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# Constitutional Law--Uniform Law to Secure Attendance of Witnesses Upheld

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contractor who does dangerous and highly specialized work is not doing work traditionally done by seamen. It is not clear from the decision whether Halecki was denied the use of the doctrine because of the specialized work or the fact that it was dangerous. With the complexity of modern ships it is difficult to visualize many jobs that will not require specialized skills or be dangerous. The Court should have overruled the *Sieracki* and *Hawn* cases or should have followed the trend these cases created. In either event it is unfortunate that they left the lower courts no workable guide for determining what constitutes "seamen's work." Once again the hazards of the sea have their equal in the hazards of judicial review.

WILLIAM TELZROW

#### CONSTITUTIONAL LAW — UNIFORM LAW TO SECURE ATTENDANCE OF WITNESSES UPHELD

Respondent O'Neill, a citizen of Illinois, had traveled to Florida to attend a convention. A New York judge, acting through a Florida circuit court, summoned him to testify in a grand jury proceeding in New York. The Florida court refused<sup>1</sup> to grant this request made pursuant to a Florida statute<sup>2</sup> entitled the "Uniform Law to Secure the Attendance of Witnesses from Within or Without a State in Criminal Proceedings."<sup>3</sup> The court held that the statute was unconstitutional on the ground that it contained no provision for bail and, hence, violated due process of law.<sup>4</sup> In most jurisdictions a witness may enter into a recognizance with the court to appear and testify and the judge may require such witness to post bail as a guarantee of his appearance.<sup>5</sup> It is only after the witness fails to comply with the recognizance that he may be jailed.<sup>6</sup> The Uniform Act did not provide for such bail. The Supreme Court of Florida affirmed<sup>7</sup> the decision on other grounds, viz., that the statute violated the

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1. *In re O'Neill*, 9 Fla. Supp. 153 (Cir. Ct. 1956).

2. FLA. STAT. § 942.02 (1957). This uniform act is also in effect in forty-three other states and Puerto Rico.

3. 9 UNIFORM LAWS ANN. 86 (1957).

4. U.S. CONST. amend. XIV, § 1; ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . "

5. OHIO REV. CODE § 2937.16.

6. OHIO REV. CODE § 2937.18.

7. Application of New York, 100 So.2d 149 (Fla. 1958).

privileges and immunities clause of the fourteenth amendment<sup>8</sup> by abridging the right of citizens to move freely among the states.<sup>9</sup>

In overruling the Florida court the United States Supreme Court declared<sup>10</sup> that the "fugitive from justice" clause<sup>11</sup> of the federal constitution did not deny the states the privilege to formulate, through cooperation, an agreement to deliver witnesses from one state to another in criminal cases; that the obligation to testify did not interfere with the witness's right of ingress and egress, for in this day and age a person can travel rapidly and conveniently from state to state. Furthermore, O'Neill was required to stay in New York for only one day. The Court added that the statute applied to residents as well as non-residents and therefore was not discriminatory.

The Court based its decision largely on policy, stating that this type of agreement facilitated comity among the states, and to hold that this and other similar arrangements are beyond the power of the states because there is no specific provision in the Constitution would hobble the effective functioning of our federalism. The United States Supreme Court found that O'Neill was afforded procedural due process as he was given a hearing to determine if his testimony was necessary, if the trip would be an undue hardship, and whether he would be accorded immunity from judicial process in the states through which he traveled.

The matter of bail, which was the basis of the Florida lower court's decision, was not reviewed, as it was not discussed by the Florida Supreme Court.

The dissent declared that O'Neill's right of ingress and egress<sup>12</sup> was violated, and to say that he would be gone only temporarily was begging the question. They said a state could compel a citizen to travel from one state to another only if he were a fugitive from justice,<sup>13</sup> and O'Neill was not. The minority accused the majority of amending Article Four, Section Two, of the Constitution to include "witnesses." The dissent also said that Congress had completely pre-empted the field of interstate de-

8. U.S. CONST. amend. XIV, § 1; "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States. . . ."

9. *Crandall v. Nevada*, 73 U.S. (Wall) 35 (1867). The Court stated that the right of a person to travel between the states without restraint is a right he possesses as a national citizen.

10. *New York v. O'Neill*, 359 U.S. 1 (1959).

11. U.S. CONST. art. IV, § 2; "A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime."

12. *New York v. O'Neill*, 359 U.S. 1, 12 (1959) (dissent).

13. U.S. CONST. art. IV, § 2.

livery of witnesses by making it a crime for a person to flee interstate to avoid giving testimony in certain criminal cases.<sup>14</sup>

The uniform act is efficacious because it removes restrictions imposed on the states due to their limited jurisdiction. The only other means that a state has to procure the testimony of a witness outside its territory is through the use of depositions or, if the case comes within its provisions, use of the Fugitive Felon Act.<sup>15</sup> Compelling the states to use depositions would be impractical because of the defendant's right of confrontation.<sup>16</sup> The federal act covers only the situation where the witness flees interstate to avoid giving testimony and is not applicable when the witness remains in one state or has no intent to avoid testifying.<sup>17</sup> These limitations make necessary the uniform statutes.

Some difficulties may arise as a consequence of the uniform act. Officers know how to handle a fugitive in escorting him from state to state, but a witness presents a different problem. Can he be escorted in handcuffs if he refuses to accompany the officer? If he attempts to escape may he be subdued as a common criminal? The best answer that can be given is to attempt to draw an analogy from statutes which compel a local witness to testify in criminal proceedings. Most of these statutes permit the court to jail the witness if he refuses to testify or enter into a recognizance with the court.<sup>18</sup> Thus, if a witness may be jailed for refusing to testify, it would seem that he could be compelled against his will to travel from one state to another without violating the fourteenth amendment.

The only valid objection to the statute itself is that it does not provide for bail. The Court's refusal to entertain this issue could be interpreted as a desire to uphold the constitutionality of the law in general with a hint that something should be done to provide an opportunity for bail. If some provision is not made for bail, the Court may rule differently the next time the statute comes before them and the issue of bail is raised. Because of this factor a few states have amended the uniform statute to provide for bail.<sup>19</sup> The bail amendment should be followed in other

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14. 18 U.S.C. § 1073 (1952).

15. *Ibid.*

16. OHIO REV. CODE § 2945.53 provides that the accused shall have the opportunity to be present in person at the taking of a deposition to be used by or against him.

17. In *Barrow v. Owen*, 89 F.2d 476 (5th Cir. 1937), the court declared that mere absence from the state of prosecution was not sufficient proof of the crime under the fugitive felon act.

18. OHIO REV. CODE § 2937.18.

19. See ARIZ. REV. STAT. ANN. § 13-1863(B) (1956); CAL. PEN. CODE § 1334.3 (1956); LA. REV. STAT. ANN. § 15:152.1 (1951); MD. ANN. CODE art. 27, §§ 618, 619 (1957); MISS. CODE ANN. § 1895 (Recompilation 1956); MONT.

jurisdictions rather than take the risk of nullifying a useful statute. Whether the lack of opportunity to post bail presents an undue hardship and denies the witness procedural due process can only be determined when the question is decided by the Supreme Court.

In upholding the constitutionality of the uniform act, the Court has permitted the states to employ an effective and expedient device for securing the testimony of witnesses who may be scattered throughout the nation.

WILLIAM SLIVKA

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REV. CODE ANN. § 94-9003(2) (Supp. 1957); N.Y. CODE CRIM. PROC. § 618-a(3) (1958); PA. STAT. ANN. tit. 19, § 622.2 (Purdon Supp. 1957); R.I. GEN. LAWS ANN. tit. 12, ch. 16, § 8 (1956).