Journal of Criminal Law and Criminology

Volume 45 | Issue 6 Article 12

1955

Abstracts of Recent Cases

right of privacy—providing quick and certain punishment for the policeman offender. Adoption of such a system would obviously not be easy. It would probably be opposed by the courts and the prosecutor, as well as by the police.

Summary

The exclusionary rule is most effective in relation to serious offenses. It fails to deter invasions of privacy where there is no premium on conviction, and it provides no remedy for the victim of an illegal search who is not prosecuted. However, no other method has yet been proposed which would accomplish the ends which it does reach. Enforcement of thei right of privacy requires the use of the exclusionary rule, supplemented by the tort action and some form of mandatory punishment.

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Jurors Reading of Prejudicial Newspaper Article is Grounds for New Trial—Defendant was convicted of rape and no appeal was taken. Several years later he sought relief under the Illinois Post-Conviction Hearing Act. A new trial was granted after a finding that defendant's constitutional right to an impartial and unprejudiced jury had been violated. On appeal, the Supreme Court of Illinois affirmed this determination. *People v. Hryciuk*, 122 N.E. 2d 532 (Ill. 1954). During the course of the trial the jurors were permitted to return to their homes each night. On the evening before a verdict was to be rendered, a newspaper reported defendant had, when arrested, boasted of attacks on more than fifty women, that police described defendant as a vicious degenerate, and that defendant had been arrested while trying to attack a young lady. The next morning the trial judge overruled defendant's motion for a new trial and upon inquiry learned that each of the jurors had read newspaper accounts of the case. After receiving assurances from the jurors that they would not be influenced by the reports and giving an instruction to ignore the newspaper articles, the judge allowed the trial to continue.

The Supreme Court stated the test to be whether any of the jurors had been influenced to such an extent that they would not be fair and impartial. A determination of this question was said to involve consideration of all the facts and circumstances and to rest in the discretion of the trial judge. However, the court went on to say that "the statement of a juror that reading a prejudicial newspaper article has not influenced him should not be considered conclusive. . . . The most controlling fact or circumstance to create an inference is the character and nature of the prejudicial statements." Concluding as a matter of law that reading the article was prejudicial and could not be cured by instruction, the court decided that the trial judge had abused his discretion.

The dissent argued that the effect of the decision is to make a mistrial a matter of course whenever a juror reads an article derogatory to the defendant, and represented a departure from precedent. "It is my feeling that such an inflexible rule is one whereby the speedy and efficient administration of justice will be unduly hampered. . . . In this day of complete news coverage through so many different media . . . few persons would ever qualify as jurors. . . ."

Opportunity to Obtain Counsel Cannot be Denied After Additional Charge is Added—Petitioner pleaded guilty to a charge of housebreaking and waived his right to counsel. Thereupon he was orally advised by the trial judge that he would also be tried as a habitual criminal because of three prior felonies. A request for a continuance to obtain counsel was denied and defendant was also sentenced under the Tennessee Habitual Criminal Act which carries a mandatory sentence of life imprisonment with no possiblity of parole. After serving his sentence for housebreaking, defendant was denied habeas corpus relief by the highest court in Tennessee. The Supreme Court of the United States held that petitioner had been denied due process of law in that his prior waiver of counsel on the housebreaking charge did not

deprive him of a similar right on the habitual criminal accusation. *Chandler v. Fretag*, 75 Sup. Ct. 1 (1954). The Court reasoned that the jury might find petitioner guilty of housebreaking, yet innocent of being a habitual criminal. It concluded that a necessary corollary to the right to counsel is the reasonable opportunity to procure and consult with counsel.

Test Tube Babies Ruled Illegitimate—A judge of the Superior Court of Cook County, Illinois, ruled orally that test-tube babies are illegitimate if somebody other than the husband is the donor. *Doornbos v. Doornbos*, (Decided December 13, 1954—unreported trial court decision). "Artificial insemination (when the specimen is obtained from a third party) is contrary to good morals and constitutes adultery on the part of the wife. As such, it's the child of the mother, and the father has no right or interest in the child." If the husband is the donor "it is not contrary to public policy and good morals and doesn't present any difficulty from a legal point of view." The ruling was made in the course of a divorce case in which the wife was suing her husband for divorce on the ground of habitual drunkenness. How the court supplies the element of sexual intercourse usually thought an essential element of adultery was undisclosed. An appeal is not expected.

Legal Test of Obscenity—Appellants were convicted by an English court for publishing and selling obscene novels. The appellants contended that the books were not obscene by the standards of today and that they should have been allowed to introduce a number of other current books for comparison. The court rejected this contention stating that the test of obscenity is whether "the tendency of the matter . . . is to deprave and corrupt those whose minds are open to such immoral influences, and into whose hands a publication of this sort may fall. . . . The book or picture itself provides the best evidence of its own indecency. . . . The character of other books is a collateral issue, the explanation of which would be endless and futile. If the books produced by the prosecutor are indecent or obscene, their quality in that respect cannot be made any better by examining other books, or listening to the opinions of other people with regard to these other books." *Regina v. Reiter*, 2 *W.L.R.* 638 (Ct. Crim. App. 1954).