un-American Activities Comm. investigating communism in Phila. schools. Issues: scope of Comm.'s authority; witness's right to refuse to answer under First Amdt. Def. tried without jury; decision awaited.  
Leonard B. Boudin, Esq., 25 Broad Street, NYC.
- 271.7. *U. S. v. Barenblatt.* (CA DC.) Def. convicted for declining to answer questions before House Un-American Activities Comm. Issues: scope of authority of Comm; interference with First Amdt. rights; validity of indictment; whether investigation was for legislative purpose. Sept. 27: appeal argued, decision reserved.  
David Scribner, Esq., 9 E. 40th, NYC.
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- 271.8. *U. S. v. Lorch.* (SD Ohio, W. Div., #3185.) Def.-prof. declined to answer questions before House Un-American Activities Comm. Dist. Ct. ordered U. S. to state in bill of particulars the subject of inquiry and whether within scope of resolution fixing Comm.'s duties. Ct. then *granted* Gov't's motion to dismiss indictment. Jy. 10: new indictment returned. Pending.  
Fyke Farmer, Esq., 300 W. Bellevue Drive, Nashville, Tenn.
- 271.9. *U. S. v. Russell.* (CA DC, #13529.) Def. *convicted* on 3 counts for declining to answer questions re his own and others' alleged Communist activities before House Un-Am. Activities Sub-comm. Issues: validity of Def.'s reliance solely on First Amdt.; failure to direct to answer. Appeal pending.

Joseph A. Fanelli, Esq., 1701 K St., NW, Washington, D.C.

- 271.10. *U. S. v. Deutch*. (CA DC.) Facts similar to *Russell* (271.9). Dist. Ct. *dismissed* indictment because did not allege "wilful" refusal. July 26, 1956: CA *reversed*, *held* refusal a "positive act \* \* \* by its very nature \* \* \* wilful."

Henry W. Sawyer, Esq., 117 S. 17th, Philadelphia; Edmund D. Campbell, Esq., Southern Bldg. and George H. Goodrich, Esq., Ring Bldg., both of Washington, D.C.

- 271.11. *U. S. v. Sacher*. (CA DC.) (139 F. Supp. 853, 855.) Before Sen. Internal Security Sub-comm. Def.-atty. answered questions re his relations with ex-Gov't witness Matusow, declined to answer re his own political beliefs and associations because questions improper, not pertinent, without legislative purpose. Appeal from conviction argued Sept. 27; decision reserved.

Judge Hubert Delany, 52 Broadway, NYC; David Rein, Esq., 711 14th St., NW, Washington, D.C.

- 271.12. *U. S. v. Gojack*. (CA DC.) Def.-union official appealing conviction for contempt of House Un-American Activities Comm. for refusal, under First Amdt., to answer questions re communism.

Frank Donner, Esq., 342 Madison Ave., NYC.

- 271.13. *U. S. v. Metcalf*. (SD Ohio.) Def.-prof. at Antioch College answered all questions about himself at hearing of House Un-American Activities Comm. but declined to answer questions as to others because he didn't want to become "an informer". Issues: similar to *Lamont* (271.1). Oct. 3, 1955: Fedl. Judge dismissed indictment on ground of no authority in Comm., similar to *Lamont*. Def. reindicted.

Telford Taylor, Esq., 400 Madison Ave., NYC.

- 271.14. *Watkins v. U. S.* (U.S.S.C., #261.) (233 F. 2d 681.) Def.-UAW-CIO official convicted of contempt of House Un-American Activities Comm. for refusal to testify re other former Communist Party members. CA DC *reversed* conviction (2-1), *holding* questions asked Def. not pertinent to purposes for which Comm. created. On rehearing en banc, CA DC *affirmed* conviction because questions were pertinent and any exposure of individuals to public scorn thereby was incidental only. Oct. 8: U.S.S.C. *granted* cert. Joseph L. Rauh, Jr., Norma Zarky, Esqs., 1631 K St., NW; Sidney Sachs, Esq., Woodward Bldg., all of Washington, D.C.; and Harold Cranefield, Esq., 8000 E. Jefferson Ave., Detroit.

Law review note in 42 Virginia L. R. 675-9 (June, 1956).

And see 331.

## 272. State Committees

- 272.1. *Sweezy v. New Hampshire by Atty. Genl. Wyman*. (U.S.S.C., #175.) (121 A. 2d 783.) N. H. Sup. Ct. unanimously *affirmed* conviction of Def. for refusal to answer questions re content of his lecture at U. of N.

H. and activities of Progressive Party because N. H. Laws, Chap. 193, giving Atty. Genl. power to investigate "subversive" organizations and individuals held valid and questions relevant when Atty. Genl. "possesses reasonable or reliable information" that proscribed doctrines and actions were present. Oct 8: U.S.S.C. noted probable jurisdiction; further consideration of jurisdictional question at argument on merits.

William L. Phinney, Esq., Amoskeag Bank Bldg., Manchester, N.H.

272.2. *New Hampshire v. Uphaus*. (N.H. Sup. Ct.) Dr. Willard Uphaus refused, on First Amdt. grounds, to give names of guests at World Fellowship Camp to Atty. Genl., as directed by N. H. Super. Ct. Sentenced to jail until he purged himself. Issues: Def.'s First Amdt. rights; whether *Nelson* decision (350 U. S. 497) re supercession applies here; whether this constitutes cruel and unusual punishment under Eighth Amdt. To be argued Nov.

Hugh F. Bownes, Esq., Laconia, N.H.

And see 332.

### 273. Legal and administrative tribunals

273.1. *U. S. v. Witkovich*. (U.S.S.C.) (140 F. Supp. 815.) Deportee indicted for violation of supervisory parole provisions of Walter-McCarran Act (8 U.S.C. 1252(d)(3)). Charges based on Def. having "wilfully fail[ed] to answer" series of questions re associations, activities, membership in Communist Party and other organizations, on First Amdt. grounds. Ct. *dismissed* indictment, *holding* Atty. Genl's. only power is to deport; these questions not relevant to Def's. "availability for deportation". Following analogy of criminal contempt proceedings for failure to answer grand jury or Cong. comm., Ct. ruled pertinency to subject matter may be determined from indictment itself. Gov't's. appeal to U.S.S.C. pending.

Pearl M. Hart, Esq., 30 N. La Salle, Chicago.

273.2. *U. S. v. Keller*. (ND Ill., ED, #55 CR 608.) Facts and issues similar to *Witkovich* (273.1). Trial date: Nov. 26.

Pearl M. hart, Esq., 30 N. La Salle, Chicago.

273.3non-crim. *Nukk, et al. v. Shaughnessy*. (SD NY.) (125 F. Supp. 498, 76 S. Ct. 114.) Application for order restraining Immigration Service from enforcing Walter-McCarran supervisory parole provisions against Pets.-non-citizens against whom final deportation orders have been issued. Orders require: weekly reporting to Service; no travel outside 50 mi. radius; discontinuation of Communist Party Membership and association with Party members or affiliates. U.S.S.C. *reversed* dismissal of complaint, *held*, "case or controversy" present. On remand to 3-judge Ct.

Blanch Freedman and Gloria Agrin, Esqs., 220 Broadway, NYC.

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273.4. *Sentner v. Colarelli*. (ED Mo. E. Dist., Civ. #9440(1). Facts similar to *Nukk* (273.1). Oct. 4, 1956: 3-judge Ct. unanimously *enjoined* Def.-Dist. Dir. of Imm. from enforcing supervisory parole provisions which

exceed authority Congress delegated to Atty. Genl.: ¶ 5: ordering Pl. to conduct herself "in a lawful and orderly manner"—state law adequate, no relationship to Pl.'s availability for deportation; ¶ 8: ordering Pl. not to violate Smith Act or Internal Security Act—adds to penalties Congress set for violating these Acts; ¶ 6 & 7: abuse of discretion to prevent Pl. from "association with, or support of the doctrines and policies of the Communist Party" or its sympathizers, particularly when based on no standard.

"The vagueness of these restrictions can be illustrated. \* \* \* Thus, it has often been suggested that the Communists desire to take advantage of the racial problem in this country by advocating integration in the south, thereby supposedly stimulating unrest and discord. If that is true, is such advocacy a 'doctrine' or 'policy' of the sort contemplated by paragraphs 6 and 7? It is hardly reasonable to suppose that the Attorney General, by these two paragraphs, seeks to preclude plaintiff from expressing approval of the decision of the Supreme Court in the *School Segregation Cases*, 347 U. S. 483, or of the position taken by this same Attorney General in those cases. Yet such an expression would appear to be activity in furtherance of that 'policy'. If those paragraphs do not have this effect, it is not easy to say what their meaning is." Sydney L. Berger, Esq., Koenig Bldg., Evansville, Ind.; R. L. Witherspoon, Esq., 1518 N. Sarah St., St. Louis, Mo.

## 274. Refusal to produce records

274.1. *Flaxer v. U. S.* (U.S.S.C.) Pres., United Public Workers Union, convicted of contempt under 2 USC 192 for failure to produce lists of union members employed by federal, state, county and municipal gov'ts when demanded by 1-man Sub-committee on Internal Security. Issues: pertinency of lists, particularly of non-federal employees; no direction to answer by quorum of sub-comm. CA *affirmed* (4-3), held union membership lists pertinent to Cong. Comm. inquiry; direction to answer was given. Petition for certiorari pending.

Forer and Rein, Esqs., 711 14th St. NW, Washington, D.C.

274.2. *U. S. v. Baxter.* (ED Mich., SD.) Prosecution for contempt of Congress for failure to produce records of *Labor Youth League* subpoenaed by House Committee. During trial, Judge Lederle sustained Def.'s objection to Gov't's attempt to establish intent in subpoenaing records by testimony of Comm. investigator. Case continued to allow appearance of Congressman member of Comm. to establish this point.

Milton R. Henry, Esq., 41½ S. Saginaw St., Pontiac, Mich.

## 280. Civil Penalties for Non-disclosure

280.1. *Savelle and Nostrand v. U. of Wash., et al.* (Thurston Co. Super. Ct.) Order issued Aug. 29, 1955 temporarily restraining Def.-University from requiring faculty loyalty oaths from Pl.-professors and others under 1955 Wash. loyalty Act, which provides immediate mandatory discharge for any Univ. employee who fails to sign notarized oath that he is not member of Communist Party

or any organization on Atty. Gen'l's list. (See 221.) Issues: whether Act violates Pls.' rights under 1st, 5th and 14th Amdts., and Art. I, sec. 10 (bill of attainder) of U.S. Const.; whether organizations on Atty. Gen'l's list had opportunity for fair hearing on charges. Pending.

Solie Ringold, Esq., 1201 Dexter Horton Bldg., Seattle.

- 280.2. *Pickus and Soglin v. Chicago Bd. of Education.* (Ill. Sup. Ct.) Facts similar to *Savelle* (280.1) except Pls. public school teachers. Trial Ct. *held*: 1) School Bd. entirely independent of City of Chicago and its employees, therefore subject to Broyles Oath Law; 2) teachers are employees and not officers; 3) law does not violate First Amdt. rights, citing *Garner* (341 U. S. 716); *Adler* (342 U. S. 485); *Anastaplo* (3 Ill. 2, 471). Also *held* statute relates to knowing membership in Communist Party or subversive organization and such membership is related to fitness to teach. Injunction sought by Pls. denied. Issues: since Oath Bill does not prohibit employment of teachers who fail to take oath, but only denies them compensation, does it even purport to carry out legitimate legislative functions; does it constitute unwarranted intrusion on rights of free speech and assembly; is it bill of attainder. Appeal pending.

Henry Heineman and Bernard Weissbourd, Esqs., 135 S. La Salle, and F. Raymond Marks, Jr., Staff Counsel, Chicago Division ACLU, 19 S. La Salle, of Chicago.

- 280.3. *Adler v. Bd. of Education.* (NY State Commr. of Education.) Proceeding by 4 teachers re right of Bd. of Educ. to dismiss employees for refusal to inform on other teachers re their political beliefs. Commr. *held* requirement that teachers inform would be detrimental to proper functioning of educational system, would destroy morale of teachers. Directed that charges be dropped. Victor Rabinowitz, Esq., 25 Broad St., NYC.

- 280.4. *Hughes v. Bd. of Higher Education.* (NY State Commr. of Education.) Facts same as *Adler* (280.2) except that college professor was involved. Decision same as *Adler*. Reinstatement ordered.

Osmond K. Fraenkel, Esq., 120 Broadway, NYC.

And see 262 and 267.

## 290. Penalties for False Disclosure

### 291. Taft-Hartley oath

- 291.1. *Jencks v. U. S.* (U.S.S.C., #23.) (226 F. 2d 540, 553.) Pl.-Mine, Mill & Smelter Workers local pres. convicted on 2 counts under 18 USC 1001, for falsely swearing to Taft-Hartley non-communist affidavit. U.S.S.C. *granted* cert., limited to. 1) Trial Ct.'s denial of Def.'s motion to inspect reports made to FBI by Gov't witness Matusow; 2) Ct.'s refusal to give charge to jury re testimony of "confidential informers"; 3) Ct.'s definition of "membership"; 4) Ct.'s definition of "affiliation" in charge to jury. Argued Oct. 16.

John T. McTernan, Esq., 112 W. 9th, Los Angeles; Nathan Witt, Esq., P. O. Box 156, Ansonia Sta., NYC; E. B. Elfers, Esq., El Paso, Texas.

- 291.2. *Gold v. U. S.* (U.S.S.C., #137.) Facts and issues somewhat similar to *Jencks* (291.1). Added issues: 1) applicability of perjury rules to prosecutions under act; 2) was resignation from Communist Party permissible under Party rules and standards, and does resignation require "denunciation" and "break" with said Party. Oct. 8: Cert. *granted*.  
Harold I. Cammer, Esq., 9 E. 40th, NYC; Forer and Rein, Esqs., 711 14th St. NW, Washington, D.C.
- 291.3. *Bryson v. U. S.* (CA 9.) Appeal from conviction for falsely swearing on affidavit re "affiliation" with Communist Party. Indictment charge of "support" of said Party *dismissed* on Gov't motion; charge of "membership" in said Party resulted in *acquittal* by jury. First case in which guilt based solely on "affiliation". Bail on appeal reduced by CA from \$50,000 to \$20,000. Pending.  
Richard Gladstein and George R. Andersen, Esqs., 240 Montgomery St., San Francisco.
- 291.4. *Travis v. U. S.* (CA 10.) Appeal from conviction on 4 counts involving "membership, affiliation with and support of" Communist Party. Argument: Nov.  
Nathan Witt, Esq., Box 156, Ansonia Sta., NYC; Samuel D. Menin, Esq., Ernest and Cranmer Bldg., Denver, Colo.
- 291.5. *Lohman v. U. S.* (CA 6.) Appeal from conviction of minor trade union official. Oct. 1956: heard and submitted.  
David Scribner, Esq., 9 E. 40th St. and Marshall Perlin, Esq., 342 Madison Ave., both of NYC; J. Paul Prear, Esq., Dayton, Ohio.
- 291.6. *U. S. v. Killian.* (DC Ill., #55 CR 626.) Minor trade union official charged with filing false affidavit re "membership" and "affiliation". Prosecution pending.  
Meyers and Rothstein, Esqs., 188 W. Randolph St., Chicago.

## **292. Government Security Questionnaires**

- 292.1. *U. S. v. McDaniel.* (ED Wash., S. Div., #C-4519.) Indictment charging Def. under 18 USCA Sec. 1001 with making false statements in application for job with Atomic Energy Commission in having answered "No" to questions of membership in organization on Att'y Gen'l's list. Charge: membership in Nat'l Negro Labor Council and Wash. Pension Union (see 211.6), neither of which organizations was on list submitted to Def. Trial date: Nov., 1956.  
John Caughlan, Esq., 702 Lowman Bldg., Seattle.

## **II. DUE PROCESS AND RELATED RIGHTS (FOURTH, FIFTH, SIXTH, SEVENTH, EIGHTH AND FOURTEENTH AMENDMENTS) (300-499)**

### **300. Searches and Seizures**

Law review article:



James A. Eichner, Impact of the Rea case (350 U. S. 214) on the law of illegal search and seizure, 9 Florida L. R. 178-192 (Summer, 1956).

### Law review notes in:

56 Columbia L. R. 940-944 (June, 1956); 25 Fordham L. R. 157-159 (Spring, 1956); 10 Southwestern L. J. 324-326 (Summer, 1956); 7 Syracuse L. R. 319-320 (Spring, 1956); 3 U. C. L. A. L. R. 390-395 (Apr., 1956); 1 Villanova L. R. 346-348 (May, 1956).

## 301. Wiretapping

301.1. *U. S. v. Costello*. (SD NY.) Sept. 28: Dist. Ct. *dismissed* denaturalization action against Def. because Govt.'s affidavit of good cause based on minutes of Kefauver Comm. hearings, transcripts of NY grand jury, disciplinary hearing re 1943 election, immigration secret files, and taps made in 1925 to indict Def. under Natl. Prohibition Act. Ct. said: "All of the information before me indicates that the tainted and illegal evidence is so intermingled with evidence that is claimed to be untainted that it is incumbent upon the Gov't to unravel the skein and to demonstrate that the sources of its evidence are unaffected by the use of wire-taps".

301.2. *California v. Tarantino*. (Calif. Sup. Ct.) (290 Pac. 2d 505.) Evidence against Def., charged with extortion, obtained by tape recordings of conversations in Def.'s hotel room through microphone planted there. Calif. Supr. Ct. held such evidence unlawful and inadmissible; *reversed* all counts but one. Cert. *denied*.

Leo R. Friedman, Esq., Russ Bldg.; Charles R. Garry, Esq., 470 Central Tower, and George Olshausen, Esq., 1238 Pacific St., all of San Francisco.

301.3. *Wirin v. Parker, L.A. Police Chief*. (Calif. Dist. Ct. of App.) Taxpayer's suit to enjoin expenditure of public funds for illegal purpose, to wit: police surveillance by dictograph installation and use, as described in *Irvine* (347 U. S. 128) and *Cahan* (282 P. 2d 905). Super. Ct. *denied* injunction on ground that taxpayer does not have sufficient interest to secure such relief. On appeal.

Nathan L. Schoichet, Esq., 8907 Wilshire Blvd., Beverly Hills, Calif.

301.4. *Voci v. Storb*. (CA 3.) Pl. sought, in Fedl. Dist. Ct., to enjoin state police officers from using, and to suppress evidence based on, wire-tapped conversations in pending state court action. Motion *denied* on ground that there is no basis for fedl. intervention at this stage of proceeding.

Benjamin R. Donolow, Esq., Land Title Bldg., Philadelphia.

## 302. Other Federal cases

302.1. *Hinton v. Eastland, et al*. (DC DC, Civ. #1167-56.) Suit charging U.S. Customs agents unlawfully seized Pl.'s valuable collection of papers, correspondence, photos, books on his return from 6½ yrs. in China in 1953 and that in 1955 Senate Internal Security Subcomm. unlawfully took possession of them. \$500,000 suit seeking return of collection filed after Pl. appeared as witness before Subcomm. which refused to make restitution.

James T. Wright, Esq., 2003 Twelfth St. NW, Washington, D.C.

### 303. Other State cases

303.1. *Levy v. Grant, et al.* (S. Dist. Calif.) Pl., arrested by Los Angeles City police, was forced to accompany Def.-officers who took his key, entered and ransacked his rooms; now brings \$3,000 damage suit under Federal Civil Rights Act. Issue: does the Fourth Amdt. guarantee against unreasonable search and seizure apply to state action through 14th Amdt. due process clause or must Pl. exhaust state remedies before entering Fedl. cts.? March 19: argued before Fedl. Judge Tolin; decision reserved.

A. L. Wirin and Fred Okrand, Esqs., 257 S. Spring; and Paul M. Posner, Esq., all of Los Angeles.

303.2. *Rynders v. Hilton, et al.* (Calif. Super. Ct., Los Angeles.) Damage suit against 5 Los Angeles police officers, charging illegal search and seizure, and assault and battery. Pending. A. L. Wirin and Fred Okrand, Esqs., 257 S. Spring St.; and Marshall Ross, Esq., 5877 W. Jefferson Blvd., all of Los Angeles.

### 310. Indictment

#### 311. Composition of grand jury (see also 510)

#### 312. Character of evidence

### 320. Double Jeopardy

#### 321. Federal cases

### 330. Self-incrimination: Criminal Sanctions

#### 331. Congressional Committees

##### Law review article:

Richard C. Baker, Self-incrimination: Is the privilege an anachronism? 42 A. B. A. J. 633 (July, 1956).

331.1. *U. S. v. Hoag.* (DC DC.) Def.-employee in defense plant, in testifying before Sen. Permanent Sub-comm. on Investigations, denied committing espionage but claimed First and Fifth Amdts. in declining to answer 7 questions re her political affiliations and associations. Jy. 6: Dist. Ct. entered judgment of *acquittal*.

Richard Lipsitz, Esq., 605 Brisbane Bldg., Buffalo, NY.

331.2. *Markinson v. U. S.* (CA DC.) Def. *convicted* of contempt for refusing to answer question before House Un-American Activities Comm. re whether she had ever worked for Gov't. Fedl. Judge Curran *held*: question "too remote" from danger to justify Def.'s use of Fifth Amdt. Appeal pending.

Charles E. Ford, Esq., Columbian Bldg., Washington, D.C.

331.3. *Singer v. U. S.* (CA DC.) Def. acquitted on 21 counts of contempt for refusal to answer questions before Cong. Comm., convicted on 1 count for

failure to properly claim Fifth Amdt. privilege. Appeal pending.

Joseph L. Rauh, Jr., Esq., 1631 K St. NW, Washington, D.C.

- 331.4. *McKenzie v. U. S.* (CA 9.) Def. claimed Fifth Amdt. privilege in hearing before House Un-American Activities Comm. in Portland in 1954. Pending.

Norman Leonard, Esq., 240 Montgomery, San Francisco 4.

- 331.5. *Wollam v. U. S.* (CA 9.) Facts and issues similar to *McKenzie* (330.4). Appeal pending.

Norman Leonard, Esq., 240 Montgomery, San Francisco 4.

- 331.6. *Simpson v. U. S.* (CA 9.) Def. convicted of contempt for refusal to testify before Congressional Committee. Dist. Ct. (Ore.) *held* he had improperly invoked Fifth Amdt. Appeal pending.

Reuben G. Lenske, Esq., 1123 S. W. 5th Ave., Portland 4, Ore.

## 332. State Committees

## 333. Grand juries and tribunals

- 333.1. *Gordon v. U. S.* (CA 2.) App't.-union official convicted of contempt for use of Fifth Amdt. in refusing to answer taking the stand in his own behalf in a civil proceeding, grand jury's questions re activities of union local possibly in violation of Anti-Racketeering Law. Sept. 13: CA 2 *reversed* conviction, *holding*: "American prosecutors must learn to adjust themselves to these obstacles [Fifth Amdt. privilege, guarantee against unreasonable searches and seizures.] We are committed to the principle that any method of pursuing suspected criminals must give way when it clashes with these constitutional guarantees."

- 333.2. *Brown v. U. S.* (U.S.S.C.) (234 F. 2d 140.) Def. found guilty of contempt of court and sentenced to 6 mths. in jail for refusing to answer questions, on grounds of Fifth Amdt. privilege, after having voluntarily taken the stand in her own defense in denaturalization trial. The questions were asked on cross-examination. Issue: does a party, by waive his constitutional privilege against self-incrimination? Petition for *cert.* pending.

George W. Crockett, Jr., Esq., 3220 Cadillac Tower, Detroit.

- 333.3. *Phillips v. U. S.* (CA 9.) Def-professor called as expert witness for defendants in Smith Act *Huff* case (241.5). Held in civil contempt for refusing to answer question on cross-examination re other members of Communist Party. Jailed until close of trial, then released and citation for criminal contempt filed by Ct. for same action. Summarily punished by 3 yrs. in prison. Appeal pending, stressing Ct.'s lack of power to impose so long a sentence.

Philip L. Burton, Esq., 2213 E. Union, Seattle.

Amicus briefs offered by National Lawyers Guild and by American Civil Liberties Union, Gordon Jaynes, Esq., 1501 Hoge Bldg., Seattle.

- 333.4. *Yates v. U. S.* (U.S.S.C.) When Def. in *Yates* (241.1) refused to answer 11 questions re Communist Party membership of other persons on cross-examination, Trial Judge held her in criminal contempt. CA 9 *affirmed*.

Issues: (1) Wasn't this *civil* contempt (since purpose was to coerce answers) so that Trial Ct. had lost power to impose imprisonment after trial completed? (2) 1 yr. sentence here excessive. Week of Oct. 8: argued in U.S.S.C.

Ben Margolis, Esq., 112 W. 9th, Los Angeles.

Amicus brief filed by American Civil Liberties Union of S. Calif.

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### 334. Grants of immunity: federal

- 334.1. *Fitzgerald v. U. S.* (U.S.S.C.) Def., called as witness before grand jury inquiring into wartime espionage activities, invoked Fifth Amdt. in refusing to reply to certain questions, refused to accept immunity offered under 1954 Compulsory Testimony Act. Convicted; CA 2 *affirmed*, citing *Ullmann* (350 U. S. 422). Oct. 8: cert. *denied*.

Milton H. Friedman, Esq., 342 Madison Ave., NYC.

### 335. Grants of immunity: state

- 335.1. *Morgan v. Ohio.* (U.S.S.C., #206 Misc.) (133 N. E. 2d 104.) Ohio S. Ct. *affirmed* App't's contempt of legislature conviction (4-3), holding Def. properly claimed privilege despite reference to Fifth Amdt. instead of comparable state provision, but privilege had been erased by state immunity statute, and therefore no direction to answer was necessary. Issues: did *Nelson* decision (350 U. S. 497) re supersession limit power of states to investigate area of "subversion"; since state could not offer protection against fedl. prosecution, was immunity broad enough to erase privilege; did Def. "wilfully" refuse to answer when Comm. Chairman had informed Def. she could claim privilege and did not give direction to answer. Appeal to U.S.S.C. pending.

Ann Fagan Ginger, Esq., 170 New York Ave., Brooklyn; Thelma Furry, Esq., 2d Natl. Bldg., Akron, Ohio.

Law review note in 7 Western Reserve L. R. 489-92 (Sept., 1956).

- 335.2. *Ohio v. Jackson, et ano.* (Ohio Ct. of App.) Facts and issues similar to *Morgan* (335.1). Appeal pending.

Thelma Furry, Esq., 2d Natl. Bldg., Akron, Ohio.

- 335.3. *Ohio v. Hupman, et al.* (Ohio Ct. of App.) Facts, issues and status similar to *Jackson* (335.2).

J. Paul Prear, Esq., Dayton, Ohio.

- 335.4. *Raley, et al. v. Ohio.* (U.S.S.C.) (133 N. E. 2d 104.) Facts, issues and status similar to *Morgan* (335.1), except that conviction based on different statute re contempt of Ohio Un-American Activities Comm. to be treated under contempt of court statute.

Milton H. Schmidt, Esq., Atlas Bank Bldg., Morse Johnson, Esq., 921-23 Dixie Terminal Bldg., both of Cincinnati, Ohio.

- 335.5. *Ohio v. Slagle, et al.* (Ohio Ct. of App.) Facts and issues similar to *Raley*

(335.4). Appeal pending.

J. L. Hilton, Esq., Canton, Ohio.

- 335.6. *Ohio v. Arnold, et al.* (Ct. of App., 9th Dist., #4524-31.) Facts and issues similar to *Raley* (335.4), except that Ct. denied jury trial because proceeding like contempt of Ct. Appeal pending.

Thelma Furry, Esq., 2d Natl. Bldg., Akron Ohio.

## **340. Self-incrimination: Civil Sanctions**

### **341. Army discharges**

See cases at 253.

### **342. Employment—Public teachers**

- 342.1. *Slochower v. Bd. of Education.* (N.Y. Ct. of App.) (350 U. S. 551.) Pl.-NYC professor with tenure dismissed without charges or hearing for declining to answer question re membership in Communist Party prior to 1940 on basis of privilege against self-incrimination before Senate subcomm. Bd. of Education followed Sec. 903, NYC Charter, which provides that municipal employee forfeits position and becomes ineligible for future municipal employment if he asserts privilege in refusing to answer before authorized body. U.S.S.C. held Pl.'s dismissal violated due process, Sec. 903 as applied *unconstitutional*. Oct. 4: Ct. of App. granted Pl.'s motion for back pay and reinstatement.

Ephraim S. London, Esq., 150 Broadway, NYC.

- 342.2. *Daniman, et al. v. NYC Bd. of Educ., Shlakman, et al. v. NYC Bd. of Higher Educ.* (U.S.S.C., #385.) (306 N. Y. 532, 348 U. S. 933.) Facts and issues similar to *Slochower* (342.1). Issue: when a decision of highest state ct. has been set aside by U.S.S.C. on appeal by 1 of 14 appellants, and state ct. has thereafter refused to set aside its own decision as to other 13 on ground they did not properly raise crucial fedl. question on which U.S.S.C. reversed, may not these 13 (1) ask U.S.S.C. to rehear their right to appeal, notwithstanding prior dismissal of appeal; (2) show that actually crucial fedl. question was properly raised by them (aided by crystallization of fedl. question through U.S.S.C. *Slochower* opinion)? Petition for rehearing after dismissal of appeal and motion for leave to use record in prior appeal and petition for cert. pending in U.S.S.C.

Osmond K. Fraenkel, Esq., 120 Broadway, NYC.

- 342.3. *Laba, et al. v. Newark Bd. of Educ.* (N. J. Sup. Ct., App. Div.) Def. discharged Pl.-teachers on ground that plea of Fifth Amdt. before Un-American Activities Comm. constituted conduct unbecoming a teacher. N. J. Commr. of Educ. Raubinger, on appeal, held: under *Slochower* (350 U. S. 551), such dismissal illegal, remanded for further hearings before Def. Pls.' and Def.'s appeals pending.

Emil Oxfeld, Esq., 744 Broad, Newark; Richard F. Green, Esq., 7 W. Grand, Elizabeth; John O. Bigelow, Esq., 744 Broad, Newark, all of N. J.

342.4. *Mass v. San Francisco Bd. of Educ.* (Cal. Sup. Ct.) Pl.-teacher dismissed under Calif. Dilworth Act for invoking Fifth Amdt. re questions by House Un-American Activities Comm. Pl. also refused to answer questions by school bd. though he had given bd. affidavit several years before in which he had admitted 1947-49 Communist Party membership. Trial Ct. *ruled* for Def.; Ct. of App., 1st Dist., *affirmed*. Appeal pending.

Lawrence Speiser, Esq., for A.C.L.U. of N. Calif., 503 Market St., San Francisco.

342.5. *Schuyten v. Contra Costa Bd. of Educ.* (Sup. Ct., Contra Costa Co.) Facts, issues similar to *Mass* (342.4). Appeal pending.

Joseph Genser, Esq., 340 11th, Richmond, Calif., and Lawrence Speiser, Esq., A.C.L.U. of N. Calif., 503 Market St., San Francisco.

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342.6. *St. John v. Orange Coast College.* (Calif. Ct. of App., 4th Dist.) Facts, issues and status similar to *Schuyten* (342.5).

A. L. Wirin and Fred Okrand, Esqs., 257 S. Spring St., for A.C.L.U. of S. Calif., Los Angeles.

342.7. *Weiss v. Los Angeles Bd. of Educ.* (Calif. Ct. of App.) Facts and issues similar to *Mass* (342.4), except that Pl.-teacher had signed 1950 and 1955 loyalty oaths. Trial Ct. *held* signing of previous oaths not sufficient to answer questions re possible Communist Party membership. Appeal pending.

A. L. Wirin, Esq., 257 S. Spring St., Los Angeles, and Ralph J. Geffen, Esq., Norwalk, Calif.

342.8. *Stein v. Detroit Bd. of Educ. and City of Det.* (Wayne Co. Cir. Ct., #283894.) Pl.-Wayne U. prof. suing to recover salary under contract suspended by Def. for invocation of Fifth Amdt. before House Un-American Activities Comm. Def. claims suspension justified under Mich. Trucks Act, Sec. 18, which creates prima facie case of membership in Communist Party or "front" organization against public employees who claim privilege. Oct.: trial date.

G. Leslie Field, Esq., 415 Dime Bldg., Detroit.

### **343. Employment—Other public officers**

343.1. *Lerner v. Transit Authority.* (NY App. Div., 1st Dept., #15187, 1954.) (NYLJ Jan. 24, 1955.) Action to review dismissal of employee of Transit Authority under N.Y. Security Risk Law. Issue: is refusal to answer questions on grounds of constitutional privilege sufficient cause for dismissal? App. Div. (4-1) *upheld* dismissal for refusal to answer questions re political beliefs. Justice Beldock, *dissenting*: NY Security Risk Law not applicable to Transit Authority. Appeal to Ct. of Appeals pending. Leonard Boudin, Esq., 25 Broad St., NYC.

343.2. *Hancock v. Burns.* (Calif. Sup. Ct., San Francisco.) Action for damages by 4 utility employees against members of Calif. Un-American Activities Comm. for causing loss of employment following use of Fifth Amdt. Pending.

Rubin Tepper, Esq., 785 Market St., San Francisco, and Edward F. Lewman, Esq., Haywood, Calif.

### **344. Employment—Private**

- 344.1. *United Electrical, Radio & Machine Workers of Am., et al. v. General Electric.* (U.S.S.C.) Issues: (1) whether it is "obvious" cause for discharge that employee in private industry having no access to "classified" work asserts Fifth Amdt. privilege in response to questions by Congressional comm. re his political beliefs and affiliations; (2) is this a unilateral change in conditions of employment made by Def. in violation of union contracts. CA DC *affirmed* dismissal of complaint of Pl.-union and Pl.-discharged employee for lack of jurisdiction because charge equals allegation of unfair labor practice within exclusive primary jurisdiction of N.L.R.B.; amount in controversy less than \$3,000 jurisdictional amount because Pl. earned less than that from Def. because part-time Union official. Petition for cert. *denied*. Arthur Kinoy, Esq., 342 Madison Ave., NYC; Joseph Forer, Esq., 711 4th St. NW, Washington, D.C.

### **345. Attorneys**

#### **Law review note:**

Use of the Fifth Amendment by an attorney as grounds for disbarment, 21 Notre Dame Lawyer 465-472 (May, 1956).

See cases at 265.

### **346. Unemployment insurance**

- 346.1. *Kilpatrick v. Bureau of Unemployment Compensation.* (Cuyahoga Co. Com. Pleas Ct., #669433.) Application for review of decision denying unemployment compensation to employee who had been discharged because in testimony before Ohio Un-American Activities Comm. he had invoked Fifth Amdt. Decision pending. Philip Bartell, Esq., Engineers Bldg., Ohio.

### **350. Due Process**

#### **351. Delay in arraignment**

#### **352. Grand Jury procedures**

#### **353. Confessions**

#### **354. Unfair press releases**

#### **355. Perjured testimony**

- 355.1. *Salemi v. Denno.* (U.S.S.C.) (306 N. Y. 863, 348 U. S. 890, 308 N. Y. 863, 309 N. Y. 210.) Issues: Can first degree murder conviction be sustained: (1) where only witness who identified Def. as the killer was committed as insane immediately after jury's verdict; (2) where prosecution knew facts re this witness' mental health but did not disclose to defense; (3) where proof of dying declaration implicating Def. was adduced before jury but after verdict credible evidence produced that condition of slain man was such that he

couldn't have made such declaration, and (4) that witness had not been with decedent when such declaration was made. (5) Is it denial of due process for ct., on motion for new trial, to conduct extended examination of body of deceased and question witnesses in absence of defense counsel.

Jan. 16, 1956; cert. *denied*; SD NY then *dismissed* writ of habeas corpus; CA 2 *affirmed*; Oct.: petition for cert. pending.

Osmond K. Fraenkel, Esq., 120 Broadway; Jacob Shientag, Esq., 67 Wall St.; Max Fruchtman, Esq., 1776 Broadway, all of NYC.

- 355.2. *Landeros v. New Jersey*. (DC N.J.) (20 N. J. 76, 351 U. S. 345.) After jury trial Def.-Negro convicted of rape of white woman; sentence: 10-12 yrs. Thereafter Union Co. police and prosecutors brought in other women involved in sexual attacks; Def. then indicted for many unsolved sex crimes in area. On appeal from conviction of one such case before N.J. Sup. Ct., Ct. brought up the instant conviction on own motion. Ct. ordered police records of various towns brought in; these records showed suppression of evidence favorable to Def.: 4 days after alleged rape, complaining witness taken to Def.'s place of employment where she failed to identify Def. as assailant. At same time, another woman who had been raped in nearby town at a different time also failed to identify Def.; 6 weeks later, after studying photos of other suspects and making personal examinations of other suspects, complainant brought to police station where Def. under arrest (for assault and battery of white woman); she instantly identified Def. At trial, complainant's identification and Def.'s alleged silence were only links to his commission of crime. N.J. Sup. Ct. *affirmed* conviction, stating it could not interfere with jury verdict. Issues: 1) denial of due process under 14th Amdt. by conviction based on testimony known by prosecution to be false and under circumstances where decisive evidence favorable to Def. knowingly suppressed by law-enforcement officers; 2) whether state ct., under these circumstances, may deny Def.'s motion for new trial. Cert. *denied*. Pending in Dist. Ct.

J. Mercer Burrell, Esq., 23 Howard St., Morton Stavis, Esq., 744 Broad St., both of Newark, N. J.

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- 355.3. *U. S. v. Kusnitz*. (SD Calif.) Aug. 28: Denaturalization proceedings *dismissed*. Ct. *held*: "To find for the Government in this case, the Court must rely primarily upon the testimony of Maurice Malkin. \* \* \* This Court is rather doubtful of the dependability of the witness's memory. In the first place, Maurice Malkin appeared before the Court as an impeached witness, admitting that he had been convicted of a felony. Also, he admitted on the witness stand that in a prior proceeding he had committed perjury. He is what is known as a 'professional witness'. \* \* \* On many many occasions, although the questions appeared to be relatively simple, the witness did not seem to comprehend and could not remember a question after a lapse of a few moments—although he could distinctly recall seeing the Def. 25 years before in New York City at meetings in which she was not an active participant. The Court is of the impression that the witness was evasive and uncertain. Considering the witness's (Malkin's) intelligence, motive, state of



mind, demeanor and manner while on the stand, the Court is of the opinion that not too much reliance can be accorded his testimony."

John W. Porter, Esq., 112 W. 9th, Los Angeles

### 356. Courts martial

### 357. Naturalization proceedings

- 357.1. *Bockler & Wife v. District Director.* (ND Calif. S. Div.) Motion to have naturalization petitions placed on Ct. calendar because they had been pending for 5 yrs. before Immigration Service, which had refused to bring petitions before the Court. Pets. claimed delay by Service constituted denial of due process in absence of evidence of any intention by Service to present applications favorably or otherwise to Ct. in near future. Def. opposed motion; Ct. *denied* motion. Aug. 22, 1956: Def. moved Pls. naturalization; motion *granted*.

Lawrence Speiser, Esq., A.C.L.U. of N. Cal., 503 Market St., San Francisco.

### 358. Denaturalization proceedings

- 358.1. *Trop v. Dulles.* (CA 2, #63.) Pl. sued for a declaration that he is a citizen. A passport was denied him on ground he had lost his American citizenship because of sentence by court martial of U.S. Army and dishonorable discharge for desertion in time of war. Dept. of State claimed this resulted in loss of citizenship under Nationality Act of 1940 (now 8 U.S.C. 1481(8)). Issue: Can such court martial conviction constitutionally deprive native-born citizen of his citizenship within the terms of 14th Amdt.? Dist. Ct. *denied* Pl.'s motion for summary judgment. Oct.: argued before CA 2; decision reserved.

Osmond K. Fraenkel, Esq., 120 Broadway, NYC.

- 358.2. *Diza-Estrata v. Press.* (SD Calif.) Suit to review exclusion order against American-born U.S. citizen. Immigration Service ruled Pet. lost citizenship by reason of desertion from U.S. Army for which he was court martialled and dishonorably discharged. Pet. filing amended complaint.

A. L. Wirin and Fred Okrand, Esqs., 257 S. Spring St., Los Angeles, Calif.

- 358.3. *Matter of Bean.* (Bd. of Immigration Appeals.) Exclusion proceeding. Respondent, born in U.S., left with family for Mexico in 1953. Forcibly shoved over the border by Mexican police to U.S. Immigration officers at Brownsville, Texas, he was held as alien "applying" for entry to U.S. Hearing deferred while Resp. charged and convicted of failing to report for induction in armed forces. After serving 3-yr. sentence, exclusion hearing reopened. Govt. contending Resp. had expatriated himself under section of Walter-McCarran Act providing for loss of citizenship by native-born who leave country to avoid military service. Resp. refused to offer proof, contending burden on Gov't. On appeal from H'g Off's. decision against Resp., B.I.A. *affirmed*, held (1) Resp., though born U.S. citizen, must answer questions of Special Inquiry Officer to determine whether he should be excluded as alien; (2) refusal to answer permits barring him as alien.

### 359. Loyalty hearings

### 360. Speedy and Public Trial

#### Law review note:

The "right" to observe trials—Its source and vindication, 31 *Indiana L. J.* 377-389 (Spring, 1956).

### 370. Counsel

#### 371. Federal cases

371.1. *Anonymous v. U. S.* (CA DC.) 15-yr. old youth committed to training school after admitting in Juvenile Ct. that he had used an auto without owner's consent. Not represented by counsel or advised of right to counsel. Juv. Ct. 3 mths. later denied an attorney's motion to set aside judgment for denial of counsel; Muni. Ct. of App. *affirmed*. CA DC *reversed, holding*: Defs. in Juvenile Ct. must be notified of right to counsel, and, where right is waived, Ct. must be satisfied decision is "intelligent and competent".

Amicus brief filed by American Civil Liberties Union, 170 Fifth Ave., NYC.

371.2. *Pennsylvania v. Mims.* (Phila. Juvenile Ct.) 17-yr. old Def. convicted of mugging in closed Juv. Ct. hearing; jailed 8 wks. before released on evidence collected by community leaders indicating innocence. Trial held under Pa. Sup. Ct. rule: "since juvenile courts are not criminal courts, the constitutional rights granted to persons accused of crime are not applicable to children brought before them."

Amicus work by A.C.L.U. of Greater Philadelphia, Pa.

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#### 372. State cases

372.1. *Henderson v. Michigan.* (DC Mich.) (351 U. S. 967.) 1942: Pet.-Negro after brief absence from state, learned warrant had been issued for his arrest, immediately went to State Police and identified self. Between 7:30 pm and 11:00 pm that night the following proceedings took place: Pet. registered, fingerprinted, photographed; questioned by Police Chief and Asst. DA; signed confession of rape of white woman; arraigned before Justice of Peace, waiving examination, held in default of \$100,000 bail; Justice of Peace filed return to Circuit Ct.; information lodged against Pet.; trial took place before Cir. Judge without Pet. being advised of right to counsel; State presented no witnesses; Pet. admitted crime; convicted; sentenced to life imprisonment; taken to State Prison.

1947: Pet., without counsel, filed Application for Leave to File Delayed Motion for New Trial and Set Aside Sentence, alleging his innocence, that confession was coerced by Police statements that mob was forming and Pet. would be victim of mob violence. Motion *denied*. 1952: similar petition *denied* by Trial Judge. After cert. applied for in U.S.S.C., Mich. S. Ct. *remanded* case to Trial Judge for taking further testimony, who again *denied*

motion for new trial. Mich. S. Ct. *affirmed*, though "not in sympathy with course followed in the trial court." Petition for cert. *denied*. Petition for habeas corpus pending DC Mich.

Ernest Goodman, Esq., 3220 Cadillac Tower and G. Leslie Field, Esq., 415 Dime Bldg., both of Detroit.

### 373. Indirect restrictions

373.1. *Re Gladstein*. (DC Hawaii.) 1952: During trial in *Fujimoto* (241.4), Honolulu Dist. Ct. issued Order to Show Cause why Gladstein should not be disbarred for actions in *Dennis* (341 U. S. 494, and see contempt citations against attys.) Attorney filed affidavit of bias and prejudice against Fedl. Judge who issued order; which he denied. CA 9 *held*: Fedl. judge prejudiced and matter to be heard by another Fedl. judge. Judge McLaughlin has disqualified himself; currently pending before Judge Wiig.

George R. Andersen, Esq., 240 Montgomery St., San Francisco; Bouslog and Symonds, Esqs., 63 Merchant St., Honolulu, T. H.

373.2. *Re Bouslog*. (CA 9, #15,109.) 1955: Bar Assn. of Hawaii instituted complaint against attorney charging that in 1952 and 1953, while counsel in *Fujimoto* (241.4), she made a speech imputing to Trial Judge unfairness in conduct of *Fujimoto*, impugning integrity of Ct., and, after verdict, interviewed juror who was ill and filed affidavit without fully disclosing juror's condition. Issues: whether proper forum for disciplinary proceedings is court where alleged misconduct occurred; Bar. Assn. had no power under Rules to make complaint when acts occurred; laches; speech protected by First Amdt., contained no unjust criticism, contained nothing not said in Court, no prohibition against interviewing juror after verdict. Motion to dismiss disciplinary proceedings *overruled*, 2-1. April 7, 1956: 3-judge ct. unanimously *ordered* Resp. suspended from practice in all cts. in Hawaii for 1 yr. CA 9 *granted* motion to stay suspension of license pending appeal (2-1). Briefs filed; appeal pending.

John McTernan, Esq., 112 W. 9th, and A. L. Wirin, Esq., 257 S. Spring, both of Los Angeles; Myer C. Symonds, Esq., 63 Merchant St., Honolulu, T. H.

373.3. *Re Bouslog*. (DC Hawaii, Misc. #649.) For facts, see 373.2. April 7: 2 Fedl. judges signed order *suspending* Resp. from practice before DC Hawaii, under Rules of Civil Procedure of Ct., 1(d). Motion to vacate order of suspension and hold matter in abeyance based on stay order of CA 9 in 373.2 and reinstatement as practitioner by Hawaii Sup. Ct. pending.

373.4. *Shibley v. U. S.* (U.S.S.C.) Pet-lawyer in 1952 represented a member of U.S. Marines charged with minor offense, and won reversal of conviction on appeal. Pet. subpoenaed as witness before Ct. of Inquiry convened by Comm. Genl. to investigate Pet.'s charges re failure to appoint available military counsel, destruction and falsification of records, procurement of perjured testimony, coercion of witnesses. As result of testimony, Pet. charged and tried for contempt in U.S. Dist. Ct.; Ct. *acquitted* on 3 counts; jury *acquitted* on 3 counts remaining; 3 counts later *dismissed*. Pet. then indicted for felonies: conspiracy, burglary, receiving stolen property, theft of seventh

carbon copy of transcript of hearings before Ct. of Inquiry (consisting mainly of Pet.'s own testimony). At trial, Gov't witnesses testified that one Thompson had taken copy of transcript and mailed it to Washington newspaper columnist; Gov't attempted to link Pet. with this action. After trial by jury, Pet. convicted; sentence: 3 yrs. CA 9 *affirmed*. Oct. 15: U.S.S.C. *denied* cert.

Morris Lavine, Esq., 215 W. Seventh St., Daniel G. Marshall, Esq., 4041 Marlton Ave., A. L. Wirin, Esq., 257 S. Spring St., Walter Ely, Esq., 900 Wilshire Blvd., all of Los Angeles; George Chula, Esq., 800 N. Broadway, and James C. Monroe, 800 N. Broadway, both of Santa Ana, Calif.; Philip E. Poppler, Esq., 1104 Security Bldg. and Joseph A. Ball, Esq., 120 Linden Ave., both of Long Beach, Calif.

### **380. Confrontation**

#### **Law review article:**

James E. Mulvaney, Government Secrecy and the Right of Confrontation, XXXI Notre Dame Lawyer 602-628 (Aug. 1956).

### **381. Criminal cases**

#### **Law review note:**

Right of a criminal defendant under the Sixth Amendment to confront secret informers whose statements are used to establish probable cause, 31 Notre Dame Lawyer 473-483 (May, 1956).

### **382. Civil cases**

### **390. Jury Trials (see also 510)**

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### **400. Excessive Bail; Parole Conditions**

#### **401. Amount of bail**

#### **402. Conditions imposed**

### **410. Cruel and Unusual Punishment**

#### **411. Criminal cases**

- 411.1. *Wisconsin v. Horowitz, alias Brown* (Milw. Co. Munic. Ct.). Def., born Horowitz, had been Minn. organizer for Communist Party; 1953 moved to Wis., where changed name to Brown without applying to court (under Wis. common law rule). Given Social Security number as Brown, lived and secured employment as Brown; purchased auto and secured registration of title under name Brown. 1954 returned to Minneapolis, maintaining new name Brown, securing new driver's license and registration of title in Minnesota as Brown. May, 1954, Brown arrested by Minneapolis police, charged with giving assumed name to secure driver's license, and to secure registration of title (misdemeanors in Minnesota). Brown, without counsel, pleaded guilty: 90 days on each count to be served consecutively. While

serving sentences, Wis. warrant issued charging felony: making false statements in application for registration of title (1-5 years and/or up to \$5,000 fine). Warrant served when Def. due to be released. Extradited to Wis. Jy. 1956: During trial, extended argument before Ct., in absence of jury, on common law right in Wis. to change name at will. State's testimony had not shown that change of name had occurred for purposes of committing fraud or to avoid legal process. Gov't moved for dismissal on merits. Motion *granted; discharged*.

M. Michael Essin, Esq., 623 N. Second Ave., Milwaukee; Kenneth J. Enkel, Esq., Bldrs. Exchange Bldg., Minneapolis.

- 411.2. *U. S. v. Green; U. S. v. Winston*. (CA 2.) Mar. 26, 1956: Defs. convicted of criminal contempt for failing to surrender for sentencing after affirmance of conviction by U.S.S.C. in *Dennis*. Sentences: 3 yrs. Issue: Has Fedl. Ct. power to impose sentence for criminal contempt for a term of more than one year?

John Abt, Esq., 11 Park Pl., NYC.

## 412. Extradition

- 412.1. *People of New York ex rel. Crenshaw v. Ruthazer, Warden*. (Sup. Ct. N.Y. Co., #4025.) 1931: Def., at age 18, convicted and sentenced to death in Alabama for murder of white man; commuted to life since strong evidence of self-defense. Served 24 years. Escaped to N.Y.; arrested by F. B. I. Dec. 28, 1955. Gov. Harriman issued warrant for rendition to Ala. without hearing. Crenshaw petitioned for habeas corpus, alleging cruel and unusual punishment and fear of same if returned. Greenberg, J., *dismissed* writ on ground he was powerless to act in view of executed warrant, but stays granted. Sept., 1956: Gov. *withdrew* extradition warrant; Def. *freed*.

Edwin W. Tucker, Esq., 50 Court St., Brooklyn.

- 412.2. *Ohio ex rel. Saunders v. Warden, State of Mississippi*. (Ohio Gov. Frank Lausche.) 1954: Negro Air Force Lt. Saunders arrested after minor auto collision which occurred while companion drove his car. Charge: drunken driving; sentence: to be served on chain gang. Miss. Sup. Ct. *affirmed* conviction. Saunders went to Ohio in Air Force. Jy. 18, 1956: Gov. Lausche *refused* to extradite because Def. only charged with misdemeanor and had not fled Miss.

Stanley U. Robinson, Esq., Columbus, Ohio, for A.C.L.U.

- 412.3. *In re Willie Reid*. (N.Y. Sup. Ct.). 1950: Reid, without counsel, allegedly pleaded guilty to assault with intent to commit murder; sentence: 15 yrs. on Fla. chain gang. Reid escaped to NY, where he was arrested. Hearing on petition for writ of habeas corpus in Sup. Ct., NY County before Judge Dineen. Testimony taken from Def. re his treatment in Florida. Petition *denied*. Feb. 23, 1955: Gov. Harriman *signed* rendition papers, without hearing on issue of cruel and unusual punishment on Fla. chain gang. Resp. filed depositions showing extradition warrant invalid because based on conviction void through denial of counsel. Oct.: heard and submitted.

Lewis Flagg, Esq., 1 Kingston Ave., Brooklyn, for NAACP; Milton Friedman, Esq., 342 Madison Ave., NYC.

### 413. Civil cases

- 413.1. *DeSilva v. TW A.* (SD NY #99198.) Action for false arrest based on transportation of Pl. against her will from Ceylon to New York. Def. claims justification because of deportation order issued by Ceylon Government. In support of that defense it sought to inquire whether Pl. or her husband were members of Communist Party. Pl. having objected to these questions as irrelevant, Judge Dawson ruled that they should be answered. Thereupon Pl. claimed privilege against self-incrimination and Def. made motion to dismiss her complaint, which was *denied* by Judge Ryan late Sept., 1955. Pending.
- Milton H. Friedman, Esq., 342 Madison Ave., NYC.

### 490. Miscellaneous Due Process

- 490.1. *Kraus v. Dulles.* (CA DC.) Pl. denied passport on ground he was without financial means, Passport Office noting that in past State Dept. had been required to give financial assistance to him to enable him to return from abroad. Pl. sued for mandatory relief; Dist. Ct. *granted* Def.'s motion to dismiss. CA *remanded* to Dist. Ct., *held* establishment of means test for passport applicants would raise constitutional questions which ought not to be decided on motion to dismiss.
- Stanley Suydam, Esq., 1025 Connecticut Ave. N.W., Washington, D.C.

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## III. EQUAL PROTECTION (FOURTEENTH AMENDMENT) (500-599)

### 500. Elections

#### 501. Racial discrimination

- 501.1. *Allen v. Clerk, Duchesne Co.* (Utah Sup. Ct.) Suit filed by Pl.-officer of Affiliated Ute Citizens of Utah for himself and several hundred half-, quarter-, and full-blood Ute Indians, testing constitutionality of Utah statute requiring Indians to acquire off-reservation residence in order to vote. Pending.
- Robert V. Barker, Esq., Washington, John S. Boyden, Esq., Salt Lake City, Utah.
- 501.2. *Ivy v. Cole, Registrar, Halifax Co.* (ED N.C., Ral. Div., #969-Civ.) Pl.-Negro minister filed \$5,000 damage suit when Def. *refused* to permit Pl. to vote after asking him questions: Name of act passed to enforce 18th Amdt.; what year passed; date Congress convenes; date Pres. inaugurated when 1st term, 2d term, 3d term? N.C. statute requires prospective voter to be able to read and write any section of U.S. Constitution. Issue: arbitrary nature of questions. Def.'s motions to strike and to remove to different Div. pending.
- Taylor and Mitchell, Esqs., 125 E. Hargett St., Raleigh; Hon. James R. Walker, Jr., Weldon, N.C.

## **502. Political discrimination**

502.1. *Lumpkin v. Bd. of Registrars.* (Mobile Co. Cir. Ct., #14864.) In answering question re willingness to bear arms for U. S. on application to vote, Pl.-woman wrote, "By reason of my religious beliefs, I am conscientiously opposed to combat service. I will perform any non-combatant service required of me." Def. Bd. *denied* application. April 30, 1956: Cir. Ct. *granted* Pl.'s appeal, ordered Def. to register Pl. as qualified elector.

Holberg, Tully and Aldridge, Esqs. 1st Natl. Bank Bldg., Mobile, Ala.

502.2. *Mayhew v. Bd. of Elections.* (Cir. Ct., Cook Co., Ill.) Pl.-Socialist Workers Party Congressional candidate suing to test constitutionality of Ill. statute which provides "that no political organization or group shall be qualified as a political party hereunder, or given a place on a ballot, which organization or group is associated directly or indirectly, with Communist, Fascist, Nazi or other un-American principles and engages in activities or propaganda designed to teach subservience to the political principles and ideals of foreign nations, or the overthrow by violence of the established constitutional form of government of the United States and the State of Illinois." Issue: does this section violate First and Fourteenth Amdts. and Ill. Const., Art. II?

American Civil Liberties Union, Ill. Div.

## **510. Juries**

### **511. Federal employees**

### **512. Racial discrimination**

### **513. Economic discrimination**

### **514. Political discrimination**

### **515. Discrimination against women**

## **520. Education**

### **Law review articles:**

Robert B. McKay, "With all deliberate speed", A study of school desegregation, 31 N. Y. U. L. R. 991-1090 (June, 1956);

Arthur A. North, S.J., Desegregation: Its implications in the constitutional, political, legal, economic, and sociological spheres of Southern life, 25 Fordham L. R. 91-100 (Spring, 1956).

### **521. Challenge to unequal facilities**

521.1. *Holland v. Bd. of Public Instruction* (Palm Beach). (DC Fla.) Suit by Negro parent for admission of son to white school because denial "arbitrary and capricious" since Pl. lives near white school and Negro school substandard. Issue: constitutionality of Fla. new pupil assignment law. Pending.

### **522. Suits to enforce integration**

522.Ala1. *Lucy v. Adams, U. of Ala., et al.* (ND Ala., Civ. #652.) (134 F. Supp.

235—Pl.'s admission to Def.-Univ. *ordered*; 350 U. S. 1—suspension of injunction against continued exclusion pending appeal *lifted*; 228 F. 2d 619 (CA 5) — D.C. admission order *affirmed*, reh'g *denied*; 228 F. 2d 620 (CA 5)—motion to hold Def. Dean of Admissions in contempt *denied*, *affirmed*.) Feb. 1956: readmission after exclusion by Def. *ordered*. Feb.: Def.-Bd. of Regents *expelled* Pl. for improper conduct in bringing contempt action against Dean, etc. Aug. 30, 1956: Dist. Ct. *denied* Pl.'s motion for readmission because of this expulsion, without prejudice to further action by Pl.

Arthur D. Shore, Esq., 1630 4th Ave. N., Birmingham, Ala.; Constance Baker Motley, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

- 522.Ark1. *Hoxie School Dist. #46, et al. v. Brewer, White Citizens Council, et al.* (CA 8, #15510.) (137 F. Supp. 364.) Nov. 1955: Dist. Ct. *issued* temporary injunction against Defs.' interfering with recently-integrated public schools. At trial, 5 Negro parents testified to threats made by Defs. visiting them. Trial Ct. *granted* injunction; *held* Ark. segregation laws unconstitutional under *Brown* (347 U. S. 483; 349 U. S. 294) ; Pl.-Bd. *required* to end segregation as soon as all administrative obstacles removed. Sept. 10, 1956: Defs.' appeal heard and submitted.

Penix & Penix, Esqs., Box 354, Jonesboro; James Sloan, III, Esq., Walnut Ridge; Edwin Dunaway, Esq., Union Life Bldg., Little Rock, all of Ark.

Amicus appearance by United States, by Warren Olney, III, Asst. U. S. Atty. Genl., Arthur B. Caldwell, Henry Putzell, Esqs., Dept. of Justice, Washington, D. C.

- 522.Ark2. *Matthews, et al. v. Launius, et al.* (Bearden Dist.) (WD Ark., Civ. #570.) (134 F. Supp. 684.) Injunction suit filed 1952 by Negro-Pls. to force equalization of public school facilities; amended, after *Brown* decisions to require immediate integration. Oct. 4, 1955: Dist. Ct. *ordered* integration by Fall 1956 at latest. Oct. 2, 1956: Def.'s motion for continuance and Pl.'s motion for summary judgment heard and submitted.

L. Clifford Davis, Esq., 401½ E. 9th, Fort Worth, Texas.

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- 522.Ark3. *Aaron, et al. v. Cooper, et al.* (Little Rock.) (CA 8.) Integration suit filed Feb. 1956. Trial Ct. *granted* Def.'s motion to take depositions from N.A.A.C.P. officials. who testified no documents available re N.A.A.C.P. meeting at which vote taken to bring suit, declined to state number of state N.A.A.C.P. members. Aug. 28: Dist. Ct. *dismissed* suit, *held* Def.-Bd. had acted in "utmost good faith" in proposing integration over 5-10 yr. period starting perhaps Fall, 1957. Appeal pending.

Wiley A. Branton, Esq., 119 E. Barraque St., Pine Bluff, Ark.; U. Simpson Tate, Esq., 2600 Flora St., Dallas, Tex.; Thurgood Marshall and Robert L. Carter, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

- 522.Dela1. *Jackson, et al. v. Buchanan, Members of Dela. Bd. of Educ. and Bd. of Trustees, et al* (Christiana School Dist.) (DC Dela.Civ. #1815.) Suit by Pl.-Negro children seeking injunctive relief to restrain enforcement of administrative orders, rules, regulations, customs, practices and usages



pursuant to which Pls. are segregated in schooling because of race, color and ancestry and to require admittance on non-discriminatory basis, with all deliberate speed. Partial integration begun. Continued.

Louis L. Redding, Esq., 923 Market St., Suite 300, Wilmington, Dela.

522.Dela2. *Evans, et al. v. Buchanan, et al.* (Milford). (DC Dela., Civ. #1817.) Facts and issues similar to 522.Dela1. Oct. 4: Defs.' motion to dismiss heard and submitted.

Louis L. Redding, Esq., 923 Market St., Suite 300, Wilmington, Dela.

522.Dela3. *Holloman, et al. v. Buchanan, et al.* (Milton). (DC Dela., Civ. #1819.) Facts and issues similar to 522.Dela1. New Def.-Bd. moved to strike answer by old Def.-Bd. which had proposed gradual desegregation plan. Pending.

Louis L. Redding, Esq., 923 Market St., Suite 300, Wilmington, Dela.

522.Dela4. *Coverdale, et al. v. Buchanan, et al.* (Greenwood.) (DC Dela., Civ. #1818.) Facts, issues and status similar to 522.Dela3.

Louis L. Redding, Esq., 923 Market St., Suite 300, Wilmington, Dela.

522.Dela5. *Creighton, et al. v. Buchanan, et al.* (Laurel). (DC Dela., Civ. #1820.) Facts, issues and status similar to 522.Dela3.

Louis L. Redding, Esq., 923 Market St., Suite 300, Wilmington, Dela.

522.Dela6. *Denson, et al. v. Buchanan, et al.* (Seaford). (DC Dela., Civ. #1821.) Facts, issues and status similar to 522.Dela3.

Louis L. Redding, Esq., 923 Market St., Suite 300, Wilmington, Dela.

522.Dela7. *Oliver, Jr., et al. v. Buchanan, et al.* (Clayton). (DC Dela. Civ. #1822.) Facts, issues and status similar to 522.Dela3.

Louis L. Redding, Esq., 923 Market St., Suite 300, Wilmington, Dela.

522Dela8. *Staten, et al. v. Buchanan, et al.* (Milford). (DC Dela., Civ. #1817.) Facts, issues and status similar to 522.Dela3.

Louis L. Redding, Esq., 923 Market St., Suite 300, Wilmington, Dela.

522.Fla1. *Florida ex rel. Hawkins v. Bd. of Control of Fla.* (Fla. S. Ct.) (53 S. 2d 116, cert. den. 342 U. S. 877 (1951), 60 S. 2d 162, 347 U. S. 971, 83 S. 2d 20, 76 S. Ct. 464.) Suit by Negro-Rel. for admission to Fla. Univ. Law School. March 1956: U.S.S.C. *vacated* 1954 judgment, *remanded* case because "there is no reason for delay. He is entitled to prompt admission \* \* \*." Fla. S. Ct. appointed judge as commission to determine when Rel. and other Negro students should be admitted without creating confusion. Univ. distributed questionnaire to parents and students showing "violence and trouble" would ensue if Rel. admitted. Pending before Fla. S. Ct.

Robert Carter and Thurgood Marshall, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

522.Fla2. *Gibson, et al. v. Dade Co. Bd. of Public Instruction, et al.* (SD Fla., #6978-M-Civ.) Injunction suit to prevent Def.-Bd. from continuing operation of segregated public schools. Pending.

Edwin L. Davis, Esq., 941 N.W. 2 Ave., G. E. Graves, Jr., Esq., 802 N.W. 2 Ave., both of Miami, Fla.; Thurgood Marshall, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

522.Gal. *Ward v. Regents, University System of Georgia, et al.* (ND Ga., Civ. #4355.) Suit filed June 23, 1952 seeking admission to Univ. of Georgia Law School for Pl. and others similarly situated. Pending.

A. T. Walden, Esq., 200 Walden Bldg., Atlanta, Ga.; Thurgood Marshall, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

522.Ky1. *Mitchell v. Bd. of Educ.* (Hopkins Co.) (WD Ky.) Sept. 27: Dist. Ct. *declined* to grant Pl.'s motion for immediate integration; *asked* Def.-Bd. to reconsider plan for integration over 12-yr. period.

522.Ky2. *Gordon et al. v. Collins, et al.* (Webster Co.) (WD Ky., #720.) Pl.-Negro children were first admitted to Def.'s all-white school (State troops used to keep order), then refused admittance by Bd. Suit pending.

James A. Crumlin, Esq., 608 Walnut St., Louisville; Louis P. McHenry, 408½ S. Main, Hopkinsville, both of Ky.; Robert L. Carter, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

522.Ky3. *Garnett, et al. v. Oakley, et al.* (Union Co.) (WD Ky., #721.) Facts and issues similar to 522.Ky2. Pending.

James A. Crumlin, J. Earl Dearing, and Henry S. McAlpin, Esqs., 608 W. Walnut St., Louisville; Robert L. Carter, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

522.La1. *Bush, Jr., et al. v. Orleans Parish School Bd., et al.* (CA 5.) (138 F. Supp. 337.) Amended suit seeking temporary restraining order and preliminary injunction to prevent Defs. from enforcing 2 statutes passed 1954 after decision in *Brown*. Issues: constitutionality of Act 555, which directs State Bd. of Educ. to withhold approval (and therefore funds) from any school admitting Negro and white students; and of Act 556, authorizing parish school sup'ts to assign children to public schools. Feb. 15: 3-Judge Fedl. Ct. ruled all La. state laws aimed at preserving segregation *invalid*; no serious constitutional questions involved in case, therefore turned over to Judge Wright, who *issued* injunction restraining Defs. from requiring and permitting segregation in any school under its supervision "from and after such time as may be necessary for admission of children to such schools on a racially nondiscriminatory basis with all deliberate speed." May 28: U.S.S.C. *denied* Def.-Bd.'s motion for leave to file petition for writ of mandamus testing decision by single Dist. Ct. judge rather than 3-judge statutory Ct. Pending on Def.'s appeal in CA 5.

A. P. Tureaud and A. M. Tureaud, Jr., Esqs., 821 Orleans Ave., New Orleans, La.; Thurgood Marshall, Esq., N.A.A. C.P., 107 W. 43rd, NYC; U. Simpson Tate, Esq., 2600 Flora St., Dallas, Tex.

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522.La2. *Hall, et al. v. St. Helena Parish School Bd., et al.* (ED La., Civ. #1068.) Facts and issues similar to 522.La1. Oct. 15, 1956: Def.'s motion to dismiss heard and submitted.

A. P. Tureaud and A. M. Tureaud, Jr., Esqs., 821 Orleans Ave., New Orleans, La.; Thurgood Marshall, Esq., N.A.A. C.P., 107 W. 43rd, NYC; U. Simpson Tate, Esq., 2600 Flora St., Dallas, Tex.

522.La3. *Angel, et al. v. La. State Bd. of Educ., et al.* (ED La., Baton Rouge Div., Civ. #1658.) Suit by Negro-Pls. for admission, on integrated basis, to five state-operated trade schools. Pending on Pls.' application for interlocutory injunction.

A. P. Tureaud and A. M. Tureaud, Jr., Esqs., 1821 Orleans Ave., New Orleans; U. Simpson Tate, Esq., 2600 Flora St., Dallas, Texas; Thurgood Marshall and Robert L. Carter, Esqs., N.A.A.C.P., 107 W. 33rd St., NYC.

522.La4. *Davis, Jr., et al. v. E. Baton Rouge Parish School Bd., et al.* (ED La., Baton Rouge Div., Civ. #1662.) Suit by Pl.-Negro children for interlocutory injunction requiring Def.-Bd. to admit Pls. to school on integrated basis.

Alex L. Pitcher, Jr., Esq., 1501 E. Boulevard, Baton Rouge; A. P. Tureaud and A. M. Tureaud, Jr., Esqs., 1821 Orleans Ave., New Orleans; U. Simpson Tate, Esq., 2600 Flora St., Dallas, Texas; Thurgood Marshall and Robert L. Carter, Esqs., N.A.A.C.P., 107 W. 43rd St., NYC.

522.La5. *Tureaud v. Bd. of Supervisors, La. State Univ. and Agric. and Mech. Coll., et al.* (CA 5.) (116 F. Supp. 248, 207 F. 2d 807, 346 U. S. 881; 225 F. 2d 434, 347 U. S. 971, 226 F. 2d 714.) Application for injunction to restrain Defs. from refusing to admit Pl.-Negro student to La. State Univ. under-graduate program. 1955: Judgment vacated and case remanded for consideration in light of *Brown* "and conditions that now prevail". Fedl. Judge Skelly again ordered Pl. admitted; Aug. 1955: CA 5 *upheld* ruling. May 1956: U.S.S.C. *denied* Def.'s petition for cert.

Alexander P. Tureaud, Esq., 1821 Orleans Ave., New Orleans, La.; Ulysses S. Tate, Esq., 171 Jackson St., Dallas, Tex.; Robert L. Carter and Thurgood Marshall, Esqs., N.A.A.C.P., 107 W. 43rd St., NYC.

522.La6. *Williams, et al. v. Prather, et al.* (WD La., #5000 Civ.) Suit for admission of Negro student to Northwestern State College, Natchitoches, La. Pl. asked for convening of 3-judge court, following decision in *Tureaud* (522.La5). Apr. 22, 1955: Chief Judge of CA 5 refused to convene such court on ground it was not necessary in view of decision in *Brown*. Aug. 1956: Defs.' filed motion to dismiss for lack of proper party Pl. Pending.

A. P. Tureaud, Esq., 1821 Orleans Ave., New Orleans, La.; U. Simpson Tate, Esq., 1718 Jackson St., Dallas, Texas; Robert L. Carter and Thurgood Marshall, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

522.Md1. *Robinson et al. v. Bd. of Educ. of St. Mary's Co., Md., et al.* (DC Md., Civ. #8780) Suit by Pl.-Negro children for admission on integrated bases to schools operated by Def.-Bd. July 1956: Dist. Ct. *granted* Defs.' motion to dismiss, *held* Pls. must exhaust administrative remedies before suing.

Tucker R. Dearing, Esq., 740 N. Gay St., Robert B. Watts, Esq., 1520 E. Monument St., Juanita J. Mitchell, Esq., 1239 Druid Hill Ave., all of Baltimore, Md.; Jack Greenberg, Esq., N.A.A.C.P., 107 W. 43rd St., NYC.

522.Md2. *Moore, Jr., et al. v. Bd. of Educ.* (Harford Co.) (DC Md., Civ. #9105.) Pls.

filed suit, then dismissed it when Def.-Bd. announced intention of admitting Negro students to all-white schools Fall 1956. 15 Negro children admitted; 44 denied admission. Suit filed for some of 44 now pending on Def.'s motion to dismiss. (Others of 44 appealing directly to Bd. of Educ. under ruling in 522.Md1.)

Dearing and Toadvine, Esqs., 740 N. Gay St.; Brown, Allen & Watts, Esqs., 1520 E. Monument St.; Juanita Jackson Mitchell, Esq., 1239 Druid Hill Ave., all of Baltimore; Jack Greenberg, Esq., N.A.A.C.P., 107 W. 43rd. NYC.

- 522.NC1. *Carson, et al. v. Bd. of Educ.* (McDowell Co.) (CA 4, #7096.) (227 F. 2d 789.) 1953: Pls.-Negro students brought suit for admission to white schools, asked hearing before 3-judge Fedl. Ct. Dec., 1955: 3-judge Ct. *held* Pls. had not exhausted remedies in state courts under 1955 state law providing local school bds. with complete authority over assignment and enrollment of pupils, and that pupils can appeal from such bds.' decisions directly to state Superior Ct. Ct. also treated case as one involving individual Pls., and not as class action. May: N. C. Sup. Ct. *affirmed* lower ct. decision; *upheld* constitutionality of 1955 local school assignment law and ruled that Negroes seeking to enter white public schools must act individually and not as a class under the statute. Appeal pending in CA 4 for order requiring Dist. Ct. to hear case on merits and for immediate integration.

Herman L. Taylor and Samuel S. Mitchell, Esqs., 125 E. Hargett St., Raleigh, N. Caro.

- 522.NC2. *Covington, et al. v. Edwards, Supt. of Schools, et al.* (Montgomery Co.) (MD N. Caro., Rockingham Div., Civ. #323.) Pls. seek injunction to prevent segregation in county schools and ruling that N. Caro. school segregation law is unconstitutional. Fedl. Judge Hayes permitted Pls. to amend suit to add allegation that County school sup't and school bd. are officers of State of N. Caro. April 1956: *held*: 1) 3-judge ct. not necessary to hear case; 2) N. C. constitutional proviso requiring separate schools *unconstitutional*; 3) local school bd. members are state officials and their action is state action. Oct.: Pls. moved to amend complaint to attack constitutionality of new Pearsall Plan (for closing public schools under certain circumstances and giving state-aid to attend private schools), after its adoption as amdt. to State Constitution.

C. O. Pearson, Esq., 203½ E. Chapel Hill St., Durham, N. C.; J. Kenneth Lee, P.O. Box 645; George A. Lawson, 914 Gorrell St., and Major S. High, 914 Gorrell St., Esqs., all of Greensboro, N. C.

- 522.SC1. *Briggs v. Elliott.* (Clarendon Co.) (98 F. Supp. 529, 342 U. S. 350; 103 F. Supp. 920; 347 U. S. 483, 75 S. Ct. 753.) Companion case to *Brown* and *Davis* (522.Va1). On remand, 3-judge court entered decree July 1955: 1) *holding* state statutes and constitutional provisions requiring segregated schools unconstitutional; 2) *enjoining* Defs. from refusing on account of race or color to admit any qualified child to any school in jurisdiction after Defs. have made "necessary arrangements" for non-discriminatory admission, with no date for compliance set. Pending.

Spottswood W. Robinson, III, and Oliver W. Hill, Esqs., Richmond, Va.;

Harold R. Boulware, Esq., Thurgood Marshall, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

522.Tenn1. *Kelly, et al. v. Bd. of Educ.* (Nashville.) (MD Tenn., Nash. Div., Civ. #2094.) Suit filed Sept. 23, 1955 by relatives of 21 Negro children denied admission to white schools. 3-judge court asked to set aside Tenn. segregation laws and constitutional provisions. White Fisk U. Prof. Rempfer filed petition to amend suit to seek Ct. order compelling Def. to admit his 2 children to nearby Negro elementary schools rather than to white schools over a mile from his home. March 28: 3-judge ct. postponed action on suit till Oct. Term after Nashville School Bd. failed to submit desegregation plan to ct. Calendared for Oct. 8.

Z. Alexander Looby and Avon Williams, Esqs., 327 Charlotte Ave., Nashville, Tenn.; Thurgood Marshall, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

522.Tenn2. *Booker, et al. v. State of Tennessee Board of Education, et al.* (CA 6.) Suit by 5 Negro students seeking admission to Memphis State College. Oct., 1955: Dist. Ct. Judge Boyd *ruled* Negroes could enter Def.-college under gradual integration plan proposed by Def.-Bd. May 28: U.S.S.C. *denied* motion for leave to file petition for writ of mandamus to compel convening of 3-judge ct.; trial ct. had correctly decided that no constitutional question was involved since decision in *Brown*. Pl.'s appeal to CA 6 pending.

J. F. Estes, Esq., 145 Beale, H. T. Lockard, Esq., 322½ Beale, B. L. Hooks, Esq., 362 Beale, and A. M. Willis, Jr., Esq., 336 Vance Ave., all of Memphis, Tenn.; and Thurgood Marshall, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

522.Tex1. *Jackson v. Rawden.* (Mansfield, Tex.) (U.S.S.C.) (133 F. Supp. 936.) Suit by Negro students for injunction against continued segregation in public schools. Nov. 1955: Dist. Ct. *dismissed* without prejudice. CA 5 *reversed, remanded*. Summer 1956: Dist. Ct., complying, *ordered* immediate admission of Negro students to high schools. Oct. 22: U.S.S.C. *refused* to hear appeal in first such public school case to reach U.S.S.C. on merits since *Brown*.

L. Clifford Davis, Esq., 401½ E. 9th St., Fort Worth, Tex.; U. Simpson Tate, Esq., 2600 Flora St., Dallas, Tex.; Thurgood Marshall and Robert L. Carter, Esqs., 107 W. 43rd, NYC.

522.Tex2. *Avery, et al. v. Randel.* (CA 5.) April 1956: Dist. Ct. *dismissed* complaint by Negro parents for admission of children to white elementary school because Def.-Bd. disclosed plans to desegregate completely by Sept. 1956 or Jan. 1957. Appeal pending.

U. Simpson Tate, Esq., 2600 Flora St., Louis Bedford, Esq., 1807½ Singleton Blvd., both of Dallas; Thurgood Marshall and Robert L. Carter, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

522.Tex3. *Whitmore v. Stilwell, et al.* (DC Tex.) (227 F. 2d 187.) Suit by Negro student for admission to Texarkana Junior College following administrative refusal. Case started in May, 1949. Dist. Ct. then *dismissed* complaint on ground Pl. had not exhausted administrative remedies. CA 5 *reversed*. Oct., 1954: Dist. Ct. *dismissed* case for want of equity. Nov., 1955: CA 5 *reversed*

Dist. Ct., *ordered* Def. Texarkana Jr. College, tax-supported school, to admit qualified Negro applicants. Sept. 27, 1956: Dist. Ct. *ruled* N.A.A.C.P. could not intervene for Pls. after students testified they had not retained counsel. N.A.A.C.P. counsel then withdrew motion that Def.-College pres. and a trustee be cited for criminal contempt for alleged statements to White Citizens Council meeting that it was duty as well as right to protest integration.

John T. Raffaelli, Esq., 817 Texarkana Natl. Bk. Bldg., Texarkana, Tex.; U. S. Tate, Esq., 1718 Jackson St., Dallas, Tex.; Robert L. Carter, Thurgood Marshall, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

- 522.Tex4. *Jackson, et al. v. McDonald, Pres., Lamar State College of Technology, et al.* (DC Tex., Beaumont Div., Civ. #3172.) Pl.-Negro students suing for admission to Def.-college. Def., in answer, suggested that 17 public colleges are integrated and state should continue to provide some segregated colleges. Pending.

Theodore R. Johns and Elmo R. Willard, III, Esqs., 2370 Washington Blvd., Beaumont, Texas; U. Simpson Tate, Esq., 2600 Flora St., Dallas, Texas; Robert L. Carter and Thurgood Marshall, Esqs., N.A.A.C.P., 107 W. 43rd St., NYC.

- 522.Tex5. *Bell, et al. v. Rippy, et al.* (ND Tex., Civ. #6165.) (133 F. Supp. 811.) Suit to compel immediate abolition of racial segregation. Oct. 16, 1955: *dismissed* without prejudice on ground that Dallas provides equal school facilities for whites and Negroes and that U.S.S.C. ruling requires that districts shall do away with segregation after having worked out a proper plan. May 25, 1956: CA 5 *vacated* and *reversed* Dist. Ct. decision dismissing action; case *remanded* to Dist. Ct. for proceedings re Pet.'s allegation of segregation in Dallas public schools. Oct. 3: heard and submitted.

U. Simpson Tate, Esq., 2600 Flora St., Dallas, Texas.

- 522.Va1. *Davis v. County School Bd.* (Prince Edward Co.) (DC Va.) (103 F. Supp. 337; 347 U. S. 483; 75 S. Ct. 753, companion case to *Brown*.) On remand, 3-judge court *entered decree* July 18, 1955: 1) setting aside 1952 decree in part; 2) ruling Va. Const. of 1902, sec. 140 and Va. Code of 1950, sec. 22-221 (requiring segregated schools) not be enforced by Defs. because in violation of Equal Protection Clause of 14th Amtd.; 3) enjoining Defs. from refusing on account of race or color to admit any qualified child to any school in their jurisdiction after Defs. have made "necessary arrangements" for such a non-discriminatory admission "with all deliberate speed" but Ct.'s refusal to require such rearrangement by Sept., 1955 (as requested by Pls.) "is not inconsistent with the public interest or with the decision of the Supreme Court"; 4) retaining jurisdiction for further action, if necessary. April 1956: Pls. moved for ct. order requiring Def.-Bd. to make "prompt and reasonable start" toward racial integration in public schools. Aug.: preliminary hearings on motion. Pending.

Spottswood W. Robinson, III, and Oliver W. Hill, Esqs., Richmond, Va.; Thurgood Marshall, Esq., N.A.A.C.P., 107 W. 43rd, NYC.

- 522.Va2. *Corbin. et al. v. School Bd.* (Pulaski Co.) (177 F. 2d 924.) Dist. Ct.

*dismissed* Pl.'s suit for admission to white public high school. CA 4 *reversed* and *remanded* for trial. Pending since Dec. 1955.

Hill, Martin and Robinson, Esqs., 623 N. 3d, Richmond, Va.

- 522.Va3. *Atkins, et al. v. School Bd., et al.* (Newport News). (ED Va., Newport News Div., Civ. #489.) Suit by Pl.-Negro children for admission on integrated basis to schools operated by Def.-Bd. filed April 26. Nov. 17: hearing on Def.'s motion to dismiss.

W. Hale Thompson, Esq., 611 25th St. and Philip S. Walker, Esq., 2411 Jefferson Ave., both of Newport News, Va.; Spottswood W. Robinson, III, Esq., 623 North 3rd St. and Oliver W. Hill, Esq., 118 East Leigh St., both of Richmond, Va.

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- 522.Va4. *Beckett, et al. v. School Bd.* (Norfolk.) (ED Va., Civ. #2214.) Facts, issues and status similar to 522.Va3.

Victor J. Ashe, Esq., 1134 Church, J. Hugo Madison, Esq., 1017 Church, and Spottswood W. Robinson, III and Oliver W. Hill, Esqs., 623 N. 3d St., all of Richmond. Va.

- 522.Va5. *Allen, et al. v. School Bd.* (Charlottesville.) (CA 4.) July, 1956: Dist. Ct. *ordered* Def.-Bd. to desegregate public schools by Fall 1956, said: "I don't think any decree should be sweeping enough to say to every Negro child in Charlottesville 'you can go to whatever school you want.' There are valid and legitimate reasons for some discrimination, but not because the pupil is a Negro." Dist. Ct. granted stay pending appeal.

Oliver W. Hill and Spottswood W. Robinson, III, Esqs., 623 N. 3rd St., Richmond.

- 522.Va6. *Thompson, et al. v. School Bd.* (Arlington.) (CA 4.) August, 1956: Dist. Ct. *ordered* Def.-Bd. to desegregate public elementary schools Jan. 31, 1957; junior and senior high schools Sept. 1957. Appeal pending.

Edwin C. Brown, Esq., 1200 Cameron St., Alexandria, Va.

- 522.W.Va.1. *Pierce, et al. v. Bd. of Educ.* (Cabell Co.) (W. Va., Huntington Div.) Sept. 5, 1956: Ct. suspended further action in Pls' desegregation suit after Def.-Bd. *agreed* to open all public schools in Co. to Negro pupils. Ct. retained jurisdiction.

T. G. Nutter, Esq., 609½ Virginia St. E, Charleston, W. Va.

### 523. Suits to prevent integration

- 523.Ark1. *Shackleford, et al. v. Vance, Ch., Hoxie School Bd., et al.* (Ark. Sup. Ct.) Suit by pro-segregationists to remove 3 desegregationist members of Def.-School Bd. alleging administrative irregularities. (See *Hoxie*, 522.Ark.1.) Sept., 1956: Chancery Ct. *held* itself lacking authority to remove school bd. members. Pls.' appeal pending.

For Def. Bd.: Penix and Penix, Esqs., Jonesboro, Ark.; James F. Sloan, III, Esq. Walnut Ridge, Ark.

- 523.Ky1. *Grubbs, et al. v. Gov. Chandler, et al.* (Franklin Co. Cir. Ct.) Suit by 110 Pls.

(incl. Ch., Ky. Citizens Councils) to require Def.-Gov. and other Ky. officials to enforce compliance with Ky. laws forbidding integration in public schools. Defs'. motion to dismiss because they are not proper parties-Defs. pending.

For Defs.: Jo M. Ferguson, Ky. Atty. Genl., Frankfort, Ky.

523.Md1. *Williams v. School Bd.* (Anne Arundel Co.) (Cir. Ct., Anne Arundel Co., Law #7810.) Mandamus action by Pl.-atty., on behalf of 9 parents, "commanding" Def. Bd. "to establish and maintain" segregated schools under Art. 77 Md. Anno. Code, Sec. 207, 208. Sept. 27, 1956: Ct. *dismissed* petition.

For Def. Bd.: R. Tilghman Brice, 3d, Esq., Lee Bldg., Annapolis, Md.

523.Md2. *Williams v. School Bd.* (Howard Co.) (Cir. Ct., Howard co., Law #3599.) Facts, issues and status similar to 523.Md1.

For. Def. Bd.: Jerome A. Loughran, Esq., Ellicott City, Md.

523.S.C.1. *Nash v. Sharper, N.A.A.C.P. Chapter, et al.* (Sumter Co. Ct. of Com. Pleas, #7.) Oct. 1955: Pl.-atty. for Co. School Bd. sued N.A.A.C.P. and its officers for libel, charging that Defs. wrote letter to press concerning one signer of N.A.A.C.P. desegregation petition who later withdrew name. Defs. had allegedly written: "He not only signed after reading the petition, but on one occasion directed others how to sign them. Either he is double-talking or the officials who released his statements to the press are wording these retractions to fit the Citizens' Committees." Pl. claimed article false, asked \$120,000 actual and punitive damages. Defs. demurred, claiming statement not libelous per se because alleged statement made in the alternative; nothing in statement mentioned Pl., and it is incapable of reasonable construction which would render words defamatory re Pl.; statement absolutely privileged, having been published in reply to previous statement in same paper by school officials. Trial date: Oct. 1956.

For Def.: L. C. Jenkins, Jr., Esq., Columbia, S. C.

523.Tenn1. *Davidson, et al. v. Cope, et al.* (Tenn. Ct. of App.) Suit by Pls. (for Tenn. Bd. for Constitutional Govt.), to prohibit Def.-State Treas. from allotting money to Memphis State College because it plans to admit Negroes to desegregated classes. May 1956: Chancery Ct. *held* Tenn. laws and constitutional provisions requiring segregation *unconstitutional* under *Brown*. Pls. appeal pending.

For Defs.: Nat Tipton, Tenn. Advocate Genl. and Solicitor Genl. Allison B. Humphreys, Supreme Ct. Bldg., Nashville.

523.Tex1. *Barnes, et al. Calvert, Compt.* (Tex. Sup. Ct.#A-6035.) Mandamus action against Texas Comptroller of Funds to prohibit expenditure of state funds for use by Negro students at integrating-Univ. of Texas, which was created as all-white school (Tex. Const. Art. VII. Sec. 14). Issue: whether U.S.S.C. decision in *Brown* over-rides state's alleged Tenth Amdt. right over higher education. Sept. 18, 1956: Tex. Sup. Ct. *denied* Pls. permission to file action.

For Resp.: John Ben Shepperd, Atty. Genl. of Tex., Austin, Texas.

523.Va1. *Dobbins v. Virginia.* (Va. Ct. of App.) Conviction of group of Negro parents for violating state compulsory school attendance law when they refused to



send children to inferior, segregated school. Feb., 1955: oral argument before Va. Ct. of App.; decision awaited.

## 530. Housing

### 531. Public

531.1. *Heyward v. Savannah Housing Authority, et al.* (CA 5, #16040.) (135 F. Supp. 217.) Suit to enjoin allocation of Fed'l funds and technical assistance to construction of segregated public housing development in Savannah. Oct. 1955: Dist. Ct. *granted* Def.-U. S. Gov't motion for summary judgment and Def.-Housing Auth. motion to dismiss on ground that separate-but-equal still applies in housing. Oct. 8, 1956: heard and submitted.

A. T. Walden, Esq., 200 Walden Bldg., Atlanta, Ga.; Frank D. Reeves, Esq., 2000 Ninth Ave. NW, Wash., D.C.; Constance B. Motley and Thurgood Marshall, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

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531.2. *Watts v. Housing Authority of Birmingham District.* (DC Ala.) Facts and issues similar to *Heyward* (531.1). Pending.

Peter A. Hall, Esq., 1630 4th Ave., Birmingham, Al.; Thurgood Marshall and Constance Baker Motley, Esqs., N.A.A.C.P., 107 W 43rd, NYC.

531.3. *Askew, et al. v. Benton Harbor Housing Commission, et al.* (WD Mich., S. Div., Civ #2512.) Suit to enjoin Defs.' admitted policy of housing whites and non-whites in separate housing projects and to enjoin denial of admission of Negro veterans to so-called veterans' housing project. Motion for summary judgment pending.

Alphonse Lewis, Jr., Esq., 142 Michigan St. N.W., Grand Rapids; John W. Roxborough, II, Esq., 402 Tobin Bldg., 1308 Broadway, Detroit, Michigan; Thurgood Marshall and Constance Baker Motley, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

### 532. Private

532.1. *S. End Fed'l Svgs. & Loan v. Roan, Braden and Wade.* (Jeff. Cir. Ct., Chanc. Branch, 2d Div., Ky.) Def. Braden and wife bought house in so-called white neighborhood and transferred it to Negro couple, Def. Wade and wife. Def. Wade continued to occupy house despite dynamiting which led to prosecution in *Braden* (244.3). June 1954: Pl., holding first mortgage, sued to foreclose because Bradens had not obtained Pl.'s consent to transfer to Wades, under contract clause: "That no conveyance shall be made \* \* \* without the written consent of the association". Defs. contend clause designed to avoid U.S.S.C. refusal to enforce housing restrictive covenants (*Shelley v. Kraemer*, 334 U. S. 1). Trial concluded; Sept. 1956: final brief filed.

Conrad J. Lynn, Esq., 141 Broadway, NYC and Neville Tucker, Esq., 422 S. Sixth, Louisville, Ky.

532.2. *Ming v. Horgan. et al.* (Calif. Super. Ct., Sacramento Co., #97130.) Pl.-Negro home buyer sued Def. real estate bd. and Defs.-realty cos. and

construction cos., charging Defs.' segregation policy contravened Calif. state policy against discrimination and restraints of trade. Jan. 1956: Super. Ct. *overruled* Defs.' demurrer except re 2 technical defects. Trial date: Jan. 10, 1957.

Loren Miller, Esq., 542 S. Broadway, Los Angeles; Franklin H. Williams, Esq., N.A.A.C.P., 690 Market St., San Francisco; Nathaniel S. Colley, Esq., 621 P St., Sacramento, Calif.

- 532.3. *Beddoe v. Southeast Realty Bd., et al.* (Calif. Super. Ct., Los Angeles, #SG C 1050.) Dec., 1955: Pl.-realtor represented Mexican-American family in successful purchase of home in previously restricted neighborhood. Def.-Bd. thereupon ousted Pl. from membership; fined him \$310. Pl. refused to pay, brings \$42,000 damage action, charging fine and ouster violate Sec. 16,700, Calif. Business & Professional Code prohibiting unfair interference with trade and competition. Pending.

Mark F. Joseff, Esq., 7857 Florence Ave., Downey, Calif.; A. L. Wirin, Fred Okrand and Paul Posner, Esqs., 257 S. Spring St., Los Angeles.

## 540. Transportation

### 541. Interstate

- 541.1. *Fitzgerald v. Pan American World Airways, Inc.* (SD NY. Civ. #97-356.) (132 F. Supp. 798; 229 F. 2d 499.) Pl. sued Def.-airline for damages for denial of flight accommodations, alleging racial discrimination, violation of Civil Aeronautics Act, sec. 404(b). DC *dismissed* complaint; *held* breach of Act did not give rise to fedl. cause of action. Jan. 1956: CA 2 *reversed*; *held* Act created new fedl. right; suit could be maintained without diversity jurisdiction; since CAB had no power to grant relief sought, Pl. did not have to exhaust adm'r remedy. Def. filed answer in DC; pending.

Bergerman and Hourwich, Esqs., 14 Wall St., NYC.

### 542. Intrastate

- 542.1. *City of Montgomery v. Parks.* (Ala. Ct. of App.) Dec. 1955: Def.-Negro woman arrested when she refused to move to "Jim Crow" section of bus. In Police Ct.: convicted, fined \$10 and costs, under state statute authorizing bus companies to provide and enforce separate facilities for whites and Negroes. Feb. 1956: Cir. Ct. *affirmed*; *upheld* constitutionality of Montgomery and Ala. bus segregation statutes. May: Cir. Ct. *directed* Montgomery City Bus Lines to abandon its integration policy. Pending on appeal.

Fred Gray, Esq. and Charles Langford, Esq., 113 Monroe St., Montgomery, Alabama.

And see *Browder* (542.2) and *Rev. King* (244.4).

- 542.2. *Browder, et al. v. Gayle.* (U.S.S.C.) Suit by Negro-Pls. for injunction against Def.-transportation co. testing constitutionality of state law requiring segregation in intrastate commerce and testing Montgomery city ordinance passed pursuant thereto. June 5: 3-judge ct. *ruled* (2-1) state and city statutes requiring segregation on Montgomery city buses *unconstitutional*. June 19:

Ct. issued injunction to stop enforcement of said laws, but suspended it pending Def's. appeal from ruling. Appeal to U.S.S.C. pending.

Fred D. Gray and Charles D. Langford, Esqs., 113 Monroe St., Montgomery, Alabama.

And see *Browder* (542.1), and *Rev. King* (244.4).

- 542.3. *Flemming v. S. Carolina Electric and Gas Co.* (CA 4.) (128 F. Supp. 469; 224 F. 2d 752.) Suit by Negro woman passenger forced by bus driver for Def.-intrastate bus co. to change her seat in accordance with S. Car. segregation law. Issues: violation of equal protection clause, damages under Fedl. Civil Rights law because driver was acting "under color of law". Dist. Ct. *dismissed*; CA 4 (July 1955) unanimously *reversed, holding*: "separate but equal" doctrine, repudiated by U.S.S.C. in *Brown*. also unconstitutional here. Since S. Car. law makes bus driver a police officer, he acted "under color of law"; case remanded to Dist. Ct. to determine amount of damages. April 23: U.S.S.C. unanimously *dismissed* Def.'s appeal because it was premature. Case returned to Dist. Ct. June 13: Fedl. Judge Timmerman *dismissed* case a second time, holding bus driver had acted under segregation statutes valid at the time and CA 4 decision outlawing segregation could not apply retroactively. Pending on appeal in CA 4.

Philip Wittenberg, Esq., Barringer Bldg., Columbia, So. Carolina; Thurgood Marshall and Robert L. Carter, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

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- 542.4. *Evers, et al. v. Dwyer, Comm'r of Public Service of City of Memphis, et al.* (WD Tenn., Civ. #2903.) Negro-Pls. brought suit to test constitutionality of state statutes requiring segregation on intra-state buses. Pending.

H. T. Lockard, Esq, 322½ Beale St., Memphis, Tennessee; Thurgood Marshall and Robert Carter, Esqs., N.A.A.C.P., 107 W. 43rd St., NYC.

- 542.5. *Miami v. Reid.* (Miami Police Ct.) June 12: Def.-organizer in N.A.A.C.P. Miami Youth Council arrested after he refused to move to rear of city bus to make way for a white patron. Def. charged with tending to create a breach of the peace. Pending.

G. E. Graves, Jr., Esq., Miami, Florida.

- 542.6. *Virginia v. Ritter* (Richmond Hustings Ct.) re Va. Transit Co. Def.-Negro bus passenger charged with refusing to move to seat designated by local bus driver. Fined: \$10. Appeal continued indefinitely.

Hill, Martin and Robinson, Esqs., Richmond, Va.

## 550. Miscellaneous Facilities

### 551. Recreational

- 551.Call. *McClain, by guardian ad litem v. City of S. Pasadena.* (Calif. Ct. of App.) Pl.-9 yr. old Negro girl went with white neighbors to city-owned swimming pool where she was denied entry on basis of race under rule of City Dept. of Recreation. City Council denied claim charging discrimination. Suit filed for injunction against City denying Pl. use of pool and for \$1,000 damages. City

claims its denial based on Pl.'s nonresidency in city, tho she is Calif. resident. Trial ct. decided in favor of Def. on ground that City has right to restrict use of its facilities to residents. Appeal pending.

A. L. Wirin, Esq., 257 S. Spring St., Los Angeles; Hugh R. Manes, Esq., 6223 Selma Ave., Hollywood, Calif.

551.Ind1. *Stewart, et al. v. Hartke, et al.* (Evansville.) (SD Ind., Evans. Div.) June 1956: suit filed for Negro children Pls. for injunction and damages for denial by Def.-City Recreation Commission of equal access to city-pools. July 1956: stipulation filed and approved: Defs. *ceased* discrimination, "and have now complied with obligations imposed by law \* \* \* and will continue to do so." Suit *dismissed* on Pls.' motion.

Willard R. Ransom, Esq., Walker Bldg.; Patrick E. Chavis, Jr., Esq., 157 N. Illinois St., both of Indianapolis; Sydney L. Berger, Esq., Koenig Bldg., Evansville, Ind.

551.NC1. *North Carolina v. Simkins, et al.* (Super. Ct., Guilford County, N.C.) 6 Negro-Def. *convicted*; fined for trespassing on publicly-owned but privately leased golf course in Greensboro, N.C. Case on appeal to Super. Ct. Issue: whether U.S.S.C. ruling against segregated public parks can be circumvented by leasing public lands to alleged private club. Pending.

J. Kenneth Lee, Esq., Greensboro, N.C.

551.Tenn1. *Crutcher v. Hayes.* (Mid. Dist. Tenn., Civ. #1344.) (108 F. Supp. 582, 137 F. Supp. 853.) March, 1954: Dist. Ct. *held*: Negroes must be permitted to use Shelby Park Golf Course 2 days a week until Cumberland Golf Course for Negroes completed. City attorneys filed for dismissal of order upon completion of Cumberland, claiming facilities now equal. Negro golfers argue that *Brown* rule applies here. Jan. 1956: Fedl. Dist. Judge *ordered* desegregation of Nashville municipal golf courses. May 1: petition for rehearing filed by 12 citizens alleging that decision ordering desegregation improper because 1) case should have been heard by 3-judge ct.; 2) park bd. failed to interpose a number of defenses and exceeded authority in deciding to desegregate; 3) by opening courses to both races, park comm'rs were individually liable for misappropriation of park funds. Pending.

Z. Alexander Looby, Esq., 327 Charlotte Ave., Nashville, Tenn.; Thurgood Marshall, Esq., N.A.A.C.P., 107 W. 43rd St., NYC.

551.SC1. *Clark, et al. v. S. C. Forestry Commission.* (CA 4.) Suit by Pls.-Negroes seeking admission to Edisto Beach State Park. Feb. 6: case heard and submitted; decision reserved. Thereafter S. Caro. Legis. passed Act closing Edisto State Park, to which Pls. had sought entry. March 21: Ct. held meeting with counsel, stating that inasmuch as there is now no park, relief sought by Pl. can no longer be had under any circumstances. April: suit *dismissed*. Appeal pending.

John H. Wrihten, Esq., 230 Comings St., Charleston, S. C.; W. Newton Pough, Esq., Orangeburg, S. C.

551.Va1. *Tate, et al. v. Va. Dept. of Conservation and Development.* (U.S.S.C.) (133 F. Supp. 53, 231 F. 2d 615.) Pls.-Negroes brought class action for declaratory

judgment and injunction against Def. which operated Seashore State Park on segregated basis. July 1955: Dist. Ct. *enjoined* Def., or any future lessee, from discriminating, directly or indirectly, re use of park facilities. April 1956: CA 4 *affirmed*. Oct. 8: U.S.S.C. *denied* Def.'s appeal.

Victor J. Ashe, Esq., 1134 Church St.; J. Hugo Madison, Esq., 1017 Church St., both of Norfolk, Va., and James A. Overton, Esq., 801 High St., Portsmouth, Va.

## 552. Others

552.III1. *Santiago, et al. v. Roberts, d/b/a Tiny Tap Tavern.* (Chi. Muni. Ct.#56M4933.) Suit for damages by Pls.-Puerto Ricans against Def.-bartender for refusal to serve, in violation of Rev. Stats. Ill., Chap. 38, Sec. 125-8. Pending. Charles Pressman, Esq., 77 W. Washington, Suite 910, Chicago.

## 560. Family Matters

### 561. Marriage and divorce

### 562. Adoption

### 563. Custody

563.1. *Lynch v. Uhlenhopp.* (Sup. Ct. Iowa.) Ct. *reversed* (5-4) judgment holding Pet. in contempt for violation of provision in divorce decree providing Pet. shall rear child "in Roman Catholic religion". Ct. *held*: provision too indefinite to support contempt citation; contract interferes with religious beliefs, is unenforceable as violation of First and Fourteenth Amdts.

Robert B. Kay, Esq. and Marvin G. Kjellberg, Esq., Clarion, Iowa.

## 564. Miscellaneous

564.1. *Maryland v. Howard.* (Balt. Crim. Ct.) 20-yr. old white woman charged with violating 1715 law which provides sentence (18 mths. to 5 yrs.) for "any white woman who shall suffer or permit herself to be got with child by a Negro or Mulatto".

John J. O'Connor, Jr., Esq., 2410 Mathieson Bldg., Baltimore.

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## 570. Employment

### 571. Racial discrimination

571.1. *Brooks, et al. v. Bd. of Educ., et al.* (ED Mo., #551.) Nov., 1955: 8 Pls.-Negro teachers filed suit (under 28 U.S.C. 1331) for damages of \$4,000 for each Pl., a declaratory judgment and injunction restraining Def. Bd from denying employment on racial grounds and from making any distinction whatsoever because of race or color in employing public school teachers. Apr., 1955, after Def. decided to discontinue segregated schools for Negroes, Pls., who had taught for Def. for at least 3 yrs., were notified they would not be rehired. Pls. invoke 14th Amdt. and Fedl. statutes in behalf of their right to

contract, be employed and follow teaching profession without discrimination because of race or color. Def. Bd. admits dismissals and that if they were based solely on race or color "such action would have been illegal, arbitrary, wrongful and violative of Pls.' personal and individual rights, as secured to them by \* \* \* laws and Const. of U.S." Pending.

Thurgood Marshall, Robert L. Carter, and Elwood H. Chisholm, Esqs., N.A.A.C.P., 107 W. 43rd, NYC.

571.2. *Dixon, et al. v. Barrows, et al.* (Mo. Cir. Ct., 13th Jud. Dist., #213220, Div. 5.) Facts and issues similar to *Brooks* (571.1). Pending.

Alphonse J. Lynch, Esq., 2316a Market St., St. Louis, Mo.

571.3. *Wise v. Gasaway, et al.* (ED Ark., Civ. #2736.) Suit to secure equal salaries for Negro and white teachers. Pending.

Harold Flowers, Esq., Masonic Temple, Pine Bluff, Ark.

571.4. *Jeanpierre v. State Commission Against Discrimination.* (NY Sup. Ct., App. Div., 1st Dept.) Pet.-Negro flyer brought Art. 78 proceeding to challenge finding by Def.-SCAD dismissing his complaint against Pan American World Airways for discriminating against him when refusing him employment as flight steward. First suit brought against SCAD alleging it was arbitrary and capricious in dismissing complaint. Pet. alleges Def. ignored racial inquiry directed at him by one of Pan American's personnel supervisors, failed to hold conference or hearing, though confessing "some suspicion" of racial discrimination in that no Negro had ever been hired in any flight capacity. Allegations: 1) SCAD kept matter for almost 11 mths. before making decision; 2) white applicants for same job hired though their work records were as "inconsistent", according to employer's standards, as Pet.'s; 3) Commr. in charge of processing Pet.'s complaint attempted to and actually arranged for Pan Am. to give Pet. another job as "cargo representative" (non-flight capacity). Appeal pending.

Weaver, Evans, Wingate and Wright, Esqs., 160 Broadway, NYC.

## **580. Civil Actions under Civil Rights Law Not Otherwise Covered**

## **590. Criminal Prosecutions under Civil Rights Law**

590.1. *U. S. v. Pavlenko.* (D.C. N. Dak.) Def.-Sheriff *convicted* of mistreating Indian youth (while investigating death of youth's half-sister), by lengthy questioning—sometimes in presence of a crowd, striking youth and stringing him between fencepost and winch of truck and leading him to believe he would be tortured if he did not confess. Dist. Ct. *found* violation of Fourteenth Amdt. [Youth, first sentenced for first degree murder after pleading guilty, on new trial convicted of manslaughter.]