Fall 1951

Abstracts of Recent Cases

ABSTRACTS OF RECENT CASES

Power of Attorney General to Prevent Disclosure of F.B.I. Files—The United States Supreme Court in *Touhy* v. *Ragen*, 340 U. S. 462 (1951), upheld the right of the Attorney General to divest his subordinates of authority to produce Justice Department files in court. The case arose when the celebrated Roger Touhy filed a petition for habeas corpus in the Federal Courts alleging that his conviction was obtained in violation of the "due process" clause. He contended that certain files in the hands of the Department of Justice supported his allegations.

The District Court ordered the Agent in Charge of the Chicago office of the Federal Bureau of Investigation to produce the papers and was met with a refusal because of a departmental regulation prohibiting disclosure of files without permission from the Attorney General. The District Judge thereupon cited the Agent for contempt, the citation was reversed on appeal, and certiorari was granted.

The Court, through Mr. Justice Reed, expressly limited its decision to the propriety of the departmental regulation and reserved the issue of the right of the Attorney General to refuse a court order for the documents. Mr. Justice Frankfurter concurred stating that implicit in the Court's decision was the assumption that the Attorney General will be amenable to process in whatever jurisdiction the issue of his right to withhold Justice Department documents arises. Justices Black and Douglas would have affirmed the District Court's action.

(The problems of the *Touhy* case are discussed in detail in "Executive or Judicial Determination of Privilege of Government Documents," Vol. 41, page 330 of this *Journal*.)

Shackling of Defendant Discretionary With Court—During his trial in a state court the defendant was handcuffed and armed guards were stationed in the courtroom. The defendant filed petition for habeas corpus in federal court alleging that these facts prevented him from having a fair trial. At the proceeding the local sheriff testified that there was fear of the defendant's relatives causing a disturbance during the trial and the defendant had been previously convicted of armed robbery, burglary, and auto theft. The court in *Odell* v .*Hudspeth*, 189 F. 2d 300 (10th Cir. 1951), held that the issue of manacling is discretionary with the trial judge and the due process clause is not offended unless there is a clear abuse of this discretion coupled with an unusual display of hostility toward the defendant. The facts did not disclose the presence of either of these conditions in the instant case.

Right of Defendant to Inspect His Confession Before Trial—The legislature of Minnesota has recently enacted a statute giving a defendant an unequivocal right to obtain a copy of his confession before trial. The statute, found in Minn. Laws 1951, C. 284 §611.033, provides that no confession is admissable in evidence unless attached to it is a receipt of the accused stating that he obtained a copy of the statement at the time it was made. In the absence of statute, the majority rule is that a pre-trial inspection by the defendant is discretionary with the court. *Cf. State* v. *Leland*, 227 P. 2d 785 (Ore. 1951), and cases there cited. (For a complete discussion of defendant's right to data in the hands of the state, see "The Right of Defendant to Inspect Results of State Conducted Tests and Experiments," Vol. 51, page 65 of this *Journal*.)