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Notes: Articles, Reports, and Notes of The National Association of County and Prosecuting Attorneys

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by the correction of errors in the application of law in each case. Neither object is inconsistent with the other. The end is not reached, the cause is not finished, until both the facts and the law applicable to the facts are finally determined. The principle of finality is essential; but not more essential than the principle of justice. A final settlement is no more vital than a right settlement."⁶⁶

A later Supreme Court case, *Palko v. Connecticut*,⁶⁷ greatly weakens the force of the double jeopardy bar applied by the closely divided Court in *Kepner*. In *Palko*, Justice Cardozo, speaking for a nearly unanimous Court, held that the state appeals allowed in Connecticut do not violate federal due process, and, indeed, it was intimated that state appeals might not conflict with any notions of double jeopardy.⁶⁸

⁶⁶ 65 Conn. at 271-272.

⁶⁷ 302 U.S. 319 (1937).

⁶⁸ Compare this language from *Palko*: "... the dissenting opinions (in *Kepner*) show how much was to be said in favor of a different ruling. Right-minded men, as we learn from those opinions, could reasonably, even if mistakenly, believe that a second trial was lawful in prosecutions subject to the Fifth Amendment, if it was all in the same case. Even more plainly, right-minded men could reasonably believe that in espousing that conclusion they were not favoring a practice repugnant to the conscience of mankind. Is double jeopardy in such circumstances, if double jeopardy it must be called, a denial of due process forbidden to the state? * * * The answer surely must be 'no.' The state is not attempting to wear the accused out by

It is submitted that modern day courts have seriously crippled the people's right to equal justice when they refuse to allow state appeals because of constitutional prohibitions against double jeopardy. It must be remembered that the fundamental concept expressed in the phrase "double jeopardy" is the idea that no man should be tried more than once for a single crime. This "universal maxim" of the common law is based on policy grounds with which no one can quarrel. It certainly would be abhorrent to the instincts of civilized men if the government could try a man over and over and over again regardless of the results of the successive trials. The awesome power which the government can bring to bear against a lone defendant should be governed by reason and fairness. It is not fair, and not reasonable, however, to pervert a salutary policy of the law to the end that criminals may go free because the people received an unfair trial. This is to give "special sanctity . . . to a verdict tainted with illegality."

a multitude of cases with accumulated trials. It asks no more than this, that the case against him shall go on until there shall be a trial free from the corrosion of substantial legal error. This is not cruelty at all, nor even vexation in an immoderate degree. There is here no seismic innovation. The edifice of justice stands, its symmetry, to many, greater than before." (Emphasis added.) 302 U.S. at 323, 328, *with Kepner v. United States*, 195 U.S. 100 (1904).

NOTES

NACPA Objectives for the Year 1958-59

President J. St. Clair Favrot outlined the objectives of the Association for the year 1958-59 in the following comments he made as he assumed office at the 1958 Convention:

The person inheriting the mantle of office from ex-President Frank E. Moss wonders about the fit of the garment until there comes the realization that the estate includes many of the officers who contributed so much to make the past two years so successful in the comparatively short history of the association. In 1957 our group went into the last of the 48 states and in 1958 the thousand-mark in membership was achieved. These happenings will be permanent milestones in the history of the organization and will ever redound to the credit of "Ted" Moss and the valiant group of workers who gave so much of their time and of themselves to

the association. It is merely hoped that the writer can furnish some few sparks of the leadership exhibited by Moss and can receive some portion of the support given to him by members of our group during the past two years.

In outlining the plan of operation for the 1958-59 year, there are certain specific observations which should be made and which are as follows:

Publications

It is believed that the *Journal of Criminal Law* published by Northwestern University which has been adopted as the official organ of the association will fill a long-felt want by providing a bi-monthly contact between the association and the individual members thereof. In addition to being an excellent periodical featuring articles of interest and value to a large majority of the membership, the *Journal* will carry a certain number of pages each issue de-

voted strictly to NACPA affairs. The publication will likewise provide a vehicle for further dissemination of such outstanding addresses as were given at the Atlantic City convention by Dr. Herbert Berger, Police Commissioner Stephen Kennedy and Justice Michael A. Musmanno. The advantages accruing from the adoption of the *Journal* as the official organ of the association and sending it to all active members will certainly be worth the increase in active membership dues which has been occasioned by the cost of the *Journal* to the association.

Honorary Member Fred E. Inbau of the Northwestern faculty, manager of the six times per year publication, and Vice President Patrick Brennan, ex officio officer member of the Public Relations committee, will be in charge of NACPA's participation in the periodical and should be contacted by all members with regard to editorial and pictorial content of the publication.

Committees

The 1958-59 committees announced in this issue of the *Bulletin* are the first to be named under the stream-lined set-up provided in the new by-laws of the Association and replace the more than a score of various groups appointed during preceding years. The committee chairmen and vice-chairmen are all of proven calibre and membership on the groups has been largely based on attendance at one or more conventions although this rule has not been invariably followed in making appointments. Each committee has an ex officio national officer member whose duty is to see that the group maintains its functions during the year. Additions or subtractions will be made without hesitation if it is believed such action will benefit the association.

Survey

A survey of salaries, expense allowances and other remunerations in all of the 48 states will be undertaken by the association as one of its chief objectives for 1958-59. The full cooperation of the State Directors is needed by Vice President James H. DeWeese, who will be in charge of the undertaking, and results of the survey will be published in the *Journal*. It is believed that this material will prove of inestimable value in those states where compensation is below the national average and efforts are being made in the state legislatures to secure adequate remuneration for officials of our classification.

State Associations

It is realized that our association prospers best in those states with strong associations and a determined effort will be made to assist state groups in organizing or in bettering their particular group. It is hoped that some national officer of the association will be able to attend the state meetings and all State Directors are requested to call upon me in advance of their local gathering so that a representative of our association can be present to spread the word of what has been accomplished in many states with regard to better procurements, increased salaries and expense funds, retirement or pension plans, and other benefits through concerted action at the state level.

Furtherance of Justice Award

The association will continue its Furtherance of Justice Award to some individual or organization which has made a notable contribution in this field during the year. Individual members are requested to communicate with Chairman Edmond F. Devine of this committee in making recommendations for the 1958-59 award as notice of possible recipients must be had by the group if the annual designation is to achieve its intended purpose.

Administration of Law and Justice

One of the chief committees of the association is the Committee on Administration of Law and Justice under the co-chairmanship of J. Harold Grady of Baltimore, Md. and Frank H. Newell III of Towson, Md. This committee is charged with presenting the views of our association on a number of important matters pending before Congress as a result of several unfortunate decisions of the United States Supreme Court including the Benanti, Mallory and Nelson cases. The impact of Federal cases on matters at the state level is not to be minimized and curative work in the past Congress amounted to very little in the eyes of most prosecutors. The association and this particular committee can play a very important part in national legislation if the proper attention and direction is given to the effort. Several matters will come before the new Congress meeting in January, 1959 which affect, directly or indirectly, the conduct of many prosecuting officials and it is important that individual members of our association contact their senators and representatives when requested by the officers of this committee.

In writing to any other member or officer it is requested that copies of your letter be sent to all national officers if possible. When addressing communications to a committee chairman, it is urged that copies of your missive be forwarded to members of the committee. In this way, everyone is kept informed of what is going on and will result in better understanding and more active participation by everyone in the affairs of the association.

The association has gained a lot of momentum in its short existence and this can be accelerated if everybody pitches in and works for the betterment of the group. We can add a good deal of respectability to our official positions and can make our association the great force in better law enforcement in better communities in a better nation if each of us contributes just one little something to the aims of our association.

Resolutions Adopted at the 1958 NACPA Convention

The following resolutions were adopted at the 1958 NACPA Convention, in Atlantic City on July 30:

Resolution No. 1—Federal Legislation to Permit State Laws Authorizing Wiretapping by Law Enforcement Officers: The Supreme Court of the United States has recently interpreted Section 605 of the Federal Communications Act to preclude the states from enacting legislation which would legalize wire tapping by state law enforcement officers. Section 605 of the Federal Communications Act (47 U.S.C. Sec. 605) provides:

“...no person not being authorized by the sender shall intercept any communication and divulge or publish the existence, contents, substance, purport, effect, or meaning of such intercepted communication to any person . . .”

In *Benanti v. United States*, 78 S. Ct. 155, decided December 9, 1957, the Court held that evidence obtained by wire tapping by state officers is inadmissible in a federal criminal prosecution. In this decision the Court said “we find that Congress, setting out a prohibition in plain terms, did not mean to allow state legislation which would contradict that section and that policy.”

This interpretation of Section 605 deprives state prosecutors and other law enforcement officers of one of the most effective weapons in combating serious crimes and organized activity. In many instances the telephone is the usual means by which persons engaged in kidnapping, extor-

tion and racketeering convey threats and information. This criminal activity can be effectively countered only through the use of wire tapping. In some instances wire tapping will serve to protect the lives and property of persons by providing information concerning plans for the commission of crime.

To remedy the present situation Senate Bill 3013 (85th Congress, 2nd Session, January 16, 1958), has been introduced by senators McClellan, Ives, Ervin, Mundt, Goldwater and Curtis. The Bill provides that “Section 605 shall not apply to . . . (b) the interception, by any law enforcement officers or agency of any state (or any political subdivision thereof) in compliance with the provisions of any statute of such state, of any wire or radio communication, or the divulgence in any proceeding in any court of such state, of the existence, contents, substance, purport, effect, or meaning of any communication so intercepted, if such interception was made after determination by a court of such state that probable cause existed for belief that such interception might disclose evidence of the commission of a crime.”

This Association expressed its approval of Senate Bill 3013 at the 1958 Mid-Winter meeting at Las Vegas, Nevada and directed the President of the Association to bring its approval to the attention of the appropriate committees of the Congress. The Bill has not been passed and the need for immediate action is urgent.

Now, therefore, be it resolved that the National Association of County and Prosecuting Attorneys at the 1958 Convention at Atlantic City, New Jersey, approves Senate Bill 3013 and urges its immediate passage by Congress, and that the President of this Association be directed to bring this Resolution to the attention of the chairman of the United States Senate Committee on Interstate and Foreign Commerce and to the attention of the chairman of the United States House of Representatives Committee on the Judiciary; and further that the President of this Association request the appropriate Committees of Congress for permission to have various members of this Association appear to testify in favor of this legislation.

Resolution No. 2—Stricter Enforcement of Traffic Laws: In the year 1957 traffic accidents caused 38,500 deaths, 1,350,000 injuries and a property loss of 5.3 billion dollars. A further untold number of persons and families suffered grave privation by the deaths, injuries and losses. This

shocking toll indicates that traffic accidents have become a major domestic problem touching all the communities throughout the nation.

The problem of reducing traffic accidents is, in part, one of effective law enforcement. Statistics show that some form of traffic violation was present in the great majority of these accidents. Of 80 million licensed drivers in the United States, more than 25 million were cited to appear in traffic courts in 1957.

One effective means of reducing the ever growing incidence of traffic accidents is to be found in programs of stricter enforcement of traffic laws, more vigorous prosecution of all traffic violators and imposition of greater penalties for violations. Less than the most vigorous enforcement and prosecution or the imposition of penalties which are too small serve only to minimize in the mind of the otherwise law abiding citizen the importance of obedience to traffic laws.

Now, therefore, be it resolved that the National Association of County and Prosecuting Attorneys at the 1958 Convention at Atlantic City, New Jersey, be recorded as favoring programs of stricter enforcement of traffic laws, more vigorous prosecution of all traffic law violators and the imposition of heavier penalties for violations.

Resolution No. 3—Crime as Depicted on Television Shows: Television plays a significant role in the influencing of American thought and conduct. Indeed, for many families it is the instrument which forms their principal impressions of the standards of conduct observed in the outside world. With such influence and thought-controlling power, the content of television shows becomes a matter of great public concern and national importance.

For the past several years the television industry has seen fit to intensify its emphasis on the dramatic portrayal of crime in its perpetration as well as in its detection and prosecution.

With respect to the perpetration of crime, it is distressing to note the tendency of an alarming number of television shows to glorify violence, glamorize corruption and picture the criminal as a character to be idolized. The presentation of criminal conduct in such an unrealistic and false light cannot but cause some of our nation's impressionistic youths to acquire a distorted sense of values. Evidence is already forthcoming that this has occurred.

Further, there are some television programs

which depict the typical prosecutor as being utterly ruthless, or devoid of principles, or unintelligent and incompetent. These shows not only fail to cultivate a healthy respect for law and law enforcement, but they ridicule and vilify law and law enforcement. Such presentations cannot result in the proper attitude toward our legal institutions.

Now, therefore, be it resolved that the National Association of County and Prosecuting Attorneys at the 1958 Convention at Atlantic City, New Jersey records its firm protest against those television programs which glorify crime or violence and against those which vilify law enforcement, and that the President of the Association be instructed to bring this resolution to the attention of the appropriate television network officials in the hope that they will exert their conscientious efforts to correct the situation.

Resolution No. 4—Interstate Cooperation to Prevent Bigamous Marriages by Central Recording: The large number of bigamous marriages contracted each year has become a growing menace striking at the foundation of American family life. These marriages have created increasingly serious social problems in the nation through the desertion and abandonment of wives and children of the legal as well as the bigamous marriages. The result has been that many of the abandoned dependents have been placed on the public relief rolls. Moreover, the deprivation of normal family life and the stigma of illegitimacy placed on the children of bigamous unions causes a weakening of the social structure.

The present marriage licensing acts and other legal procedures of the states do not adequately prevent the crime of bigamy. Nationwide recording is urgently needed to prevent the commission of this crime and to establish an adequate safeguard for persons contemplating marriage.

Now, therefore, be it resolved that the National Association of County and Prosecuting Attorneys at the 1958 Convention at Atlantic City, New Jersey be recorded as favoring an interstate agreement and other necessary action within the several states for the establishment of one central marriage records office for all participating states. This office should keep duplicate records of all marriages thereafter performed in states which are party to the agreement. Copies of this resolution shall be sent by the President of the Association to the Council of State Governments and to the chairman

of the Legislative committee on Interstate Cooperation of each of the several state legislatures.

Resolution No. 5—The Association's Appreciation to Convention Hosts and Speakers: The National Association of County and Prosecuting Attorneys has been privileged to hold its 9th Annual Convention at both Philadelphia, Pennsylvania and Atlantic City, New Jersey.

The sponsoring of a Convention is an exceedingly arduous task requiring the energies and talents of numerous individuals who cooperatively afford the delegates both an informative and an entertaining occasion.

For their interesting and instructive speeches we are deeply indebted to: Dr. Herbert Berger, Dr. T. Terrell Davis, Hon. Edward J. Dimock, Hon. Louis J. Dughi, Dr. Richard Ford, Hon. John E. Hassett, Bernard F. Hillenbrand, Fred E. Inbau, Hon. Stephen P. Kennedy, Hon. Robert B. Meyner, Hon. Michael A. Musmanno.

For the gracious hospitality at historic Philadelphia we are indebted to: Victor H. Blanc, District Attorney of Philadelphia County, the City Council of Philadelphia, Robert Carpenter, President of the Philadelphia Phillies National League Baseball Club, Food Fair, Inc.

For their gracious hospitality at enjoyable Atlantic City we are indebted to: Atlantic County Detectives Joseph Jacobi and Joseph Mangold, and Monmouth County Detective Merritt B. Kent, Mrs. Sue Eastman and Miss Charlotte Brown of the Atlantic County Prosecutor's Office, Office Staff of the Atlantic, Monmouth

and Union County Prosecutors, Anheuser Busch Company, David Brone, Assistant County Prosecutor of Atlantic County; Bristol Myers Company; Van Brunt Printers of Red Bank; Esso Standard Oil Company; Soney and Sage Company, Law Book Publishers; Lewis P. Scott, County Prosecutor of Atlantic County; The County Prosecutors' Association of New Jersey; Mr. Robert Hitchin, Mr. Lou Mintzer, and the entire staff of the Hotel Traymore.

In the course of human frailty there are undoubtedly several individuals whom we have failed to properly honor. In short, to those named and those unnamed our sincere thanks for a memorable Convention.

The 1959 Annual Meeting of the Association and Northwestern University's 14th Annual Short Course for Prosecuting Attorneys

The next annual meeting of the National Association of County and Prosecuting Attorneys will be held in Milwaukee, Wisconsin on July 30, 31, and August 1, 1959. In Chicago the following week, Northwestern University School of Law will conduct its 14th annual Short Course for Prosecuting Attorneys, and on the preceding Sunday, August 2nd, the Law School will be host to its course attendants at an informal reception in the Georgian Room at the Drake Hotel.

NACPA members who are in Chicago that afternoon are cordially invited to attend the reception.