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Abstracts and Notes

in support of his defense of insanity, testified that, among other things, he had stuck his fist through a wall, thrown dishes out of a window, attempted to throw a crying baby out of the window, and physically threatened the life of their unborn child. To supplement this, the defense offered testimony from the defendant's sister-in-law, brother-in-law, and two friends as to various other actions indicating insanity. In answering a hypothetical case based on these actions, a neuro-psychiatrist replied that he thought the defendant had been mentally ill for a number of years. The government, in rebuttal, presented the accused's closest friend who declared that he had never witnessed any irrational acts on the part of the defendant. In addition, two psychiatrists testified that in their opinion the defendant was not suffering from any mental disease or defect. While presenting his closing argument to the jury, the prosecuting attorney remarked that he believed all of the testimony offered by the defendant's wife to be perjury. Later on in his summation, counsel for the prosecution stated that he would not make a charge of false testimony unless he could prove it. The United States Court of Appeals, with one judge concurring and four judges dissenting, reversed the defendant's conviction of first degree murder and held that comment by an attorney to the jury as would indicate personal knowledge of perjury is reversible error when there is no evidence in the record to support such a comment. *Stewart v. United States*, 247 F.2d 42 (D.C. Cir. 1957).

The court noted the fact that the defendant's insanity defense rested chiefly on the testimony of his wife concerning his irrational conduct and the hypothetical questions based on this conduct asked a doctor, who testified that the defendant was mentally ill. In addition, after searching the record the court could not find any evidence contradicting the wife's testimony. The court concluded that the prosecutor's statements, indicating to the jury that the defendant's wife had committed perjury, amounted to unsworn testimony by the prosecutor. This, the court said, was improper conduct so prejudicial that a new trial was necessitated, even though the defendant had not raised this point in his appeal. The court expressly refused to decide the question of "whether it is ever proper for a prosecutor to hurl charges of perjury at witnesses."

The concurring opinion indicated that the doubt created by the prosecution's claim of perjury was not cured by the general statement of the prosecuting attorney at the beginning of his argument that the jury is the sole judge of the facts, or by an instruction by the trial judge to the same effect. The concurrer then stated that "in a capital case specific error of serious character may not be disregarded because of scrupulous correctness of the trial in other respects", and it is the obligation of a reviewing court to search the record for reversible error.

While agreeing with the majority as to the general proposition that the prosecutor may not assert that testimony constituted perjury unless there is evidence in the record to support such a contention, the four judges dissenting denied that the prosecutor had exceeded these bounds. In support of this position they pointed to the fact that the defendant's wife had never complained previously of the alleged acts. Joined with her personal interest, and the testimony of the defendant's close friend that he had never witnessed any insane acts on the part of the defendant, the dissent concluded that there was evidence in the record justifying the jury's disbelief of the defense's witnesses. Even assuming error, the dissent argued that it was not prejudicial because: it was clearly the prosecutor's belief and not a statement of fact; the trial as a whole was completely fair; and finally, the prosecutor had made it patently clear to the jury that his summation was to be taken only as his personal recollection, and not as evidence.

Consequences of Committing Felony While on Parole Applied to Delinquent Parolee—The defendant was found guilty of a crime in New York and sentenced to a term of from five to ten years in prison. After serving three and one half years, he was released on parole in 1945. On November 2, 1949, Texas authorities lodged a parole violation complaint against the defendant, and a New York warrant for his arrest was issued on November 7, 1949. On the same day, the defendant was arrested pursuant to the warrant, but released on bail eight days later. A Texas court heard the matter on November 25, 1949, but no one appeared on behalf of the New York parole board to take the defendant into custody. However, on December 16, 1949, the New York parole board declared the defendant delinquent as of November 2, 1949. The Texas authorities later arrested the defendant on January 13, 1950 for a