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# Constitutional Law - Civil Liberties, Adderley v. Florida, 87 S.Ct. 242 (1966)

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duction.[11] This trend toward liberality in allowing the deduction of attorney's fees has its present culmination in *Parker v. Commissioner*, which goes beyond *Commissioner* v. *Tellier*,[12] and the earlier case of *Commissioner v. Heininger*,[13] where deductions for legal expenses were allowed despite criminal convictions.

The distinguishing factor in the *Parker* case is that the deduction is allowed to a separate organization which paid the fees for the individual, while at the same time the individual was allowed to exclude the value of the expenses from his income. This result is due to the fact that the individual and organization were so closely interconnected that they were actually one, thus allowing the exclusion to the individual as well as the organization. It has been the practice of the Internal Revenue Service to separate an individual and an organization in determining the proper allocation of income. It may be inferred from the present result that legal fees are deductible in defending any criminal action against a "prime functionary" where the relation between the organization and the individual is so interconnected that the life of the organization would become tenuous by an adverse judgment against the individual.

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**Constitutional Law—Civil Liberties.** In *Adderley* v. *Florida*,[1] petitioners, Harriet Louise Adderley and thirty-one other persons, apparently all students at Florida A. & M. University in Tallahassee, were convicted by a jury in a joint trial in the County Judge's Court of Leon County, Florida, on a charge of trespass upon the premises of the county jail, with a malicious and mischievous intent, in violation of section 821.18 of the Florida Statutes.[2]

11. Int. Rev. Code of 1954, § 212:

> In the case of an individual, there shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year . . . (3) in connection with the determination, collection, or refund of any tax.

Int. Rev. Reg., § 1.212 (1):

> Expenses paid or incurred by an individual in connection with the determination, collection, or refund of any tax, whether the taxing authority be Federal, State or municipal, and whether the tax be income, estate, *gift*, property or any other tax, are deductible. [Emphasis added.]

12. *Supra* note 8.

13. 320 U.S. 467 (1943), held deductions claimed by a dentist for lawyer's fees in defending him on a criminal charge of fraud order of the Postmaster General, were upheld, even though the dentist was convicted.

1. 87 S.Ct. 242 (1966).

2. Fla. Stat. § 821.18 (1965), "Every trespass upon the property of another, com-

The students had gone to the jail to demonstrate, and to protest the arrest of other protesting students which had been made the previous day. The county sheriff, after trying to persuade students to leave the jail grounds, notified them that if they did not leave he would arrest them for trespassing. Several students did leave, but petitioners remained and were arrested. Petitioners' convictions were affirmed on appeal by the Florida District Court of Appeals.[3] They then applied to the Supreme Court for certiorari "contending that, in view of petitioners' purpose to protest against jail and other segregation policies, their conviction denied them 'rights of free speech, assembly, petition, due process of law and equal protection of the laws as guaranteed by the Fourteenth Amendment to the Constitution of the United States.' "[4]

The Supreme Court held that the Florida Trespass Statute[5] was not void for vagueness and that the jury was authorized to find that the State had proven every essential element of the crime as defined by the Trial Court;[6] and that the conviction of the state offense thus defined did not unconstitutionally deprive petitioners of their rights to freedom of speech, press, assembly or petition under the First Amendment.[7]

Although in February 1966 the Court, in *Brown* v. *Louisiana*,[8] by a

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mitted *with a malicious and mischievous intent*, the punishment of which is not specially provided for, shall be punished by imprisonment not exceeding three months, or by fine not exceeding one hundred dollars." (Emphasis added.)

3. Adderley v. Florida, 175 So.2d 249 (1965).

4. *Supra* note 1, at 244.

5. *Supra* note 2.

6. *Supra* note 4, at 245 n.2. " 'Malicious' means wrongful. . . . The word 'malicious' means that the wrongful act shall be done voluntarily, unlawfully, and without excuse or justification. The word 'malicious' that is used in these affidavits does not necessarily allege nor require the State to prove that the defendant had actual malice in his mind at the time of the alleged trespass. Another way of stating the definition of 'malicious' is by 'malicious' is meant the act was done knowingly and willfully and without any legal justification.

" 'Mischievous,' which is also required, means that the alleged trespass shall be inclined to cause petty and trivial trouble, annoyance and vexation to others in order for you to find that the alleged trespass was committed with mischievous intent."

7. *Supra* note 4, at 247. Constitution of United States of America, Amendment I states "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances." These rights are protected by Amendment XIV which says "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States . . ."

8. 383 U.S. 131 (1966).

3-1-1-4 distribution of opinions, come very close to upholding convictions of Southern Negro Demonstrators, *Adderley* is the first instance in which convictions of Civil Rights demonstrators have been affirmed.[9]

Here petitioners contended that their case was controlled by the decisions of *Edwards* v. *South Carolina*,[10] decided in 1963, and *Cox* v. *Louisiana*,[11] decided in 1965. In *Edwards*, Negro students assembled at the site of the State Government and peacefully expressed their grievances, by singing, to the Legislative Bodies, and to the citizens of South Carolina. The students were arrested after refusing to disperse, and were convicted of the common-law crime of breach of the peace. The Supreme Court, in reversing the convictions, held that to convict the students of an offense so generalized as to be not susceptible of exact definition, South Carolina infringed their rights of free speech, free assembly and freedom to petition guaranteed by the First Amendment and protected by the Fourteenth Amendment.[12] In the *Cox* case student demonstrators were also convicted under a breach of the peace statute,[13] and the thesis of the majority in overturning the convictions proceeded on the same ground of vagueness as in *Edwards*. The court, however, refused to follow these previous cases, distinguishing the present case on two principal grounds. In the first place in *Edwards* the demonstrators had gone to the State Capitol grounds to protest, and in *Cox* to the Courthouse. In *Adderley* however, the demonstrators went to the premises of the county jail, and this, the court felt, distinguished *Adderley* from the previous cases. "Traditionally, State Capitol grounds are open to the public. Jails, built for security purposes, are not." [14] More importantly, however, the Court held that the words "with a malicious and mischievous intent" [15] do not make the Florida Statute so broad

9. The William & Mary Law Review, in its 1966 Constitutional Issues edition (*Constitutional Issues in the 1965 Term of the Supreme Court*, 8 WM. & MARY L. REV. 49), discussed the impact of the divided majority in Brown v. State of Louisiana, 383 U.S. 131 (1966), on civil liberties, and declared "Brown v. State of Louisiana may mark the extreme in a pendulum swing of judicial persuasion." Adderley v. Florida seems to confirm that declaration, and indicates, perhaps, that the pendulum may be swinging back from the extreme position.

10. 372 U.S. 229 (1963).

11. 379 U.S. 536 (1965).

12. *Supra* note 10.

13. *Supra* note 11.

14. *Supra* note 4, at 244.

15. *Supra* note 2.

as to be vague, as were the common-law breach of the peace charges in *Edwards* and *Cox*. The Court held that "On the contrary, these words narrow the scope of the offense. . . . The use of these terms in the statute, instead of contributing to uncertainty and misunderstanding, actually makes its meaning more understandable and clear." [16]

In *Brown* v. *Louisiana*,[17] the Supreme Court reversed convictions under the same Louisiana Statute involved in *Cox, supra*. In *Brown*, five young Negro males entered the adult reading room of a public library, asked for a book which the library did not have, and then sat and stood in the room as a protest against the segregation of the library. By a 3-1-1-4 distribution of opinions the Court narrowly overturned the conviction of the protestors under the breach of the peace statute as infringing upon their constitutional rights. In a strong dissenting opinion, Mr. Justice Black distinguished *Brown* from previous cases by pointing out that "A tiny, branch, parish library, staffed by two women, is not a department store as in *Garner* v. *Louisiana*,[18] not a bus terminal as in *Taylor* v. *Louisiana*,[19] nor a public thoroughfare as in *Edwards* v. *South Carolina*,[20] and in *Cox*.[21] " [22] He went on to say "The holding in this case makes it more necessary than ever that we stop and look more closely at where we are going." [23]

Mr. Justice Black further declared "It is high time to challenge the assumption in which too many people have too long acquiesced, that groups that think they have been mistreated or that have actually been mistreated have a constitutional right to use the public streets, buildings, and property to protest whatever, wherever, whenever they want, without regard to whom it may disturb." [24] It would appear that this same rationale carried over to his opinion for the majority in *Adderley*.[25]

16. *Supra* note 4, at 245.
17. 383 U.S. 131 (1966).
18. 368 U.S. 157 (1961).
19. 370 U.S. 154 (1961).
20. 372 U.S. 229 (1963).
21. 379 U.S. 536 (1965).
22. *Supra* note 17, at 163.
23. *Id.* at 168.
24. *Supra* note 14, at 162.
25. *Supra* note 1, at 247: "The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this 'area chosen for the peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate. . . .' Such an argument has as its major

Whether *Adderley* represents a great break with the traditions of the court, however, remains to be seen. Whether Mr. Justice Black's opinion expressed in his dissent in *Brown* has been adopted by the majority of the Court and carried forward in *Adderley*, or whether the majority merely felt that the security requirements of a jail made it necessary to distinguish *Adderley* from all other demonstration cases, is a question which will surely be presented in the future. It can be said, however, that the Court has posted a "no trespassing" warning on public property not traditionally open to the public, and the decision may indicate a less tolerant attitude developing in the Court toward demonstrators.

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unarticulated premise the assumption that people who want to propagandize protests or views have a constitutional right to do so whenever and however and wherever they please."