

UCLA

National Black Law Journal

Title

New Laws

Permalink

<https://escholarship.org/uc/item/6wc5v2q4>

Journal

National Black Law Journal, 1(1)

Author

Bowers Jr., Bob

Publication Date

1971

Copyright Information

Copyright 1971 by the author(s). All rights reserved unless otherwise indicated. Contact the author(s) for any necessary permissions. Learn more at <https://escholarship.org/terms>

Peer reviewed

AN ANALYSIS

NEW LAWS & PROSPECTIVE LEGISLATION

By BOB BOWERS, JR. and J. WILLIE SMITH

CIVIL RIGHTS

I — SUBVERSIVE ACTIVITIES:

Alabama laws requiring (Black) "Muslim" organizations to register and provide membership and attendance lists and which required *all* Muslims who stayed in the state one day to register — struck down via the First and Fifth Amendments of the U.S. Constitution, *Wallace v. Brewer*.¹

II — IDENTIFICATION:

Attorney General and FBI Director are not entitled to summary judgment against arrested and released citizens who sue for injunction requiring that their FBI "rap sheets" and finger print cards be expunged or their dissemination restricted.

"Particularly troublesome is the possibility, by no means eliminated on the present record, that information in the FBI's file may be used for many purposes other than law enforcement for which its retention may be justified." *Menard v. Mitchell*.²

III — HIRING DISCRIMINATION ON BASIS OF ARREST RECORD ENJOINED:

A persons' mere arrest record, (unsupported by anything more), cannot be taken into account without being guilty of racial discrimination — "... because it is a fact that blacks are more frequently subjected to arrest." Civil Rights requires that employer eschew acquisition or use of new or prospective employees' arrest records, since blacks more-frequent subjection to arrest renders use of arrest data in hiring a racially discriminatory factor. Employers should be permitted to obtain and inspect information on the *public* record concerning

the prosecution and trial of any prospective employee — even if such a proceeding eventually resulted in an acquittal. But records of arrest which do not result in formal prosecution or trial are not matters of public record. Therefore, since blacks are arrested substantially more frequently than whites, employment conditioned, to whatever extent, on the number of arrests of an applicant without any convictions, is unlawful because it has the foreseeable effect of denying black applicants an equal opportunity for employment. *Gregory v. Litton Systems, Inc.*³

IV — "LEAVE YOUR POCKETBOOK AT HOME" ADVERTISING:

It has been concluded, the phrase "Leave your pocketbook at home," is equivalent to, or synonymous with a "No down payment" claim with respect to the Federal Truth in Lending requirements. It was pointed out, therefore, that it would be improper to use the proposed phrase without disclosing the specific credit terms required by section 226.10(d) (2) of regulation Z. Specifically, the advertising must disclose the following credit information whenever a "no down payment" claim is made: (1) the cash price, (2) the number, the amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended, and, (3) the annual percentage rate, and (4) the deferred payment price of the article offered for sale.

The above requirements also apply to automobile credit. Advertising section 11.444. Section 226.8 Z Federal Truth in Lending Act (Public Law 90-321).

1. 315 F. Supp. 431 (1970).

2. 430 F. 2d 486 (1970).

3. 316 F. Supp. 401 (1970).

V — SEIZURE OF PURCHASER'S
CHATELS IS INVALID WITHOUT
A COURT ORDER:

Sheriff may not seize, without a court order that affords due process, chattels of a conditional purchaser who could not keep up the *time payments*. *Laprease v. Raymours*.⁴

VI — REVOLVING CHARGE PLAN IS
DEEMED USURIOUS:

Department store revolving charge account plans carrying the usual 1½% per cent per month charge on the unpaid balance were found not to reflect the time price differential — thus it was deemed usurious and not enforceable, *Wisconsin v. J. C. Penney Co.*⁵

VII — LANDLORDS MUST PROTECT
TENANTS FROM "FORESEEABLE
CRIMINAL ACTS:

Landlords must either take all reasonable steps to minimize the risks of foreseeable crime within their apartment buildings or suffer the consequences, *Kline v. 1500 Massachusetts Ave. Apartment Corp.*⁶

VIII — LANDLORD LIABLE FOR FAILURE
TO REMOVE LEAD POISONING
MENACE:

Redecoration for health's sake can be compelled and a *tenant* may recover his costs for such improvements if the landlord, who having notice, wrongfully refuses to have the work done himself, *Garcia v. Freedland Realty, Inc.*⁷

IX — STATE CANNOT BURDEN
ELIMINATION OF DE FACTO
SEGREGATION:

Once a program for the elimination of de facto segregation in a state has been implemented, equal protection invalidates subsequent acts by the state to hinder or stop the program. *Lee v. Nyquist*.⁸

X — WELFARE HEARINGS:

Public assistance benefits, which "are a matter of statutory entitlement for all

persons qualified to receive them," the court said, may not be cut off without a predetermination or evidentiary hearing. The court held that the due process clause bars state termination unless the recipient is permitted to appear personally, with counsel and cross-examine witnesses.

By definition, a welfare recipient is destitute, without funds or assets. Thus, to cut off a welfare recipient in the face of demonstrated need without a prior hearing of some sort is unconscionable, unless overwhelming considerations justify it. *Goldberg v. Kelly*.⁹

XI — MAN IN THE HOUSE:

An Alabama law which required that a needy child's "resources" for AFDC purposes include either the income of a non-adopting stepfather not legally obligated to support the child, or the income of a man assuming the role of spouse was questioned. The court held, as a result of a challenge brought by welfare recipients, that the law's conclusive presumption that a child's needs are reduced by the amount of income available from the man in the house — whether or not available in fact or actually used to meet the dependent child's needs — required its invalidation, *King v. Smith*.¹⁰

4. 315 F. Supp. 716 (1970).

5. 39 L. Wk. 2240 (1970).

6. 39 L. Wk. 2081 (1970).

7. 39 L. Wk. 2125 (1970).

8. 39 L. Wk. 2212 (1970).

9. 397 U.S. 254 (1970).

10. 392 U.S. 309 (1968).

Power concedes nothing without a demand. It never has and it never will. Find out just what people will submit to and you have found out the exact amount of injustice and wrong which will be imposed upon them; and these will continue till they have resisted either with words or blows or with both. The limits of tyrants are prescribed by the endurance of those whom they suppress.

FREDERICK DOUGLASS (1849)