Constitutional Law - Segregation of Facilities Used By An Interstate Bus Line

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Repository Citation
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prosecution to be constitutional. In disposing of the instant case the Court could simply have said, as did the lower courts, that since the narcotics control act grants immunity from federal prosecution, this case is controlled by United States v. Murdock, and it would have been unnecessary to consider whether or not it was constitutional to grant immunity from state prosecution in this area. The instant case might be urged to support the position that the Murdock decision is open to question but for the fact that since the Ullmann decision the Court has continually espoused the “two sovereignties” theory. It may be that the Court by-passed the Murdock rationale and seized upon both Ullmann and Reina to set the limits of Congress’ power to grant immunity from state prosecution.

Walter I. Lanier, Jr.

CONSTITUTIONAL LAW — SEGREGATION OF FACILITIES USED BY AN INTERSTATE BUS LINE

Petitioner, a Negro, was travelling by interstate bus through the South. During a stopover he entered a terminal restaurant and found that it was segregated into white and colored sections. Disregarding the division, petitioner sat down in the white section where he was refused service and was eventually arrested by an officer upon request of the proprietor. He was subsequently convicted and fined $10.00 in the Police Justice’s Court of Richmond for violating a Virginia trespass law. The terminal restaurant which petitioner entered was leased by the Trailways Bus Terminal, Inc., a Virginia corporation, to the manager of the restaurant. The lease provided that the operation of the restaurant should be in keeping with the character of service of a modern bus terminal. Petitioner appealed to the city court of

28. That the Murdock holding is open to question is especially true in light of the following extract taken from the majority opinion in the instant case (81 Sup. Ct. 260, 262): “Both courts below passed the question whether the statute grants state immunity because, assuming only federal immunity is granted, they held that United States v. Murdock, 284 U.S. 141, 52 S. Ct. 63, 76 L. Ed. 210, settled that the Fifth Amendment does not protect a federal witness from answering questions which might incriminate him under state law. D.C., 170 F. Supp. at page 595; 2 Cir., 273 F.2d at page 235. Petitioner contends that Murdock should be re-examined and overruled. We have no occasion to consider this contention, since in our view § 1406 constitutionally grants immunity from both federal and state prosecutions.” (Emphasis added.)


1. Actually, this was only one provision in the lease. The majority opinion summarized the lease provisions as follows: “Terminal covenanted to lease this
Richmond, claiming that discrimination based on color violated the Interstate Commerce Act, the equal protection, due process, and commerce clauses of the Constitution. His motion to dismiss on these grounds was overruled and he appealed to the Virginia Supreme Court, charging only discrimination in violation of the commerce clause and the fourteenth amendment. After the conviction was affirmed, the United States Supreme Court granted certiorari on the issue of whether the conviction violated the commerce, due process, and equal protection clauses of the Constitution, but decided that there were "persuasive" reasons why the case should be decided on the Interstate Commerce Act rather than the constitutional grounds presented in the petition for certiorari, and held, conviction reversed. The discrimina-
tion violated the Interstate Commerce Act since the terminal and restaurant operated as an "integral" part of the bus carrier's transportation service for interstate passengers, the act prohibiting discrimination by such terminals and restaurants. *Boynton v. Virginia*, 81 Sup. Ct. 182 (1960).

The commerce clause of the United States Constitution confers upon Congress the power to regulate interstate commerce. As a corollary when Congress acts in a particular area of interstate commerce the states are no longer free to legislate in the same area. However, where Congress has refrained from acting, and thus not pre-empted the field, residual power is said to rest in the states to legislate on local matters, even though interstate commerce may be affected. Yet, even where Congress has not acted, state legislation is prohibited which substantially impedes the free flow of interstate commerce or which acts in an area which demands a single uniform authority. Thus the states have been prohibited from enacting segregation laws concerning passenger use of an interstate carrier's facilities on the ground that this is a subject which requires a single uniform rule which only Congress can provide.

In enacting the Interstate Commerce Act Congress prohibited an interstate carrier from discriminating in the use of facilities which it furnished. Section 3(1) of that act, which applies to railroad carriers, prohibits giving any undue or unreasonable preference or advantage to any particular person. Common

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under the Interstate Commerce Act was fairly comprised in the constitutional questions presented in the petition for certiorari, one persuasive reason that the Court refused to base the decision on constitutional grounds may have been the accepted proposition that the court will avoid a decision on a constitutional issue when the case can be decided on other grounds. However, due to the seemingly strained interpretation given the Interstate Commerce Act by the Court, discussed hereafter, it does not appear to this writer that justification for not deciding the constitutional questions can be explained merely in terms of the fact that the Court will not decide constitutional issues where it is unnecessary to do so.


5. *U.S. Const.* art. I, § 8, provides in part: "The Congress shall have power . . . to regulate Commerce with foreign Nations, and among the several states, and with the Indian Tribes."

6. See, e.g., *Chicago v. Atchison, Topeka & Santa Fe Ry.*, 357 U.S. 77 (1958). However, the states may be free to act in an area where Congress has acted if the federal and state law may be reconciled so that they can stand together. Dowling, *Constitutional Law* 562 (6th ed. 1959).


10. *24 Stat. 380* (1887), *49 U.S.C.* § 3(1) (1958) provides: "It shall be unlawful for any common carrier subject to the provisions of this chapter to
carriers by motor vehicle engaged in interstate commerce are subject to a similar provision in Section 216(d). The act further provides that facilities furnished by a carrier are those which are operated or controlled by it. Under the section of the act dealing with railroads, it has been held that discrimination by a carrier between Negroes and whites in the furnishing of dining facilities is unlawful, the United States Supreme Court indicating that a railroad might not be required to furnish facilities; but if they did there could be no discrimination in the use by interstate passengers. The Interstate Commerce Commission classified a railroad-owned hotel and restaurant facility necessary for the convenience of passengers as a carrier itself, but refused to find that a restaurant leased by a carrier to a private company was such a “carrier” since the lessor’s power of supervision was so limited that the restaurant could not be considered an “integral part” of its passenger service.
In the instant case the Court avoided a decision on the constitutional issues presented in the petition for certiorari, and decided the case under the Interstate Commerce Act. The Court held that facilities regulated by the act are those which are an integral part of the interstate carrier's transportation service. In so doing the Court apparently substituted "integral" for the word "control," which is used in the section of the act specifying the facilities that are to be considered services of the carrier. It was apparently on this point that the dissenting Justices took issue, indicating that they disagreed that "a motor carrier's regular 'use' of a restaurant, though it be 'neither own[ed], control[led] nor operated by the motor carrier, makes the restaurant a facility' operated or controlled by [the motor] carrier or carriers within the meaning of section 203(a) (19) of the Interstate Commerce Act."  

In the final analysis, the question must arise as to why the Court would resort to a seemingly extended interpretation of the Interstate Commerce Act to encompass the facts of the instant case, instead of deciding the constitutional questions presented in the petition for certiorari. Since the commerce clause delineates the powers of Congress and the states, and expressly provides that Congress shall have the power to regulate interstate commerce, it appears that a decision under that clause would be directed to the question of whether certain state
legislation is an unlawful regulation of interstate commerce. In the instant case the state legislation involved would be the trespass law as applied to the facts. If the Court had decided that this was an unlawful regulation of interstate commerce, the effect would have been to deny the state power to invoke laws to aid an individual in his racial discrimination when that individual was involved in interstate commerce. However, the individual himself could still discriminate since a decision under the commerce clause would enjoin only the state. Thus it seems that the ultimate effect would be to allow private discrimination without state aid, which would mean that the individual involved could carry out his discrimination through private means, whatever they might be, with no law on which to rely to effectuate his right.19

If the instant decision had been rendered under the fourteenth amendment, the recent group of cases involving the so-called "sit-in" demonstrations, in effect, would have been decided. Those cases raise the question of whether state aid of private discrimination is unlawful state action under the fourteenth amendment. They commonly arise when an individual refuses service on the basis of color and the state aids the individual in his discrimination by enforcing a trespass law or similar statute.20 As yet, it is not clear whether such aid is unlawful and the Court appears reluctant to settle the issue. If state enforcement of private discrimination is held to be unlawful state action, then again the somewhat anomalous situation could arise where the individual is allowed to discriminate

19. Self-help might be encouraged even more by the fact that thus far the Supreme Court has refused to find state action where a private person effectuates his own desire to discriminate and then is sued by the person who is discriminated against and is upheld in his discrimination by the state court. See Rice v. Sioux City Memorial Cemetery, 348 U.S. 880 (1954). "Suppose, in the typical 'sit-in' situation, that the owner of the property, instead of seeking the assistance of the state to vindicate his right to discriminate, chooses to utilize self-help for that purpose, that is, to use reasonable force to remove the Negro from his premises. If the Negro subsequently sues him for assault and battery or causes a criminal proceeding to be initiated, and the defendant pleads a privilege to use reasonable force to remove a trespasser, the court's action in sustaining the defense would not violate the Fourteenth Amendment.

"If private implementation of the right to discriminate is permissible in a trespass-to-real-property situation arising out of a 'sit-in', but the Court holds that affirmative state vindication of that right by imposing a criminal sanction is not, it will thereby encourage the use of a self-help, a situation hardly calculated to improve either race relations or the maintenance of law and order." Louisiana Legislative Symposium—Race Relations, 21 Louisiana Law Review 85, 97 (1960).

20. For a thorough discussion of the problem of state action under the fourteenth amendment, see Comment, 21 Louisiana Law Review 433 (1961).
if he can effectuate such discrimination himself. It appears that such position would put a premium on self-help. Thus, perhaps it may be concluded that the "persuasive reasons" why the Court did not consider the constitutional questions in the instant case stemmed from the fact that it did not approve of the discrimination here involved, but yet was reluctant to condemn it as unconstitutional because of the complications inherent in such a decision.

Hillary J. Crain

**INCOME TAXATION — DEPRECIATION OF AN ASSET NOT USED FOR ITS FULL ECONOMIC LIFE**

The United States Supreme Court in three cases decided during the last term has defined the concepts of "useful life" and "salvage value" as applied to depreciable property that is sold prior to exhaustion of its full economic life. A hypothetical case will serve to illustrate the situation presented in two of these cases.\(^1\) During the taxable years in question, 1950 and 1951, taxpayer sold cars which he had previously purchased for use in his business. The cars had an original cost of $1,600 each, and taxpayer depreciated them by the straight line method, taking a useful life of four years and a salvage value of zero.\(^2\) After using the cars for less than two years, he sold them for $1,400 each. During this period $500 per car was deducted as depreciation, leaving a net profit of $300 per car.\(^3\) A total of 290 cars were sold in the two years, at a profit of $87,000, which was treated as a capital gain. The Commissioner of Internal Revenue contended that for depreciation purposes, useful life was the period over which the taxpayer actually used the cars in his trade or business, and salvage value was their actual resale value. Therefore, the taxpayer could have deducted only

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1. The figures in the hypothetical case approximate those as set out in Evans v. Commissioner, 264 F.2d 502 (9th Cir. 1959).
2. This is the most common method of depreciation. The annual allowance is computed by this formula: 
\[
\frac{\text{original cost} - \text{salvage value (if any)}}{\text{useful life}}
\]
In the hypothetical case: 
\[
\frac{$1600 - 0}{4 \text{ years}} = $400 \text{ per year per car}
\]
3. Net profit = Resale Price - Adjusted Basis [Cost-Depreciation Taken]. In the hypothetical case Net Profit = $1400 - ($1600 - $500) = $300.