Journal of Criminal Law and Criminology

Volume 29
Issue 6 *March-April*

Article 7

Spring 1939

Recent Criminal Cases

RECENT CRIMINAL CASES

Edited by the
LEGAL PUBLICATIONS BOARD OF
NORTHWESTERN UNIVERSITY SCHOOL OF LAW

OLIVER M. TOWNSEND, Case Editor

EVIDENCE — ADMISSIBILITY OF PREVIOUS CRIMES UPON ISSUED DEGREE OF PUNISHMENT WHERE TRIAL IS BEFORE A JURY.—[Federal] Defendant, Dalhover, a member of the notorious Brady gang, plead guilty to a charge of murder of a state policeman while escaping from the robbery of the Goodland State Bank of Goodland, Indiana. The bank was an insured bank under 48 Stat. 783 (1934), 12 USCA §588c, and as such the defendant came under Federal jurisdiction; this act provided that on trial both the guilt and the punishment were to be matters for jury consideration. Dalhover admitted after his capture that he and his two cohorts had in their careers robbed approximately 150 stores, 4 jewelry stores, and 3 banks previous to the Goodland robbery. The issue on appeal was whether evidence of these previous crimes, readily confessed by the defendant, was properly admissible in the proceedings before the jury to determine the punishmnt. The majority of the court ruled that this evidence was perfectly proper. A strong dissent contended that the proceedings should be conducted under the rules of evidence which would have applied if the proceedings were a trial to determine guilt; under such rules the dissent finds this evidence would have been barred. *United States* v. *Dalhover,* 96 F. (2d) 355 (C. C. A. 7th, 1938).

That evidence of other unrelated crimes is not admissible in the trial of a criminal case, as a general rule, is too well recognized to require elaboration 1 Wigmore, Evidence (2d ed., 1923) §300; Underhill, Criminal Evidence (3rd ed., 1923) §150; 1 Jones, Evidence, (1913) §145. However, there are certain times when crimes other than the one for which the defendant is being tried are related to the crime of the indictment so that evidence of them is within the legitimate field of evidence to be considered; i. e., where two or more crimes are part of one transaction. *Miller* v. *State,* 13 Okla. Cr. 176, 163 Pac. 131 (1917); where it is necessary to complete the *res gestae. Gibson* v. *State,* 14 Ala. App. 111, 72 So. 210 (1916); where motive need be shown. *State* v. *Martin,* 47 Ore. 282, 83 Pac. 849 (1906); where the identity of the accuser is in question, *Romes* v. *Commonwealth,* 164 Ky. 334, 175 S. W. 669 (1915); to rebut a defense or alibi. *People* v. *Mandrell,* 306 Ill. 413, 138 N. E. 215 (1923) or in particular classes of crimes such as sex crimes to show inclination. *Lefforge* v. *State,*

129 Ind. 551, 29 N. E. 34 (1891). In the instant case there is no contention that this evidence of these other hundred odd crimes is so related to the murder that it is therefore within proper bounds. Rather the opinion concludes that since the guilt of the defendant has been determined by the plea of guilty there is no need of the rigorous exclusion of evidence of this type. The rule requiring exclusion of this kind of evidence finds its reason for being in certain "Auxiliary General Principles of Policy"; namely: 1. unaue prejudice might be caused by taking it into consideration; 2. unfair surprise would handicap the defense; 3. confusion of issues would result. 1 Wigmore, Evidence §29a, Wharton, Criminal Evidence (11th ed., 1935) §344. The court argued that since the guilt had been determined and since it is merely a question of meting out the punishment, this evidence might be admitted. They evidently felt that the "Principles of Policy" were all matters applicable in the determination of guilt but are no longer pertinent once guilt is determined.

Under the common law, the court prescribed the punishment; even in instances where alternative punishments were provided, the question was for the court's discretion. Bishop, Criminal Law (9th ed. 1923) §934. But in some situations the jury is given a voice in the fixing of the punishment. Ark. Stat. 4039; Ariz. Rev. Code (1928) §4585; Ky. Stat. (Carroll, 1936) §1136; Mo. Stat. (1929) c. 29, Art. 13, §3703; Ohio Stat. (Baldwin, 1934) §12400; Tex. Code of Cr. Proc. (Vernon, 1936) Art. 502; Va. Stat. (Michie, 1936) §4784. This procedure of having the jury fix the punishment, however, has not been without its critics. Kerr, A Needed Reform in Criminal Procedure, 6 Ky. L. Rev. 107 (1918); Fuller, Criminal Justice in Virginia, pp. 133, 139, 161 (1931); 24 Va. L. Rev. 463 (1937). Such criticism would well lead one to question the feasibility of this type of process.

In cases where the court is the body which imposes the sentence it seems to be a generally accepted practice that evidence of other offenses may be taken in consideration by the court in determining the sentence. 86 A. L. R. 833; 8 R. C. L. §269; 3 Wharton, Criminal Procedure (10th ed. 1918) §1890; *Peterson* v. *United States,* 246 Fed. 18 (C. C. A. 4th, 1917); *Meyers* v. *People,* 65 Colo. 450, 177 Pac. 145 (1918); *People* v. *Popescue,* 345 Ill. 142, 177 N. E. 739 (1931). The rule obviously is different from that applied to evidence heard to determine guilt. *People* v. *McWilliams,* 348 Ill. 333, 180 N. E. 832 (1933).

The leading authority cited in the principal case upholding the contention that this evidence is properly in the scope of the jury's consideration in setting the sentence is the Illinois case, *People* v. *Popescue, supra.* In that case there was a cause tried before a judge on a plea of guilty to a murder charge. "The only question is whether the trial judge erred in hearing evidence of other crimes before exercising his statutory discretion in fixing the degree of punishment." The court held in that particular case that this evidence was properly to be considered. But the opinion points out that the results might be different if the jury were the body to determine the punishment. Thus the *Popescue* case, which is the only case cited to uphold this conclusion in the noted case would seem to be distinguished

from the very situation for which it is cited as precedent. Moreover there are other features by which the cases are distinguishable There the evidence of these other crimes was not unrelated, but was found relevant to the crime for which the defendant was being tried; it served to rebut the defense that the killing was accidental and as such would come within the exceptions previously considered and would be good evidence even on trial. *People* v. *Folignos,* 322 Ill. 304, 153 N. E. 373 (1926). Also the court was conducting a hearing under an Illinois Statute, Ill. Rev. Stat. (1937) c. 38, §732, which makes it mandatory if requested by the State or by the defendant that evidence in mitigation or aggravation be heard. *People* v. *Pennington,* 267 Ill. 45, 107 N. E. 871 (1915).

Can we reason by analogy and conclude that since the judge can hear evidence of other offenses in determining punishment in criminal trials, therefore a jury is able to do likewise? As a rule it does not seem that this evidence is admissible for the jury's consideration. Wharton, Criminal Procedure, §1890. In a situation nearly identical with that in the principal case the court held that the defendant had a right to have his punishment fixed with reference only to the circumstances of the crime of which he has been found guilty. If this evidence has been admitted it is not possible for the court to say that the jury in sentencing hasn't been prejudiced by this evidence. *Farris* v. *People,* 129 Ill. 521, 21 N. E. 821 (1889); *People* v. *Meisner,* 311 Ill. 40, 142 N. E. 482 (1924); *People* v. *Hefferman,* 312 Ill. 66, 143 N. E. 411 (1924); it might close the jury's mind to any lenience and cause them to fix a death penalty instead of a life term. *Reppin* v. *People,* 95 Colo. 192, 34 P. (2d) 71 (1934). The court says in *People* v. *Corry,* 349 Ill. 122, 181 N. 5. 603 (1932) that where the punishment may vary, "the accused had the right not only to have his guilt or innocence of the particular charge determined free from the prejudicial effect of incompetent evidence, but also to have his punishment, when found guilty of the crime charged, fixed solely with reference to the facts and circumstances of that crime, excluding from the process of making such decision, the consideration of other independent and unrelated offenses."

On the basis of these cases to which there seem to be few exceptions one might conclude that this evidence was wrongly admitted for jury consideration. Certainly there is little authority in the instant case which would serve as precedent for the conclusion reached. It seems to be the rule that where the court is fixing the sentence after the guilt has been determined, it can consider these other evidences. But where the determining body is the jury most decisions rule that this evidence would prejudice the resulting punishment and therefore only incidents directly connected with the charge should be allowed to influence the final conclusion. This difference in rules seems to be an inconsistency in our criminal practice, not to be justified on the basis of the superior sense of judgment which a court possesses as compared with a lay jury. Rather the difference in rules goes deeper so as to involve considerations of entirely different fields in determining the punishment the accused must suffer. For the same crime the judge in sentencing could scan the whole character and past con-

duct of the accused; but the jury would be limited to the relatively narrow scope of incidents directly related to the one crime of the indictment. It truly seems to be a double standard; one for the judge, another for the jury. This case, if followed, would establish a uniform rule to be followed by both the judge and jury by letting them both consider the same fields. The decision, however, has not supported its conclusion on the basis of precedent cases, nor has it justified the result by considerations of policy.

If one is to desire uniformity in method of arriving at the punishment, whichever process is elected should be chosen only after consideration of the larger question of criminology of what purpose the punishment is to serve. That the historical basis of punishment arose from an attitude of vengeance is a truism which to the sociologist requires little explanation. MacDougal defines the origin of punishment as "the binary compound of anger and positive self feeling." Even today that vengeance theory is the basis of the attitude that many lay persons have toward the treatment of the criminal. But to most criminologists such an attitude is too much like a debtor-creditor agreement where the criminal, by suffering his punishment which corresponds to the price to be paid for that particular breach of the rules of society, again gains the right to commit another crime. Such, it would seem would be the result of attempting to isolate the facts of the one particular crime and render a corresponding punishment. This leaves no room for any play of mitigation or aggravation but is rather an eye for eye—tooth for tooth doctrine. This is the conclusion one must sustain if they are to argue for exclusion of other evidence in determining the punishment.

Rather it would seem that the ultimate purpose of imprisonment is to protect society and the lives of its members. To reach this end, the punishing body could more aptly consider facts of deterrence of the commission of crime and the prevention or restraint of it in the future. Statistics support the general supposition that a habitual criminal is more likely to commit crimes in the future than is a first offender. Glueck and Glueck, Five Hundred Criminal Careers (1933) 250-251. Certainly it would seem that these previous elements of other crimes which furnish a background for the criminal and to an extent determine his moral turpitude, and do admittedly correlate with the record he will probably have in the future, should be considered in punishing the person guilty of the crime.

With this in mind it would seem that the conclusion in the instant case could be supported on doctrines taken from the fields of criminology and sociology: that punishment determined with consideration of former crimes would be more apt to bring a result nearer the ends of justice.

HAROLD CALKINS.

ABORTION—ATTEMPT TO ABORT A NON-PREGNANT WOMAN — DYING DECLARATIONS. — [Illinois] The well-nigh impossible task of upholding a conviction in abortion cases on appeal was again demonstrated in a recent decision of the Illinois Supreme Court. *People* v. *Holmes*, 369 Ill. 624, 17 N. E. (2d) 562 (1938). That case, however,

is of interest, not necessarily because of the above fact, but because of the law which the Supreme Court refused to decide. Delivering an opinion without citing a case, the court reversed the conviction without remanding on two grounds.

The first ground for reversal was based on the admission by the trial judge of the deceased woman's oral dying declaration. On May 10, 1938, Grace Christensen, the deceased, told hospital authorities that when she knew she was near death she would make a statement. On May 15, 1938, without any solicitation on the part of the hospital authorities she said she wished to make a statement as she knew she was going to die. She repeated this several times, and accused the defendant of being responsible for her condition. The hospital authorities, in transcribing her statement substituted their language for hers, and the trial judge held this written statement inadmissible on the ground that it was not in the words of the deceased woman. The oral statements of Mrs. Christensen, from which the written statement was taken, however, were admitted into evidence, and this admission the Supreme Court ruled erroneous, stating; *one,* that the record failed to establish that the deceased had given up all hope of living when she made the written declaration; *two,* that at no time was deceased ever told by her physicians or other qualified persons she was going to die; and *three,* that the genesis of both the oral and written statements was the desire of the hospital to obtain an exculpatory statement to absolve it from any blame in her death. The court claims the statement was essentially one of exoneration for the hospital, not one of incrimination of the defendant.

These propositions can be shortly answered. First, the court confuses the written declaration which was not admitted and the oral declaration which was held admissible. Aside from this, however, the record is replete with statements by Mrs. Christensen that she knew she was going to die. That she entertained such a belief is strengthened by the fact that on May 10th she postponed making any statement until she was certain she was near death, and subsequently on May 15th, made the declaration saying she knew she was dying. As early as May 4th, the record shows, the deceased woman had declared herself near death and had made plans for her own funeral. Statements such as these are more than enough to satisfy the Illinois rule, laid down in *People* v. *Cassesse,* 251 Ill. 422, 425, 96 N. E. 274 (1911), that the evidence must show the declarant entertained a fixed belief and a moral conviction that his death was impending, that he had no hope of recovery, that he despaired of life and looked upon death as inevitable and at hand. Secondly, there is no mention in the above rule of the necessity of a physicians warning as to impending death. To the contrary, in *People* v. *Zachary,* 310 Ill. 351, 141 N. E. 732 (1923), the Illinois court held that to make a dying declaration it was *not* necessary for any physician to be present. Whether this is still the rule in Illinois we cannot be certain, for the court in the instant case has not met the issue squarely or clearly, but only intimates that this may no longer be the rule. Thirdly, the court's theory that the statement is one of exoneration is completely exploded by the fact that there is

no showing in the record that there was any persuasion on the part of the hospital authorities. Had there been any effort on the part of the hospital authorities to obtain the statement, the court's point would still not have been well taken. *People* v. *Borella,* 312 Ill. 34, 43, 143 N. E. 447 (1924) enunciated the doctrine that such statements may be solicited by officials.

The court also stresses the fact that the deceased lived eleven days after making her declaration. It is interesting to note that in *People* v. *Kreutzer,* 354 Ill. 430, 188 N. E. 422 (1933), the declarant lived nine days after making her declaration, and in *People* v. *Cassesse* (*supra*) the declarant actually lived thirty-five days after the statement was made.

As a second ground for reversal, the Court, completely misunderstanding the theory of the People as to just how the deceased woman came to her death, rule that the expert medical testimony for the State did not over-balance such testimony for the defense. It is apparent from an examination of the briefs of both the People and the defendant that each contended Mrs. Christensen died from a general peritonitis which resulted from the rupture of a tubo-ovarian abscess. The State argued the rupture was caused by the insertion of the instrument used in the attempted abortion. The defendant claimed the rupture was either spontaneous or that it was caused after defendant had treated her, by an operation performed by deceased's physicians in an effort to save her life. The court seemingly was under the impression that the defense alone recognized the previous existence of the abscess and that the People were contending the abscess itself was caused by the insertion of the instrument in the attempt to procure the abortion. The court, therefore, reversed without a necessary understanding of the arguments that were made.

The court, reversing on the above two grounds left undecided a point of law which has long been argued. The defendant, who was not a physician and shown by other testimony in the record to have made a practice of performing abortions for money, was charged with murder by attempting to procure a miscarriage on a woman who was not pregnant. The indictment was drawn under the statute relative to abortion, Ill. Rev. Stats. 1937, Ch. 38, Sec. 3, which reads: "Whoever, by means of any instrument, medicine, drug or other means whatever, causes any woman pregnant with child, to abort, or miscarry, or attempts to procure or produce an abortion or miscarriage, unless the same were done as necessary for the preservation of the mother's life, shall be imprisoned in the penitentiary not less than one year nor more than ten years; or if the death of the mother results therefrom, the person procuring or causing the abortion or miscarriage shall be guilty of murder." 1874, March 27, R. S. 1874, p. 348, div. 1, sec. 3. That the statute does cover murder by attempted abortion as decided in *Clark* v. *People,* 224 Ill. 554, 79 N. E. 941 (1906), the defendant does not deny, but does argue that because of the impossibility of performing an abortion or an attempted abortion on a woman not pregnant she could not be convicted under this indictment.

The defense contends that before a crime can be committed under this statute the act would have to be done, in the language of the

statute, on a woman "pregnant with child." They say the party shall be guilty of murder only "if the death of the *mother* results therefrom" (italics supplied), and cite, in support of this contention, the case of *Howard* v. *People,* 185 Ill. 552, 57 N. E. 441 (1900). In that case the Illinois court held the word "mother" in section 3 (*supra*) meant a woman pregnant with child. There the indictment charged the defendant with murder by abortion on a woman pregnant with child, and the court, faced only with the problem of the sufficiency of the indictment, held it good saying that a woman pregnant with child is a "mother" as used in Section 3 (*supra*). The case is distinguishable on this point, the court not having considered or faced the problem of the instant case.

The argument in answer to defendant's contention is that of legislative intent. By no stretch of the imagination does it seem possible the legislature intended this statute to be used as a means of escape from one of the crimes it was attempting to prevent. Even on the grounds of statutory interpretation there is an answer to the argument of the defense. It will be observed that Section 3 embraces two offenses, that of abortion, and that of attempt to abort. Of course, to constitute the crime of completed abortion the woman must be pregnant, and the phrase "woman pregnant with child" is found in that part of the statute which deals with that crime. These words are significantly absent from the part of the statute dealing with the crime of attempted abortion. The more sensible construction is that the word "mother" as used in Section 3 was merely intended to describe the person on whom the abortion was attempted, and not that the intent of the legislature was to exclude an act of this kind from the statute.

This contention of the defense was squarely met in the case of *People* v. *Huff,* 339 Ill. 328, 171 N. E. 261 (1930), which was reversed because of an error in the indictment. Although reversing, the court said on page 333; "It is not necessary to allege she was pregnant. It would be impossible to procure a miscarriage if she were not, but it was not necessary to the making of the attempt that she should be pregnant. An attempt may be made to commit a crime which it is impossible for the person making the attempt to commit because of the existence of conditions of which he is ignorant." The court, in that case, went on to say that the defendant cannot take advantage of a fact of which he did not know. This is certainly the better reasoned argument. It is not conceivable that a defendant, with every other element of the crime present, should go free because of the absence of a foetus. Whatever else it did, the Illinois Court should have at least discussed and decided this question. It is to be remembered that the *Huff* case was reversed on other grounds, and without a distinct holding on the point the question is still a fairly open one in Illinois.

Nowhere in the record is there any denial by the defendant that she did not perform any of the acts of which she is accused in the dying declaration. There was testimony at the trial to show she made a practice of performing abortions. She was not qualified in any way for the practice of medicine or surgery. Under all these facts there can be no justification for a crime

such as this, yet the court gave her her freedom after she had been convicted by a jury of a crime which she did not deny. There was sufficient basis both on the law in Illinois and the facts of the case for a decision affirming the conviction. It is clear the court should have settled the law on this subject in such a way as to leave no doubt as to how it stood in future cases concerning like situations. By refusing to meet the issue squarely the court has only succeeded in confusing the law as to dying declarations. Whichever way the court ruled, a firm decision was needed to clarify the law, thus insuring a greater opportunity for the granting of justice, and a saving in time and money for the people of the state.

PETER WILSON.

STAMPS — OBLIGATION OR OTHER SECURITY—COUNTERFEITING.—[Federal] In an action of libel, the United States seized, and attempted to have forfeited a stamp catalogue which had been imported from Switzerland through the mails. This book had, on its face, an illustration of a Swiss postage stamp in green and within its covers were black and white reproductions of foreign stamps. The government contended that the book was illegal because the stamps were reproduced in violation of sections 220, 172 and 161 of the Criminal Code. The District Court ultimately rests its decision on sec. 161, and determines that the illustrations were not obligations or securities within the meaning of that act; and that the catalogue was not subject to seizure. *United States* v. *One Zumstein Briefmarken Katalog,* 24 F. Supp. 516 (D. C. E. D. Pa., 1938).

Sec. 220 of the Code forbids anyone from knowingly using any forged or counterfeited stamps of any foreign government. Knowledge or belief of its counterfeit character is an essential part of passing counterfeit obligations. *Zottarelli* v. *United States,* 20 F. (2d) 795 (C. C. A. 6th, 1927); *Hagan* v. *United States,* 295 Fed. 656 (C. C. A. 6th, 1924). Since intent is so necessary, and the government readily conceded that there was none here, this section as well as section 172, wherein there is a like requirement, are inapplicable, and the District Court finds them so.

Penetrating the somewhat confused arguments of counsel for the United States, we see that the issue is presented by an interpretation of sec. 161, viz., is a foreign stamp an obligation or other security of a foreign government within the meaning of the Act? The pertinent provisions of that section prohibit the selling, printing or importing of "any counterfeit plate . . . engraving, print, obligation, or other security of any foreign government." It is quite obvious that these stamps are neither counterfeit plates, engravings, or prints. If the act is to have applicability at all, it will be in analyzing the connotation of "obligations." There is a decided dearth of cases dealing with the definition and interpretation of these terms. A search produced but two cases involving that section. Both cases are cited in the court's opinion, and the dissent of one, *Biddle* v. *Luvisch,* 287 Fed. 699 (C. C. A. 8th, 1923), is relied on heavily. In that case, the question arose on the sufficiency of an indictment charging a violation of section 161, and involving Canadian excise stamps. Defendant pleaded

guilty, and the court held that under that plea, he had admitted the allegations that the stamps were obligations or securities of that country, and that this relieved the government from proving a foreign law, of which courts could not take judicial notice. At pp. 701, 702, the Dissent held that the indictment had assumed that the stamps were obligations and had charged a counterfeit of them; but, a stamp shows on its face that it is not such an obligation, and to say that it might be would be to import into our law a foreign law as a new element of defining a crime. Foreign stamps are not expressly included in the statute as "obligations or other securities"; since they are not so included, and since Congress could have included them, a contrary implication arises. See also *United States* v. *Luvisch,* 17 F. (2d) 200 (D. C. E. D. Mich. 1927).

The fact situations in the principal case, and in the *Biddle* case, *supra,* are so dissimilar, however, that the decision in the latter, though helpful, is far from controlling.

A great deal, of course, depends on the definition of the terms in the dispute. *Webster's New International Dictionary,* 2d edition, defines the words in question as follows: a "stamp" is "evidence that the government's dues are paid"; an "obligation" is a "formal and binding agreement or acknowledgment of a liability to pay a certain sum or do a certain thing"; a "security" is "an evidence of debt or of property, as a bond, stock certificate . . .; a document giving the holder the right to demand and receive property not in his posession."

Examining sec. 161 more closely, can we say that the words "other securities" have a special significance, and that they should be construed so as to include stamps which were not specifically set forth in the act? To do this—to give them a flexible meaning in which they would operate as a "catch-all" —would seem to contravene, if not repudiate, the doctrine "ejusdem generis," that is when general words follow the enumeration of particular things, or persons, the general words will be construed as applying only to persons or things of the same general nature as those enumerated; this rule is especially applicable to penal statutes. 59 C. J., sec. 581, and cases there cited.

The words "other securities" are words of a general character, and under the doctrine just enunciated we may conclude that "other security" means things of the same general nature as "obligation"; a stamp, even though an "other security," is not a promise to pay or do something but is rather dues for a governmental service.

The stamps in the case at bar were illustrations included in a stamp catalogue, and were definitely not to be used for any other than philatelic purposes. Such a situation as this seemed to be realized as conceivable by Congress. Proponents of the Act of March 3, 1923, 42 Stat. 1437, argued that since there was a large group of philatelists in the country, and that number was continually increasing, that something be done to permit them to increase their activities by allowing them to issue and collect defaced stamps. The Act allowed printing and publishing of black and white illustrations of foreign stamps "from plates so defaced as to indicate (they) are not adapted or intended for use as stamps, or to prevent or forbid making of nec-

essary plates therefor for use in philatelic . . . articles or albums."

This act was a boon to stamp collectors; but, more was to come. The above act's amending act of Jan. 27, 1938, 56 Stat. 6, provided that "nothing in secs. 161, 172, and 220 of the Criminal Code . . . shall be construed to forbid or prevent . . . importation . . . for philatelic purposes . . . of black and white illustrations of: (1) foreign revenue stamps if from plates so defaced as to indicate illustrations are not adapted or intended for use as stamps; (2) foreign postage stamps." Unless indicated otherwise, the amended statute should be construed as though the original had been repealed and the new act adopted in its amended form. Applying these principles to the situation at bar, there is little doubt but that the legislation intended to permit these black and white illustrations to be made; this the government's counsel graciously concedes. And this whether the stamps were or were not obligations of a foreign power. In view of these two acts the court's discussion of sec. 161 in this connection seems rather meaningless, although informative. But, as the Amending Act of 1938 was not passed until after this case was in litigation, a good explanation appears.

There remain but the two other kinds of stamps to be disposed of; the colored illustration on the cover, and some black and white illustrations of revenue stamps within. The District Court holds that though not coming within the exemption of the Amending act, still, since they weren't obligations or securities of a foreign country or counterfeits, their importation for philatelic purposes is not prohibited.

It is rather difficult to believe that the government was serious in prosecuting—what appears to have been its purpose was to present this as a test case. Counsel for the United States seems to have made half-hearted attempts to throw out, without any well-conceived plan, some sections of the Code; and, instead of pursuing his contentions, he either conceded that he was in the wrong, or failed to press his line of attack. Apart from this, we cannot see how the Court could, under these conditions, have decided that these were "obligations." We hasten to add that we do not contend that stamps could never be obligations of a government, for that has been decided otherwise. In 20 O. A. G. 691, and 27 O. A. G. 125, the Attorneys-General said: "that postage stamps are not obligations of the United States, except so long as they remain uncancelled." In this case, there is a different consideration. The stamps were reproduced in black and white and were solely for philatelic purposes; and, since there is no danger of their being used for any other purpose, we seriously doubt whether Congress would prevent their importation, even though they were obligations. This position is confirmed by the Amending act of 1938 which allowed exactly that.

SELWYN COLEMAN.