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Criminal Law—Criminal Contempt

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of his official position shall be a trustee of the union's welfare fund, the two positions may not be separated. Consequently a violation of one of his duties in the area of trusteeship is at the same time and by the same act a violation of his duty in the overall area as labor representative. Therefore, the acceptance of a bribe in the capacity of *trustee* alleges a violation of section 380 (2) of the Penal Law which makes it a misdemeanor to accept a bribe as a *labor representative*. (Emphasis supplied).

A further question was raised by the subsequent amendment of that section which enlarged its application to include "Labor representative or any duly appointed trustee . . . of an employee's welfare fund." The Court held that this later amendment did not indicate that the legislature never intended the original section to apply to a labor representative who simultaneously held a position as trustee. But rather it was a legislative attempt to cover those trustees who held their positions independent of being a labor representative.

It is apparent that the Court, in construing the term "labor representative" to include those acts performed as a trustee, has broadly construed this statute in derogation of the rule of construction that a criminal statute should be strictly construed in favor of the defendant.⁵⁸ The only justification for this decision seems to be the slim technicality that the union constitution combined the two positions in the same person. Therefore, in light of the subsequent amendment, the writer feels that this case should be limited to its facts.

Criminal Contempt

The granting of statutory immunity to a witness by a grand jury does not preclude prosecution for contempt for failure to answer questions properly within the scope of its investigation.⁵⁹ Nor is prosecution for contempt barred, after immunity is granted, because the witness refused to answer questions on the grounds his answers might tend to incriminate him.⁶⁰

In *People v. Saperston*⁶¹ the defendant was convicted of contempt for refusing to reveal to a grand jury, while under statutory immunity, the identity of persons in wire tapped conversations he had with said persons. The defendant contended that although the statutory immunity protected him from prosecution by the state, it did not prevent federal prosecution under the Federal Communication Act,⁶²

58. *People v. Benc*, 288 N.Y. 318, 43 N.E.2d 61 (1942).

59. N.Y. PENAL LAW §§600, 2447.

60. *People v. Breslin*, 306 N.Y. 294, 118 N.E.2d 108 (1954).

61. 2 N.Y.2d 210, 159 N.Y.S.2d 160 (1957).

62. 48 STAT. 1103, 47 U.S.C.A. §605 (1934).

and therefore he could constitutionally refuse to answer such questions on the grounds that the answers would incriminate him.⁶³

The Federal Communication Act prohibits interception of any communications and the publication or divulgence of the same, and prohibits the use in federal courts of any evidence so obtained,⁶⁴ thus limiting its effect to federal jurisdiction. It does not supersede the state's exercise of its police power in tapping telephone lines, since there is not clear manifestation to the contrary.⁶⁵ Under the New York Code of Criminal Procedure wire taps made under a court order are admissible in court as evidence,⁶⁶ even though obtained in violation of the Federal Communications Act.⁶⁷ Therefore it is clear that the federal act does not prevent the divulging, in state courts, of intercepted telephone conversations.⁶⁸ And this rule is not affected by the circumstance that requiring a witness to testify as to wire taps might cause him to violate the Federal Communications Act.⁶⁹ In any event, as the Court rightly pointed out, under the facts of this case, the defendant's testimony would not fall within the federal act. The act prohibits third persons from intercepting and publishing communications, and does not prohibit divulgence by the participants of a telephone conversation. Defendant's other objections as to the amount of his grand jury testimony admitted as evidence, and the manner in which he was indicted, were dispensed with on the grounds that the procedures used were proper in a contempt procedure.⁷⁰

Though the merits of wire tapping, even for investigation purposes, may be questionable, and the objections to its admissibility as evidence numerous, the Court reached a proper result. It is clear that the federal rule does not control the use of wire taps in state proceedings, and that it does not constitute a defense in the state courts.

Criminal Negligence In Operation Of Motor Vehicles

In *People v. Decina*⁷¹ the defendant, suffering from Jacksonian epilepsy, was convicted of criminal negligence under section 1053-a of the Penal Law as a result of losing control over his vehicle which struck five minor pedestrians, four of whom died from injuries sustained.

63. N.Y. CONST. art. II, §6 (1894).

64. Note 62, *supra*.

65. *Black v. Impellineni*, 281 App. Div. 671, 117 N.Y.S.2d 686 (1st Dep't 1952).

66. N.Y. CODE CRIM. PROC. §813-a.

67. *Application of Order Permitting Interception of Telephone Conversation of Anonymous*, 207 Misc. 69, 136 N.Y.S.2d 612 (Sup. Ct. 1955).

68. *Harlem Check Cashing Corp. v. Bell*, 296 N.Y. 15, 68 N.E.2d 854 (1946); *Schwartz v. State of Texas*, 344 U.S. 199 (1952).

69. *People v. Stemmer*, 298 N.Y. 728, 83 N.E.2d 141 (1948).

70. N.Y. PENAL LAW §600.

71. 2 N.Y.2d 133, 157 N.Y.S.2d 558 (1956).