St. John's Law Review

Volume 31
Number 1 *Volume 31, December 1956, Number 1*

Article 10

May 2013

Criminal Law--Obstructing Justice--Destruction of Documents by Prospective Witness Held Punishable Under 18 U.S.C. § 1503 (United States v. Solow, 138 F. Supp. 812 (S.D.N.Y. 1956))

St. John's Law Review

only the right of cumulative voting and does not necessarily guarantee the effectiveness of the exercise of that right to elect minority representation on the board of directors." [17]

In effect, the Court has declared that the statute has granted a mere right which others, also under the guise of statutory power can fashion into a hollow claim. Cumulative voting was first introduced into American law to correct the evils widespread in private corporations after the Civil War.[18] It was designed to grant representation to minority interests on the board of directors.[19] The instant decision appears to be an anomaly in the current trend of American law—a trend which seeks to protect and grant representation to minority groups.

CRIMINAL LAW — OBSTRUCTING JUSTICE — DESTRUCTION OF DOCUMENTS BY PROSPECTIVE WITNESS HELD PUNISHABLE UNDER 18 U.S.C. § 1503. — In an action prosecuted under the federal "Obstruction of Justice" statute,[1] the defendant was accused of destroying certain papers which he had reason to believe would be subpoenaed in a pending grand jury investigation. The defendant moved for a dismissal on the grounds that the indictment had failed

---

[17] Humphrys v. Winous Co., *supra* note 14, 133 N.E.2d at 789.

[18] See WILLIAMS, CUMULATIVE VOTING FOR DIRECTORS 20-22 (1951); Stephan, *Cumulative Voting and Classified Boards: Some Reflections on Wolfson v. Avery,* 31 NOTRE DAME LAW. 351 (1956).

[19] See Matter of Rogers Imports, Inc., 202 Misc. 761, 116 N.Y.S.2d 106 (Sup. Ct. 1952); Maddock v. Vorclone Corp., 17 Del. Ch. 39, 147 A.2d 255 (1929); Commonwealth *ex rel.* O'Shea v. Flannery, 203 Pa. 28, 52 Atl. 129 (1902); PRASHKER, CORPORATIONS 488 (2d ed. 1949).

[1] "Whoever corruptly, or by threats or force, or by any threatening letter or communication, endeavors to influence, intimidate, or impede any witness, in any court of the United States or before any United States commissioner or other committing magistrate, or any grand or petit juror, or officer in or of any court of the United States, or officer who may be serving at any examination or other proceeding before any United States commissioner or other committing magistrate, in the discharge of his duty, or injures any party or witness in his person or property on account of his attending or having attended such court or examination before such officer, commissioner, or other committing magistrate, or on account of his testifying or having testified to any matter pending therein, or injures any such grand or petit juror in his person or property on account of any verdict or indictment assented to by him, or on account of his being or having been such juror, or injures any such officer, commission, or other committing magistrate in his person or property on account of the performance of his official duties, or corruptly or by threats or force, or by any threatening letter or communication, influences, obstructs, or impedes, or endeavors to influence, obstruct, or impede, the due administration of justice, shall be fined not more than $5,000 or imprisoned not more than five years, or both." 18 U.S.C. § 1503 (1952). This statute was derived from Sections 5399 and 5404 of the Revised Statutes of 1875.

to state an offense, further contending that the statute upon which the indictment was based had no application to the offense with which he was charged. The Court, in denying the motion, *held* that, although there was no evidence that the defendant was under the jurisdiction of the Court when the act was committed, and although there was no indication that his act had succeeded in obstructing justice, the destruction of the documents was a crime properly included within the scope of the omnibus provision of that statute. *United States v. Solow,* 138 F. Supp. 812 (S.D.N.Y. 1956).

The defendant was indicted for an act which tended to obstruct the administration of justice. Though this type of crime was originally treated as a common-law misdemeanor in some of the individual states,[2] the English courts [3] and our federal courts [4] regarded it as an offense punishable under the contempt jurisdiction of the courts. Later, Congress removed many of those offenses which often take place beyond the purview of the court—such as bribing or corruption of jurors, bribing or corruption of witnesses, and interference with officers of the court—from the coverage of the contempt statutes, making them punishable under ordinary indictment proceedings.[5]

In New York state, the development of the law in this area has followed no general pattern, and at present there are many penal statutes on the books [6] covering crimes which obstruct the administration of justice. Of interest, in the consideration of the instant decision, is the fact that the New York Penal Law, unlike the United States Code, does have a specific statute covering the offense with which the defendant Solow was charged.[7]

In denying the defendant's motion to dismiss, the Court in effect stated that the "Obstruction of Justice" statute was the proper one upon which to base the indictment.[8] Despite strong urgings to the contrary on the part of the defense counsel,[9] the Court decided that the fact that justice may not have been actually impeded was imma-

---

[2] See, *e.g.,* Southern Express Co. v. Commonwealth, 167 Ky. 480, 180 S.W. 839 (1915); Commonwealth v. Berry, 141 Ky. 477, 133 S.W. 212 (1911); People v. Tenerowicz, 266 Mich. 276, 253 N.W. 296 (1934).

[3] 7 Halsbury's Laws of England 2-36 (2d ed. 1932).

[4] The Judiciary Act of September 24, 1789 gave the courts power to punish by contempt ". . . all contempts of authority, in any cause or hearing before the same. . . ." 1 STAT. 83 (1789).

[5] See note 1 *supra.*

[6] *E.g.,* N.Y. PEN. LAW §§ 371 (bribery of a judicial officer), 376, 376-a, 377 (embracery), 379 (bribery of witnesses), 580(6) (conspiracy to obstruct justice), 812 (destruction of documents), 860 (intimidating a public officer).

[7] "A person who, knowing that a book, paper, record, instrument in writing, or other matter or thing, is or may be required in evidence, or on a motion, upon any trial, hearing, inquiry, investigation, or other proceeding, authorized by law, wilfully destroys the same, with intent thereby to prevent the same from being produced, is guilty of a misdemeanor." N.Y. PEN. LAW § 812.

[8] United States v. Solow, 138 F. Supp. 812 (S.D.N.Y. 1956).

[9] United States v. Solow, *supra* note 8, at 817.

terial, since the indictment included the charge of endeavoring to obstruct justice.[10] In this the Court went against the strong precedent of *Rosner v. United States*,[11] where the defendant was acquitted because no actual successful interference with justice was shown.

It seems likely that the defendant committed some wrong. The only question is—was this wrong a violation of the statute under which he was indicted? Section 1503 of Title 18 of the United States Code is entitled "Influencing or injuring officer, juror, or witness generally," and, while it is easily recognized that the defendant's act fits into none of the categories enumerated in the title, the Court found that the defendant's act was properly covered by the omnibus clause in the statute.[12] The Court interpreted the omnibus clause as designed to meet any corrupt endeavor directed towards the obstruction of justice,[13] and the cases cited by the Court to support this conclusion [14] might be so interpreted. But the fact remains that the statements upon which the Court relied were made in contexts where the immediate problem was interference with witnesses [15]—an offense clearly within the province of Section 1503.

A sampling of cases prosecuted under Section 1503 and its predecessors [16] reveals that virtually all involved situations where illegal acts were performed by third persons *upon* those under the jurisdiction of the court. The contempt statute,[17] on the other hand, applies to defaults and wrongful acts *by* those under the authority of the court. If this distinction be conceded some validity, the application of some of the basic canons of statutory construction [18] leads one

---

[10] "The statute . . . condemns not only the corrupt obstruction of the administration of justice but also any endeavor to corrupt the due administration of justice." United States v. Solow, *supra* note 8, at 817.

[11] 10 F.2d 675 (2d Cir. 1926).

[12] United States v. Solow, *supra* note 8, at 817.

[13] United States v. Solow, 138 F. Supp. 812 (S.D.N.Y. 1956).

[14] See Catrino v. United States, 176 F.2d 884 (9th Cir. 1949); Samples v. United States, 121 F.2d 263 (5th Cir.), *cert. denied*, 314 U.S. 662 (1941).

[15] In fact, one of the cases relied upon clearly states that the statute covers "any corrupt endeavor whatsoever, to 'influence, intimidate, or impede any party or *witness* . . .'" Catrino v. United States, *supra* note 14, at 887 (emphasis added). See also Craig v. United States, 81 F.2d 816, 820-22 (9th Cir.), *cert. denied*, 298 U.S. 690 (1936).

[16] See, *e.g.*, Kong v. United States, 216 F.2d 665 (9th Cir. 1954); Catrino v. United States, *supra* note 14; Samples v. United States, *supra* note 14; United States v. Kee, 39 Fed. 603 (D.C.S.C. 1889).

[17] "A court of the United States shall have power to punish by fine or imprisonment, at its discretion . . . *contempt of its authority* . . ." 18 U.S.C. § 401 (1952) (emphasis added).

[18] Henry Campbell Black tells us that "it is a general rule of statutory construction that where general words follow an enumeration of persons or things, by words of a particular and specific meaning, such general words are not to be construed in their widest extent, but are to be held as applying only to persons or things of the same general kind or class as those specifically mentioned." BLACK, HANDBOOK ON THE CONSTRUCTION AND INTERPRETATION OF THE LAWS 141 (1896). He further states that "headings prefixed to the titles, chapters,

to the conclusion that there is much merit to the defendant's contention that the omnibus clause, like the more specific provisions of the statute, only applies to ". . . conduct which unduly influences another human being." [19] In fact, at least one significant decision has stated that ". . . the purpose of Congress in enacting this statute was not to charge witnesses with duty or liability, but to protect them and the administration of justice from corruptly threatening and intimidating acts by third persons." [20]

One of the purposes of putting laws into statutory form is clearly to define the limits between conduct which is within, and that which is without the law.[21] When statutes have failed to make this distinction sufficiently clear so that the ordinary citizen can determine, in advance, whether or not contemplated acts are legal, the courts have not been loath to hold them unconstitutional because of vagueness.[22]

In the instant case, both the prosecution and the Court were forced to stretch the law in order to accommodate the new [23] situation which had arisen. The reason for this necessity is obvious. While the destruction of documents *in violation of a court order* could be neatly included within the confines of the contempt jurisdiction, there is at present no federal statute which, on its face, specifically defines the crime of destruction of documents by a person not within the court's jurisdiction. Thus, it can be seen why the prosecution, in the present case, had no alternative but to locate the crime within the hazy wording of the omnibus provision of Section 1503.

If this decision is important, it is only because it reveals a tendency towards a loosened construction of Section 1503. For the Court to expand the scope of the law unduly is to defeat the purpose of statutory law by eliminating the clear distinction which must be maintained between the different types of crimes.

Since this problem is one which is likely to recur in the future, it should be brought to the attention of Congress now, before serious injustices result. It is suggested that our law-makers take steps to eliminate the present confusion and the present necessity of prosecuting under a statute which, at best, vaguely outlines the crime, by

---

and sections of a statute or code may be consulted in aid of the interpretation, in case of doubt or ambiguity . . . ." BLACK, *op. cit. supra* at 181.

[19] Brief for Defendant, p. 25, United States v. Solow, 138 F. Supp. 812 (S.D.N.Y. 1956).

[20] Smith v. United States, 274 Fed. 351, 353 (8th Cir. 1921).

[21] "No one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the State commands or forbids." Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939).

[22] See, *e.g.*, Winters v. New York, 333 U.S. 507 (1948); Lanzetta v. New Jersey, *supra* note 21; United States v. Cohen Grocery Co., 255 U.S. 81 (1921).

[23] "Counsel have not cited, nor has research by the Court disclosed, any federal case directly on all fours with the instant one." United States v. Solow, 138 F. Supp. 812, 814 (S.D.N.Y. 1956).

adopting a statute which will clearly define this particular offense, a good model for which would be Section 812 of the New York Penal Law.[24]

DIVORCE — FULL FAITH AND CREDIT — MAINTENANCE AWARD AFTER FOREIGN EX PARTE DIVORCE HELD VALID. — Plaintiff-wife brought an action for separation and support and maintenance. The parties married in Connecticut and established domicile in California. Thereafter, the husband removed to Nevada, the wife to New York. In March 1953, the husband sued for divorce, obtaining a valid decree based on constructive service of the wife. The separation action, instituted by the wife in April 1954, was barred by the husband's decree, but the Court awarded maintenance under the Civil Practice Act, Section 1170-b. *Held:* full faith and credit had been afforded Nevada's decree, which, though valid as to marital status, was invalid as to the property rights of the wife. *Vanderbilt v. Vanderbilt,* 1 N.Y.2d 342, 135 N.E.2d 553 (1956).

Prior to the decision in *Haddock v. Haddock,*[1] most states afforded full faith and credit to *ex parte* divorce decrees based on constructive service.[2] However, New York felt it was not bound to recognize them.[3] With the *Haddock* decision, the policy of New York became the law of the land. Later in *Williams v. North Carolina,*[4] the Supreme Court ruled that foreign *ex parte* divorces could not be denied recognition simply because they were based on constructive service.

With the advent of the *Williams* case, the New York courts were powerless in a good many cases to assist a stay-at-home spouse.[5] The

---

[24] See note 7 *supra.* This statute is recommended in every respect except for the punishment provided. It is submitted that consideration should be given to making this crime a felony rather than a misdemeanor.

[1] 201 U.S. 562 (1906). The Court held that as the matrimonial domicile was in New York, the Connecticut divorce forum did not have jurisdiction to grant an *ex parte* divorce decree entitled to full faith and credit in New York.

[2] See GOODRICH, CONFLICT OF LAWS 408 (3d ed. 1949).

[3] See Winston v. Winston, 165 N.Y. 553, 59 N.E. 273 (1901), *aff'd per curiam,* 189 U.S. 506 (1903); Matter of Kimball, 155 N.Y. 62, 49 N.E. 331 (1898), *appeal dismissed,* 174 U.S. 158 (1899); People v. Baker, 76 N.Y. 78 (1879).

[4] 317 U.S. 287 (1942).

[5] See Adler v. Adler, 192 Misc. 953, 81 N.Y.S.2d 797 (N.Y. Dom. Rel. Ct. 1948); "Standish" v. "Standish," 179 Misc. 564, 40 N.Y.S.2d 538 (N.Y. Dom. Rel. Ct. 1943). *But cf.* Franklin v. Franklin, 189 Misc. 442, 71 N.Y.S.2d 234 (N.Y. Dom. Rel. Ct. 1947). A New York wife was granted maintenance. The court said that the husband's foreign *ex parte* divorce was not valid as severing her right to maintenance.