quick to announce that the fact that the property in question is less profitable for the permissible uses under the zoning ordinance than for some other use is not sufficient ground for holding the ordinance invalid, and to sustain an attack on the validity of the ordinance an aggrieved property owner must show that such ordinance precludes the use of the property for any use to which it is reasonably adapted.[13] Even where a nonconforming use is permitted to continue under a zoning ordinance, the burden of proof is on the one claiming the right to such use to show that the property was being used as such prior to the enactment of the ordinance.[14]

Most courts are apparently slow to follow the example of Louisiana, California, and Florida, and still refuse to uphold a zoning ordinance compelling property owners to discontinue their nonconforming uses, but the cases indicate that the courts are gradually restricting nonconforming uses to the point that little deviation is permitted, with the result that voluntary discontinuance is hastened.

The minority view apparently considers the individual's rights and interests as being immaterial when they conflict with "the interests of the public," and feel that any loss sustained is more than offset by the gain to the community. Under this view the property owner has little if any safeguard against being "zoned out" any time the local zoning authorities conceive a plan in the interest of the public welfare, safety, health, or morals.

JOE R. YOUNG, JR.

13. Walker v. Board of County Commissioners, ... Md. ..... , 116 A.2d 393 (1955).
14. Colabufalo v. Public Building Commissioner of Newton, ... Mass. ..... , 127 N.E.2d 564 (1955).

CASE NOTES

CONTRACTS — WIFE'S CONTRACT TO CARE FOR HUSBAND — CONSIDERATION — PUBLIC POLICY

Plaintiff contracted with her former employer to care for her (plaintiff's) sick husband for six months in order that she (plaintiff) could obtain coverage under the social security laws. The Appeals Council of the Department of Health, Eduaction and Welfare denied plaintiff's claim for social security benefits as there was insufficient consideration for the contract which was void as against public policy. On appeal to the United States District Court, *Held*: Claim for benefits granted. There was sufficient consideration to make a valid contract,

and the contract was not against public policy. *Willard v. Hobby,* 134 F. Supp. 66 (E.D. Pa. 1955).

A wife is under a legal duty to care for her sick husband. *Foxworthy v. Adams,* 136 Ky. 403, 124 S.W. 381, 27 L.R.A. (N.S.) 308 (1910). *Bohanan v. Maxwell,* 190 Iowa 308, 181 N.W. 683, 14 A.L.R. 1004 (1921). Any agreement for the husband to pay his wife to be a housekeeper is against public policy and void. *Michigan Trust Co. v. Chapin,* 106 Mich. 384, 64 N.W. 334 (1895). A contract to pay for wife's domestic services is void as it is against public policy. *In re Smith,* 291 F. 587 (N.D. N.Y. 1923), *Frame v. Frame,* 120 Texas 61, 36 S.W.2d 152 (1931), CLARK, CONTRACTS § 193. A contract to devise home place to wife in return for domestic services is void because it relates to the domestic obligations of the marital contract which may not be made the subject of contract. *Ritchie v. White,* 225 N.C. 450, 35 S.E.2d 414 (1945). In England, if one is bound by a contract to do a particular thing, his performance or promise of performance will constitute a sufficient consideration for a third party's promise for the same act. *Shadwell v. Shadwell,* 9 C.B. (N.S.) 159, (1860); the American rule is contra: *Moore v. Kuster,* 238 Ky. 292, 37 S.W.2d 863 (1931). *Tipton v. Tipton,* 133 Cal.App. 500, 24 P.2d 525 (1933). Georgia follows the majority of American courts in rejecting the English rule. *Johnson v. Hinson,* 188 Ga. 639, 4 S.E.2d 561 (1939). The promise of a third person to pay a wife for the performances of her legal duty (caring for husband while sick) is without consideration. *Robinson v. Foust,* 31 Ind. App. 384, 68 N.E. 182, 199 Am. St.Rep. 269 (1903) (wife allowed to recover having expended money from her own estate in relying on this promise). The ordinary care and services rendered between spouses is not sufficient consideration for a contract. CORBIN, CONTRACTS §189. "Consideration is not insufficient because of the fact . . . (d) that the party giving the consideration is then bound by a contractual or quasi-contractual duty to a third person to perform the act or forebearance given or promised as consideration." RESTATEMENT, CONTRACTS, Chap. 3, § 84. But a wife has been allowed to contract with her husband for services outside the domestic realm, *e.g.* looking after husband's business and books. *Roubicek v. Roubicek,* 246 Ala. 442, 21 So.2d 244 (1945). Spouses have been allowed to contract concerning property rights, but not the obligations imposed by the marital relationship. *Ritchie v. White, supra.* Also, a wife can contract for business enterprises with her husband. *Smith v. Hughes,* 292 Ky. 723, 167 S.W.2d 847 (1943). The Social Security Act will be liberally construed in favor of those seeking coverage. *Ewing v. McLean,* 189 F.2d 887 (9th Cir. 1951), and factual situations do not

have to be governed by strict common law rules. *Holland v. Altmeyer,* 60 F. Supp. 954 (D.C. Minn. 1945).

The tendency is to nullify all contracts concerning husbands and wives when they are contracting upon subjects pertaining to domestic obligations. This seems to be done for two reasons; (1) public policy; (2) a pre-existing legal duty prevents a person from contracting with a third person to perform that prior obligation.

The circumstances as to how this case arose should not be overlooked. The Plaintiff is seeking Social Security benefits and the rule has been cited which states claimants will be given the benefit of the doubt when it comes to granting or denying a claim. The court had respected authority in the view from the Restatement in regards to the consideration problem involved here.

What future does this case have? Undoubtedly it will be classed as an exception, because of the extenuating circumstances and because reasons of public policy are strongly against placing the marital duties upon the market.

JOHN H. HICKS

CONSTITUTIONAL LAW — AMENABILITY OF EX-SERVICEMEN TO TRIAL BY COURTS-MARTIAL

Acting pursuant to Article 3(a) Universal Code of Military Justice, 64 Stat. 109 (1950), 50 U.S.C. § 553 (1951), the United States Air Force ordered the arrest and trial by court-martial of an honorably discharged airman, on the charge of murder committed while on active duty in Korea. Article 3(a) provided for court-martial jurisdiction over ex-servicemen who had committed an offense punishable by confinement of five years or more and for which they could not be tried in any United States or territorial court.

The accused was arrested by military police and flown to Korea. The district court for the District of Columbia granted a writ of habeas corpus, *Toth v. Talbott,* 113 F. Supp. 330 (1953), and on production of the prisoner in court ordered him discharged on the ground there was no authority for the arrest and removal of a civilian by the military. *Toth v. Talbott,* 114 F. Supp. 468 (1953). The Court of Appeals for the District of Columbia Circuit reversed, holding such authority was implied from the power to try by court-martial and that Article 3(a) was a constitutional exercise of Congressional power over the land and naval forces. *Talbott v. United States ex rel.*

Toth, 215 F.2d 22 (D.C. Cir. 1954). On certiorari to the Supreme Court, *held*, reversed. Article 3 (a) is unconstitutional. The power granted Congress by Article I, § 8 of the Constitution "To make Rules for the Government and Regulation of the land and naval Forces" by its terms extends only to members of the land and naval forces and power to subject civilians to a trial without Bill of Rights safeguards is not to be inferred from the Necessity and Proper Clause. J. J. Burton, Minton and Reed dissented. *United States ex rel. Toth v. Quarles*, 76 S. Ct. 1 (1955).

It is well settled that in absence of an act of Congress, court-martial jurisdiction does not extend beyond final separation from military service. *United States ex rel. Hirshberg v. Cooke*, 336 U. S. 210, 69 S. Ct. 530, 93 L. Ed. 621 (1949); *United States ex rel. Viscardi v. Mac Donald*, 265 F. 695 (E.D. N.Y. 1920); *Ex parte Drainer*, 65 F. Supp. 410 (N.D. Cal. 1946). See also *United States v. Kelly*, 82 U. S. (15 Wall) 34, 21 L. Ed. 106 (1872). And, this is so although the accused re-enlists the day following discharge. *United States ex rel. Hirshberg v. Cooke, supra.* Release from active duty to the Reserve is equivalent to a final separation so far as amenability to court-martial is concerned. *United States ex rel. Santantonio v. Warden or Keeper of Naval Prison*, 265 F. 787. (E.D. N.Y. 1919). *United States ex rel. Viscardi v. MacDonald, supra.* An order of the President dropping an officer from the rolls has the effect of a final separation from the service. *Ex parte Wilson*, 33 F.2d 214 (E.D. Va. 1929). See also *Closson v. United States ex rel. Armes*, 7 App. D. C. 460 (1896); *Murphy v. United States*, 38 Ct. Cl. 511 (1903). But if the separation does not purport to be final, being subject to review by higher officials, a restoration to military status may result. *United States ex rel. Harris v. Daniels*, 279 F. 844 (2d Cir. 1922) (bad-conduct discharge vitiated by decision of Secretary of Navy that enlisted man had not been charged with an offense—therefore court-martial lacked jurisdiction). And, once jurisdiction has attached (as by arrest), it is not defeated by expiration of the accused's term of service prior to trial. *Barrett v. Hopkins*, 7 F. 312 (C.C. Kan. 1881). Military prisoners are subject to trial by court-martial although they were dishonorably discharged as part of their sentence. *Kahn v. Anderson*, 255 U. S. 1, 41 S. Ct. 224, 65 L. Ed. 469 (1921).

Court-martial jurisdiction over ex-servicemen has been upheld under act of March 2, 1863, 12 Stat. 696 (later Article of War 94; Article 14 of Articles for the Government of the Navy). *In re Bogart*, 3 Fed. Cas. 796, No. 1596 (C.C. Cal. 1873) (relying on fifth amendment exception of "cases arising in the land or naval forces"); *Ex*

parte, Jole, 290 F. 858 (S.D. N.Y. 1922) (court doubted constitutionality of act but, as court of first instance, felt constrained to uphold it since it had been in force almost sixty years); *Terry v. United States,* 2 F. Supp. 963 (W.D. Wash. 1933) (relying on the above decisions) *Kronberg v. Hale,* 180 F.2d 128 (9th Cir. 1950) (". . . too late for any federal court short of the Supreme Court to do other than accept the provision as valid.") But see *United States ex rel. Flannery v. Commanding General,* 69 F. Supp. 661 (S.D. N.Y. 1946). The constitutionality of this act was never passed on by the Supreme Court but the instant case indicates that it would have suffered an adverse ruling.

The holding of the Court is clear insofar as deciding that Congress was not expressly granted the power to subject ex-servicemen to trial by court-martial. In regard to the Necessary and Proper Clause, the Court concluded that discipline in the Armed Forces would not be aided by court-martial trial of civilians, thus indicating a holding that article 3 (a) had no reasonable relation to the government and regulation of the land and naval forces. But the emphasis throughout the majority opinion on the importance of the right to indictment and trial by a jury and an independent judiciary, coupled with the observation that jurisdiction can be given to the district courts to try these offenses, establishes that the Court has decided that as to attempts to extend court-martial jurisdiction beyond the expressly granted area, with resulting deprivation of Bill of Rights safeguards, absolute necessity rather than reasonable relation is the test of Constitutionality. A requirement of absolute necessity is justified in this area and the decision of the Court re-affirms the traditional view that amenability to courts-martial does not extend beyond final separation from military service.

ROCK T. SPENCER

CONSTITUTIONAL LAW — FEDERAL COURTS — CONTEMPT — ELEVENTH AMENDMENT PROHIBITS ENFORCEMENT AGAINST SCHOOL BOARD

In 1955, in a class action brought by Negro teachers charging violation of the fourteenth amendment, the county school board as an entity and the individual members of the board were permanently enjoined from discriminating in the payment of salaries on the basis of race or color. Petitioner, a member of that class, brought ancillary action against the board as an entity alleging violation of the injunc-

tion by discrimination. A master was appointed and found that there was discrimination; this finding was adopted by the court. Petitioners prayed for a decree holding the board in contempt and imposing a compensatory fine covering the difference between the salary paid and the salary that would have been paid had there been no discrimination. *Held*: Petition dismissed. To grant the relief prayed for would be to permit a suit against a state in a Federal court in violation of the eleventh amendment. *Gainer v. School Board of Jefferson County*, 135 F.Supp. 559 (M.D. Ala. 1955).

"The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, . . ." U. S. CONST., *amend. XI*. This prohibition applies to suits brought against a state by its own citizens. *Hans v. Louisiana*, 134 U.S. 1, 10 S.Ct. 504, 33 L.Ed. 842 (1890). This immunity from suit extended to the states by the eleventh amendment does not extend to a county as such, *Lincoln County v. Luning*, 133 U.S. 529, 10 S.Ct. 363, 33 L.Ed. 766 (1890); although an agency of the county can be construed a state agency rather than a municipal corporation and thus entitled to immunity from suit. *O'Neill v. Early*, 208 F.2d 286 (4th Cir. 1953) (county school board). County school boards of Alabama are considered quasi corporations and agencies of the state. *Turk v. Board of Education*, 222 Ala. 177, 131 So. 436 (1930). But suit against the board of education of a city for an injunction alleging discrimination is not a "suit against the state" forbidden by the Federal Constitution, *Cook v. Davis*, 178 F.2d 595 (5th Cir. 1949), *cert. denied*, 340 U.S. 811, 71 S.Ct. 38, 95 L.Ed. 596 (1950). "Where equity jurisdiction has once been attached to a suit the court may retain jurisdiction to give complete relief . . ." MCCLINTOCK, EQUITY (1948). Principal jurisdiction once obtained gives the court power over ancillary actions, *O'Brien v. Rictarsic*, 2 F.R.D. 42 (W.D. N.Y. 1941).

In the instant case petitioners were denied the relief prayed for on the ground that to grant it would violate the eleventh amendment. Even if a county is considered a state agency under the eleventh amendment, it seems highly questionable that this amendment in 1798 should be construed to frustrate the enforcement of the fourteenth amendment adopted in 1868. This decision has the effect of creating, the anomalous situation of finding jurisdiction to enjoin but no jurisdiction to enforce the injunction. This result may leave an injured party without an effective remedy against the state agency

(which in some cases might be the only solvent defendant available) and also leaves the agency free to continue violating the injunction without fear of anything greater than a moral sanction.

STANLEY R. SEGAL

TORTS — DAMAGES FOR LOSS OF FUTURE EARNINGS — DEDUCTION OF INCOME TAX IN ASSESSMENT

In an action for personal injuries, plaintiff recovered £37,720 damages for loss of earnings actual and prospective. The award was alternately assessed at £6,695 taking into account the income tax and surtax which plaintiff would have paid on these earnings over the period covered. The Court of Appeals affirmed the decision of the trial court which paid no regard to the tax liability. On appeal to the House of Lords, *Held*: Reversed. The tax position should have been taken into account, therefore £6,695 was correct measure of damages. Lord Keith dissented on the ground that to fix damages on an estimate of future taxation is impossible and to assess them de futuro on the basis of existing taxation savors of legislation by the judiciary. *British Transport Comm'n v. Gourley,* [1956] 2 Weekly L.R. 41 (H. L. 1955).

Damages in personal injury actions for loss of future earnings represent a sum equal to the loss of future earnings discounted to their present worth. MCCORMICK, DAMAGES (1935) § 86. Accord: *Yost v. West Penn. Rys.,* 336 Pa. 407, 9 A.2d 368 (1939). In this country such awards are exempt from taxation under federal law. *Internal Revenue Code of 1954,* § 104 (a) (2). "Matter completely collateral and merely 'res inter alios acta,' cannot be used in mitigation of damages." MAYNES, DAMAGES 151 (11th ed. 1946); *Majestic v. Louisville and N.R.R.,* 147 F.2d 621 (6th Cir. 1945) (Wrongdoer may not take advantage of contracts or other relations which exist between injured party and third persons.) It is right in principle to have no regard in assessing damages to liability for taxation which is truly "res inter alios acta." *Fine v. Toronto Transportation Comm'n.* [1946] K.B. 356 (Eng.); relying on: *Fairhome v. Firth & Brown,* (1933) 149 L.T. 332 (Eng.) When loss of earnings is a factor in the assessment of damages, no deduction can be made on the grounds that these earnings would have been liable to income tax. *Blackwood v. Andre,* (1947) S.C. 333 (Scot.). Accord: *Billingham v. Hughes,* [1949] 1 K.B. 643 (Ultimate liability to tax department is no concern of wrongdoer). Thus the basis of assessment must be the gross earnings. *Bowers v. Hollinger*

[1946] 4 D.L.R. 186 (Ont. H. C. Can.) Contra: *McDaid v. Clyde Navigation Trust* (1946) S.C. 462 (Scot.) Damages for loss of future earnings should be based strictly on actual pecuniary loss, but this rule cannot be adhered to insofar as it may be impossible to compute with reasonable accuracy the amount of income tax liability that may attach. *Dempsey v. Thompson,* 363 Mo. 339, 251 S.W.2d 42 (1952). It is improper to make deductions for income tax in estimate of damages for future earnings; such deductions are too conjectural. *Stokes v. United States,* 144 F.2d 82 (2d. Cir. 1944) (A suit in admiralty for partial impairment of earning capacity). See: *Southern Pacific Co. v. Guthrie,* 180 F.2d 295 (9th Cir. 1950) (net earnings proper basis to estimate pecuniary loss; on rehearing, 186 F.2d 926 (9th Cir. 1951) (facts of case make estimation of net earnings too conjectural). Future tax liability is subject to too many variables to be a matter of consideration in an award for future impairment of earning capacity. *Combs v. Chicago, St. P., M. & O. Ry.,* 135 F. Supp. 750 (N.D. Iowa 1955). Such other American authority as available is in accordance with the theory of non-deduction. See: *O'Donnel v. Great Northern Ry.,* 109 F.Supp. 590 (N. D. Cal. 1951); *Runnels v. City of Douglas, Alaska,* 124 F. Supp. 657 (D.C. Alaska); *Chicago and N. W. Ry. v. Curl,* 178 F.2d 497 (8th Cir. 1949); *Texas & N. O. R. Co. v. Pool,* Tex. Civ. App. 1953, 263 S.W.2d 582. Cf: *Cole v. Chicago, St.P.., M. & O. Ry.,* 59 F. Supp. 443 (D. Minn 1945).

The decision in the instant case overruling the doctrine of non-deduction as expressed in the *Billingham* case, *supra,* appears to reflect English recognition that income tax at the present day is of paramount importance in ascertainment of pecuniary loss in distinction to the time of promulgation of the non-deduction doctrine when taxation was a less important factor in determination of the individual financial status. However, assessment of damages on this basis does not lend itself to practical application. Tax rates, especially in the United States, fluctuate with the changing of the legislature and are governed by variables such as age, number of dependents and other considerations which are indeterminable insofar as present assessment for future earnings is concerned. To attempt deduction for income tax in the assessment of damages could result in confusion for the jury.

The recent *Combs* case, *supra,* decided shortly before the instant case is indicative of the fact that American courts are demonstrating no trend towards the doctrine of deduction of taxes in assessment of

damages for loss of future earnings. It is submitted that the present American doctrine of non-deduction is a more practical rule than the doctrine of the instant case, which viewed in its many ramifications appears to be an unfortunate precedent to establish.

MITCHEL P. HOUSE, JR.

CRIMINAL LAW — FELONY-MURDER RULE — LIABILITY FOR DEATH OF CO-FELON

Defendant and deceased committed an armed robbery. As they fled the scene, the victim of the robbery shot and killed the deceased. Defendant was indicted for the murder of his co-felon; his demurrer was sustained. On appeal, *held*, judgment reversed. If two persons join to commit a dangerous felony, and one of them is killed by the victim, the surviving felon may be convicted of murder. *Commonwealth v. Thomas,* 382 Pa. 639, 117 A2d. 2041, (1955).

Any fatal injury caused by a person in the commission of a violent felony is regarded as malicious. *Commonwealth v. Kelly,* 33 Pa. 280, 805 (1939). Such a homicide was murder at common law. *Commonwealth v. Green,* 302 Mass. 547, 20 N.E.2d. 417 (1939). By Pennsylvania statute, "All murder . . . committed in the perpetration of . . . any arson, rape, robbery, or burglary shall be deemed murder in the first degree." P.L.872 § 701, 18 P.S.4701. All who participate in such a felony are equally guilty of a death that might result. *People v. Martin* 12 Cal.2d. 466, 85 P2d. 880 (1938). If the felons place a victim in such a position that death is likely to result, such as use as a shield, a resulting death is murder. *Keaton v. State,* 41 Tex. Cr.R. 621, 57 S.W. 1125 (1900). Even if the death is unintentional, it is murder. *Commonwealth v. Philips,* 372 Pa. 223, 93 A2d. 455 (1953). Felons have been held guilty of the death of an innocent by-stander killed by the victim defending himself. *Commonwealth v. Moyer,* 357 Pa. 181, 53 A2d. 736 (1947), or by a policeman pursuing the felons. *Commonwealth v. Almida,* 362 Pa. 596, 68 A2d. 595 (1949). In the words of the *Moyer* case, *supra,* the test is when the felon ". . . sets in motion a chain of events which were, or should have been within his contemplation . . . he should be held responsible for any death . . ." The normal reactions to the felon's act will not be considered as breaking the causal connection between the crime and the death. *Commonwealth v. Almeida, supra.* If the wrongful act of the felon is the dominant cause, without which the injury would not have resulted, it is criminally the proximate cause. *Letner v. State,* 156 Tenn. 68, 299 S.W. 1049 (1927). The *Almeida* case, *supra,* disting-

uishes from felony-murder cases in which there was a lack of causal connection, *People v. Garippo*, 292 Ill. 293, 127 N.E. 75 (1920), or of concert of action. *Butler v. People*, 125 Ill. 641, 18 N.E. 338 (1888).

The instant case enlarges the felony-murder rule to include felons slain by their victims. Thus a homicide is at once justifiable on the part of the slayer, and first degree murder on the part of the felon, who is held to be the criminal cause of the death. It may be argued that felons have no common design to kill one of their own number. It is not, however, the intent of the felons, but their causal connection to the killing which holds them guilty under the felony-murder rule. Using proximate cause as a guide, the decision in the instant case is quite reasonable. It is normal to expect the victim of an armed robbery to retaliate in protection of his property. The death of a robber is the natural result of this retaliation. Such a death then falls within the necessary foreseeability to be called the proximate result of the felony. It is doubtful, however, that this result will be sufficiently contemplated by would be felons to make the rule extention a deterrent to crime.

FRANK M. MCKENNEY

LABOR LAW — NLRA — SECONDARY BOYCOTT AS UNFAIR LABOR PRACTICE

Manufacturer whose typewriter plant was strike-bound directed customers who desired repairs on its products to select a repair company, have their repairs made, and send the receipted invoices to him for payment. Most of the customers sent the manufacturer the unpaid bill as directed. The National Labor Relations Board directed the respondent union which had a labor dispute with the manufacturer to stop picketing this repair company on the grounds that this was a secondary boycott and was prohibited by § 8(b) (4) (A) of the NLRA. The NLRB sought an injunction from the Circuit Court of Appeals to enforce its order. *Held*: Petition dismissed. The repair company was so intertwined and associated with the manufacturer that such picketing did not violate the Taft-Hartley Act's secondary boycott provisions. *N.L.R.B. v. Business Machine and Office Appliance Mechanics Board.* —F.2d— (2d Cir. 1955).

If union conduct is directed without question at the employees of a secondary employer on his premises, and the immediate objective is clearly to force the latter to cease doing business with the primary employer, there is a violation of the secondary boycott prohibition. *In re Chauffeurs, Local 135*, 101 NLRB No. 215, 31 L.R.R.M. 1210 (Dec.

1952). However, where an engineers union sought, by picketing, to encourage employees of a sub-contractor to refuse to do engineering work for the primary employer, a violation was not found; it was determined that the sub-contractor was not a neutral, but an ally of the contractor. *Douds v. Metropolitan Federation of Architects,* 75 F. Supp. 672 (D.C. N.Y. 1948); 21 L.R.R.M. 2256. An off-shoot of the "ally" doctrine and one which usually prevents the violation of the secondary boycott provision is the "unity of interest" doctrine, which has been developed by the New York courts; this latter doctrine is predicated in the main upon the close economic relationship between the primary employer and the secondary employer, whose relationship, at least in a quasi-legal sense, is that of principal and agent. *Auburn Draying Company v. Wardell,* 227 N.Y. 1, 124 N.E. 97 (1919); *Accord*: *Goldfinger v. Feintuch,* 276 N.Y. 281, 11 N.E.2d. 910 (1937); Irwin, *Secondary Boycotts Under the Taft-Hartley Act,* 5 S.C. L. Q. 223, 236 (1952). The National Labor Relations Act specifically states that it shall be unlawful for a union to engage in or to induce the "employees" of a secondary employer to engage in a strike or to refuse to use or handle certain goods and materials. 61 STAT. 158; 29 U.S.C.A. 187; NLRA § 8 (b) (4). Since there is no inhibition in the inducement by unions of secondary employers, the Board feels that the purpose of Congress was to protect the rights of unions to exert direct pressure upon their employers. *Local 28, Sheet Metal Workers Int'l. Ass'n.,* 102 NLRB No. 166 (1953). Requests and threats addressed directly to secondary employers are also lawful. *NLRB v. Service Trade Chauffeurs,* 191 F.2d 65, 51 A.L. C. 958 (1951). Therefore, the only thing proscribed by Section (b) (4) is inducement or encouragement of the "employees" of secondary employers. *Teamsters Union (Arkansas Express, Inc.),* 92 NLRB 255 (1950). In a secondary boycott situation the scope of the legitimate dispute is widened so as to disrupt the tranquility of the industrial community and injure the public interest. 23 CIN. L. REV. 31, 44 (1954).

A great deal of unbalance is evident in the bargaining of the principals when a secondary boycott is in progress. Unfortunately, a financial strain is put on the employer—a result which could be more undesirable than the strike itself if people are not permitted to purchase goods from him or if he is not permitted to have goods shipped to him. Because of the status of the party injured, the secondary boy-

cott is as much against the public interest as any other type of coercion of third parties. Unnecessary pressure is imposed against both employers and workers by this type of activity. The proper solution would seem to be an amendment to the NLRA removing this type of activity from the protection of the statute.

W. HOMER DRAKE, JR.