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Constitutional Law—Uniform Act to Secure Compulsory Attendance of Out-of-State Witnesses

In a recent case, a judge of the Court of General Sessions of New York had a certificate filed in a Florida circuit court recommending that a certain person be taken into custody and delivered to an officer of the State of New York. This was requested in order to compel his attendance as a witness before a New York grand jury investigating a possible conspiracy to steal labor union funds. The certificate was filed in accordance with a Florida law which provided two alternative methods for compelling a witness within the state to attend a criminal proceeding in another state. Under this law the witness could be placed in the custody of officers from another state, or the Florida court could issue a subpoena ordering him to appear before the out-of-state proceedings. In the principal case the person sought as a witness was a resident of Illinois, a state not having such a statute, and was at the time a visitor in Florida. The Florida court held that the statute was repugnant to the Federal Constitution and refused to take this person into custody. On appeal the state supreme court affirmed.

The Florida court based its decision primarily on two grounds. The first reason advanced was that the statute violated the right of free ingress and egress among the states. The court affirmed that this was a privilege of national citizenship and thereby protected under the privileges and immunities clause of the fourteenth amendment against infringement by state action. Secondly, the court stated that article IV, section 2 of the Constitution guarantees that citizens of each state are vouchsafed the privileges and immunities appurtenant to citizens of all other states. It seems the court was inferring that, when a person has the right to be immune from rendition in the state in which he resides, another state could not deprive him of this immunity even though he voluntarily left the former state and came within the jurisdiction of another state. Although the question was not presented by the facts, the court went on to say that the alternative provision which provided only for a subpoena ordering the witness to appear at the out-of-state proceeding was also unconstitutional. The court’s basis for this ruling was “that the courts of this state are without power to issue process effective beyond the borders of this state.”

1 Application of the People of the State of New York, 100 So. 2d 149 (Fla. 1958).
4 Application of the People of the State of New York, 100 So. 2d 149, 155 (Fla. 1958).
The Florida law in question was modeled after the Uniform Act which was adopted by the Interstate Crime Commission in 1936. This act was designed to prevent state borders from becoming effective barriers for those who would avoid their public duty as material witnesses simply because of personal inconvenience or a desire to circumvent the administration of criminal justice.

The origin of this type legislation in the United States may be traced back as far as 1792. In that year New Hampshire passed an act under which a person within the state, certified as a material witness in a criminal proceeding, could be summoned to attend trial in any court of another state. Subsequently, similar laws were enacted by all the New England states, and in 1902 New York passed a comparable statute. In general these statutes were of an awkward nature and applied only to border states. In 1923 the National Conference of Commissioners on Uniform State Laws took cognizance of the great need for effective state legislation in this area, and in 1931 the Conference adopted a draft of “An Act to Secure the Compulsory Attendance of Non-Resident Witnesses in Criminal Cases.”

The early state statutes and the draft adopted by the Conference on Uniform State Laws provided for compulsory attendance only when a criminal prosecution was already pending. There was no provision for grand jury investigations. Neither was there any provision for the arrest and delivery of unwilling witnesses to secure their attendance. Both the foregoing provisions were incorporated into the Uniform Act passed by the Interstate Crime Commission. Today, the Uniform Act, which is reciprocal, has been made law in forty-three states. Surprisingly, there have been very few cases dealing with the constitution-

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5 Uniform Act to Secure the Attendance of Witnesses From Within or Without a State in Criminal Proceedings (hereinafter called the “Uniform Act”).
6 N.H. Laws 1792, at 251-252.
7 Me. Laws 1855, c. 184; Mass. Laws 1873, c. 319; Vt. Acts 1878, No. 43; Conn. Acts 1903, c. 87; R.I. Laws 1907, c. 1462.
8 Laws of New York 1902, c. 94. A draft later approved by the National Conference of Commissioners on Uniform State Laws was basically a restatement of this New York law.
11 Interstate Crime Commission, Handbook on Interstate Crime Control at 31-33 (1949). 9 U.L.A. at 32-34 (1942). Also, under the earlier draft adopted by the Commissioners on Uniform State Laws, the radius of rendition was limited to 1,000 miles. The new Uniform Act contains no limitation as to distance. For a discussion of the mechanics of the Uniform Act as well as the operation of earlier legislation, see Note, 19 N.C.L. Rev. 391 (1941).
ality of such legislation. The principal case dramatically brings into issue the validity of this act, especially with respect to the two added provisions described above.

In 1904 the first case arose testing the early New York law. The court declared it to be a violation of due process and unconstitutional. However, this decision was admittedly made in haste and without proper research. Seven years later, in *Massachusetts v. Klaus*, the New York court overruled this earlier holding. The majority of the court held the statute to be valid and rejected arguments of unconstitutionality based on due process, the privileges and immunities clause, and the alleged invalid extraterritorial operation of the law. For a number of years this decision stood unquestioned as the leading case on the subject.

However, in 1940 an inferior court of Pennsylvania held the new Uniform Act to be unconstitutional. Three reasons were advanced as the basis for this decision: (1) that the law abridged the privilege of ingress and egress among the states, (2) that it denied citizens of a state the privileges and immunities of the state in which they reside, and (3) that the authority of one state may not be extended beyond its own borders. This case did not reach a court of last resort.

_In re Cooper,* in 1941, was the first case testing the Uniform Act which reached a state supreme court. In this decision the Supreme Court of New Jersey declared the Uniform Act to be constitutional, holding that a person certified as a material witness for the defense in a pending criminal case could be taken into custody and delivered to officials of another state to assure his attendance. In so holding, the court rejected objections based on due process. The privileges and immunities clause was not raised as an objection in this case. The New Jersey court reaffirmed this decision in 1954 and upheld the validity of the act as applied to witnesses desired by a grand jury."


"As the moving party has requested, and the circumstances call for, an immediate decision of this motion, I have had no time to prepare more than this brief expression of my impressions." _Ibid._

"145 App. Div. 798, 130 N.Y. Supp. 713 (1st Dep't 1911). Here, in a five to four decision, the court gave an excellent discussion of all the aspects of this type legislation.

"In re People of New York, 103 Legal Intell. 1055 (Phila. County Ct. of Quarter Sess. Dec. 6, 1940). This was the first case to pass on the merits of the Uniform Act. The title of the act had been modified as the result of a New Jersey decision in 1936. People of New York v. Parker, 16 N.J. Misc. 471, 1 A.2d 54 (Cir. Ct. 1936).

"127 N.J.L. 312, 22 A.2d 532 (Sup. Ct. 1941).

"In re Saperstein, 30 N.J. Super. 373, 104 A.2d 842 (App. Div. 1954). The court held in this case that the witness, in addition to being compelled to attend, could be made to produce books and records."
In the principal case the court appears to emphasize the fact that the person sought was not charged with a crime and that no criminal action was then pending. The court also states "that the right of ingress and egress is not absolute, for instance, the Fourteenth Amendment does not limit exercise by the state of the police power to protect the health, morals and general welfare of the people." Perhaps the Florida court would include within this police power the authority to grant rendition of material witnesses if there is a criminal proceeding already pending.

The police power of every state unquestionably includes the authority to require persons within the state's borders to testify at grand jury investigations within that state. This is a fundamental principle of both English and American common law. When this is done there is a definite infringement of a person's right of egress from the state. Today, it is difficult to see the value of a distinction which permits compulsory attendance before a grand jury in the state in which a person is located when he is summoned, and which disallows rendition for testimony before a grand jury in another state. The terms of the Uniform Act specify that a person shall not be summoned if "undue hardship" would be involved in the trip. In the realm of the police power, legislative judgment has been accorded great weight unless it was clearly beyond the bounds of constitutionality. Should not the legislature be allowed to exercise this power so as to include the investigation of crime, which is the necessary forerunner of criminal prosecution?

The traditional interpretation which the courts have made regarding the application of article IV, section 2 of the Constitution has been that this section prohibits discrimination by a state in favor of its own citizens and against citizens of other states. Certainly the language of the Uniform Act applies equally to all those within the state's borders. There is no discrimination. The power of a state over people within its borders is plenary with respect to the police power. If the

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19 Application of the People of the State of New York, 100 So. 2d 149, 157 (Fla. 1958).
21 UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHIN AND WITHOUT A STATE IN CRIMINAL PROCEEDINGS § 2.
22 Hague v. Committee for Industrial Organization, 307 U.S. 496 (1939). In this decision it was stated that this clause does not import that a citizen of one state carries with him into another fundamental privileges and immunities which come to him necessarily by the mere fact of citizenship in his state, but that in any state every citizen of any other state is to have the same privileges and immunities which the citizens of that state enjoy. The Court added that the section prevents a state from discriminating against citizens of other states in favor of its own.
23 The language of the act specifies only "that a person being within this state is a material witness...." UNIFORM ACT TO SECURE THE ATTENDANCE OF WITNESSES FROM WITHIN AND WITHOUT THE STATE IN CRIMINAL PROCEEDINGS § 2.
power exists anywhere to compel witnesses to proceed from one state to another to testify, it must be in the state in which the witness is present.

One of the primary objections to the Uniform Act is based on its so-called extraterritorial effect, i.e., the witness is compelled to appear before a proceeding outside the territorial jurisdiction of the court which issues the order. It is submitted that this objection may be overcome by following the rationale of courts acting in equity when faced with similar problems. Modern cases have established that in many situations a court of equity may require certain things to be done beyond the court's territorial jurisdiction. The problem which arises when one is required to perform an act in another state is essentially one of enforcement. The court is not acting entirely extraterritorially, because at the time the witness is subpoenaed he is within the territorial jurisdiction of the court.

The future validity of the Uniform Act is certainly placed in jeopardy by the decision in the principal case. Should other states choose to follow this ruling, it may be almost impossible, as a practical matter, to obtain the testimony of a witness who lives outside the state or who has fled to another state to avoid giving testimony. The Federal Fugitive Felon Law, passed in 1934, was intended to provide some relief in this area in the absence of appropriate state legislation. This law made it a felony to travel in interstate or foreign commerce in order to avoid giving testimony in any criminal proceeding. While this law is certainly beneficial, it fails to provide an adequate solution to the problem. Obviously it would be completely ineffective as to any witness who had never entered the state conducting the prosecution or investigation. Unless the states themselves are allowed to enforce comprehensive legislation, there appears to be no effective means of securing testimony from unwilling witnesses outside a state.

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Messner, The Jurisdiction of a Court of Equity Over Persons to Compel the Doing of Acts Outside the Territorial Limits of the State, 14 MINN. L. REV. 494 (1930).

Ibid. It has been recognized that in certain circumstances a court acting in equity may (1) restrain proceedings instituted in a foreign tribunal, (2) decree a conveyance of foreign lands, and (3) restrain or compel the doing of some act outside the territorial limits of the state.

§ 1073 (1952).

At the time of this writing, certiorari has been granted by the United States Supreme Court. Application of the People of the State of New York v. O'Neill, 356 U.S. 972 (1958). Also, motion made by the National Conference of Commissioners on Uniform State Laws for leave to file brief as amicus curiae has been granted. Application of the People of the State of New York v. O'Neill, 79 S. Ct. 19 (1958).