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Civil Liberties Docket

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National Lawyers Guild, National Committee on Constitutional Rights and Liberties

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HIGHLIGHTS OF THIS ISSUE

This issue reports 30 recent decisions of the U.S. Supreme Court, 16 significant decisions of lower courts, 13 new cases raising new constitutional questions, as well as other decisions and new cases.

All of these cannot be highlighted here. (See list, next page.) Each reader is urged to scan these important cases and to analyze for himself what they may do to the U.S. Constitution and Bill of Rights.

COMMUNIST PARTY REGISTRATION AND MEMBERSHIP CASES

June 5, 1961, the U.S. Supreme Court (5-4) held that the Communist Party, its officers and members, must register under the 1950 Internal Security Act, and can be sent to jail under the 1940 Smith Act. The *C.P.* decision was based on testimony on the character of the Party adduced at hearings before S.A.C.B. Apr. 1951 to July 1952. No additional testimony has been taken; some has been stricken as perjurious.

The 1961 decision in effect requires the Communist Party of July 1, 1952 to register, or go to jail.

Queries: Can this 1952 organization register in 1961? Can it be sent to jail and subjected to other penalties of the Act?

If it cannot, what must the Communist Party of 1961, with its post-1952 constitution and officers, do as a result of the decision?

Can a constitutional purpose be achieved by sending *Scales* to jail for six years in 1961 for "knowing membership in the Communist Party" several years after his membership ceased and after policy and personnel changes in the Party?

Can political concepts or organizations be jailed — or even accurately registered?

The World of Mr. Chief Justice Warren

"At this point, it should be observed that the vast bulk of the evidence introduced by the Government at the hearing before the Board related to the Party's activities prior to its disaffiliation from the Communist International in 1940. In order to link this stale evidence to the Party's current activities, with which the Act is concerned, the Board indulged in a presumption of continuity, whereby it reasoned that since the Party was under Soviet control prior to 1940, and since the Party still adheres to the principles of Soviet Communism, it must be presumed that the Party is still controlled by the Soviet Union. The validity of such a presumption is certainly dubious"

".. . If the Court would remand on any one of the four errors which I have discussed, and I think each warrants a remand, the resolution of the difficult constitutional issues presented by this case would certainly be postponed, and perhaps made totally unnecessary. For, if further cross-examination of *Gitlow* based on the memoranda discredited his testimony, or if all of *Budenz'* testimony were stricken, or if the Board were required to find that the petitioner actually engaged in advocacy aimed at inciting action, or if the secrecy finding were stricken, the Government's case might be so weakened that it would be impossible for the Board to conclude, on the basis of the present record, that the petitioner is a Communist-action organization, as that is used in the statute"

dissenting in *C.P. v. S.A.C.B.*, 211.1)

The World of Mr. Justice Black

Balancing The First Amendment

"This, I think, demonstrates the unlimited breadth and danger of the 'balancing test' as it is currently being applied by a majority of this Court. Under that 'test,' the question in every case in which a First Amendment right is asserted is not whether there has been an abridgment of that right, not whether the abridgment of that right was intentional on the part of the Government, and not whether there is any other way the Government could accomplish a lawful aim without an invasion of the constitutionally guaranteed rights of the people. It is, rather, simply whether the Government has an interest in abridging the right involved and, if so, whether that interest is of sufficient importance, in the opinion of a majority of this Court, to justify the Government's action in doing so. This doctrine, to say the very least, is capable of being used to justify almost any action Government may wish to take to suppress First Amendment freedoms".

(dissenting in *Scales v. U.S.*, 242.2)

Informing

"The Government is being told, in effect, that if it wishes to get convictions under the Smith Act, it must maintain a permanent staff of informers who are prepared to give up-to-date information with respect to the present policies of the Communist Party. Given the fact that such prosecutions are to be permitted at all, I do not disagree with the wisdom of the Court's decision to compel the Government to come forward with evidence to prove its charges in each particular case. But I think that it is also important to realize the overriding pre-eminence that such a system of laws gives to the perpetuation and encouragement of the practice of informing — a practice which, I think it is fair to say, has not always been considered the sort of system to which a wise government would entrust the security of a Nation. I have always thought, as I still do think, that this Government was built upon a foundation strong enough to assure its endurance without resort to practices which most of us think of as being associated only with totalitarian governments".

(dissenting in *Noto v. U.S.*, 242.4)

The Worlds of Mr. Justice Frankfurter

Trade Union Political Action

"The Court-devised precept against avoidable conflict with Congress through unnecessary constitutional adjudication is not a requirement to distort an enactment in order to escape such adjudication...

"This is too fine-spun a claim for constitutional recognition. The framers of the Bill of Rights lived in an era when overhanging threats to conduct deemed 'seditious' and *lettres de cachet* were current issues. Their concern was in protecting the right of the individual freely to [unclear] himself — especially his political beliefs — in a public forum, untrammled by fear of punishment or of governmental censure. ..

".. . we are asked by union members who oppose these expenditures [of union funds for political purposes] to protect their right to free speech — although they are as free to speak as ever — against governmental action which has permitted a union selected by democratic process to bargain for a union shop and to expend the funds thereby collected for purposes which are controlled by internal union choice. To do so would be to mutilate a scheme designed by Congress for the purpose of equitably sharing the cost of securing the benefits of union exertions;". ..

(dissenting in *I.A.M. v. Street*, 56.3)

Communist Party Political Action

".. . It is wholly speculative now to foreshadow whether, or under what conditions, a member of the [Communist] Party may in the future apply for a passport, or seek government or defense-facility or labor-union employment, or, being an alien, become a party to a naturalization or a denaturalization proceeding. None of these things may happen...

".. . The record here does not show that any present members, affiliates, or contributors of the Party have withdrawn under the. .. Act, or that any prospective members, affiliates, or contributors have been deterred from joining the Party or giving it their support... It is thus impossible to say now what effect the provision of the Act affecting members of a registered organization will have on the Party".. ..

"We find that the self-incrimination challenge to §7(a) and (d),. .. is also premature at this time... We cannot know now that the Party's officers will ever claim the privilege".. ..

(for the majority in *C.P. v. S.A.C.B.*, 211.1)

The Worlds of Mr. Justice Douglas

"Belief in the principle of revolution is deep in our traditions. The Declaration of Independence proclaims it:. .. This right of revolution has been and is a part of the fabric of our institutions".

(dissenting in *Scales v. U.S.*, 242.2)

".. . These are the reasons why, in my view, the bare requirement that the Communist Party register and disclose the names of its officers and directors is in line with the most exacting adjudication touching First Amendment activities".

(dissenting in *C.P. v. S.A.C.B.*, 211.1)

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NATIONAL LAWYERS GUILD

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DOCKET

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

MATERIAL ON U.S. SUPREME COURT

Law review articles:

Alexander Meiklejohn, The balancing of self-preservation against political freedom, 49 Calif. L. Rev. 4-14.

William J. Brennan, Jr., The Bill of Rights and the states, 36 N.Y.U. L. Rev. 761-78.

Paul G. Kauper, The Supreme Court and the rule of law, 59 Mich. L. Rev. 531-52.

Ray D. Henson, A study in style: Mr. Justice Frankfurter, 6 Vill. L. Rev. 377-87.

Comments:

The "void for vagueness" doctrine in the Supreme Court, 109 U. of Pa. L. Rev. 67-116.

Per curiam decisions of the Supreme Court: 1959 Term, 28 U. Chi. L. Rev. 297-302.

The untenable nonfederal ground in the Supreme Court, 74 Harv. L. Rev. 1375-95.

Book:

William O. Douglas, A living Bill of Rights, 72 pp. Doubleday. \$1.50.

GENERAL CONSTITUTIONAL MATERIAL

Law review articles:

Louis L. Jaffe, Standing to secure judicial review: public actions, 74 Harv. L. Rev. 1265-1314.

W. Friedmann, Planning for freedom, 24 Modern L. Rev. 209-18.

Harold D. Lasswell, The interplay of economic, political and social criteria in legal policy, 14 Vand. L. Rev. 451-71.

Walter Probert, The psycho-semantics of judicial inquiry, 34 Temp. L. Q. 235-54.

Samuel D. Estep, The legislative process and the rule of law: attempts to legislate taste in morals and political beliefs, 59 Mich. L. Rev. 575-602.

Edward G. Hudon, Scholasticism, the law of nature, and the Bill of Rights, 38 U. Det. L. J. 279-308.

Walter E. Volkomer, The constitutional ideas of Judge Jerome N. Frank, 7 N.Y. L. F. 17-47.

Wallace Mendelson, Clear and present danger — another decade, 39 Tex. L. Rev. 449-56.

Book:

The legal conscience: selected papers of Felix S. Cohen, edit. by Lucy K. Cohen, 505 pp. Yale U. Press. \$12.50.

SPEECH, PRESS AND ASSEMBLY (0-199) See also Association (200-299)

10. Licensing

11. Meetings

- 11.3. *Los Angeles City Bd. of Educ. v. Am. Civil Liberties Union.* (U.S.S.C.)
- 11.6. *Rockwell v. Morris.* (N.Y. Ct. of App.) Facts: VI DOCKET 51-52. June 9, 1961: N.Y. Ct. of App., per curiam, unanimously *affirmed* App. Div. holding for Pet's. right to park permit.
- 11.7. *Florida ex rel. Feldman and Ray (Emma Lazarus Organization) v. City of Miami Beach.* (3d Dist. Ct. of App.)*
- 11.9. *New York v. Humes.* (Sup. Ct., Manhattan.) Facts: VI DOCKET 79. May 22, 1961: Upper Manhattan Arrest Ct.: Def. Humes *convicted* of making a speech in Washington Sq. Park without a permit, *acquitted* of disorderly conduct; suspended sentence.
And see *Young*, 11.9a.
- 11.9a. *Young, Social Folk-singing Group v. Morris.* (NY Sup. Ct., App. Div., 1st Jud. Dept.) Suit by Pls. contesting denial of park permit by Def. Commr. for group folk-singing in Washington Sq. Park. Issues: whether denial after granting permits to group for 14 yrs. was arbitrary; standards for granting or denying permits; power of Def. to issue park use permits. May 4, 1961: Sup. Ct. J. Hecht *held* for Def. June, 1961: appeal argued; pending.
Emanuel Redfield, Esq., for NY Civil Liberties Union, 156 Fifth Ave., NYC.
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- 11.11. *Pls. v. Music at Newport, Inc.* (Newport Super. Ct., R.I.) 11 property owners adjacent to Freebody Park sought injunction against Def. holding jazz concerts in municipal park. May 17, 1961: Super. Ct., after 4-day hearing, held *for Def.*: injunction may not be issued for anticipatory nuisance.

12. Motion Pictures

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G. Bradford Cook, Motion picture censorship, 40 Neb. L. Rev. 491-502.

- 12.15. *Times Film Corp. v. Chicago*. (U.S.S.C., #34.) Facts: VI DOCKET 1, 52. Cite: 365 U.S. 43.

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- 34 Temp. L. Q. 331-35;
36 N. Dame Law. 406-10;
34 So. Cal. L. Rev. 362-66.

13. Peddlers

- 13.1. *Chicago v. Falk*. (Chi. Muni. Ct., Branch 27.) Def. arrested while selling pacifist pamphlet on sidewalk; charge: peddling without a license. Apr. 17, 1961: Muni. Ct. directed *not guilty* verdict: Def's. actions protected by First Amendment.
J. J. Sprayregen, Esq., 38 S. Dearborn, Chicago.

14. Books, Magazines (see also 52)

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Parker L. Shipley, Obscene publication prohibition, 40 Neb. L. Rev. 481-90.

15. Miscellaneous

- 15.1. *New York v. Ziegler*. (NYC Magis. Ct.)*
15.3. *New York v. Figaro Cafe*. (Upper Manhattan Summons Ct.) Sept. 18, 1960: admission-free afternoon concert of Beethoven, Shubert and Bach held in Def's. coffee house; no liquor served. Def. arrested; charge: operating cabaret without license. [30 similar arrests made of coffee house operators.] Apr. 10, 1961: Magis. Bayer *dismissed* charge, said in long opinion: Police interpretation of cabaret law "would make even the corner ice cream parlor with its juke box and nickelodeon subject to the statute".

20. Administrative Restrictions

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22. Post Office

- 22.11. *Big Table, Inc. v. Schroeder*. (ND Ill.) Facts: V DOCKET 22, 72. Cite: 186 F. Supp. 254.

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- 22.12. *Four Star Publications, Inc. v. Erbe, individually and as Iowa Atty. Genl.* (CA 8, ##16492, 16495.)*

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- 23.9. *Shuttlesworth v. Connor*. (CA 5, #18838.)*
23.10. *Smith v. Cremins*. (CA 9.) Facts: VI DOCKET 52-3. DC *sustained* motion to dismiss. Appeal pending.

- 23.11. *New York Post Corp. v. Moses.* (N.Y. Ct. of App., #130.)*
- 23.12. *Re Richard G. Jones.* (Wash. State Supt. of Public Inst.)*
- 23.15. *W. Windsor School Bd. v. Trifan.* (W. Windsor Muni. Ct., N.J.) Facts: VI DOCKET 80. May 17, 1961: after 4-day hearing, Magis. Hicks *held*: 1) Defs. innocent of being disorderly persons for educating children at home thru correspondence courses, with 3-5 hrs. music practice daily; 2) Defs. proved children receiving instruction "equivalent" to public school's; 3) teacher credential not necessary to prove "equivalence". Ct. criticized state and co. education authorities for failure to test Def's. children; noted complete lack of state supervision over parochial and other private schools.
- 23.16. *Louisville Courier-Journal v. Curtis.* (U.S.S.C., #442.) (335 S.W. 2d 934.) Man convicted of murder; conference in chambers between counsel; Ct. set aside murder conviction so Def. could plead guilty. Pl.-newspaper asked to see transcript of conference; Ct. refused. Pl. sued; complaint dismissed. Dec. 5, 1961: U.S.S.C. *denied* cert.

30. Economic Restrictions

- 30.1. *Independent Productions Corp. v. Loew's, Inc.* (SD NY, Civ. #110-304.)*
- 30.3. *Comm. to Secure Justice for Morton Sobell v. Tavern-on-the-Green Restaurant.* (SD N.Y., #143-369.)*
- 30.5. *Wagner v. Post Office.* (U.S. Post Office.)*
- 30.5a. *Pranger v. San Bernardino Air Pollution Control Dist.* (U.S.S.C.) 1958: Pl. clerk for Def. wrote editorial in union newspaper protesting failure of Bd. of Supervisors to grant Co. employees wage increase. Aug. 1958: Pl. *fired* for "conduct unbecoming an employee" because editorial expressed philosophy "inimical to public service". Lower cts. *affirmed* dismissal. Appeal to U.S.S.C. pending.
- Lewis Garrett and Lionel Richman, Esqs., Los Angeles.
- Amicus brief filed by A. L. Wirin, Fred Okrand and Warren P. Hill, Esqs., for A.C.L.U. of S. Calif., 323 W. 5th St., Los Angeles.
- 30.6 *Eustace v. Postmaster General and U.S. Civil Service Commission.* (DC DC.)*
- 30.7. *Young v. Motion Picture Assn. of America.* (DC DC.) Facts: VI DOCKET 53. June 12, 1961: Defs. filed interrogatories re past and present political associations and beliefs of Pls. June 12, 1961: DC *denied* Pls. motion to strike such questions, tho 11 of 12 Pls. indicated any inquiry into this area would result in their claiming privilege against self-incrimination.
- 30.8. *Ciepley v. Intl. Assn. of Machinists.* (ND Ill., E.D., #60 C 1840.) Facts: VI DOCKET 80.*
- Marks, Simons & Houghteling, Esqs., 105 W. Adams; Hubert Will, Esq., 33 N. La Salle, all of Chicago.

- 30.9. *Mitchell v. Intl. Assn. of Machinists.* (Dist. Ct. of App., 2d App. Dist., Calif., #24913.) Facts: VI DOCKET 80. Aug. 10, 1961: appeal argued.

Hill, Farrer and Burrill, Esqs., 411 W. 5th, Los Angeles.

Amicus appearance by A.C.L.U. of S. Calif., 323 W. 5th St., Los Angeles.

- 30.10. *Koch v. Bd. of Trustees, U. of Ill.* (Cook Co. Super. Ct.) Pl.-biologist under contract to Def. Aug. 31, 1959-Aug. 31, 1961 as asst. prof. Mar. 18, 1960: Pl's. letter published in school newspaper discussing advisability of premarital sexual relations among students under certain circumstances. Apr. 7, 1960: Def.-Pres. filed charge against Pl. of "conduct. .. prejudicial to the best interests of the University". Def. Bd. ordered Pl's. contract terminated Aug. 31, 1960. Issues: whether dismissal violates Pl's. First Amendment rights; academic freedom guaranteed by University Stats., §39a, b; due process. Pl's. suit filed. June 27, 1961: argument on Defs'. motion to dismiss. Donald Page Moore, Esq., 105 W. Adams; Joel J. Sprayregen, Esq., 38 S. Dearborn, both of Chicago, for Ill. Div., A.C.L.U.

40. Contempt

Law review article:

Richard C. Donnelly and Ronald Goldfarb, Contempt by publication in the U.S., 24 Modern L. Rev. 239-55.

41. Federal Courts

42. State courts

- 42.5. *Mississippi v. Evers.* (Miss. Sup. Ct.) Facts: VI DOCKET 53.*
Jack Young, Esq., Jackson, Miss.
And see *Kennard*, 411.12.

43. Other agencies

50. Criminal Sanctions

51. Disorderly conduct

- 51.4. *Talley v. People.* (U.S.S.C.) Facts: IV DOCKET 40, 68, V DOCKET 46. Cite: 362 U.C. 60.

Case notes:

36 Ind. L. J. 306-17;
49 Ky. L. J. 423-28;
22 Ohio St. L. J. 220-24.

- 51.8. *Storey v. Davis.* (Cook Co. Super Ct., #60 S 9228.)*

- 51.11. *California v. Meisenbach.* (San Francisco Super. Ct.) Facts: VI DOCKET 3. May 3, 1961: after 11 days of trial, jury *acquitted* Def. of all charges.

Newspaper comment:

Reprints on *Meisenbach* trial, 24 pp. 1961. Bay Area Students Comm. Against HUAC, 1732 Francisco, Berkeley.

- 51.16. *New York v. Cartagena and Bonet.* (NYC Magis. Ct.)*
- 51.19. *South Carolina v. Carras, Stradley.* (Sumter Muni. Ct.)*

52. Obscenity (see also 12, 14)

- 52.20. *U.S. v. Frew.* (ED Mich., #37517.)*
- 52.21. *U.S. v. Steiner.* (ED Mich., #37580.)*
- 52.22. *Massachusetts v. Spiegel.* (Cambridge Dist. Ct.)*
 And see *Spofford* and *Dorius*, 303.27, 303.28, and *Marcus*, 52.30.
- 52.25. *Mapp v. Ohio.* (U.S.S.C.) See case following 303.29.
- 52.28. *Gregory v. Ball, Dist. Atty.; N.Y. State Atty. Genl. Lefkowitz.* (Erie Co. Sup. Ct.) Facts: VI DOCKET 4. Complaint *dismissed*.
- 52.30. *Marcus v. Search Warrant of Property.* (U.S.S.C., #225.) Facts: VI DOCKET 4. June 19, 1961: U.S.S.C. *reversed* (9-0), Brennan, J.: Discretion to seize allegedly obscene materials cannot be confided to law enforcement officials without violating Due Process clause of Fourteenth Amendment, unless adequate safeguards are provided. Black, Douglas, JJ., *concurring*: Use by state of general warrant, that does not specifically describe things to be seized, violates prohibitions of Fourth and Fourteenth Amendments.
 And see *Spofford* and *Dorius*, 303.27, 303.28.
- 52.31. *Bantam Books, Inc. v. Sullivan.* (R.I. Sup. Ct.) Facts: VI DOCKET 4, 81. Nov. 3, 1961: appeal argued.
 52.33 *California v. Aday.* (Alameda Co. Super. Ct., #31900.) (Cal. Sup. Ct.) Facts: VI DOCKET 4, 54. May 11, 1961: Calif. Sup. Ct. *held*: 1) search warrant was "so sweeping" as to include virtually all personal business property on premises, "placed no meaningful restriction"; 2) everything seized to be returned to Fresno Muni. Ct. which may refuse to return to Defs. any property it regards as obscene, except 3) all copies of two books were properly seized and may be held because of probable cause of their obscenity; 3) Alameda Co. Super. Ct. erred in ordering seized property taken to Alameda Co. before hearing could be held in Fresno re legality of seizure.
- 52.35. *Tenney v. Liberty News Distributors.* (formerly listed as *N.Y. v. Manhattan News Co.*) (N.Y. App. Div., 1st Dept.) Facts: VI DOCKET 81. May 29, 1961: App. Div. *held* ex parte stay against distribution of Defs' publications not authorized; *upheld* temporary injunction; *denied* application for jury trial; *held* one of three Def. distributors entitled to separate trial.
- 52.37. *Gerstein v. "Pleasure Was My Business".* (11th Jud. Cir., Dade Co., Fla.) Facts: VI DOCKET 81. Amended complaint filed under new Fla. obscenity law. Pending.
- 52.38. *New York v. Richmond Co. News, Inc.* (N.Y. Ct. of App.) Def. charged with circulating an obscene publication, "Gent" magazine; convicted. App. Div., 2d Dept. reversed and dismissed, held magazine obscene, but no proof of Def's. scienter. May 26, 1961: N.Y. Ct. of App. (4-3) *held*:

magazine not obscene. Majority definition (Fuld, J.): obscenity focuses "predominantly on what is sexually morbid, grossly perverse and bizarre without any artistic or scientific purpose or justification".

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- 52.39. *Lopert Pictures Corp. v. Atlanta Bd. of Censors*. (Fulton Co. Super. Ct.) Def. Bd. refused to grant movie "Never on Sunday" a permit; Pl. sued for temporary restraining order against ban. May 3, 1961: Super. Ct. *held* city movie censorship law unconstitutional; vague and indefinite, violates First Amendment; censorship does not suppress obscenity.

Case note:

Anti-obscenity legislation: *Pennsylvania v. Blumenstein* (396 Pa. 417, 153 A. 2d 227, 1959), 12 W. Res. L. Rev. 425-30.

53. Defamation

- 53.1. *Alabama v. Salisbury*. (Bessemer Cir. Ct.)*
And see 61.11, 61.12.
- 53.2. *California v. Michaels*. (L.A. Dist. Ct. of App.)*

54. Sedition (see also 241-4)

- 54.1. *U.S. v. Powell*. (ND Calif., S. Div., #35065.) Facts: VI DOCKET 4-5. May 3, 1961: sedition indictment *dismissed* on *ex parte* motion of Gov't.; no other charges pending; case closed.

55. Picketing

- 55.4. *Fair Share Organization v. Kroger Co., Local 1460-Retail Clerks Intl. Assn.-AFL-CIO*. (Ind. App. Ct., Indianapolis.)*
- 55.7. *Tennessee v. Defs.* (Madison Co. Ct.)*

56. "Corrupt Practices"

- 56.3. *Intl. Assn. of Machinists v. Street*. (U.S.S.C., #4.) Def.-unions and carriers entered into union-shop agreement under Ry. Labor Act, §2, Eleventh. Defs. spent some dues for political purposes: financing campaigns of candidates for fedl. and state offices, supporting and opposing legislation. Pl.-union members sued to enjoin enforcement of union-shop agreement because they did not agree with political action taken with their union dues. Ga. Super. Ct. *granted* injunction. Ga. Sup. Ct. *affirmed*. June 19, 1961: U.S.S.C. (6-3) *affirmed*, Brennan, J.: Union shop contract is not unlawful; unions with such contracts are without power to use payments from workers for political causes workers say they oppose. Ct. *ordered* restitution to individual worker of % of union dues he paid which was spent for political causes with which he told union he disagreed. Douglas, J., *conc.* Frankfurter, J. (Harlan, J.) *diss.*: Cong. *permitted* union-shops on rrs., didn't *require* them; nothing in union rules prohibited Pl.-members from expressing their views for or against political candidates or issues; nothing in statute limited union expenditures for political activities; sound trade union principles require

unions to participate in many issues not "reasonably necessary" to collective bargaining agreements with a specific employer; case should be reversed and remanded for dismissal. Black, J. *diss.*: §2, Eleventh is unconstitutional in authorizing union-shop contract over protesting Pls. here; Pls. should get back all dues and interest paid under protest against Union's political action. Whittaker, J., conc. in part, *diss.* in part.

And see Highlights.

Case note:

Federal estate tax: bequests to organizations engaged in influencing legislation: *League of Women Voters v. U.S.* (180 F. Supp. 379, *c.d.* 364 U.S. 322, 1960), 39 Tex. L. Rev. 525-29.

57. Vagrancy

57.2. *Arizona v. Papcum.* (Super. Ct.)*

58. Miscellaneous

See cases at 120.

58.14. *New York v. Schmidt.* (Upper Manhattan Arrest Ct.) Apr. 28, 1961: 7-800 demonstrators in City Hall Plaza during civil defense test drill; 47 arrested under NY Emergency Defense Act, sec. 102, for refusing to take cover. Most Defs. pleaded guilty. May 3: Magis. Phipps imposed \$15 fines or 3 days on 8 Defs.: 4 served time. May 8: Magis. Phipps imposed 30 days sentences on 4 Defs. who said in ct. they intended to disregard future civil defense drills; \$15. fines or 5 days on 4 other Defs. May 9: Magis. Maglio imposed 30 day sentence on Def.-student Just; after serving 3 days, Magis. Schreckinger *suspended* sentence after Def. refused to swear she would not protest annual drill next yr. May 10: Magis. Phipps imposed \$25. or 5 days on 9 Defs.: 5 served time; May 10: Magis. Maglio acceded to defense counsel's request that young piano student not be pressed on whether she would disobey next drill; May 26: Magis. Vetrano imposed *suspended sentence* on Def. May 15: Magis. Bayer imposed \$50. fines or 25 days on 10 Defs.: 5 served time; Def.-minister's sentence suspended. May 17: Magis. Wallach in Adolescent Ct. *granted rehabilitation* to NYU student who agreed not to defy civil defense law again. May 22: Magis. Bayer imposed \$50. fines or 25 days on 4 Defs.; all paid. June 8: Magis. Gomez in Adolescent Ct. imposed 5 days on Def. because he was convicted in *Richman*, 120.20a.

C. Frank Ortloff, Esq., 535 Fifth Ave.; Joseph Glass, Esq., 60 Wall St.; Maxwell T. Cohen, Esq., 505 Fifth Ave., all of NYC, for some Defs.

And see *Hoffman*, 58.14a.

58.14a. *New York v. Hoffman.* (Spec. Sess.) Facts: similar to *Schmidt*, 58.14. May 9, 1961: Magis. Maglio *imposed* 60 days in workhouse on Def.-19 yr. old artist who said he would disobey future civil defense drills. May 25: Spec. Sess. granted Def. release on \$100. bail pending appeal for

reduction of "excessive and arbitrary" sentence. June 19, 1961: App. Term. *affirmed sentence*.

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

- 58.15. *New York v. Best*. (Spring Valley Police Ct.) April 28, 1961: 4 Defs. arrested in Station Plaza during civil defense test [see 58.14]. *Convicted*; sentences: 2 to 5 days, \$25. fine.

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- 58.16. *New York v. Fletcher*. (Woodstock Justice of Peace Baungarten.) April 28, 1961: 5 Defs. arrested on village green during civil defense test [see 58.14]; Defs. pointed out Woodstock lacked fallout shelter. May 31: 3 Defs. *Pleaded* guilty; 5 days and \$25.; 2 pleaded not guilty; released in \$50. bail pending trial.

- 58.17. *New Jersey v. Congdon*. (Madison Magis. Ct.) April 28, 1961: 7 students (Drew Univ.) refused to take cover during civil defense test. May 18: Magis. *fined* 4 Defs. \$35.; 3 Defs. \$10.

- 58.18. *New Hampshire v. Katz*. (Hanover Muni. Ct.) April 28, 1961: 5 students (Dartmouth College) refused to take shelter during civil defense test. May 2: Defs. pleaded no contest; Muni. Ct. *fined* Defs. \$15. each.

Peter P. Plante, Esq., Hanover, N.H.

- 58.19. *New Hampshire v. Defs.* (Durham Muni. Ct.) April 28, 1961: 18 Defs. arrested for failure to take cover during civil defense test. May 15-16: 14 Defs. pleaded not guilty; all 18 Defs. *convicted*; \$25. to \$50. fines. Appeals of 5 Defs. pending in N.H. Sup. Ct. 16 Defs., U. of N.H. students, placed on probation. May 22: U. Trs. directed suspension or dismissal of any student who refuses to obey any future civil defense alert.

60. Civil Sanctions

61. Defamation

- 61.4. *Steinberg v. O'Connor*. (DC Conn.)*

- 61.9. *The New York Times v. Sullivan*. (Ala. Sup. Ct., 3d Div. #961.) Facts: VI DOCKET 5-6, 55. Apr. 13, 1961: Def.-newspaper posted \$1,000,000. bond under Ala. law requiring appeal bond in twice the sum of verdict. Appeal pending.

- 61.9-1. *Sullivan v. Montgomery Improvement Assn.* (Montgomery Cir. Ct.) Pl. in 61.9 brought garnishment suit to collect on judgment against 4 Negro minister Defs. in 61.9 after their autos and land had been attached. Apr. 12, 1961: Cir. Ct. *dismissed* action when minister testified Def.-Assn. owed no salaries to 4 ministers.

- 61.9a. *Commr. James v. The New York Times*. (Montgomery Cir. Ct.)*

- 61.9b. *Commr. Parks v. The New York Times*. (ND Ala.)

and

- 61.10. *Gov. Patterson v. The New York Times*. (ND Ala.) Facts: VI DOCKET 6. Apr. 13, 1961: Def. filed removal petitions, alleging Def.-Ala. Negro

ministers joined as parties Def. solely to prevent removal to federal ct.; Def.-ministers contend their names appeared in NY Times adv. without their consent. Apr. 13, 1961: Pls. filed motion to remand to state ct.

- 61.11. *Mayor Morgan v. The New York Times.* (CA 5, #18589.)
and
- 61.12. *Bessemer City Commrs. v. The New York Times.* (CA 5, #18589.)
Facts: VI DOCKET 6. June 14, 1961: CA 5 *reversed, held* Def.-newspaper could not be served in Ala., *remanded* to DC for judgment for Def. on motions to quash service of process.
Amicus briefs filed by Chicago Tribune and Atlanta Newspaper, Inc.
- 61.13. *Abernathy v. Montgomery Co. Cir. Ct.* (CA 5, #19023.) Facts: VI DOCKET 82. Appeal pending.
And see *Salisbury*, 53.1.
- 61.14. *Bridges v. Colonna.* (Anne Arundel Co. Ct., Law #A-2417.) Pl., discharged official of Balt. Dept. of Aviation, sued superior for libel. Charge: Def. deliberately attempted to publicize reasons for discharge through 3 reporters. Reporters refused to disclose news source for stories re Pl's. discharge, under Art. 35, sec. 2, Md. Code. Super. Ct. *upheld* reporters. No appeal.
Wm. J. McWilliams, 212 Duke of Gloucester St., Annapolis.

62. Injunctions in labor disputes

63. Other injunctions

64. Miscellaneous

- 64.2. *Re James L. Creighton.* (U. of Calif. Academic Senate.) Facts: VI DOCKET 82. May 1, 1961: Academic Sen. voted to establish a special comm. to investigate complaint.

90. Miscellaneous Freedom of Thought

- 90.2. *Westlake Subdivisions Improvement Assns. v. Klein.* (San Mateo Super. Ct., #94100.) Facts: VI DOCKET 82. Def's. demurrer pending.
Belli, Ashe and Gerry, Esqs., 722 Montgomery, San Francisco 2.

FREEDOM OF RELIGION (100-199)

110. Separation of Church and State

Law review article:

Harry N. Rosenfield, Separation of church and state in the public schools, 22 U. Pitt. L. Rev. 561-89.

- 110.2. *Spalding v. Wooley, et al.* (Marion Co. Ct., Ky.)*
110.6. *Schempp v. School Dist. of Abington Township.* (ED Pa.)*
110.8. *Engle v. Vitale.* (N.Y. Ct. of App.) (11 App. Div. 2d 340, 206 NYS 2d 183.)*

Case note:

25 Alb. L. Rev. 318-21.

110.9. *Snyder v. Town of Newtown.* (U.S.S.C.) Facts: VI DOCKET 82. Cite: 365 U.S. 299.

110.10. *Chamberlin v. Miami Bd. of Public Instruction.* (11th Jud. Cir., Dade Co., #59 C 4928.)

and

110.10a. *Resnick v. Dade Co. Bd. of Public Instruction.* (11th Jud.

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Cir., Dade Co.) Facts: VI DOCKET 7. Apr. 14, 1961: Cir. Ct.: 1) *enjoined* sectarian holiday observances in public schools (depicting Nativity and Crucifixion), and use of school facilities for afternoon religious classes by church groups as violative of U.S. and Fla. constitutions barring religious teachings on school property; 2) *ruled* Bible may be read in schools daily as required by Fla. law since no evidence of violation of restriction barring sectarian comment; 3) *found* no constitutional bar to saying Lord's Prayer and holding baccalaureate programs at which religious service given because attendance is optional; 4) *denied* injunction against display of religious symbols in school building during holidays because devised by children so no different from religious objects worn by children; 5) *did not reach* merits of Pls'. objections to religious tests for teachers holding Pls. without standing to complain. Appeal to be filed.

110.14. *Anderson v. Swart* (formerly *Swart v. S. Burlington Town School Dist.*) (U.S.S.C., #856.) Facts: VI DOCKET 7, 55, 82. May 15, 1961: U.S.S.C. *denied* petition for certiorari.

Case note:

29 Ford. L. Rev. 578-82.

110.17. *Dickman v. School Dist. #62-c, Oregon City.* (Ore. Sup. Ct.) Facts: VI DOCKET 7. Jy. 5, 1961: heard *en banc*.

110.20. *Brown v. Orange Co. Bd. of Pub. Inst.* (Dist. Ct. of App., 2d Dist., Fla.) (Fla. Sup. Ct.) Facts: VI DOCKET 55. Defs'. appeal pending.

Jerome J. Bornstein, Esq., 56 E. Pine St., Orlando, Fla.; Leo Pfeffer, Esq., 15 E. 84th St., NYC.

110.22. *Murray v. Baltimore School Bd.* (Balt. Co. Ct.)*

110.23. *Anderson v. Redwood City.* (San Mateo Co. Super. Ct.)*

110.24. *In re Anonymous.* (N.Y. Ct. of App.) Comm. on Character and Fitness, NY Bar, *denied* Appt's. application for admission to practice law. Appt. sued, alleging failure to give Appt. statement of charges against him, denial due to Appt's. rabbinical studies in violation of principle of separation of church and state. Sup. Ct. *dismissed*. June 9, 1961: N.Y. Ct. of App. *reversed*.

Herbert Monte Levy, Esq., 11 E. 44th St., NYC.

And see 265, 373.

Attorney Generals' Opinions:

Mar. 16, 1961: Ariz. Atty. Genl. Pickrell *ruled* school personnel cannot tell pupils in public class rooms where Gideon representatives will be distributing Gideon Bibles off school premises.

Mar. 15, 1961: Mich. Atty. Genl. Adams *ruled* illegal Bible instruction and distribution of materials by Rural Bible Mission in public schools.

120. Pacifists and Conscientious Objectors

See cases at 58.

- 120.17. *U.S. v. Glover*. (CA 8.) Facts: VI DOCKET 7-8. CA 8 *reversed* conviction for refusal to submit to induction into armed forces, *held* local draft bd's. failure to advise Def. of reason for fifth classification notice of Def. as 1-A (after Def. had four times explained claim for exemption for religious beliefs against war) was so "arbitrary, unfair" as to make unnecessary further exhaustion of administrative remedies.
- 120.18. *U.S. v. Johnson, Taylor, Gallegos*. (CA 9, ##16679, 16276, 16725.)*
- 120.20a. *U.S. v. Richman*. (DC Conn.) Facts: VI DOCKET 8, 56, 83, #120.20. Apr. 27, 1961: Def. Henry *pleaded* guilty; 1-yr. suspended, 2 yrs. probation after release from 1 yr. in 120.23. 3 Defs. tried by jury, 4 Defs. by ct. May 23, 1961: 7 *convicted* of seeking to interfere with launching 2 nuclear submarines Nov. 22 and Jan. 28, 1961. June 19, 1961: *sentenced* to 20 days, 30 days, 90 days, 4 yrs.
- 120.21. *U.S. v. Defendants*. (ED S.C.)*

130. Denial of Tax Exemptions

140. Sunday Closing Laws

- 140.16. *Morein v. Furman, N.J. Atty. Genl.* (DC N.J.)*
- 140.10. *Gallagher v. Crown Kosher Super Market of Mass., Inc.* (U.S.S.C., #11.) Facts: VI DOCKET 8. May 29, 1961: U.S.S.C. *reversed* (6-3);
and
- 140.10a. *Braunfeld v. Brown*. (U.S.S.C., #67.) 5 Orthodox Jewish retailers sought injunction against Pa. Sunday closing laws as applied to them. DC *dismissed* complaint. May 29, 1961: U.S.S.C. *affirmed* (6-3), Warren, C.J., agreed that laws make "the practice of their religious beliefs more expensive" for those who celebrate Sat. as Sabbath and must therefore lose Sun. business also, but found state power to so provide. Frankfurter, Harlan *concurring* in separate opinion. Douglas, J. *diss.* Brennan and Stewart, JJ., *diss.*
- 140.19. *Two Guys from Harrison-Allentown, Inc. v. McGinley*. (U.S.S.C., #36.)
and
- 140.20. *McGowan v. Maryland*. (U.S.S.C., #8.) Facts: VI DOCKET 8. May 29, 1961: U.S.S.C. *affirmed* (8-1), Warren, C.J., *holding* no denial of equal protection due to exemptions of certain businesses from Sun. closing laws since states have broad powers of classification: "It is not difficult to discern

that as presently written and administered, most ["blue laws"], at least, are of a secular rather than of a religious character". Douglas, J., *diss.*

140.25. *Caroline Amusement Co. v. Martin.* (U.S.S.C., #424.) Facts: VI DOCKET 8. June 19, 1961: U.S.S.C. *dismissed* appeal, *denied* cert.; Douglas and Brennan, JJ. for noting probable juris.

140.26. *Giant Tiger Drugs, Inc. v. Ohio.* (U.S.S.C.) Def. Co. *fined* \$25. for operating store in Euclid on Sun. Ct. *upheld* constitutionality of Sun. closing law. June 5, 1961: U.S.S.C. *dismissed* Def's. appeal.

140.27. *New York v. Welt.* (Sup. Ct., App. Div., 1st Dept.) (8 N.Y. 2d 961, 168 N.E. 2d 854.) Dist. Ct. *convicted* owner

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of automatic laundry for operating on Sun. Co. Ct. *reversed.* App. Div. *Affirmed* reversal, *dismissing* 451 violations of state law for which owners of automatic laundries had been fined \$2,255.

Hyman Bravin, Esq., Bronx, NY.

And see 140.28.

140.28. *Am. Automatic Laundry Fdation. v. NYC.* (NY Sup. Ct.) June 7, 1961: Sup. Ct. *held* invalid NYC ordinance prohibiting coin operated laundries from operating on Sun.; *upheld* sec. requiring that such laundries have attendant on duty daily 6 pm to midnight, close midnight to 6 am, to discourage crime.

150. Miscellaneous Restrictions

150.1. *Prisoners v. Folsom Prison Warden.* (Calif. Sup. Ct.) Mar. 3, 1961: 10 Negro inmates petitioned Calif. Sup. Ct. to require prison authorities to let them practice Muslim religion. Defs. allege sect is not a religion, its sufferance would present a "clear and present danger" in maximum security institution. Pending.

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

200. Privileges

201. Meetings (and see 11)

202. Tax exemption

202.1. *Communist Party v. Moysey.* (U.S. Tax Ct.)*

203. N.L.R.B. Certification (see also 245, 291)

203.3. *R. Dennis v. U.S.* (CA 10; DC Colo.)*

And see *Brown*, 245.1, *West*, 291.20.

204. Continued existence (see also 213, 223)

See *Highlander Folk School*, 244.6.

204.1. *Ex parte N.A.A.C.P.; Alabama ex rel. MacDonald v. N.A.A.C.P.* (Montgomery Co. Cir. Ct.)*

And see 204.1a

- 204.1a. *N.A.A.C.P. v. Ala. Officials.* (CA 5.) 1956: Pl. sought fedl. injunction against Defs. enforcing state injunction prohibiting Pl. from operating in Ala. (see 204.1 history.) DC *dismissed* Pl's. suit. May 16, 1961: CA 5 *reversed* dismissal.
- 204.3. *Revenue Commr. of Ga. v. N.A.A.C.P.* (Fulton Super. Ct., Atlanta Jud. Cir., #A-58654.)*
- 204.4. *N.A.A.C.P. Legal Defense and Educ. Fund, Inc. v. Harrison.* (ED Va., #2436.)*
- 204.4a. *N.A.A.C.P. v. Harrison.* (U.S.S.C., #689.)*
- 204.4b. *N.A.A.C.P. Legal Defense Fund v. Harrison.* (Richmond Cir. Ct., #B-2879.)*
- 204.4c. *Virginia ex rel. Virginia State Bar. v. N.A.A.C.P.* (Richmond Chancery Ct., #503.)*
- 204.6. *Arkansas v. N.A.A.C.P.* (Cir. Ct., Pulaski Co.)*
- 204.7. *Arkansas ex rel. Atty. Genl. v. N.A.A.C.P.* (Cir. Ct., Pulaski Co.)*
- 204.8. *Arkansas ex rel. Bennett v. N.A.A.C.P. Legal Defense & Educational Fund.* (Cir. Ct., Pulaski Co., #44,679.) Facts: VI DOCKET 10. May 13, 1961: Cir. Ct. *ruled* unconstitutional Acts 12, 14, 16, Ark. 1958 Spec. Sess.: to permit admr. officer to request membership list from organization; to prohibit "unnecessary" litigation re admr. of public schools; to make criminal the giving of money as inducement to person to file lawsuit. Ct. *held* acts vague, too broad.
- 204.9. *Arkansas ex rel. Bennett v. N.A.A.C.P. Legal Defense & Education Fund.* (Cir. Ct., Pulaski Co., #45,183.) Facts: VI DOCKET 10. May 18, 1961: Cir. Ct. *dismissed* on ground ct. had no authority to prohibit N.A.A.C.P. from practicing law in Ark.
- 204.16. *La. ex rel. Gremillion, Atty. Genl. v. N.A.A.C.P.*
and
- 204.17. *New Orleans Branch, N.A.A.C.P. v. Martin, Secy. of State,* (U.S.S.C., #294.) Facts: VI DOCKET 10. May 22, 1961: US.S.C. *affirmed* (9-0) Douglas, J.: It is not consonant with due process to require a person to swear to a fact that he cannot be expected to know, or alternatively to refrain from a wholly lawful activity. Freedom of association is included in the bundle of First Amendment rights made applicable to the states by the Due Process Clause of the Fourteenth Amendment. And where it is shown that disclosure of membership lists results in reprisals against and hostility to the members, disclosure is not required. Harlan and Stewart, JJ. *concurred* in the result. Frankfurter and Clark JJ. *concurred* in the judgment.

210. Compulsory Registration

211. 1950 Internal Security Act

- 211.1. *Communist Party of U.S. v. Subversive Activities Control Bd.* (U.S.S.C.,

#12.) Facts: VI DOCKET 10-11. June 5, 1961: U.S.S.C. *affirmed* (5-4), per Frankfurter, J.: *held* 1) registration requirement in §7, Internal Security Act, constitutional under First Amendment (rejecting Black, J. *diss.*); 2) *evidence* before S.A.C.B. supported finding that C.P. is foreign dominated under §3(3) even tho no proof that foreign govt. has coercive power to exact compliance (see Warren, C. J., *diss.*); 3) S.A.C.B. finding that Party advocates overthrow by force "if necessary" meets §§2, 3(3) subversive "objectives" test (see Warren, C.J., *diss.*); 4) premature to decide whether §§7(a) (c) requiring registration by C.P. officers constitute violation of Fifth Amendment self-incrimination privilege (rejecting four JJ. *diss.*); 5) S.A.C.B. rulings on 4 points did not abuse discretion (rejecting Warren, C.J. *diss.*)

Black, J. *diss.*: should decide now that whole Act is *unconstitutional*: under First Amendment for denying freedom of speech and association; under Fifth Amendment due process and self-incrimination provisions; as bill of attainder providing statutory outlawry of organization. (See Highlights).

Warren, C.J. *diss.*: would remand for correction of four non-constitutional errors (see Highlights); *concur*s with Brennan, J.

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Douglas, J. *diss.*: Registration sec. not unconstitutional under First Amendment; constitutionality of registration sec. should be settled now; it is *void* as conflicting with self-incrimination privilege; C.P. can claim privilege for members.

Brennan, J. *diss.*: Registration sec. not unconstitutional as invasion of First Amendment rights; not necessary to decide now constitutionality of other sections re sanctions on C.P. and members; should decide now validity of §7(d); it is *void* as conflicting with Fifth Amendment self-incrimination privilege.

June 23, 1961: Frankfurter, J. *granted* Pet's. stay pending decision on petition for rehearing.

And see *Scales*, 242.2, *Noto*, 242.4.

- 211.2. *Jefferson School v. S.A.C.B.* (CA DC.)*
- 211.3. *Labor Youth League v. S.A.C.B.* (CA DC.)*
- 211.4. *Nat'l. Council of American-Soviet Friendship v. S.A.C.B.* (CA DC.)*
- 211.5. *Kennedy v. Civil Rights Congress.* (S.A.C.B., #106-53.)*
- 211.6. *Kennedy v. Washington Pension Union.* (S.A.C.B., #114-55.)*
- 211.7. *Haufrecht v. S.A.C.B. (re American Peace Crusade)* (S.A.C.B., #117-56.)*
- 211.8. *California Labor School in San Francisco v. S.A.C.B.* (CA DC.)*
- 211.9. *Am. Comm. for Protection of Foreign Born v. S.A.C.B.* (CA DC., #15,960.)*
- 211.10. *Kennedy v. California Emergency Defense Committee.* (S.A.C.B.)*
- 211.12. *Blau v. S.A.C.B. (re Colo. Comm. to Protect Civil Liberties.)**

212. 1954 Communist Control Act

212.1. *Kennedy v. Intl. Union of Mine, Mill & Smelter Workers.* (S.A.C.B.)*

213. State Laws

220. Listing

221. By the Attorney General of the United States

221.5. *Kennedy v. Californians for the Bill of Rights.* (Dept. of Justice.)*

221.6. *Kennedy v. Natl. Council of Arts, Sciences and Professions.* (Dept. of Justice.)*

222. By Congressional Committees

And see cases at 271.

222.1. *Wheeldin v. Wheeler.* (CA 9.)*

223. By State authorities

ASSOCIATION: As affecting members (240-299)

240. Criminal Penalties for Membership

241. Smith Act: conspiracy

241.8. *Bary, et al. v. U.S.* (CA 10.) Facts: VI DOCKET 12. May 31, 1961: CA 10 *reversed* second conviction and *remanded* for new trial in DC.

241.14. *Winston v. U.S.* (Pres. Kennedy.) Facts: VI DOCKET 12. June 30, 1961: Pres. Kennedy *commuted* Def's. sentence to time served.

And see *Winston*, 411.11.

242. Smith Act: mere membership

242.1. *U.S. v. Lightfoot.* (ND Ill. E.D.) Facts: VI DOCKET 12. Trial date: May 1, 1961.

242.2. *Scales v. U.S.* (U.S.S.C., #1.) Facts: VI DOCKET 12. June 5, 1961: U.S.S.C. (5-4) *affirmed* conviction, Harlan, J.: 1) membership clause of Smith Act "on its face, much less as we construe it in this case,. .. neither proscribes membership in Communist organizations, as such, but only in organizations engaging in advocay of violent overthrow, nor punishes membership in that kind of organization except as to one 'knowing the purposes thereof', and, as we have interpreted the clause, with a specific intent to further those purposes. We have also held that the proscribed membership must be active, and not nominal, passive or theoretical". 2) "We conclude that [Congress] did not [intend a partial repeal of the membership clause of the Smith Act] and hold that this prosecution is not barred by §4(f) of the Internal Security Act of 1950". 3) [fn.] "... there is no great difference between a charge of being a member in a group which engages in criminal conduct and being a member of a large conspiracy,

many of whose participants are unknown or not before the ct." 4) No First Amendment problems; they were settled in *Dennis*. 5) "Hence this record cannot be considered deficient because it contains no evidence of advocacy of immediate overthrow".

Black, J., *diss.* with Brennan, J., and Douglas, J., also: "It seems clear to me that neither pet. nor anyone else could ever have guessed that this law would be held to mean what this Court now holds it does mean. For that reason, it appears that pet. has been convicted under a law that is, at best, unconstitutionally vague and, at worst, *ex post facto*".

Douglas, J., *diss.*: "When we allow pet. to be sentenced to prison for six yrs. for being a "member" of the Communist Party, we make a sharp break with traditional concepts of First Amendment rights. .. [citing also Mark Twain]". "There is here no charge of conspiracy, no charge of any overt act to overthrow the Gov't. by force and violence, no charge of any other criminal act". "Not one single illegal act is charged to pet. That is why the essence of the crime covered by the indictment is merely belief — belief in the proletarian revolution, belief in Communist creed".

Brennan, J. (Warren, C.J., Douglas, J.) *diss.*: "The legislative history of §4(f) [Internal Security Act] is murky but I think there clearly emerges a congressional decision to extend immunity from prosecution for any membership in a Communist organization in order to safeguard against constitutional frustration the policy of disclosure embodied in the registration provisions". .. "By reading §4(f) to

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provide that being a member of the Communist Party shall not 'constitute *per se*' a crime, immunity from prosecution under the membership clause of the Smith Act is effected. And that is in full harmony with the purpose to make something more than 'membership' necessary for conviction. That something more can be some kind of unlawful activity. After the 1950 Act was passed, membership without other activity was no longer sufficient for Smith Act prosecutions".

242.3. *Blumberg v. U.S.* (DC Pa.)*

242.4. *Noto v. U.S.* (U.S.S.C., #9.) Facts: VI DOCKET 12. June 5, 1961: U.S.S.C. unanimously *reversed*, Harlan, J.: see opinion in *Scales*, 242.2; this case tried before *Yates*, 354 U.S. 298, described evidence sufficient to support conviction; no such evidence here. Brennan, J. (Warren, C.J.) would remand to DC to dismiss because prosecution barred by 4(f), Internal Security Act. Douglas, J., joins Brennan, J., would remand for dismissal because "utterances, attitudes, and associations in this case, .. are in my view wholly protected by the First Amendment and not subject to inquiry, examination, or prosecution by the Fedl. Govt." Black, J., would reverse solely on First Amendment grounds.

242.5. *U.S. v. Weiss.* (ND Ill. E.D.)*

242.7. *U.S. v. Russo.* (DC Mass.)*

242.8. *Hellman v. U.S.* (CA 9.)*

243. 18 U.S.C. 2384

244. Kennedy-Landrum-Griffin Act (29 U.S.C. 504) (see also 203, 291)

- 244.1. *U.S. v. Brown*. (ND Calif., S. Div.) May 1961: Def.—elected union official — indicted for "unlawfully, knowingly and wilfully" serving on exec. bd., Intl. Longshoremen's and Warehousemen's Union, "while a member of the Communist Party, in wilful violation" of Kennedy-Landrum-Griffin Act. Released on \$5,000. bail. Jy. 6, 1961: argument on Def's. motion to dismiss because sec. violates First Amendment, deprives union of right to elect officials of own choice.

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

245. State laws

- 245.6. *Tennessee ex rel. Sloan v. Highlander Folk School*. (U.S.S.C.) Facts: VI DOCKET 13, 84. May 5, 1961: Tenn. Sup. Ct. *denied* rehearing, *granted* stay pending appeal to U.S.S.C.

250. Civil Disabilities: Federal

251. Federal employment (and see 268)

See cases at 30.5, 30.6.

- 251.15. *Dew v. Quesada*. (DC DC, #4079-60.)*

252. Deprivation of passport rights, right to travel

- 252.52. *U.S. v. Reynolds*. (CA 9.) Facts: VI DOCKET 13, 58, 84. Cite: 286 F. 2d 433.

253. Unfavorable Army discharges

- 253.9. *Olenick v. Brucker*. (Army Sec. Bd.)*
- 253.51. *Dr. Belsky v. U.S.* (U.S. Ct. of Claims.) Facts: VI DOCKET 13-4. June 7, 1961: Ct. unanimously *granted* Pl's. motion for summary judgment, *entered* judgment for difference between pay received as private doing work of Dr. and captain's pay which he should have received for doing Dr's. work in Army.

254. Deprivation of veterans disability payments

- 254.2. *Thompson v. Whittier*. (CA DC.) (Cites: appeal *dismissed*: 365 U.S. 465; below: 185 F. Supp. 306). Facts: VI DOCKET 14, 84.*

Case note:

29 Geo. Wash. L. Rev. 580-83.

255. Deprivation of Social Security rights

256. Deprivation of housing rights

257. Deprivation of Federal licenses

257.3. *Borrow v. Federal Communications Commission.* (U.S.S.C.) Facts: VI DOCKET 14. Cite for *cert. den.*: 364 U.S. 892.

Case note:

59 Mich. L. Rev. 638-40.

257.5. *Cronan v. Federal Communications Commission.* (U.S.S.C., #792.) Facts: VI DOCKET 14. Apr. 24, 1961: U.S.S.C. *denied* petition for cert: 366 U.S. 904.

258. Deportation proceedings (see also 358)

258.7. *Wolf v. Boyd.* (U.S.S.C., #858 Misc.) Facts: VI DOCKET 14, 57. May 7, 1961: U.S.S.C. *denied* petition for cert: 365 U.S. 888 (below: 287 F 2d 520.)

258.9. *Gastelum-Quinones v. Rogers.* (U.S.S.C.) Facts: VI DOCKET 58, 84. Cites: 286 F. 2d 824, *cert. den.* 365 U.S. 871.

259. Denaturalization and Naturalization proceedings (see also 358)

260. Civil Disabilities: State, Local and Private

261. State or local governmental employment (see also 343)

261.1. *Wilkins v. Carlander.* (Super. Ct., Kings Co., #490844.)*

261.3. *Hehir v. NYC Transit Authority.* (N.Y. Sup. Ct., Kings Co., App. Div.)*

261.7. *Crowe v. County of Wayne, Mich.* (Mich. Sup. Ct.)*

261.15. *Dvorman v. School Bd.* (Orange Co. Super. Ct., Calif.) Facts: VI DOCKET 15, 85. Ct. *upheld* recall election. Apr. 18, 1961: Pl. *recalled* from part-time, non-paying position as trustee of Magnolia School Dist. by 2,200-700 vote.

262. Teaching (see also 267, 280 and 342)

Law review article: Frederick Davis, Enforcing academic tenure: reflections and suggestions, 1961 Wis. L. Rev. 200-20.

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262.2. *Bd. of Trustees, Lasson Union High School v. Owens.* (Calif. Dist. Ct. of App., 3d App. Dist.)*

263. Denial of State unemployment insurance rights (see also 346)

263.1a. *Syrek v. Calif. Unemp. Ins. App. Bd.* (Calif. Sup. Ct.) Facts: IV DOCKET 12, V DOCKET 27, 79. Cite: 354 P. 2d 625.

Case notes:

9 Kan. L. Rev. 346-48;

36 N.Y.U. L. R. 1052-60;

34 So. Cal. L. Rev. 367-73.

263.2. *Communist Party v. Catherwood*. (U.S.S.C., #495.) (8 NY 2d 77, 168 N.E. 2d 242.) Facts: VI DOCKET 15, 85. June 12, 1961: U.S.S.C. unanimously *reversed*, Harlan, J.: Communist Control Act of 1954, in providing that Communist Party is "not entitled to any of the rights, privileges, and immunities attendant upon legal bodies created under the jurisdiction of the laws of the" U.S. or any political subdivision, did *not* provide that Party could not participate in fedl. unemployment compensation arrangement permitting employer to profit from state experience rating by crediting state tax against fedl. tax; Act raises novel constitutional questions not reached here. Black, J., *concurring*.

Case note:

22 Ohio St. L. J. 244-47.

264. Denial of State licenses

264.1. *Torcaso v. Watkins*. (U.S.S.C., #373.) Facts: VI DOCKET 15. June 19, 1961: U.S.S.C. *reversed* denial of notary commission (9-0), Black, J.: Neither state nor Fedl. Gov't. can constitutionally force a person to profess a belief or disbelief in any religion; neither can constitutionally pass laws or impose requirements which aid all religions as against non-believers; neither can aid those religions based on belief in existence of God as against those religions founded on different beliefs. Frankfurter, Harlan, JJ. *concurred* in result.

Case notes:

36 N.Y.U. L. Rev. 513-22;

47 Va. L. Rev. 315-29;

10 Buff. L. Rev. 372-80.

And see *Wirin*, 280.11.

264.3. *Sabel v. N.Y. Motor Vehicle Commr. Hulst*. (N.Y. Ct. of App.)*

265. Proceedings against attorneys and Bar applicants (see also 345, 373)

265.4. *In re Schlesinger*. (Pa. Sup. Ct.) Facts: VI DOCKET 15-16. Mar. 17, 1961: argued.

265.5. *In re Steinberg*. (Allegheny Co. Common Pleas Ct., Pa.)*

265.21. *Konigsberg v. State Bar of California*. (U.S.S.C., #28.) and

265.23. *In re Anastaplo*. (U.S.S.C., #58) Facts: VI DOCKET 16. Apr. 24, 1961: U.S.S.C. *affirmed* (5-4) Harlan, J.: It is not constitutionally impermissible for a state legislatively, or through court-made regulation, to adopt a rule that an applicant will not be admitted to the practice of law if, and so long as, by refusing to answer material questions, he obstructs a bar examining committee in its proper functions of interrogating and cross-examining him upon his qualifications. The state's interest in enforcing such a rule as applied to refusals to answer questions about Communist Party membership outweighs any deterrent effect upon freedom of speech and association, and hence such state action does not offend the Fourteenth Amendment. Black, J. (Warren, C.J., and Douglas, J.) *diss.*: The First

Amendment, as made controlling upon the States by the Fourteenth Amendment, precludes a state from denying an applicant admission to its bar for refusing to answer questions as to Communist Party membership. The majority's "balancing test", that permits constitutionally protected rights to be balanced away whenever a majority of this Court thinks that a State might have interest sufficient to justify abridgment of the freedoms of speech and association, tells us that no right to think, speak or publish exists in the people that cannot be taken away if the government finds it sufficiently imperative or expedient to do so. The First Amendment's unequivocal command that there shall be no abridgment of the rights of free speech and assembly shows that the men who drafted our Bill of Rights did all the balancing that was to be done in this field. The interest in free association at stake here is not merely the personal interest of petitioner in being free from burdens that may be imposed upon him for his past beliefs and associations. It is the interest of all the people in having a society in which no one is intimidated with respect to his beliefs or associations. Brennan, J. (Warren, C.J.) *diss.*: The Committee of Bar Examiners did not come forward with evidence to show that the Pet. unlawfully advocated the overthrow of the government. The Fourteenth Amendment protects the Pet. from being denied admission to the bar for his refusal to answer the questions.

265.25. *Marshall v. State Bar of California*. (Calif. Sup. Ct.)*

265.26. *In re Application of Brooks*. (U.S.S.C.) Facts: VI DOCKET 16, 85. Cite: 365 U.S. 813.

266. Deprivation of right to tax exemption

267. Private employment — teaching (see also 262, 280 and 342)

268. Private employment — defense establishments (see also 344)

268.1a. *Graham v. Richmond*. (U.S. Coast Guard App. Bd.)*

268.1b. *Homer v. Richmond*. (CA DC.) Facts: VI DOCKET 17. CA DC *reversed* DC to extent that Def. ordered to hold hearing if applicants specifically request it, with right to submit interrogatories to applicants in advance of hearing.

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268.5c. *Dressler v. U.S.* (U.S. Ct. of Claims, #59-60.)*

268.7. *Kreznar v. Wilson*. (DC DC.)*

268.11. *Lundquist v. Marine Engineers Beneficial Assn., Local 97*. (Calif. Dist. Ct. of App., 1st Div.)*

268.14. *Cafeteria and Rest. Workers Union, Local 743 and Brawner v. McElroy*. (U.S.S.C., #97.) Facts: VI DOCKET 17. June 19, 1961: U.S.S.C. *affirmed* (5-4), dismissal of cook in Naval Gun Factory, Stewart, J.: Notice and hearing are not constitutionally required where private interest involved is mere privilege. Brennan, J. (Warren, C.J., Black, Douglas, JJ., *diss.*: Pet. has, at least, right to be told reason for his exclusion as "security risk", as reason may be one forbidden by

Constitution. The designation "security risk" ought not to be affixed to a person without some statement of charges and opportunity to speak in reply.

Case note:

36 N.Y.U. L. Rev. 506-13.

269. Private employment — Other

269.1. *Faulk v. AWARE, Inc.* (Sup. Ct., N.Y. Co.)*

270. Criminal Penalties for Non-disclosure (see also 330)

271. Congressional Committees (see also 222, 330)

Pamphlet:

David Wesley, Hate groups and the Un-American Activities Comm., E.C.L.C., 421 - 7th Ave., NYC. 25c.

271.1. *Barenblatt v. U.S.* (U.S.S.C.) Facts: IV DOCKET 15, 96. Cite: 360 U.S. 109.

Case note:

9 Kan. L. Rev. 70-72.

271.9. *Russell v. U.S.* (U.S.S.C., #239.) Facts: VI DOCKET 18. June 19, 1961: U.S.S.C. *granted* petition for cert.

271.10. *Deutch v. U.S.* (U.S.S.C.) Facts: VI DOCKET 18. June 12, 1961: U.S.S.C. (5-4) *reversed* conviction, Stewart, J.: Pet. basically cooperative witness, answering all questions re his own political affiliation, declining only to answer re others; Gov't. must prove 2 kinds of pertinency: 1) that Comm. explained pertinency of questions to witness if witness asked, which this Def. did not clearly do; 2) that questions were pertinent to matter Comm. was inquiring into, which HUAC did not do here because hearings were on a different geographical area and different part of population from Def., not on Ithaca or education. Harlan, J. (Frankfurter, J.), *diss.*; Whittaker, J. (Clark, J.) *diss.*

271.12. *Gojack v. U.S.* (U.S.S.C., #313 Misc.) Facts: VI DOCKET 18. June 5, 1961: U.S.S.C. *granted* petition for certiorari.

271.13. *U.S. v. Metcalf.* (SD Ohio.)*

271.15. *Shelton v. U.S.* (U.S.S.C., #246.) (Cert. granted: 365 U.S. 857.)*

271.16. *Whitman v. U.S.* (U.S.S.C., #300.) Facts: VI DOCKET 18. June 19, 1961: U.S.S.C. *granted* petition for cert.

271.19. *Price v. U.S.* (U.S.S.C., #331.) Facts: VI DOCKET 18. June 19, 1961: U.S.S.C. *granted* petition for cert.

271.20. *Liveright v. U.S.* (U.S.S.C., #328.) Facts: VI DOCKET 18. June 19, 1961: U.S.S.C. *granted* petition for cert.

271.23. *U.S. v. Sullivan.* (SD NY, #152-238.)*

- 271.24. *U.S. v. Yarus.* (SD NY, #15586.)*
- 271.25. *U.S. v. Seeger.* (CA 2.)*
- 271.27. *Hartman v. U.S.* (U.S.S.C.) Facts: VI DOCKET 18. CA 9 *affirmed* conviction, citing *Wilkinson, Braden*, 271.31, 32, finding probable cause for issuance of HUAC subpoena in fact that subpoena was issued. Petition for rehearing pending.
- 271.28. *Grumman v. U.S.* (CA DC.)*
- 271.29. *Silber v. U.S.* (CA DC.)*
- 271.30. *U.S. v. Feuer.* (ED La., #26,322.)*
- 271.31. *Wilkinson v. U.S.* (U.S.S.C.) Facts: VI DOCKET 19, 85. Cite: 365 U.S. 399.
- 271.32. *Braden v. U.S.* (U.S.S.C.) Facts: VI DOCKET 19, 86. Cite: 365 U.S. 431.
- 271.33. *Yellin v. U.S.* (U.S.S.C.)*
- 271.34. *U.S. v. Lehr.* (ND Ind.)*
- 271.35. *U.S. v. Malis.* (ND Ind.)*
- 271.36. *U.S. v. Samter.* (ND Ind.)*
- 271.37. *Turoff v. U.S.* (CA 2.)*
- 271.40. *U.S. v. O'Connor.* (ND N.J.)*
- 271.42. *U.S. v. Popper.* (DC DC.) Facts: VI DOCKET 19. Def. *convicted* after trial; awaiting sentence.
- 271.43. *Wheeldin v. U.S.* (U.S.S.C.)*
- 271.45. *Hutcheson v. U.S.* (U.S.S.C., #701.)*
- 271.47. *U.S. v. Tobin.* (DC DC.)*
- And see cases at 222, and *Meisenbach*, 51.11.
- 271.a. *Pauling v. Eastland.* (U.S.S.C.) Facts: VI DOCKET 19, 59. Cite for CA: 288 F. 2d 126.

272. State committees

- 272.2. *New Hampshire v. Uphaus.* (U.S.S.C.) Facts: VI DOCKET 20, 59. Cite: 364 U.S. 388.

Case note:

61 Colum. L. Rev. 725-39.

- 272.3. *DeGregory v. Wyman, Atty. Genl. of N.H.* (N.H. Sup. Ct.)*
- 272.4. *N.A.A.C.P. v. Ames.* (ED Va.)*

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- 272.10. *Rev. Gibson v. Florida Legislative Investigating Comm.* (U.S.S.C.) Facts: VI DOCKET 20, 60. May 8, 1961: U.S.S.C. *granted* petition for cert.

And see cases at 204, 213.

273. Legal and administrative tribunals

274. Refusal to produce records

274.3. *McPhaul v. U.S.* (U.S.S.C.) Facts: V DOCKET 29, 81. Cite: 364 U.S. 372.

Case notes:

63 W. Va. L. Rev. 274-77;

29 Ford. L. Rev. 582-86.

280. Civil Penalties for Non-disclosure (see also 342)

280.1. *Nostrand v. Little.* (formerly listed as *Savelle v. U. of Washington.*) (Wash. S. Ct.) (362 U.S. 474.)*

Case note:

28 U. Chi. L. Rev. 355-62.

And see cases at 221.

280.5b. *Re Nash.* (N.Y.C. Bd. of Educ.)*

280.5c. *Adler v. N.Y.C. Bd. of Educ.* (N.Y. Sup. Ct.)*

280.8. *Allen v. Office Employees' Intl. Union.* (Wash. Sup. Ct.) Facts: VI DOCKET 21. Jury trial verdict *for Defs.* Appeal pending.

280.11. *Wirin v. Ostly.* (Calif. Sup. Ct.) Facts: VI DOCKET 21, 60. May 2, 1961: Dist. Ct. of App. *held* oath requirement constitutional, citing *Pocman v. Leonard.* Petition for hearing pending in Calif. Sup. Ct.

And see *Torcaso*, 264.1.

280.12. *Collins v. Huntington Beach Union High School Dist.* (Santa Ana Super. Ct., Calif., #86390.)*

280.13. *Carr v. Young.* (U.S.S.C.)

and

280.14. *Shelton v. Tucker.* (U.S.S.C.) Facts: VI DOCKET 21, 60. Cite: 364 U.S. 479.

Case notes:

36 Ind. L. J. 306-17;

41 B.U. L. Rev. 269-72.

280.15. *Cramp v. Bd. of Public Instruction, Orange Co., Fla.* (U.S.S.C., #849.) Facts: VI DOCKET 22. May 29, 1961: U.S.S.C. *granted* petition for cert.

280.16. *Re William and Rita Mack.* (Calif. Bd. of Educ.) Facts: VI DOCKET 60. H'g. officer *recommended* revocation of credentials, *found* Pets. knew Communist Party advocated violent overthrow. Calif. Bd. of Educ. *affirmed* revocation.

290. Penalties for False Disclosure

291. Taft-Hartley Oath (see also 203, 245)

291.6. *U.S. v. Killian.* (U.S.S.C., #141.) (Cert. granted: 365 U.S. 810.)*

291.7. *U.S. v. Fred and Marie Haug.* (ND Ohio ED.)*

And see *West*, 291.20.

- 291.20. *U.S. v. West, Haug.* (ND Ohio ED.) Facts: VI DOCKET 22, 87. May 6, 1961: DC *ordered* Marie Haug to begin 18 mth. sentence now, Fred Haug to begin sentence 10 days after her release, for benefit of their 10 yr. old daughter; *granted* Lumer 90-day delay in entering prison due to wife's medical condition; *denied* Defs' petitions for reduction of sentence. Cite for cert. denied: 365 U.S. 811.

And see *Haug*, 291.7, *R. Dennis*, 203.3.

292. Government Security Questionnaires

- 292.2. *Ogden v. U.S.* (CA 9.)*

293. Miscellaneous

- 293.2. *U.S. v. Hucks.* (DC DC, Cr. 384-60.) Def. hotel telephone operator indicted for: perjury before McClellan Labor-Management Comm., obstructing Comm. work, influencing witness before grand jury. Charge: Def. caused destruction of records concerning phone calls by Teamsters Union pres. Hoffa. Dec. 7, 1960: during trial Def's. counsel, with Gov't. counsel (Def's. neighbor), moved to have Def. committed to mental institution and mistrial declared. Def. objected; dismissed counsel. Mistrial declared; Def. committed. Dec. 1960: new counsel filed petitions for writ of habeas corpus; third petition *granted*; psychiatrist found Def. sane. Feb. 27, 1961: Def's. husband fired by his employer, C.I.A., for refusal to become Gov't. witness in this case; denied unemployment compensation for misconduct; later compensation granted. DC granted Def's. petition to proceed *in forma pauperis*; lasted 7 weeks, 4,000 pp. transcript. May 26, 1961: Def. *convicted*; 20 mths. to 5 yrs. Co-Def. Herman, former Teamster, convicted; 1-3 yrs. *suspended*. June 6, 1961: DC *denied* petition to appeal *in forma pauperis*. Principle appeal and from denial of petition pending in CA DC. Issues, inter alia: 1) breadth of authorizing resolution of Comm.; 2) presence of many Gov't. employees on trial jury; 3) pertinency of questions asked Def.; 4) trial ct's. rejection of testimony re dismissal of Def's. husband to show improper conduct of Gov't.; 5) former jeopardy; 6) unreasonable search and seizure.

Benedict F. FitzGerald, Jr., Charles E. Robbins, Esqs., 983 National Press Bldg., Washington, D.C.

295. Right of Privacy

- 295.3. *St. Regis Paper Co. v. U.S.* (U.S.S.C., #704.) (24 F.R.D. 366, 181 F. Supp. 862, 285 F. 2d 607.) Fedl. Trade Comm., investigating Pl. Co's. acquisition of other paper cos., requested confidential reports prepared by mfrs. for Bureau of Census. Def. refused. Def. Co. indicted for violating 15 U.S.C. §46(b), §50; *convicted*; CA 2 *affirmed*. Mar. 27, 1961: U.S.S.C. *granted* cert., tolled running of daily forfeiture

of \$100. for failure to furnish report to FTC. Argument: Fall, 1961.

Comment:

The right of privacy in Wisconsin, 1961 Wis. L. Rev. 332-38.

Case note:

Republication of news story containing Pl's. name as part of advertisement violates N.Y. privacy act: *Flores v. Mosler Safe Co.* (7 N.Y. 2d 276, 164 N.E. 2d 853, 196 N.Y.S. 2d 975), 74 Harv. L. Rev. 1238-41.

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

Law review articles:

Frank C. Newman. The process of prescribing "due process", 49 Cal. L. Rev. 215-39.

Frank C. Newman and Thomas M. Clusserath, What agencies are exempt from Admr. Procedure Act? 36 N. Dame Lawyer 320, 325.

Comment:

The duty of the prosecutor to disclose exculpatory evidence, 60 Colum. L. Rev. 858-70.

Law review article:

Anders Bratholm, Compensation of persons wrongfully accused in Norway, 109 U. Pa. L. Rev. 833-45.

Case note:

Testing constitutionality of a criminal statute before violation: *Memorial Trusts, Inc. v. Beery* (356 P. 2d 884, Colo. 1960), 33 R. Mt. L. Rev. 235-37.

300. Searches and Seizures

301. Wirelapping

301.11. *U.S. v. Silverman.* (U.S.S.C.) Facts: VI DOCKET 23, 87. Cite: 365 U.S. 505.

301.12. *Pugach v. Dolinger.* (U.S.S.C., #111.) Facts: VI DOCKET 23, 87. Correction: 365 U.S. 458 *affirmed* 277 F. 2d 739, which affirmed denial of injunction by DC.

Case notes:

36 Wash. L. Rev. 93-101;

9 Kans. L. Rev. 328-31;

29 Fordham L. Rev. 586-92;

60 Colum. L. Rev. 871-77.

302. Other Federal cases

302.11. *Wirin v. Hilden.* (SD Calif.)*

302.14. *Elkins and Clark v. U.S.* (U.S.S.C.) Facts: V DOCKET 83.

Cite: 364 U.S. 206.

Case notes:

39 N.C.L. Rev. 193-98;
7 How. L. J. 72-75;
22 U. Pitt. L. Rev. 614-17;
32 Miss. L. J. 214-15;
49 Geo. L. J. 144-48.

- 302.16. *U.S. v. Moore*. (CA 5.)*
302.17. *Wilson v. Schnettler*. (U.S.S.C.) Facts: VI DOCKET 87. Cite: 365 U.S. 381.
302.18. *Chapman v. U.S.* (U.S.S.C., #175.) (272 F. 2d 70.) Acting without a warrant but with consent of Pet's. landlord, Ga. law enforcement officers entered through unlocked window, searched Pet's. rented house in his absence, seized distillery and mash. Pet. indicted for violating fedl. liquor laws. Motion to suppress evidence *denied*, DC *holding* search and seizure lawful under fedl. standards. CA *affirmed*. Apr. 3, 1961: U.S.S.C. *reversed* (8-1): Whittaker, J.: Inconvenience to officers and slight delay necessary to prepare papers and present evidence to magistrate alone are insufficient reasons for not obtaining search warrant. Private property law concerning landlord and tenant should not be imported into law surrounding constitutional right to be free from unreasonable searches and seizures. Black and Frankfurter, JJ. *concurred* separately. Clark, J. *diss*.

Law review article:

Julius Berman and Paul Oberst, Admissibility of evidence obtained by an unconstitutional search and seizure — fedl. problem, 55 N.W.U. L. Rev. 525-52.

303. Other State cases (and see 420)

- 303.5. *Franklin v. Gough*. (Los Angeles Superior Ct.)*
303.9. *Eaton v. Price*. (U.S.S.C.) Facts: V DOCKET 83. Cite: 364 U.S. 263.
- Case note:**
- 7 How. L. J. 80-87.
- 303.10. *Swanson v. McGuire*. (ND Ill., #57-C-1164.)*
303.14. *Cedeno v. Lichenstein*. (ND Ill., #58-C-1712.)*
303.17. *Massey v. NYC Police Commr.* (Queens Co. Ct.)*
303.19. *Jackson v. City of New York*. (NYC Comptroller.)*
303.20. *Michaels v. Chappel*. (U.S.S.C.) Facts: VI DOCKET 24. May 29, 1961: U.S.S.C. *denied cert.*, Warren, C.J. voted for cert.
303.22. *New York v. Walker*. (Mineola 1st Dist. Ct.)*
303.26. *Monroe v. Pape*. (U.S.S.C.) Facts: VI DOCKET 24, 88. Cite: 365 U.S. 167.

Case note:

The Civil Rights Act and Mr. Monroe, 49 Calif. L. Rev. 145-71.

- 303.27. *Massachusetts v. Spofford*. (Mass. Sup. Jud. Ct.)*
303.28. *Dorius v. Massachusetts*. (Mass. Sup. Jud. Ct.)*

And see *Marcus*, 52.30.

- 303.29. *Dahlgren v. Clary*. (Dist. Ct. of App., Calif.) Facts: VI DOCKET 24, 88. Appeal pending.
- 52.25. *Mapp v. Ohio*. (U.S.S.C., #236.) Facts: VI DOCKET 4. State officers forcibly entered Def's. home, seized obscene materials, but considerable doubt whether search warrant ever issued. Seized materials admitted in evidence; Def. *convicted*. June 19, 1961: U.S.S.C. *reversed* (6-3), Clark, J.: "We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court". Fourth Amendment is applicable to states by virtue of Due Process Clause of Fourteenth Amendment. Black, J.: *concurred*: When Fourth Amendment's ban against unreasonable searches and seizures is considered together with Fifth Amendment's ban against compelled self-incrimination, a constitutional basis emerges which not only justifies but actually requires exclusion of evidence seized in violation of Constitution. Douglas, J., *conc.* Stewart, J., would *reverse* on ground Ohio obscenity statute not consistent with rights of free thought and expression assured against state action by Fourteenth Amendment. Harlan, Frankfurter, and Whittaker, JJ., *diss.*

310. Indictment

311. Composition of grand jury (see also 510)

312. Character of evidence

(On *Jencks* point, 353 U.S. 357, and Jencks Act, 18 USC 3500, see 315.)

- 312.24. *Re Lt. Michael Collins, Jr.* (Pres. Kennedy.) June 1954: Resp., World War II veteran, court-martialed; charges: breaking into house with intent to rape — *acquitted*; burglary and assault — *convicted*; 10 yrs. Jan. 1956: Sec. of Army ordered all charges *dismissed*, all rights restored, Resp. released. 1961: Cong. comm. investigated, *concluded* Resp. *convicted* on false charges by fellow officers, *passed* bill giving Resp. \$25,000. reimbursement; Pres. Kennedy *signed* bill, instituted investigation.
- 312.25. *New York v. Kirkup, Jr.* (NY Sup. Ct., App. Div., Bklyn.) Def. charged with heading illegal drug-buying combine; *convicted*. June 13, 1961: App. Div. *reversed*, *ordered* new trial, holding evidence sufficient to warrant conviction, but Def. did not receive fair trial because of prosecution misconduct: trying to get immaterial testimony before jury, turning it over to newspapers when trial ct. ruled it out.
- 312.26. *New York v. Molina del Rio*. (NY Ct. of Genl. Sess.) Sept. 20, 1960: fight broke out in restaurant between anti- and pro-Castro forces; sugar bowls, chairs flung about; 2 pro-Castroites stabbed; stray bullet allegedly fired by Def. struck and killed child. Def. indicted for murder of child on theory he had deliberately, with malice aforethought sought to murder anti-Castroite; *convicted* of second degree. Motion for new trial made, based on recantation of prosecution witness after capture in Havana in unsuccessful

Cuban invasion. Issues: denial of interpreter of Spanish-speaking Def's. choice for 11 days after arrest resulting in denial of right to counsel, who spoke only English; Ct's. refusal to grant 6-mth. adjournment due to prejudice in community; Ct's. granting prosecution application for special panel of jurors, deliberate exclusion of persons of same economic strata as Def.; Ct. permitted prosecution witnesses to testify as to their activities in part, then permitted them to claim Fifth Amendment privilege in refusing to answer questions on cross-examination; whether "intent" was proved. June 22, 1961: sentencing. Ct's. decision on motions pending.

Samuel A. Neuburger, Andrew R. Tyler, Esqs., 30 Vesey St., NYC.

313. Entrapment

See *Slagle*, 335.5.

314. Conspiracy

314.5. *Cotton v. Super. Ct., Imperial Co.* (Calif. Sup. Ct.) Feb. 1961: during organizing drive by Agricultural Workers Organizing Comm., United Packinghouse Workers, 23 farm laborers arrested; charges: criminal trespass, conspiracy to kidnap, trespass and riot. Issues: violation of First Amendment rights by making it illegal for organizers to talk to braceros on ranch owners' property, only place they could be spoken to; probable cause for conspiracy charge. Calif. Sup. Ct. *issued* alternative writ of prohibition against prosecutions.

Marshall Ross, Charles K. Hackler, Esqs., 510 S. Spring St., Los Angeles; Richard W. Petherbridge, Esq., 117 N. Fifth St., El Centro, Calif.

Amicus appearance by A. L. Wirin and Fred Okrand, Esqs., for A.C.L.U. of S. Calif., 323 W. 5th St., Los Angeles.

And see 57.1, VI DOCKET 47.

Law review article:

Herbert Wechsler, Wm. K. Jones, Harold L. Korn, Treatment of inchoate crime in Model Penal Code of Am. Law Inst.: attempt, solicitation, conspiracy, 61 Colum. L. Rev. 571-628.

Case note:

Husband and wife as co-conspirators against U.S.: *U.S. v. Dege*, (364 U.S. 51), 15 U. Miami L. Rev. 312-15.

315. Right to inspect pre-trial statements of government witnesses

(Including *Jencks point*, 353 U.S. 357, and Jencks Act, 18 USC 3500.)

Comment:

Grand jury minutes and the rule of secrecy in federal litigation, 55 Nw. U. L. Rev. 482-502.

312.14a. *Palermo v. U.S.* (U.S.S.C.) Fact: IV DOCKET 100-01. Cite: 360 U.S. 343.

Case note:

315.2. *Clancy v. U.S.* (U.S.S.C.) Facts: VI DOCKET 88. Cite: 365 U.S. 312.

315.3. *Campbell v. U.S.* (U.S.S.C.) Facts: VI DOCKET 89. Cite: 365 U.S. 85.

Case note:

7 Wayne L. Rev. 487-91.

315.4. *U.S. v. Consolidated Laundries Corp. of N.Y.* (CA 2.) 2 linen supply assns., 8 member cos., 6 individuals indicted for criminal anti-trust violations. 1958: SD NY *convicted* after trial without jury; \$451,000. fines, 3-6 mths. for individuals. After trial Defs. uncovered 43 unnumbered documents in Gov't. files; DC *denied* motion for new trial. May 31, 1961: CA 2 *reversed*, held Gov't. negligent in not making documents available to Defs.

320. Double Jeopardy

Comment:

Former jeopardy, 9 Kan. L. Rev. 438-45.

Comment:

Double jeopardy and the identity of offenses, 21 La. L. Rev. 615-26.

Law review article:

Lawrence Newman, Double jeopardy and the problem of successive prosecutions: suggested solution, 34 S. Cal. L. Rev. 252-67.

321. Federal cases

321.9. *Gori v. U.S.* (U.S.S.C., #486.) Facts: VI DOCKET 63. June 12, 1961: U.S.S.C. *affirmed* (5-4), Frankfurter, J.: Where, for reasons deemed compelling by trial judge, ends of substantial justice cannot be attained without discontinuing trial, mistrial may be declared without Def's. consent, even over his objection, and he may be retried consistently with Fifth Amendment. Douglas, J. (Warren, C.J., Black and Brennan, JJ.) *diss.*: Once jury has been impanelled and sworn, jeopardy attaches and subsequent prosecution is barred if mistrial is ordered, absent showing of imperious necessity. The discretion is to be exercised only in very extraordinary and striking circumstances. The Double Jeopardy Clause applies a strict standard. The prohibition is not against being twice punished, but against being twice put in jeopardy. It is designed to help equalize the position of government and the individual, to discourage abusive use of the awesome power of society.

Case note:

36 N.Y.U.L. Rev. 730-37.

321.10. *Saldana v. U.S.* (U.S.S.C.) Facts: VI DOCKET 63, 89. Cite: 365 U.S. 646.

Case note:

Multiple offenses and multiple penalties under fedl. narcotics laws: *Yancy v. U.S.* (362 U.S. 389), 28 U. Chi. L. Rev. 308-16.

322. State cases

330. Self-incrimination: Criminal Sanctions (see also 270)

Law review article:

Jack Kroner, Self-incrimination: the external reach of the privilege, 60 Colum. L. Rev. 816-38.

331. Congressional Committees

331.10. *Presser v. U.S.* (U.S.S.C.) Facts: VI DOCKET 25, 89. Cites: 284 F. 2d 233; cert. den. 365 U.S. 816.

332. State Committees

See *DeGregory*, 272.3.

333. Grand juries and tribunals

333.18. *Larasso v. N.Y. State Investigation Comm.* (SD NY, 60 Civ. 4229.) Facts: VI DOCKET 26. May 12, 1961: DC *dismissed* complaint.

Comment:

Privilege against self-incrimination in fedl. tax investigations, 14 U. Fla. L. Rev. 74-84.

334. Grants of immunity: federal

334.3. *Reina v. U.S.* (U.S.S.C.) Facts: VI DOCKET 26, 63. Cite: 364 U.S. 507.

Case note:

21 La. L. Rev. 653-57.

334.4. *Piemonte v. U.S.* (U.S.S.C., #122.) (276 F. 2d 148.) Pet. ordered to testify under fedl. narcotic control act granting immunity from prosecution to witness compelled to testify. Pet. refused; found *guilty* of contempt of ct. CA 7 *affirmed*. June 19, 1961: U.S.S.C. *affirmed* (6-3) per Frankfurter, J. Warren, C.J. (Douglas, J.) *diss.*: Fedl. district judge has no power to impose such punishment in summary proceeding. Moreover, Gov't's harassment of Pet. violates spirit of Double Jeopardy Clause of Fifth Amendment: Gov't. attempted to compel Pet. to testify about conduct he has already been punished for; DC imposed additional term in penitentiary for refusal to testify. Douglas, J. (Black, J.) *diss.*: Imposition of 18 mths'. sentence is beyond power of DC in summary proceeding.

335. Grants of immunity: state

335.5. *Slagle v. Ohio.* (U.S.S.C., #105.) Facts: VI DOCKET 26. May 15, 1961: U.S.S.C., per Whittaker, Jr. *reversed* (8-0) convictions for contempt for refusal to answer questions which witnesses were not specifically directed to answer. Court *aff'd*. (4-4) convictions based on refusal to answer questions which witnesses were specifically directed to answer, rejecting Def's. contention that privilege against self-incrimination protected them despite state immunity act.

336. Criminal registration laws

337. Miscellaneous

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340. Self-incrimination: Civil Sanctions (see also 280)

341. Army discharges (see also 253)

342. Employment — Public teachers (see also 262, 267, 280)

342.3. *Lowenstein v. Newark Bd. of Educ.* (N.J. Sup. Ct.) Facts: VI DOCKET 26. May 22, 1961: N.J. Sup. Ct. (4-3) *reversed* for third time dismissal of teacher for failure to answer questions as to past communist affiliation, teacher having fully answered (in the negative) questions as to the present or recent period; *ordered* Pl. reinstated with back pay to 1955.

342.4. *San Francisco Bd. of Educ. v. Mass.* (San Francisco Super. Ct.) Facts: VI DOCKET 64, 89. May 4, 1961: Ct. *denied* motion to dismiss suit by Pl.-Bd. to dismiss Def. from teaching position at San Francisco City College.

343. Employment — Other public officers (see also 261)

343.3. *Nelson v. Los Angeles Co.* (U.S.S.C.) Facts: V DOCKET 33. Cite: 362 U.S. 1.

Case note:

14 Vand. L. Rev. 636-39.

344. Employment — Private (see also 30, 268, 269)

344.5. *Gottlieb v. Universal Pictures Co.* (L.A. Super. Ct.) Facts: V DOCKET 34. Cite: 39 CCH Lab Cas. §66,142.

Case note:

49 Cal. L. Rev. 368-72.

344.6. *United Electrical Workers, Local 610 v. Westinghouse Airbrake Co.* (Allegheny Co. Ct. of Common Pleas, #3132.)*

344.9. *Sief v. Bethlehem Steel Co., United Steelworkers Union.* (Balt. City Super. Ct., 52213. — 1958 — 1054.) Facts: VI DOCKET 27. May 10, 1961: suit *dismissed* as to Marine & Shipbuilding Wrkrs. and its Local 24.

Harold Buchman, Esq., 1501 Tower Bldg., Baltimore.

344.13. *Zelman v. Bethlehem Steel Co., United Steelworkers Union.* (ND NY.)*

345. Attorneys (see also 265, 373)

345.1. *Cohen v. Hurley.* (U.S.S.C., #84.) Facts: VI DOCKET 27. Apr. 24, 1961: U.S.S.C. (5-4) *affirmed* disbarment after attorney claimed privilege against self-incrimination, Harlan, J.: Fourteenth Amendment does not automatically preclude state from exacting Pet's. testimony and attaching consequences to his refusal to respond. Black, J. (Warren, C.J., Douglas, J.) *diss.*: The product here of "balancing test" (see *Kongisberg*, 265.21) is the conclusion that state's interest in disbaring any lawyer suspected of "ambulance chasing"

outweighs the value of those provisions of Bill of Rights and N.Y. Constitution commanding government not to make people testify against themselves. A state should not be permitted to penalize a person for invoking his constitutional privilege against self-incrimination. Douglas, J. (Black, J.) *diss.*: States are obligated by Due Process Clause of Fourteenth Amendment to accord the full reach of the privilege to a person who invokes it. There is no exception in the Fifth Amendment for lawyers. Moreover, apart from the Fifth Amendment, a state may not require self-immolation as a condition of retaining the license of an attorney. Brennan, J. (Warren, C.J.) *diss.*: Pet. was protected by immunity from compulsory self-incrimination guaranteed by Fifth Amendment, which is absorbed by Fourteenth Amendment, and therefore is secured against impairment by states.

Case note:

60 Colum. L. Rev. 885-90;

29 Fordham L. Rev. 163-68.

346. Unemployment insurance and Social Security (see also 263)

350. Due Process

351. Delay in arraignment

351.1. *Buono v. Kenton.* (U.S.S.C.) (287 F. 2d 534.)*

352. Grand Jury procedures

352.1. *Wood v. Justice Hughes.* (NY Ct. of App.) Facts: VI DOCKET 90. Cite: 8 N.Y. 2d 709.

Case note:

29 Ford. L. Rev. 592-98.

353. Confessions

353.3. *Reck v. Pate.* (formerly *v. Ragen.*) (U.S.S.C., #181.) Facts: VI DOCKET 27. June 12, 1961: U.S.S.C. *reversed* (7-2), Stewart, J.: Question in each case is whether Def's. will was overborne at time he confessed. Total combination of circumstances in this case is so inherently coercive its very existence is irreconcilable with possession of mental freedom by lone suspect against whom its full coercive force is brought to bear. Douglas, J., *concurring*, would hold any confession obtained by police while Def. is under detention inadmissible unless there is prompt arraignment, accused is informed of right to silence, accorded opportunity to consult counsel. Clark and Whittaker, JJ., *diss.*

353.8. *California v. Atchley.* (U.S.S.C., #95.) Facts: VI DOCKET 28. May 1, 1961: U.S.S.C. (9-0) *dismissed* as improvidently granted writ of cert.

353.12. *Rogers v. Richmond.* (U.S.S.C.) Facts: VI DOCKET 90. Cite: 365 U.S. 534.

353.14. *Coppola v. U.S.* (U.S.S.C., #153.) Pet. arrested by local police, interrogated without prompt commitment hearing required by N.Y. state law. FBI

received permission to interrogate Pet., secured confession to violation of fed'l. law. Pet. detained 29 hours, visited by FBI 19 of those 29 hrs. Confession admitted against Pet., *convicted*. Apr. 17, 1961: U.S.S.C. *affirmed* (8-1) per curiam, on ground there was no working agreement between FBI and local police. Douglas, J. *diss.*: confession would be inadmissible if original arrest had been made by fed'l. officers, for duty of fed'l. officer making arrest is to take arrested person without unnecessary delay before judicial officer for hearing. What fed'l. agents cannot do in fed'l. precincts they should not be permitted to do in state jail.

Case note:

36 N.Y.U.L. Rev. 884-90.

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- 353.15. *Culombe v. Connecticut*. (U.S.S.C., #161.) Pet., illiterate, mentally defective, requested atty. when arrested, did not see atty. til 6 days later and after he had confessed to police. Police questioned him through period until he confessed. At one point, police attempted to use Pet's. wife as means of securing confession. Confession was admitted in evidence. June 19, 1961: U.S.S.C. *reversed* (6-3), Frankfurter, J.: When interrogation of prisoner is so long continued, with such purpose, and under such circumstances, as to make whole proceeding an effective instrument for extorting unwilling admission of guilt, due process precludes use of confession thus obtained. Douglas, J. (Black, J.) *conc.*: denial of Pet's. request for counsel was violation of his constitutional rights. Brennan, J. (Warren, C.J., Black, J.) *conc.* in result. Harlan, J. (Clark and Whittaker, JJ.) *diss.*

Case notes:

Admissibility into evidence of confession made prior to illegal detention: *Holt v. U.S.* (280 F. 2d 273, CA 8 1960), 7 N.Y. L. F. 108-13.

Motion to vacate sentence on grounds of coerced confession: *Hodges v. U.S.* (282 F. 2d 858, cert. *granted*), 29 G. Wash. L. Rev. 593-96.

Reaffirmation, after preliminary hearing, of written confession obtained in violation of *McNabb* doctrine is admissible: *Goldsmith v. U.S.* (277 F. 2d 335), 74 Harv. L. Rev. 1222-24.

Case notes:

Admissions made after indictment in absence of counsel not admissible; *People v. DiBiasi* (7 N.Y. 2d 544, 166 N.E. 2d 825, 200 N.Y.S. 2d 21, 1960):

36 N.Y.U. L. Rev. 737-44;

61 Colum. L. Rev. 744-48;

9 Kan. L. Rev. 464-66.

354. Unfair press releases

- 354.1. *Irvin v. Dowd*. (U.S.S.C., #41.) Shortly after Pet's. arrest police officials issued press releases, intensively publicized, stating he had confessed to 6 murders. Counsel sought change of venue; *granted*; later asked another change of venue; *denied*. June 5, 1961: U.S.S.C. *reversed* conviction (9-0), Clark, J.: Where the atmosphere is so poisoned by newspapers, radio, TV

that 8 out of 12 jurors thought Pet. guilty (after 268 of panel of 430 were successfully challenged for cause as having fixed opinions re Pet's. guilt, and Pet. used all his peremptory challenges), finding of impartiality of jurors does not meet constitutional standards. Frankfurter, J. *conc.* separately.

Law review articles:

Ronald Goldfarb, Public information, criminal trials and the cause celebre, 36 N.Y. L. Rev. 810-38.

Warren Freedman, News media coverage of criminal cases and the right to a fair trial, 40 Neb. L. Rev. 391-412.

Comment:

Newspaper advertising — an interference with a fair trial by jury, 22 U. Pitt. L. Rev. 601-09.

355. Perjured testimony (see also 312)

355.4. *Sobell v. U.S.* (U.S. Pardon Atty.)*

356. Courts martial

356.8. *Bell v. U.S.* (U.S.S.C., #92.) Facts: VI DOCKET 28. May 22, 1961: U.S.S.C. *reversed* (9-0), Stewart, J.: A soldier who has not received punishment from a duly constituted court-martial is entitled to the statutory pay and allowances of his grade and status while a prisoner-of-war, whether or not he has been involved in "grave misconduct", under existing statutes.

357. Naturalization proceedings (see also 259)

357.4. *Yin-Shing Woo v. U.S.* (CA 2.) Facts: VI DOCKET 90. Cite: 288 F. 2d 434.

358. Expatriation, Denaturalization and Deportation proceedings (see also 258, 259)

Comment:

Proceedings and review under Walter-McCarran Act, 41 B.U. L. Rev. 207-31.

358.8. *Kennedy, Atty. Genl. v. Mendoza-Martinez.* (formerly *Mackey v.*) (U.S.S.C.) Facts: VI DOCKET 28. *Correction:* Feb. 20, 1961: U.S.S.C. *noted* probable jurisdiction: 365 U.S. 809.

358.15. *Williams v. U.S.* (CA 6.)*

358.16. *Costello v. U.S.* (U.S.S.C.) Facts: VI DOCKET 29, 91. Cite: 365 U.S. 265.

358.17. *Rusk v. Cort.* (U.S.S.C.) (Probable jurisdiction noted: 365 U.S. 808.)*

358.51. *Heikkila v. Barber.* (CA 9.) (Soc. Sec. Bd. Referee.)*

358.52. *Re Daniels.* (Imm. Hg. Officer.)*

358.53. *Kimm v. Rosenberg.* (U.S.S.C.) Facts: V DOCKET 88. Cite: 363 U.S. 405.

Case notes:

28 U. Chi. L. Rev. 374-80;

- 358.57. *Varela v. Esperdy*. (U.S.S.C., #876.) Facts: VI DOCKET 29. CA 2 *affirmed* deportation. May 15, 1961: U.S.S.C. *denied* cert. Bill to permit Pet's permanent residence pending before Sen. Subcomm. on Imm.
- 358.58. *U.S. v. Wm. and Marina Sim*. (Imm. Serv.)*
- 358.9. *U.S. v. Marks*. (Imm. and Nat. Serv.) 1923: Def. born in Milwaukee. 1958: Def. went to Cuba, fought with Castro, after revolution became gov't. official under Castro. July 22, 1960: Def. re-entered U.S. Jan. 27, 1961: Def. *arrested*, charged with illegal entry because entered U.S. without alien's visa. June 1, 1961: Imm. Serv. hearing officer *ruled* Def. *deportable* under 1952 Imm. Act. for serving in armed forces of foreign country thereby automatically losing U.S. citizenship. Pending before Bd. of Imm. App.
- Murray A. Gordon, Esq., 401 Broadway, NYC for A.C.L.U.

359. Loyalty hearings (see also 251 and 268)

360. Speedy and Public Trial

Case notes:

Right to a speedy trial: *Porter v. U.S.* (270 F. 2d 453, 1959), 12 W. Res. L. Rev. 430-33.

People v. Wilson (8 N.Y. 2d 391, 169 N.E. 2d 440, 208 N.Y.S. 2d 963), 25 Alb. L. Rev. 321-25.

370. Right to Counsel

Law review article:

Ephraim Margolin, Right to counsel and compulsion to testify, 7 How. L. J. 36-62.

371. Federal cases

372. State cases

- 372.6. *Cash v. Culver*. (Fla. Sup. Ct.) Facts: IV DOCKET 57, 105. Cite: 122 So. 2d 179.

Case note:

15 U. of Miami L. Rev. 323-26.

- 372.13. *Reynolds v. Cochran*. (U.S.S.C.) Facts: VI DOCKET 91. Cite: 365 U.S. 525.

373. Indirect restrictions (see also 265, 345)

- 373.1. *Re Gladstein*. (DC Hawaii.)*
- 373.8. *Otto L. Tucker, Atty. v. 7th Dist. Comm. of Virginia State Bar*. (Va. Sup. Ct. of App., #5249.) Facts: VI DOCKET 30. June 12, 1961: Va. Sup. Ct. of App *affirmed* reprimand of Def.-Atty., *finding* he had offered to represent the 2d white youth.
- 373.14. *Newsom v. Smyth*. (U.S.S.C.) Facts: VI DOCKET 30, 91. Cite: 365 U.S. 604.

374. Opportunity for appellate review

- 374.1. *Eskridge v. Wash. Bd. of Prison Terms.* (Wash. Sup. Ct. #33928.)*
- 374.12. *Bailleaux, et al. v. Hatfield.* (U.S.S.C.)*
- 374.15. *Smith and Marshall v. Bennett.* (U.S.S.C., #174, #177.) Iowa Ct. clerk refused to docket petitions for habeas corpus filed by indigent prisoners without payment of \$4 filing fee. Apr. 17, 1961: U.S.S.C. *reversed* (9-0), Clark, J.: To interpose any financial consideration between an indigent prisoner of the state and his exercise of a state right to sue for his liberty is to deny that prisoner the equal protection of the laws.

Luther L. Hill, Jr., Esq., Des Moines, appointed by U.S.S.C.

Comments:

An indigent criminal defendant seeks an appeal, 36 Ind. L. J. 237-52.

Extension in New York of rule in *Griffin v. Ill.*, 25 Alb. L. Rev. 247-56.

Case note:

Indigent criminal def. must be accorded adequate appellate review: *Medberry v. Patterson* (188 F. Supp. 557), 33 R. Mt. L. Rev. 226-29.

380. Confrontation

381. Criminal cases

382. Civil cases

390. Jury Trials (see also 510)

Comment:

The right to a nonjury trial, 74 Harv. L. Rev. 1176-90.

Law review article:

Walter E. Oberer, Does disqualification of jurors for scruples against capital punishment constitute denial of fair trial on issue of guilt, 39 Tex. L. Rev. 545-67.

- 390.4. *U.S. v. ex rel. Fletcher v. Cavell, Warden.* (CA 3.)*

400. Excessive Bail; Parole Conditions

401. Amount of bail

Comments:

Bail: an ancient practice reexamined, 70 Yale L. J. 966-77.

The institution of bail as related to indigent defendants, 21 La. L. Rev. 627-38.

- 401.2. *California v. Linhart.* (Contra Costa Co. Super. Ct., App. Dept.) Facts: VI DOCKET 66. App. Dept. (2-1) *reversed* conviction, remanded for new trial, on ground that under Calif. law bail can not be increased for the reason that

Def. demands a jury trial.

- 401.3. *Re Aaron Wagman.* (NY Co. Sup. Ct.) Def. charged with 37 counts of bribing college basketball players and attempting to bribe city detective; bail set at \$65,000. May 15, 1961: NY Co. Sup. Ct. *denied* motion for reduction of bail because of "the enormity of the offenses charged".

402. Conditions imposed

Case note:

Effect of penal statute releasing probationer from "all penalties and disabilities" of a prior conviction: *People v. Taylor* (178 Cal. App. 2d 472), 34 S. Calif. L. Rev. 373-76.

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403. Denial of bail

Comment:

Imprisonment of material witness for failure to give bond, 40 Neb. L. Rev. 503-16.

410. Cruel and Unusual Punishment

Comment:

The effectiveness of the Eighth Amendment: an appraisal of cruel and unusual punishment, 36 N.Y.U. L. Rev. 846-75.

411. Criminal cases

- 411.10. *Newson v. California.* (Calif. Adult Auth.)*
411.11. *Winston v. U.S.* (SD NY.)*
411.12. *Mississippi v. Kennard.* (U.S.S.C.) Facts: VI DOCKET 92. Petition for cert. to be filed.
And see *Evers*, 42.5.

Comment:

Sentencing criminals in Calif.—a study in haphazard legislation, 13 Stan. L. Rev. 340-65.

412. Extradition

- 412.8. *In re Williams.* (CA 6.)*
412.10. *In re Albert Owings.* (N.J. Sup. Ct.) Facts: VI DOCKET 31. May 10, 1961: App. Div. *affirmed* extradition order. Appeal to N.J. Sup. Ct. pending.
412.12. *In re Rev. Cavers.* (Sup. Ct., Queens Co.) Facts: VI DOCKET 66-7. Apr. 19, 1961: Sup. Ct. *denied* habeas corpus writ, directed Resp. turned over to S.C. authorities, revoked Resp's. \$3,500. bail pending outcome of appeal; suspended order 10 days to permit appeal: "If I had any discretion at all in this matter I would unhesitantly sustain the writ and free Mr. Cavers... The color of the Def's. skin in no little way affected the verdict in S.C."
Jawn A. Sandifer, Esq., 101 W. 125th St., NYC.
412.13. *In re James Kersh.* (Calif. Gov. Brown.) 1930: Def. *convicted* of robbery;

served 8 yrs. paroled. 1939: imprisoned as parole violator — 1940 released. 1947: Def. arrested for felonious assault; 1949: Def. walked away from prison. 1952: Def. became cook in Calif., opened restaurant, became active in civic affairs, married. Mar. 1961: Def. arrested in fight with wife. Mar. 14, 1961: arrested on fugitive warrant. Neighbors petitioned Gov. to stop extradition. May 9, 1961: Gov. of Mich. *withdrew* extradition warrant.

Case notes:

Foreign trials in absentia: due process objections to unconditional extradition: *Gallina v. Fraser* (278 F. 2d 77, 1960), 13 Stan. L. Rev. 370-78.

Extradition — judicial notice: *In Matter of Mylonas* (187 F. Supp. 716, 1960), 63 W. Va. L. Rev. 291-2.

413. Civil cases

420. Illegal arrest

- 420.6. *Prof. Genovese v. N.Y.C.* (N.Y. Co. Sup. Ct.)*
- 420.7. *Hallowell v. N.Y.C.* (NYC Controller.)*
- 420.8. *Goldberger v. Lewis.* (San Francisco Super. Ct.) Facts: VI DOCKET 67. Amended complaint filed alleging *respondeat superior* liability of City and Co. for tortious acts of its police officers.
- 420.9. *Brooks v. Gray.* (San Diego Muni. Ct., #71398.)*
- 420.11. *Duble v. Brown and Chicago.* (Cook Co. Super. Ct., #60 S 19040.)*
- 420.12. *Hardwick v. Hurley.* (CA 7, #12958.) Facts: VI DOCKET 67. May 2, 1961: CA 7 *reversed* dismissal of complaint based on U.S.S.C. decision in *Monroe v. Pape*, [#303.26] where Ct. said "§1979 (1938) should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions. This could be read to mean that in the opinion of the Supreme Court it wouldn't make any difference what purpose the officers had in striking or beating the Pl."
- 420.13. *Washington v. Hall.* (Chicago Muni. Ct., #57M301523.) Facts: VI DOCKET 67. Def.-police officer is paying on judgment.
- 420.14. *Rogers v. Biskup and Chicago.* (ND Ill., E. Div., #60C-457.)*
- 420.15. *Texas v. 86 Negroes.* (Odessa, Tex.) May 11, 1961: white girl raped by man wearing mask; she said he was Negro. Police arrested 86 Negroes without warrants. Complainant unable to identify rapist. Negroes *released* after 5 days.
- 420.16. *Rev. Jones v. Shreveport Officials.* (WD La.) Facts: see *Jones*, #51.17, VI DOCKET 3, 54. Pl. filed \$50,000. damage suit against 17 city officials, judges and policemen, charging deprivation of his rights when he was arrested, his papers searched and seized, beaten in prison, put under mental observation for 17 days, bond raised to \$1,500. Pending.
Benjamin E. Smith, Esq., 406 Cigali Bldg., New Orleans.
Amicus appearance by Leonard B. Boudin, Esq., 25 Broad St., NYC, for Emergency Civil Liberties Comm.
- 420.17. *California v. Johnson.* (Los Angeles Super. Ct., App. Dept.) Sept. 29, 1959: Def. arrested for reckless driving. Def. made oral complaint to Internal Affairs

Div., Police Dept. claiming he was choked, pushed, abused and beaten by arresting officers. Def. charged with violating state prohibition against filing false police report; *convicted*. May 1961: App. Dept. (2-1) *reversed*, ordered complaint

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dismissed. Ct. *held* statute wrongfully applied to complaints of misconduct of police personnel, as this violates right to freedom of petition under Fourteenth Amendment.

David J. Lee, Esq., for N.A.A.C.P., 4230 S. Figueroa, Los Angeles.

Amicus appearance by A. L. Wirin, Fred Okrand, Peter Aronson, Esqs., for A.C.L.U. of S. Calif., 323 W. 5th St., Los Angeles.

Law review article:

William C. Douglas, Vagrancy and arrest on suspicion, 70 L. J. 1-14.

490. Miscellaneous Due Process

490.6. *Buxton v. Ullman, State's Atty.* (U.S.S.C., ##60, 61.) Facts: VI DOCKET 32. June 19, 1961: U.S.S.C. *dismissed* appeal (5-4), per Frankfurter, J., for lack of justiciability. Black, J., *diss.*, believing constitutional questions should be reached and decided. Douglas, J., *diss.*: Appellants should not be made to flout law and get arrested to have their constitutional rights determined. On the merits, right of doctor to advise patients according to his best lights comes within First Amendment rights; Conn. law as applied to married couple deprives them of liberty without due process of law under Fourteenth Amendment. A society that tells its doctors under pain of criminal penalty what they may not tell their patients is not a free society. Law that makes "use" of contraceptive devices a crime necessarily involves inquiry into relations between man and wife, is invasion of privacy implicit in free society. Harlan, J., *diss.* on both justiciability and merits. Stewart, J., *diss.* on justiciability.

Case note:

7 N.Y.L.F. 73-81.

490.6b. *Trubek v. Ullman, Conn. State's Atty.* (U.S.S.C.) Facts: DOCKET 32, 67. See *Buxton*, 490.6.

490.6c. *Rev. Willard v. Ullman, Conn. State's Atty.* (Conn. Super. Ct., New Haven Co.)*

And see 490.15.

490.12. *DeVeau v. Braisted.* (U.S.S.C.) Facts: V DOCKET 90. Cite: 363 U.S. 144.

Case note:

14 Vand. L. Rev. 667-71.

490.14. *California v. Turrieta.* (Superior Ct., Contra Costa Co., App. Dept.) Facts: VI DOCKET 32. Pittsburg Justice Ct. *refused* to allow Def. to change plea from guilty to not guilty, to arrest judgment for lack of jurisdiction, to withdraw order revoking probation. May 1961: App. Dept. *affirmed*.

490.15. *Planned Parenthood Comm. of Phoenix v. Maricopa Co. Medical Director.* (Super. Ct., Maricopa Co., #112802.)*

- 490.17. *Ferguson v. Georgia*. (U.S.S.C.) Facts: VI DOCKET 92. Cite: 365 U.S. 670.
 490.20. *Munoz v. New York City*. (NY Ct. of App.) Facts: VI DOCKET 92. Cite: 172 N.E. 2d 535.

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

Law review articles:

- Ira M. Heyman, The Chief Justice, racial segregation, and the friendly critics, 49 Calif. L. Rev. 104-25.
 Louis H. Pollak, The Supreme Court and the states: reflections on *Boynton v. Va.*, 49 Calif. L. Rev. 15-55.
 Ronald F. Howell, Legislative motive and legislative purpose in the invalidation of a civil rights statute, 47 Va. L. Rev. 439-67.
 William P. Murphy, State Sovereignty and the drafting of the Constitution — III, 32 Miss. L. J. 155-72.
 Lindsey Cowen, What is left of the Tenth Amendment? 39 N.C. L. Rev. 154-83.

Comment:

- State involvement in private discrimination under the Fourteenth Amendment, 21 La. L. Rev. 433-48.

500. Elections

501. Racial discrimination

- 501.2. *Ivy v. Cole, Registrar*. (Halifax Co., N.C.) (ED N.C., Wilson Div., #610-Civ.)*
 501.4. *Reddix v. Lucky, Registrar*. (Ouchita Parish, La.) (WD La., #5733-M.) Facts: VI DOCKET 33. April 24, 1961: suit *dismissed*.
 501.6a. *Gomillion v. Mayor Lightfoot*. (Macon Co., Ala.) (MD Ala., #462-E.) Facts: VI DOCKET 33, 68.

Case notes:

- 21 La. L. Rev. 676-80;
 34 Temp. L. Q. 326-31;
 6 Vill. L. Rev. 411-15;
 22 Ohio St. L. J. 213-19;
 33 R. Mt. L. Rev. 219-22.
 501.6b. *U.S. v. Alabama*. (Macon Co., Ala.) (MD Ala., #479-E.)*
 501.8. *U.S. v. Raines*. (Terrell Co., Ga.) (MD Ga., Americus, #442.)*
 501.9a. *Camacho v. U.S. Atty. Genl.* (SD NY, #60-Civ. 3531.) Facts: VI DOCKET 34. June 12, 1961: hearing before 3-judge ct.
 Gene Crescenzi, Esq., 320 Broadway; Paul O'Dwyer, Esq., 40 Wall St., both of NYC.
 501.11. *U.S. v. Thomas, Registrars of Washington Parish, White Citizens Council*. (Bogalusa, La.) (ED La.)*

- 501.11a. *Hannah v. Larche* (Shreveport, La.) (U.S.S.C.) Facts: VI DOCKET 34. Cite: 363 U.S. 420.

Case notes:

14 Vand. L. Rev. 631-36;

40 Neb. L. Rev. 540-45.

- 501.12a. *U.S. v. 82 Defs.* (Fayette Co.) (WD Tenn.)
and
- 501.12b. *U.S. v. Defs.* (Fayette Co.) (WD Tenn.) Facts: VI DOCKET 68. June 14, 1961: Pres. Kennedy *granted* request of Negroes who had undergone "severe hardship" and been compelled to leave their land for having registered; surplus food *shipped* to 100 Negro families in Haywood and Fayette Cos. under 1949 Agric. Act, §416.
And see 501.15a, b, c.
- 501.13. *U.S. v. Assn. of Citizens Councils of La., Inc., Culpepper, Registrar.* (Bienville Parish, La.) (WD La., #7881-S.)*
- 501.15. *U.S. v. First State Bank of Brownsville, Inc.* (Haywood Co., Tenn.) (WD Tenn.)*
- 501.15a. *U.S. v. 74 Defs.* (Haywood Co.) (WD Tenn.)*
- 501.15b. *Tennessee v. Savage.* (Haywood Co. Ct.)*
And see 501.15a, 501.12a, 12b.
- 501.16. *Bazemore v. Bd. of Elections.* (Bertie Co., N.C.) (N.C. Sup. Ct., #168.) (254 N.C. 398.) Facts: VI DOCKET 34. Apr. 12, 1961: N.C. Sup. Ct. *found* error in construction of literacy test act, *unreasonable* administration of act, *remanded*. Ct. *held*: 1) literacy test need not be given when applicants known to have ability to read and write; 2) excessive reading, writing, writing from dictation may not be required of applicant; 3) literacy test is not spelling test; 4) only reasonable proficiency in reading and writing required; 5) literacy test may not be administered so as to discriminate between citizens. May 15, 1961: trial ct. ordered precinct registrar to give new examination for registration to Pl.
- 501.17a. *In re Denkins.* (MD Ala., #1619-N.)*
and
- 501.17. *U.S. v. Voting Registrars.* (Montgomery and Sumter Cos., Ala.) (MD Ala.)*
- 501.18. *U.S. v. Sharrow.* (SD NY.) Facts: VI DOCKET 34. Apr. 4, 1961: Def. pleaded not guilty. Jy. 6, 1961: trial.
- 501.19. *U.S. v. Alabama, Voting Registrars.* (Bullock Co., Ala.) (MD Ala.)*
- 501.20. *U.S. v. Deal.* (E. Carroll Parish, La.) (WD La., #8132-M.)*
- 501.21. *U.S. v. Majors, Alabama.* (Dallas Co., Ala.) (SD Ala., #2584.) Facts: VI DOCKET 93. Defs'. motion to dismiss pending.
- 501.22. *U.S. v. Manning.* (E. Carroll Parish, La.) (WD La.) Apr. 28, 1961: U.S. filed suit under 1957 Civil Rights Act charging Def.-registrar with preventing 4,183 eligible Negroes from registering by requiring that each Negro applicant be identified by 2 registered voters from his precinct; result: no Negroes registered. White voters allegedly permitted to identify themselves by Sel. Service cards, drivers licenses, library cards. Pending.

U.S. Atty. Genl. Robert F. Kennedy, Washington, D.C.

501.23. *Montoya v. Bolack*. (N.M. Dist. Ct., 2d Jud. Dist., Bernalillo Co., #85725.) Pl. contesting election of Def. to office of Lt. Gov. on ground Navajo Indians voted for Def. Issues: whether Navajo Indian living on reservation is N.M. resident for voting purposes; whether Indians precluded from voting under N.M. Const. prohibiting "Indians not taxed" from voting. N.M. Sup. Ct. *denied* alternative writ of prohibition and mandamus on procedural grounds; *remanded* to Dist. Ct. Pending.

Amicus appearance by Stewart L. Udall, U.S. Secy. of Interior, by Frank Barry, Jr., Max N. Edwards, Esqs.

501.24. *Plaintiffs v. Registrars*. (Albany and Dougherty Cos., Ga.) (DC Ga., Albany Div.) June 21, 1961: 5 Negro Pls. sued for injunction ordering desegregation of voting lists and polling places in 2 cos. Pending.

502. Political discrimination

503. Urban discrimination

503.1. *Baker v. Carr*. (Tennessee.) (U.S.S.C., #103.) Facts: VI DOCKET 35, 69. May 1, 1961: U.S.S.C. *ordered* reargument Oct. 9, 1961.

Archibald Cox, U.S. Solicitor Genl., intervening for U.S.

503.2. *Helmsly v. Wells*. (formerly listed as *Pls. v. Ga.*) (SD Ga., ##1203, 1204.) Facts: VI DOCKET 69.*

Wm. B. Hartsfield, Osgood O. Williams, Esqs., Grant Bldg.; Morris B. Abram, Joseph Lefkoff, John H. Hicks, Maurice N. Maloof, Esqs., Healey Bldg.; Charles L. Weltner, Esq., Fulton Natl. Bk. Bldg., all of Atlanta; Edward T. Brennan, Esq., 15 Drayton St., Savannah.

503.3. *Scholle v. Secy. of State*. (Mich.) (U.S.S.C.)*

503.6. *Radio Station WMCA v. Simon, NY Secy. of State*. (SD NY.) May 1, 1961: Pls. sued for injunction requiring amendment to NY State Constitution to insure to urban voters reapportionment of state senatorial and assembly districts on more equal basis. Pls. allege disparity of 299,000 citizens represented by sen. in NY Co., 175,712 in rural cos.; 115,000 in Bronx to 17,461 in rural co. Pending. Leonard B. Sand and Max Gross, Esqs., 100 E. 42nd St., NYC.

510. Juries

511. Federal employees

512. Racial discrimination

512.27. *Rev. Anderson v. Alabama*. (U.S.S.C., #326.)*

And see *Kennard*, 411.12.

513. Economic discrimination

514. Political discrimination

515. Discrimination against women

520. Education

521. Challenge to unequal facilities

- 521.1. *Holland v. Bd. of Public Instruction.* (Palm Beach, Fla.) (SD Fla., #7161.)
Facts: VI DOCKET 35, 94. May 26, 1961: DC *ordered* Def.-Bd. to submit
plan to eliminate discrimination because of color "if [it] exists."
521.2. *Johnson v. Marion Co. Bd. of Educ.* (S.C.) (ED S.C., #7298.)*

522. Suits to enforce integration

Law review articles:

Will Maslow, De facto public school segregation, 6 Vill. L. Rev. 353-76.

William L. Taylor, Actions in equity by the U.S. to enforce school desegregation, 29 Geo. Wash. L. Rev. 539.54.

- 522.Ala3. *Koen v. Knight.* (Ala. Vocational Schools.) (SD Ala., #2434.) Facts: VI
DOCKET 94.*
Charles F. Wilson, Esq., 507 W. Gadsden, Pensacola; Clarence F. Moses,
Esq., 101 N. Cedar, Mobile, Ala.
- 522.Ala4. *Reed v. Washington Co. Bd. of Educ.* (Reeds Chapel.) (SD Ala., #2549.)
Facts: VI DOCKET 94. June 19, 1961: hearing on Defs'. motion to dismiss.
Grady Hurst, Jr., Esq., P.O. Box 331, Chatom, Ala.
- 522.Ark3. *Norwood v. Tucker.* (Little Rock.) (DC Ark., #3113.) (287 F. 2d 798.) Facts:
VI DOCKET 36, 94. May 28, 1961: Pls. asked DC to order more Negro
pupils admitted to previously all-white Jr. Highs; pending.
- 522.Ark5. *Dove v. Parham.* (Dollarway School Dist.) (ED Ark., #3680.) Facts: VI
DOCKET 36, 94. May 12, 1961: DC *approved* Bd's. plan for 1961-62 school
yr.; *ordered* Bd. to report assignments of Negro pupils under plan by Jy. 15,
1961, and denials of assignments, if any.
- 522.Dela2. *Evans v. Ennis.* (7 Dela. Cos.) (DC Dela.) Facts: VI DOCKET 70. May 22,
1961: hearing on modified segregation plan.
- 522.Fla3. *Mannings v. Bd. of Public Instruction of Hillsborough Co.* (Tampa.) (SD Fla.,
#3554.)*
- 522.Fla5. *Augustus v. Escambia Co. Bd. of Public Educ.* (Pensacola.) (ND Fla.,
#1064.) (CA 5.) Facts: VI DOCKET 37, 94. June 14, 1961: Bd. submitted
desegregation plan to DC. Pending.
- 522.Fla6. *Tillman v. Bd. of Public Inst., Volusia Co.* (SD Fla., Jacksonville Div.,
#4501.)*
And see *Bd. of Inst.*, 523.Fla2.
- 522.Fla7. *Braxton v. Bd. of Public Inst., Duval Co.* (Jacksonville.) (SD Fla., #4598.)

- (U.S.S.C.) Facts: VI DOCKET 70, 94. Mar. 1961: DC *denied* Def.-Bd's. motion for 3-judge ct. to hear case. Def. filed mandamus action in U.S.S.C.
- 522.Ga3. *Calhoun v. Latimer*. (ND Ga., Atlanta Div., #6298.) Facts: VI DOCKET 37. June 14, 1961: Def.-School Bd. *approved* transfers of 10 Negroes to white high schools in Sept. 1961 to start integration under DC order. 40 Negroes appealed from rejection of their applications to transfer; pending.
E. E. More, Jr., Esq., Atlanta, Ga.
- 522.Ky9a. *White v. Singleton*. (Knox Co.) (ED Ky., London, #1086.) Facts: VI DOCKET 70. Mar. 29, 1961: Def.-School Bd. *resolved* to integrate Co. school system in its entirety beginning with 1961-62 term. DC *ordered* Def. to pay costs; case stricken from docket.
- 522.La1. *Bush v. Orleans Parish School Bd.* (New Orleans, La.) (ED La., #3630.) (CA 5, #19520.) (U.S.S.C., #812.) Facts: VI DOCKET 37-8, 70, 94. May 9, 1961: Pl. filed motion for desegregation of all New Orleans public schools in Sept. 1961. Bd. does not plan to desegregate all 2d grades in Sept. 1961 or to follow grade-a-yr. plan, but merely to desegregate 1st grades again, with extensive testing of all pupils seeking assignment to different schools. May 16, 1961: DC postponed h'g. indefinitely.
May 8, 1961: U.S.S.C. unanimously *affirmed*, per curiam, 3-judge ct. decision holding La. laws *unconstitutional* re control of New Orleans schools.
- 552.La1a. *U.S. v. Jackson, La. Supt. of Public Educ.* (ED La.) Facts: VI DOCKET 70, 94.
And see 523.La1.
- 522.La2. *Hall v. St. Helena Parish School Bd.* (CA 5, #18523.) Facts: VI DOCKET 38, 70, 94. Apr. 23, 1961: registered voters (only 4 Negroes). *voted* to close public schools rather than integrate them: 1,147 to 57. Apr. 27, 1961: 3-judge fedl. ct. *posed* questions to Negro Pls. challenging school closing statutes, Def.-Bd., and U.S. Atty. Genl.: "Is it implicit in today's concept of due process that a child has a right to a public school education, even though there is no provision in the state constitution requiring the state to maintain a public school system?" Ct. invited 50 state attys. genl. to comment, amicus, on questions: "Would abandonment by a state of its public school system deprive children of rights guaranteed by the due process and equal protection clauses of Fourteenth Amendment? Would answer be the same if abandonment were on local-option basis after vote of electorate authorizing school authorities to close public schools?" Pending.
- 522.La4. *E. Baton Rouge Parish School Bd. v. Davis*. (ED La., Baton Rouge Div., Civ. #1662.)*
- 522.La6. *Williams v. Prather*. (Northwestern State College.) (WD La., #5000 Civ.)*
- 522.Miss1. *Meredith v. Univ. of Mississippi*. (DC Miss., Biloxi.) Pl. Negro student filed suit for integration of Univ. of Miss., injunctive relief ordering acceptance of his application. Pending.
- 522.Mo1. *Russell v. Adams, Heffley*. (Maplewood-Richmond Hts.) (St. Louis Co. Cir.

Ct.) Facts: VI DOCKET 38. Apr. 29, 1961: Def.-Bd. *announced* rezoning which will permit Pl's. children to attend formerly all-white school near their home.

Henry L. Twigg, Esq., St. Louis.

- 522.NY4a. *Taylor v. Bd. of Educ.* (New Rochelle.) (SD NY.) Facts: VI DOCKET 38, 71, 95. May 31, 1961: DC *rejected* Def.-Bd's. desegregation plan, *ordered*: beginning 1961-62, any child in Lincoln School permitted to transfer to any other school in New Rochelle with vacancies, parents to pay transportation costs; no academic or emotional standards required to transfer; transferred children to remain in new school throughout educational career. Jy. 17, 1961: argument in CA 2 on stay of DC order, and appeal.

Amicus appearance by U.S. Dept. of Justice, Civil Rights Div., Burke Marshall, Esq.

Case note:

29 G. Wash. L. Rev. 786-93.

- 522.NC6. *Jeffers v. Whitley, N.C. Supt. of Public Instruction.* (Caswell Co.) (MD N.C., Greensboro Div., #1079.)*
- 522.NC10. *McCoy v. Greensboro Bd. of Educ.* (MD N.C., #C-25-9-59.) Facts: VI DOCKET 38-9. May 12, 1961: DC *ordered* Def. to admit children to "appropriate schools in accordance with their constitutional rights".

Case note:

47 Va. L. Rev. 514-18.

- N22.NC11. *Morrow v. Mecklenburg Bd. of Educ.* (Mecklenburg Co.) (MD N.C., #1415.) Facts: VI DOCKET 39. June 22, 1961: DC *dismissed* suit, taxed costs against Pl.
- 522.NC13. *Becton v. Greene Co. Bd. of Educ.* (ED N.C., #458.)*
- 522.NC14. *Wheeler v. Durham City Bd. of Educ.* (MD N.C., #C-54-D-60.)*
- 522.NC14a. *Spaulding v. Durham City Bd. of Educ.* (MD N.C., #C-116-D-60.)*
- 522.NC15. *Vickers v. Chapel Hill Bd. of Educ.* (MD N.C., 11-D-60.)*
- 522.NC16. *North Carolina v. Chance.* (Hartnett Co. Super. Co.)*
- 522.NC16b. *Chance v. Hartnett Co. Bd. of Educ.* (DC N.C., Raleigh Div., #1263.)*
- 522.NC17. *Wynn v. Trs., Charlotte Community College System.* (Mecklenburg Co. Super. Ct.) Taxpayers suit filed by 2 Negro Pls. for injunction to halt construction of new campus for Carver College, now meeting in high school bldgs. Allegations: Carver is all-Negro school; Charlotte College is all-white; construction of new campus will perpetuate segregated colleges. Pending.
- J. Charles Morris, Esq., Charlotte, N.C.
- 522.Pa1. *Phila. Chapter, N.A.A.C.P. v. Phila. Bd. of Educ.* (ED Pa.) June 7, 1961: suit filed alleging Def.-Bd. discriminates in assignment of teachers, establishment of school boundaries, transfer of pupils, all on basis of race. Pls. ask order requiring Defs. to submit desegregation plan. Pending.
- 522.SC1. *Briggs v. Elliott* (Clarendon Co.) (ED S.C., #2657.)*
- 522.SC2. *Brunson v. Bd. of Tr., Clarendon Co. School Dist. No. 1.* (Clarendon Co.)

(ED S.C., #7210.)*

- 522.SC3. *Pls. v. School Dist.* (Charleston.) (S.C. Sup. Ct.)*
- 522.SC4. *Hood v. Bd. of Trustees.* (Sumter Co.) (CA 4.) Facts: VI DOCKET 95. DC *denied* Pls'. permanent injunction. Appeal pending.
- 522.Tenn6. *Goss v. Bd. of Education.* (Knoxville.) (CA 6, #14425.)*
- 522.Tenn7. *Northcross v. Memphis Bd. of Educ.* (WD Tenn.)*
- 522.Tenn8. *Mapp v. Chattanooga Bd. of Educ.* (CA 6, #14444.) Facts: VI DOCKET 40, 71, 95. May 25, 1961: CA 6 *denied* Pls'. motion to advance hg. on appeal to June. Hg. date: Oct. 1961.
- 522.Tenn9. *Maxwell v. Davidson Co. Bd. of Educ.* (near Nashville.) (CA 6, #14607.)*
- 522.Tex9. *Pls. v. Bd. of Educ.* (Abilene.) (Texas Sup. Ct.)*
- 522.Tex10. *Flax v. Potts.* (Fort Worth.) (ND Tex., Fort Worth Div., #4205.) Facts: VI DOCKET 40. Hearing postponed.
- 522.Tex13. *Robinson v. Evans.* (Galveston.) (ED Tex., #2643.)*
- 522.Tex14. *Eastland v. Wheat.* (Northeast Houston.) (SD Tex., #13,330.)*
- 522.Va1. *Allen v. County School Bd.* (Prince Edward Co.) (ED Va., #1333.) Facts: VI DOCKET 40, 71. Apr. 26, 1961: U.S. Dept. of Justice filed motion to become party-Pl., for DC order: 1) prohibiting use of state funds for any public schools in Va. as long as Def.-Co. does not provide public schools in Co.; 2) prohibiting use of state or Co. funds in Co. private schools; 3) enjoining state and local officials from refusing to maintain system of free public schools in Co. June 14, 1961: DC *denied* motion for intervention by U.S.: it would "unduly delay and prejudice" rights of original parties. Pending.
- 522.Va3a. *Adkinson v. School Bd.* (Newport News.) (ED Va., Newport News Div., #642.)*
- 522.Va4. *Hill . v. School Bd.* (Norfolk.) (CA 4, #8053.) (282 F. 2d 473.)*
- 522.Va5. *Allen v. School Bd.* (Charlottesville.) (CA 4, #8238.)*
- 522.Va6. *Thompson v. School Bd.* (Arlington.) (ED Va., #1341.)*
- 522.Va14. *Warden v. School Bd.* (Richmond.) (ED Va., #2819.) Facts: VI DOCKET 41. Mar. 30, 1961: tried and submitted.
- 522.Va15a. *Jones v. School Bd.* (Alexandria.) (ED Va., #1770.)*
- 522.Va19a. *Goins v. Grayson Co. School Bd.* (Galax.) (WD Va., Abington Div., #776.)*

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- 522.Va20. *Blackwell v. School Bd.* (Fairfax Co.) (ED Va., #1967.)*
- 522.Va21. *Green and Iseley v. Bd. of Educ.* (Roanoke City and Co.) (WD Va., ##1093, 1095.) Facts: VI DOCKET 72. May 1961: cases tried; decision reversed.
- 522.Va23. *Thompson v. School Bd. of Arlington Co.* (ED Va.)*

523. Suits to prevent integration

- 523.Fla2. *Bd. of Public Instruction of Volusia Co. v. Tillman.* (Volusia Co. Cir. Ct., #30365. Chanc.)*
And see *Tillman*, 522.Fla6.
- 523.Ga2. *Georgia v. Griffith.* (Clarke Co. Ct.)*

And see *Holmes*, 522.Ga4.

524. Miscellaneous suits to end segregation

- 524.1. *Jordan v. Pres. Kennedy*. (DC DC.)*
- 524.2. *Shaffer v. White Citizens' Council Forum, Miss. Sovereignty Comm., Miss. Gov. Barnett, Treas. Gandy*. (SD Miss., #3068.)*

525. Miscellaneous

Case note:

Restriction on married students: *Cochrane v. Bd. of Educ.* (103 N.W. 2d 569, Mich. 1960), 9 Kan. L. Rev. 340-43.

530. Housing

Rules:

April 1961: Pa. Real Estate Comm. adopted new regulations: attempt by real estate operator to induce panic selling will be construed as "incompetency and bad faith"; agent found guilty may lose license or have it suspended.

531. Publicly-assisted — Urban Renewal (Title I)

532. Publicly-assisted — FHA and VA

- 532.18. *O'Meara v. Jones*. (Seattle.) (Wash. Sup. Ct., #35436.)*
- 532.23. *Pearson v. Frumentti*. (Calif.) (Contra Costa Co. Super. Ct., #R 7073.)*
- 532.24. *Hudson v. Branden Enterprises*. (Calif.) (Santa Clara Co. Super Ct.)*
- 532.25. *Holmes v. Macco Construction Co.* (San Diego.) (San Diego Super. Ct., #247453.)*
- 532.26. *Gregory v. Zehman*. (Cleveland.) (Com. Pleas Ct., #742019.)*

533. Private

- 533.6. *City of Creve Coeur v. Dielman*. (St. Louis Co. Cir. Ct., Div. 5, #215350.)*
And see *Progress*, 533.20, *Wiley*, 533.25.
- 533.18. *Burks v. Poppy Construction Co.* (Calif.) (San Francisco Super. Ct., #496068.) Facts: VI DOCKET 43. Apr. 26, 1961: Super. Ct. *sustained* demurrer on ground Calif. Civil Rights Act does not cover housing accommodations. Appeal pending.
Marshall W. Krause, Esq., for N. Calif. A.C.L.U., 503 Market St., San Francisco.
- 533.20. *Progress Development Co. v. Mitchell*. (Ill.) (ND Ill. E. Div., #5 C 2050.)
Facts: VI DOCKET 43, 73. June 5, 1961: trial.

Case note:

70 Yale L. Jour. 126-34.

- 533.20a. *Progress Development Co. v. Mitchell*. (Ill.) (Ill. Sup. Ct.) Facts same as 533.20. Suit filed in Lake Co. Ct.; *dismissed*. Issue: whether Def. park bd.

used power of eminent domain solely to prevent sale of homes by developer to Negroes in violation of equal protection of law. Apr. 1961: Ill. Sup. Ct. *reversed, remanded* for trial.

- 533.22. *Divine v. Koch*. (Calif.) (Sacramento Super. Ct.)*
- 533.23. *Hudson v. Nixon*. (Calif. Dist. Ct. of App.)*
- 533.25. *Wiley v. Richland Water Dist.* (Ore.) (DC Ore., #60207.)*
- 533.26. *Case v. Colorado Anti-Discrimination Comm.* (Colo.) (El Paso Co. Dist. Ct., Colo., #39682.) Facts: VI DOCKET 43. June 2, 1961: Ct. *held* Colo. Fair Housing Act §6(12) *unconstitutional*: vague and indefinite, unlawful delegation of legislative authority to administrative agency, facts supported admr. finding.
- 533.30. *Swann v. Burkett*. (Berkeley.) (Berkeley-Albany Muni. Ct., Calif., #12243.) Facts: VI DOCKET 43, 73. Apr. 28, 1961: Ct. *found* Def. discriminated against Pl. on basis of race; *held* Civ. Code §51 Public Accommodations Act "business establishments" does not cover rental residential property; *granted* Defs'. motion for non-suit. Appeal pending.
- 533.31. *McKibbon v. Michigan Corp. Sec. Comm.* (Ingham Co. Cir. Ct., #42667 Ch.)*
- 533.32. *Smith v. Curt Craft*. (Portland.) (Multnomah Co. Cir. Ct., #265957, #266890.)*
- 533.33. *Massachusetts Comm. Against Discrimination v. Colangelo*. (Waltham.) (Middlesex Super. Ct.)*
- 533.34. *New York City v. Fried*. (NYC.) (Manhattan Sup. Ct.)*
- 533.35. *Swanson, Inc. v. Connecticut Civil Rights Comm.* (New Haven Co. Super. Ct.)*
- 533.36. *Francois v. Cameron*. (San Francisco Super. Ct.)*
- 533.37. *Droeger v. DeVries, Select Realty and Rentals*. (San Francisco Super. Ct.)*
- 533.38. *Vargas v. Hampson*. (Orange Co., Calif. Super. Ct.)*

540. Transportation

541. Interstate

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- 541.2. *Baldwin v. Morgan*. (Birmingham.) (CA 5, #18280.)*
- 541.4. *Henry v. Greenville Airport Comm'n.* (Greenville S.C.) (DC S.C.)*
- 541.8. *Boynton v. Virginia*. (Richmond.) (U.S.S.C.) Facts: VI DOCKET 44, 73. Cite: 364 U.S. 454.

Case notes:

49 Calif. L. Rev. 15-55;
6 Vill. L. Rev. 416-19;
29 Geo. Wash. L. Rev. 596-600;
21 La. L. Rev. 657-63;
39 Tex. L. Rev. 501-05;

29 Fordham L. Rev. 598-604.

- 541.12a. *Henderson v. City of Petersburg*. (U.S.S.C.)*
- 541.13. *Adams v. City of New Orleans*. (ED La., #6436.)*
- 541.14a. *P. Shuttlesworth v. Southwestern Greyhound Lines*. (ND Ala., M Div.)*
- 541.16. *Rev. Shuttlesworth v. City of Birmingham*. (ND Ala.)*
- 541.17. *Georgia v. Defendants*. (Atlanta.) (Atlanta City Ct., Fulton Co. Crim Ct.)*
- 541.19. *Georgia v. Rev. Moss*. (Atlanta.) (Fulton Co. Crim. Ct.) Feb 15, 1961: 7 Negro ministers, 1 white minister arrested during sit-in at Terminal Station restaurant. Charge: trespass. Pending.
- 541.20. *Alabama v. Zweig*. (Birmingham.) (Birmingham Muni. Ct.) May 17, 1961: 16 Negro and white students and non-students arrested at bus station after bus driver refused to let them board bus for Montgomery. Charges: interfering with officer, refusal to obey officer. Bond: \$25. on each count. Pending.
- 541.21. *U.S. v. Birmingham Police Dept., KKK*. (MD Ala.) May 31, 1961: DC *dismissed* complaint brought by Justice Dept. for injunction against Def.-police for failure to protect "Freedom Riders", finding Def.-police not responsible for rioting at bus station.
- 541.22. *Mississippi v. "Freedom Riders"*. (Jackson.) (Jackson Muni. Ct.) Defs., Negro and white students and non-students, arrived in city interstate buses, trains, planes; promptly arrested on attempting to use terminal facilities labeled "whites only". Charges: breach of peace, failure to leave scene. All *convicted*. Some went to jail to serve out fines rather than pay; some paid fines; some posted bond pending appeal:
- May 24, 1961: 25 Negroes, 2 whites; \$200., 60 days suspended. 5 paid fines; 20 to jail. May 29: 15 Negroes, 2 whites; \$200., 60 days suspended; no appeals. May 29: 17 arrested; pending. May 30: 3 Negroes, 5 whites; \$200., 60 days suspended; all to jail. June 2: 3 Negroes, 3 whites; \$200., 60 days suspended; all to jail. June 5: 13 arrested; \$200., 60 days suspended; all to jail. June 6: 7 arrested; \$200., 4 mths. — 2 mths. suspended; appeal pending. June 8: 11 arrested, including NY Assemblyman Lane; \$200., 4 mths. — 2 mths. suspended; 2 Defs. posted \$500. appeal bond; all others to jail. June 9: 8 arrested, including 3 air passengers. June 12: 12 arrested; \$200., 4 mths. — 2 mths. suspended. June 14: 1 arrested. June 16: 5 arrested. June 20: 14 arrested; \$200., 4 mths. June 22: 9 arrested; \$200., 4 mths. June 24: 4 whites.
- June 14, 1961: Gov. Barnett directed that male Defs. transferred to prison farm because of crowding at city and co. jails not be put to work in fields like other prisoners because their "passive resistance" might result in sit-down of other prisoners.
- 541.23. *Bailey, Broadwater, Jacob v. Atty. Genl. Patterson, Mayor Thompson, et al.* (Jackson.) (SD Miss.) June 9, 1961: suit against state and city officials, buslines, railroads, municipal airport restaurant-operator for injunction against continuing to enforce Miss. racial segregation laws. Issue: application of due process and equal protection clauses of Fourteenth Amendment to common carriers. Pending.

Thurgood Marshall, Constance Baker Motley, Esqs., N.A.A.C.P. Legal Defense & Educ. Fund., Inc., 10 Columbus Circle, NYC; R. Jess Brown, Esq.

- 541.24. *Alabama ex rel. Atty. Genl. Gallion v. Congress of Racial Equality.* (Montgomery Co. Cir. Ct.) May 19, 1961: Ala. Atty. Genl. moved for injunction against Def.-organization and its supporters to prohibit their entry into and travel within Ala. as "freedom riders" "and other acts or conduct calculated to provoke breaches of the peace". May 19, 1961: Cir. Ct. *issued* injunction.
- 541.25. *Alabama v. Gach.* (Montgomery.) (Montgomery Muni. Ct.) May 20, 1961: Def. white couple *arrested* after trying to help 2 Negro "Freedom Riders" attacked by whites at bus station. Charge: disorderly conduct. *Convicted*; fined \$300.; forced to quit job on newspaper; moved from Montgomery.
- 541.26. *Montgomery Police Commr. Sullivan, Police Chief Ruppenthal v. Ku Klux Klan; Congress of Racial Equality, S. Christian Leadership Conf., Student Non-violent Movement, Revs. King, Abernathy, Shuttlesworth, Seay, Walker.* (MD Ala.) June 21, 1961: after 4-day hearing, DC *found*: Pl.-city law enforcement officials demonstrated "willful and deliberate failure" to protect Greyhound bus passengers May 20 (incl. "Freedom Riders"); Def.-KKK and others directly caused violent outburst; Def.-integrationists directly caused undue burden and restraint on interstate commerce in Ala. by sponsoring "non-bona-fide trips"; *issued* 20-day temporary restraining order enjoining Pls. and Def.-KKK from conspiring to interfere with travel of passengers in interstate commerce; enjoining Def.-integrationists from encouraging interstate travel to test segregation laws. June 12, 1961: DC *refused* to prolong restraining order; *postponed* hearing on injunction until July 17 *rejected* motion to dismiss case against integrationists.
Thurgood Marshall, Esq., for C.O.R.E.
Tmicus appearance by U.S. Dept. of Justice.
- 541.27. *Florida v. "Freedom Riders".* (Tallahassee.) (Tallahassee Muni. Ct.) June 16, 1961: 10 Defs. arrested while attempting to use white facilities at airport after flying into city; charge: failure to leave scene. Released on \$500. bond each pending trial.
- 541.28. *Florida v. "Freedom Riders".* (Ocala.) (Muni. Ct.) June
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16, 1961: 2 Negro, 1 white arrested while attempting to use white facilities. Charge: failure to leave scene.
- 541.29. *U.S. v. Hamlin.* (MD Ga.) Sept. 7, 1960: Def. driver on Trailways interstate bus forced Negro passenger to move to rear while traveling thru Ga. Apr. 25, 1961: Def. driver and Def.-Bus Co. found *guilty*; fined.
- 541.30. *Bangsai v. Harrah's Club, Greyhound Bus Lines.* (Alameda Co. Super. Ct.) June 20, 1961: Pl.-Puerto Ricans filed damage action alleging Def.-Co. told them they couldn't board bus in Calif. for Def's. Nevada club, should get money refunded. Pending.

Marshall W. Krause, Esq., for A.C.L.U. of N. Calif., 503 Market St., San Francisco.

- 541.31. *Anderson v. Harrah's Club, Greyhound.* (Alameda Co. Super. Ct.) Facts and issues similar to 541.30. Pending.

542. Intrastate

- 542.4. *Evers v. Dwyer, Comm'r. of Public Service, Memphis.* (WD Tenn., Civ. #2903.)*
- 542.10. *Simpkins v. Mayor Gardner.* (Shreveport.) (WD La., Shreveport Div., #6651.)*
- 542.13. *Brown v. Gray.* (Lake Charles, La.) (WD La., #7360-LC.)*
- 542.14. *Jemison v. Christian.* (Baton Rouge, La.) (ED La., #1841.)*
- 542.15. *Boman v. Birmingham Transit Co.* (ND Ala., #9255.)*
- 542.16. *City of Montgomery v. Taylor.* (Montgomery City Ct.)*
- 542.17. *City of Petersburg v. Defendants.* (Petersburg Police Ct.)*

550. Miscellaneous Facilities

551. Recreational

- 551.Ala1. *Sawyer v. City of Mobile.* (SD Ala., #1999.) Facts: VI DOCKET 97.
Vernon Z. Crawford, Esq., 570 Davis Ave., Clarence E. Moses, Esq., 101 N. Cedar, both of Mobile.
- 551.Cal5. *Santa Clara Voiture 365 v. Voiture Nationale La Societe Des Quarante.* (Santa Clara Super. Ct., #110512.)*
- 551.Cal7. *Moore v. Thomasson, Police Chief.* (Salinas Super.Ct.)*
- 551.Fla5. *Bohler v. City of Tampa.* (SD Fla., #3809.)*
- 551.Ga3. *Williams v. Maclean.* (Savannah.) (SD Ga., #1160.)*
- 551.Ga4. *Georgia v. Defs.* (Savannah.) (Muni. Crim. Ct.) Facts: VI DOCKET 97.*
B. Clarence Mayfield and E. H. Gadsden, Esqs., 458½ W. Broad St., Savannah.
- 551.Miss2. *U.S. v. Harrison Co. Bd. of Supervisors.* (SD Miss., Biloxi, #2262.)*
- Comment:**
A critique of the Ohio Public Accommodations Laws, 22 Ohio St. L. J. 201-12.
- 551.NY8. *New York v. Komisar.* (NYC Adolescent Ct.) June 5, 1961: white students sat-in A.B.C.-Paramount Theater offices in NYC protesting segregation in Paramount Theater, Austin, Tex.; Co. guards barred entry to students, or sending packages of food. June 6, 1961: 15 *arrested* for obstructing sidewalk after ejection from bldg. after 37 hours. June 14, 1961: trial.
- 551.SC1a. *Climmings v. City of Charleston.* (CA 4.) (288 F. 2d 817.)*
- 551.Tenn3a. *Turner v. Randolph.* (Memphis.) (WD Tenn., #3525.)*
- 551.Tenn5. *Flowers v. Loeb.* (Memphis.) (WD Tenn., #3958.)*
- 551.Tenn6. *Watson v. Memphis.* (WD Tenn.)*

- 551.Tex1. *Ware v. Statler Hilton Hotel.* (ND Tex., #8214.) Facts: VI DOCKET 45. Mar. 20, 1961: cause *dismissed* by stipulation of parties.
- 551.Tex2. *Willie v. Harris Co.* (SD Tex., Houston Div., #11,-926.)*
- 551.Va6. *Virginia v. James.* (Hampton.) (Hampton Cir. Ct.)*

552. Dining

Law review articles:

- Earl L. Carl, Reflections on the "sit-in", 46 Corn. L. Q. 444-57.
- Frank E. Schwelb, The sit-in demonstration: criminal trespass or constitutional right? 36 N.Y.U.L. Rev. 779-809.

- 552.Ala1. *City of Montgomery v. Davidson.* (Montgomery Recorder's Ct.)*
and
Cole v. City of Montgomery. (Ala. App. Ct., 3d Div., ##57-64.)*
- 552.Ala1a. *Dixon v. Alabama State Bd. of Educ.* (CA 5, #18641.)*
- 552.Ala4. *Rev. E. King v. City of Montgomery.* (Ala. App. Ct., 3d Div.)*
- 552.Ala4a. *City of Montgomery v. King and Emery.* (Ala. App. Ct., 3d Div.)*
- 552.Ala5. *City of Birmingham v. Rev. Shuttlesworth.* (Jefferson Co. Cir. Ct.)*
- 552.Ala10. *City of Birmingham v. Burks.* (Birmingham Muni. Ct.)*
- 552.Ark1. *Briggs, Smith, Lupper v. Arkansas.* (Ark. Sup. Ct., ##4992, 4994, 4997.)*
- 552.Dela1. *Burton v. Wilmington Parking Auth.* (U.S.S.C., #164.) Facts: VI DOCKET 46. Apr. 17, 1961. U.S.S.C. *reversed* (6-3) Clark, J.: The facts indicate that degree of state participation and involvement in discriminatory action which it was the design of the Fourteenth Amendment to condemn. Stewart, J. *concurred* separately. Frankfurter, Harlan, Whittaker, JJ., *diss.*
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- 552.Fla2. *Steele v. Tallahassee.*
and
- 552.Fla3. *Armstrong v. Tallahassee.*
- 552.Fla6. *Webb's City v. Defs.* (Pinellas Cir. Ct.) Dec. 1960: Defs. picketed Pl's. store asking desegregation of lunch counters. Counters desegregated. Pl.-variety store sought injunction against picketing by Negro demonstrators. May 1961: Ct. *granted* permanent injunction since Defs. also picketing for employment opportunities, a continuing problem.
- 552.Fla4. *Florida v. Robinson.* (Fla. Sup. Ct.) Facts: VI DOCKET 46-7, 75. Petition for cert. pending.
- 552.Ga1. *City of Atlanta v. Defendants.* (Fulton Co. Ct.)*
- 552.Ga4. *Georgia v. Defendants.* (Savannah Muni. Ct.) Facts: VI DOCKET 47.*
B. Clarence Mayfield and E. H. Gadsden, Esqs., 458½ W. Broad St., Savannah.
- 552.Ga6. *Andrews v. Lindsay.* (Atlanta.) (DC Ga., #7287.)*

- 552.Ga10. *Georgia v. King*. (Atlanta City Ct.)*
- 552.Ga11. *Georgia v. Defendants*. (Atlanta.) (City Ct.)*
- 552.Ga12. *Georgia v. 89 Defendants*. (Atlanta.) (Fulton Co. Crim. Ct.) Facts: VI DOCKET 75. Mar. 2, 1961: anti-trespass charges filed against 26 Defs. Apr. 24, 1961: Atlanta Chamber of Commerce and N.A.A.C.P. asked Ct. to postpone trials of Defs. because of agreement by leading Atlanta stores to desegregate lunch counters fall 1961. Motion *granted*.
- 552.Ga13. *Georgia v. 8 Drs*. (Atlanta.) (Fulton Co. Ct.)*
- 552.Ky1. *Kentucky v. Defs*. (Louisville.) (Muni. Ct.)*
- 552.Ky2. *Kentucky v. Defs*. (Louisville.) (Muni. Ct.) Apr. 24, 1961: 162 Negroes arrested during protest against segregation in eating places. Charges: breach of peace. Pending.
- 552.La1. *Garner, Brisco, Hoston v. Louisiana*. (Baton Rouge.) (U.S.S.C., ##617, 618, 619.) (Cert. *granted* 365 U.S. 840.)*
- 552.La2. *Louisiana v. Goldfinch et al*. (New Orleans.) (La. Sup. Ct., #168-520.) Facts: VI DOCKET 47, 75. Appeal for violation of La. Rev. Stats. 14, §103.1, 59; 63.3. Pending.
John P. Nelson, Jr., Esq., Gravier Bldg., New Orleans.
- 552.La3. *Louisiana v. Goldfinch*. (New Orleans.) (Orleans Parish Ct.)*
- 552.Mo2. *Missouri v. Defendants*. (Columbia.) (Police Ct.)*
- 552.NC3. *North Carolina v. Avent*. (Durham.) (U.S.S.C.)
and
- 552.NC4. *North Carolina v. Williams*. (U.S.S.C.) Facts: VI DOCKET 48, 75, 98. Petition for cert. pending.
- 552.NC8. *North Carolina v. Defendants*. (Greensboro, N.C.)*
- 552.NC10. *North Carolina v. Defs*. (Rutherford.) (Muni. Ct.)*
- 552.SC1. *City of Sumter v. Defendants*. (S.C. Sup. Ct.) Facts: VI DOCKET 48. May 8, 1961: appeal heard and submitted.
- 552.SC1a. *City of Sumter v. Defendants*. (Sumter.)*
- 552.SC1b. *South Carolina v. Defs*. (Sumter.) (Muni. Ct.)*
- 552.SC2b. *South Carolina v. 9 Defendants*. (Orangeburg.)*
- 552.SC3a. *City of Columbia v. Bouie*. (Richland Co. Genl. Sess. Ct.)*
- 552.SC1b. *South Carolina v. Defs*. (Sumter.) (Muni. Ct.)*
- 552.SC4b. *South Carolina v. Rev. Ivory, Dietrich, Hackley*. (Rock Hill.) (Muni. Ct.)*
- 552.SC4c. *South Carolina v. W. Massey*. (Rock Hill.) (Muni. Ct.)*
- 552.SC7. *City of Spartanburg v. Defendants*. (Spartanburg Recorder's Ct.)*
- 552.SC9. *Byrd v. Gary*. (Darlington.) (S.C. Sup. Ct.)*
- 552.SC10. *City of Charleston v. Mitchell*. (Charleston Co. Gen. Sess. Ct.)*
- 552.Tenn4a. *City of Nashville v. Carnaham*. (City Ct., #889.)*
- 552.Tenn6. *Tennessee v. Parsons*. (Memphis.) (Shelby Co. Ct.)*
- 552.Va5. *Randolph v. Virginia*. (Richmond.) (U.S.S.C.) Facts: VI DOCKET 76. Va. Sup. Ct. of App. *affirmed*. Appeal pending in U.S.S.C.

- 552.a5a. *Tinsley v. Virginia*. (Richmond.) (U.S.S.C.) Facts: VI DOCKET 76. Va. Sup. Ct. of App. *affirmed*. Appeal pending in U.S.S.C.
- 552.Va8. *Virginia v. Rev. Williams*. (Petersburg.) (Hustings Ct.)*
- 552.Va9. *Virginia v. Defendants*. (Hopewell.) (Juv. Ct., Cir. Ct.)*
- 552.Va10. *Virginia v. Rev. Tucker*. (Lynchburg.) (Va Sup. Ct. of App.)*
- 552.Va10a. *Virginia v. Rev. Wood*. (Lynchburg.) (Muni. Ct.)*
- 552.Va11. *Owen and Brumback v. Virginia*. (U.S.S.C.)*
- 552.Va12. *Williams v. Restaurant*. (Alexandria, Va.) (CA DC.) Pl. brought \$5,000. damage action against private restaurant for refusing to serve him. Charge: Def. acted on basis of law passed by Va. Public Assembly after Civil War requiring segregation or exclusion of Negro patrons. Apr. 20, 1961: CA DC *declined* to rule because no showing law applied to restaurants, and otherwise no state action shown.

553. Others

- 553.Minn1. *Erickson v. Sunset Memorial Park Assn.* (Minn. Sup. Ct., #38091.) (108 NW 2d 434.) Facts: IV DOCKET 36, V DOCKET 42. Pl.-full-blooded Am. Indian and Caucasian-husband purchased burial lot from Def. for \$360. containing representation that purchasers are Caucasian. Apr. 18, 1958: on learning Pl's. ancestry, Def. offered \$198. for her contract since she could not be interred there. Trial Ct. held *for Pls.* Mar. 24, 1961: Minn. Sup. Ct. *affirmed; held*

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covenant void under Minn. St. §507.18, and public policy of state, L. 1957, c. 953.

Sheldon D. Karlins, Richard F. Sachs, Esq., 512 Builders Exchange, Minneapolis.

Amicus appearance by A.C.L.U., Midland Bk. Bldg., Minneapolis.

- 553.Miss1. *Mississippi v. Defs.* (Jackson.) (Muni. Ct.) Facts: VI DOCKET 99. Mar. 29, 1961: police swinging clubs and 2 police dogs chased 100 Negroes from cthouse during Mar. 28 trial; several Negroes struck by clubs, one bitten.
- 553.NY1. *Patterson v. Max Beauty Salon*. (Mineola, L.I., Nassau Co. Dist. Ct.)*
- 553.SC1. *South Carolina v. Rev. Newman*. (Columbia.)*
- 553.Tenn1. *Tennessee v. Freeman and Exum*. (Memphis.) (Shelby Co. Crim. Ct.)*
- 553.Tenn2. *Tennessee v. Ford*. (Memphis.) (Shelby Co. Crim. Ct., #86492.)*

560. Family Matters

561. Marriage and divorce

- 561.1. *Oyama and Jordan v. Pima Co. Clerk*. (Ariz. Sup. Ct.)*

562. Adoption

563. Custody

- 563.8. *Begley v. Begley*. (N.Y. Sup. Ct., App. Div., Brooklyn.) Facts: VI DOCKET 76. June 6, 1961: App. Div. *reversed, awarded* custody to Pl.-mother because

of infancy of children; *avoided* constitutional question re effect of prenuptial agreement — it can be raised when children old enough to receive religious instruction.

564. Miscellaneous

570. Employment

571. Racial discrimination

Law review article:

Harry E. Grooves, States as "fair" employers, 7 Howard L. Jour. 1-16.

Speech:

Martha Douglas, A positive program for merit employment. 2nd Annual Kan. Conf. on Civil Rights, Kan. Anti-Discrim. Comm., Topeka.

- 571.15. *Conley v. Gibson, Bro. Ry. Clerks.* (SD Tex., Houston Div., #8443.)*
- 571.21. *Cooks v. Bro. Ry. Carmen; Texas and New Orleans RR.* (SD Tex., Houston, #12329.)*
- 571.25. *Colorado Anti-Discrimination Comm. v. Continental Air Lines.* (Colo. Sup. Ct.) Facts: VI DOCKET 49, 77, 99.*
Amicus briefs filed by U.S. Dept. of Justice; Anti-Defamation League.
- 571.30. *Am. Jewish Congress v. Carter, NY S.C.A.D. and Aramco.* (N.Y. S.C.A.D.)*
- 571.35. *Local 2 Liquor Salesmen's Union v. N.A.A.C.P.* (NYC Sup. Ct.)*
- 571.35a. *Levine v. Young, Economic Action Comm.* (NYC Sup. Ct.)*
- 571.37. *City of Detroit v. Michigan Fair Employment Practices Comm.* (Wayne Co. Cir. Ct.)*
- 571.38. *Dr. Hawkins v. N.C. Dental Society.* (WD N.C., #1505.)*
- 571.41. *Credit Bureau of Albuquerque v. New Mexico Fair Employment Practices Comm.* (Dist. Ct., N.M.)*
- 571.43. *Butts v. NY Central Ry. System.* (N.Y. S.C.A.D.)*
- 571.46. *Atchison, Topeka and Santa Fe Ry. Co. v. Calif F.E.P.C.*
(L.A. Super. Ct.)*
- 571.47. *Dr. Morris, Jr. v. Chicago Hospital Council.* (ND Ill., E. Div., #61 C 232.)
Facts: VI DOCKET 100.*
John P. Morris, Walker Smith, George N. Leighton, Charles P. Rippey, Esqs.,
72 W. Adams, Chicago.
- 571.48. *Re Intl. Assn. of Machinists, Lodge 2016.* (Marietta, Ga.) Kennedy's Comm. on Equal Employment Opportunity.) Apr. 1961: NAACP filed complaint with Pres's. Comm. re award of Gov't. contract to Lockheed Aircraft in view of all-Negro lodge 2016 in Resp.-Union and other charges of discrimination against Negro workers. Apr. 23, 1961: Lodge again voted for merger with 3 all-white locals. May 9, 1961: merger completed. May 25, 1961: Lockheed

signed anti-bias agreement with Pres'. Comm.

571.49. *Pryor v. Kansas State Employment Service.* (DC Kan., Wichita.) Negro-Pl. sued for injunction to forbid Def. to discriminate, alleging Pl. passed aptitude test, was told by Def. he was too intelligent for job, wouldn't be happy, wouldn't get job because no Negroes employed there. Issue: application of Wagner-Peyser Act of 1933, Kan. Anti-Discrim. Act. Pending.

Chester I. Lewis, Esq., Wichita, Kan.

571.50. *Re South Carolina Employment Service.* (Darlington, S.C.) (Pres. Kennedy's Comm. on Equal Employment Opportunity.) Apr. 7, 1961: NAACP filed complaint charging Resp. had accepted and filled job orders on basis of racial segregation at Pyramid Elec. Co., mfrer. for Defense Dept. contractors. Pending.

572. Sex discrimination

572.1. *Beary v. Queens Co. Bar Assn.* (N.Y. Sup. Ct., Queens Co., #5394-1960.)*

580. Civil Actions under Civil Rights Law Not Otherwise Covered

And see 420.12, 420.14.

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580.3. *Pettus v. Schlet.* (Ed Mich.)*

590. Criminal Prosecution under Civil Rights Law

600. Suits Involving Constitutional Rights of American Indians

601. Civil Actions between Individual Indians and Indian Tribes

602. Civil Actions Against Indians on Reservations

603. Criminal Actions Against Indians on Reservations

604. Actions involving Real Property

605. Condemnation of Land of American Indian Reservations

Booklet:

Phila. Yrly. Meeting of Friends, The Kinzua Dam controversy: a practical solution — without shame, 160 N. 15th St., Philadelphia.