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Sale of Lewd Photographs to High School Children—In *People v. Finkelstein,* 114 N.Y.S.2d 810 (N.Y. 1952), the defendant, manager of a neighborhood candy store and luncheonette which catered to high school children, was convicted of selling lewd, lascivious, and indecent magazines, pictures, and photographs. The sales were accompanied with a brochure purporting to demonstrate their use for artistic endeavors. The court pointed out that bona fide literary and artistic efforts are not to be suppressed, but that the court is under the obligation to protect weaker members of society from corrupt influences. The most important factor considered by the court was the type of person who might reasonably be expected to secure these materials—"the high school student who purchases these pictures and seeks dark corners and privacy to snicker over their contents." Secondly, the court considered the channel of distribution, demonstrating that a candy store is not the normal channel through which actual students of art usually buy their materials.

The court concludes that realistically this condition may not be curable, but that when the opportunity does arise, it should not be allowed to pass.

Scope of Self-Incrimination Privilege Before Congressional Investigating Committee—In *United States v. Costello,* 198 F.2d 200 (2d Cir. 1952), the defendant was convicted of ten separate contempts of the United States Senate Crime Investigating Committee (Kefauver Committee). The counts break down into three categories: (1) refusal to answer specific questions regarding his financial condition, (2) wilful default in terminating his appearance before the Committee without leave and refusing to answer any questions whatsoever, (3) refusal to answer specific questions after stating that he refused to answer any questions whatsoever.

The Second Circuit, speaking through Judge Augustus Hand, held that Costello was justified in refusing to answer specific financial questions because of their tendency to incriminate him. The court took a broad view of the self-incrimination privilege and relied on the test enunciated by the the Supreme Court in *Hoffman v. United States,* 341 U.S. 479, 488 (1951). The refusal is privileged unless it is *perfectly* clear that the answer *cannot possibly* tend to incriminate. The court also held with Costello regarding the alleged contempt for refusing to answer specific questions after his initial refusal to give *any* testimony. The court was of the opinion that "the contempt was total when he stated that he would not testify, and the refusals thereafter . . . [were merely] expressions of his intention to adhere to his earlier statement and as such were not separately punishable."

Nevertheless, Costello's conviction was sustained on the counts alleging wilful default in his unwarranted absence and complete refusal to testify were affirmed. The defendant argued that his refusal was not a wilful default because he had acute laryngotraceitis and could not testify. The court held it proper to submit the questions of the defendant's physical ability and wilfulness to the jury.

The Supreme Court denied Costello's petition for certiorari and he is now serving his sentence for contempt.

For a full discussion of Congressional investigations generally, and also as regards the problems involved in the Costello case, see this Journal, Vol. 41, No. 5, at pp. 618-639.

Strangers Convicted of Conspiracy—In *United States v. Tramaglino,* 197 F.2d 928(2d Cir. 1952), the defendants, suppliers of marijuana, were con-

victed of conspiring to commit, and of committing offenses involving the purchase and sale of narcotics. The two defendants had no actual dealings with one another; they merely sold their wares, marijuana, to the same group, but both knew the purchases were for resale and that there were suppliers other than themselves. This was enough, said the court, to show that each participated in and acted to further the ends of the overall conspiracy conceived by the intermediary group.

Alien Signing Voting Certificate Did Not Represent That He was a Citizen—In *United States v. Anzelone*, ... F.2d... (3d Cir. 1952); 21 U.S.L. WEEK 2027 (July 7, 1952), an alien who signed a Pennsylvania voter's certificate was charged with false representation that he was a United States citizen in violation of 18 U.S.C.§911 (1948). Under the laws of Pennsylvania a person who signs his name to a voter's certificate is entitled to vote, unless 1) he becomes disqualified because of moving from the district, or 2) if he violated any laws prohibiting bribery at elections, or 3) his signature on the certificate is not the same as that shown on his registration. 25 PS Pa.§951-36(a)(1935).

The District Court upheld the government's arguments that since a person has to be a citizen of the United States to be a qualified voter, Anzelone therefore represented himself to be a citizen.

On appeal, the Circuit Court pointed out that this voter's certificate could not be treated as a direct representation of United States citizenship, that it merely represented that the signer was registered, that he had not moved from the voting district, etc. The court went on to say that an interpretation of the statute so as to make action of this type a crime, would be so vague as to require the condemnation of uncertainty, indefiniteness and vagueness expressed in *United States v. Cohen Grocery Co.*, 255 U. S. 81 (1921).
