

Summer 1959

Abstracts of Recent Cases

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Abstracts of Recent Cases, 50 J. Crim. L. & Criminology 46 (1959-1960)

This Criminal Law is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

defense of indigent persons in justice and police courts. It has been the experience of those associated with the program—the bar, the prosecutors, judges and teachers—that student counsel are usually well prepared, enthusiastic in their defense, and surprisingly successful in their record of cases won.¹⁶ This practice is carried on under Colorado statutory and rule authorization.¹⁷

A recent survey by a committee of the Association of American Law Schools shows that law

¹⁶ Letter from Acting Dean Harold E. Hurst, University of Denver College of Law, to the *Journal*.

¹⁷ COL. REV. STAT. §12-1-19 (1953). The statute provides: "Students of any law school which has been continuously in existence for at least ten years prior to the passage of this section and which maintains a legal aid dispensary where poor persons receive legal advice and services shall when representing said dispensary and its clients and then only be authorized to appear in court as if licensed to practice." COL. R. CIV. P. 226A provides: "Students in the junior or senior class of any law school recognized by this court may, without fee, represent indigent persons in any justice of the peace or municipal court in Colorado; provided such representation be with the approval of the Dean of the said law school and the justice or judge of said court."

students are allowed to appear unofficially, or by local court rule, in several other jurisdictions.¹⁸

The results of the programs at Harvard and the University of Denver demonstrate that law student representation of indigent defendants in misdemeanor cases can be effective for both the accused and the student. The benefit to the student is obvious. He is gathering not only law research ability but also a wealth of trial experience.

The most formidable obstacles to be overcome before a system of student defenders could go into effect generally are the unauthorized practice statutes of most of the states. Legislative action, or the exercise of the rule-making power of the several supreme courts, is necessary here. All law schools, students interested in the administration of the criminal law, the organized bar, and the judiciary should explore together this great need for far more effective representation of the indigent. Student defender programs can go a long way towards solving this problem.

JIM THOMPSON

¹⁸ AALS, REPORT OF THE COMMITTEE ON LEGAL AID CLINICS (1958).

ABSTRACTS OF RECENT CASES

Francis A. Heroux

The Refusal to Answer Questions because of Possible Incrimination in Another Jurisdiction—In a Pennsylvania civil suit, a witness invoked his constitutional privilege against self-incrimination because the questions asked related to a pending criminal prosecution of him in New York. Upon attack, the Pennsylvania Court of Common Pleas for the City of Philadelphia upheld the use of the privilege against self-incrimination, even though the testimony would not have subjected the witness to criminal liability within Pennsylvania. *Putnik Travel and Tourist Agency v. Goldberg*, 27 U.S. L. WEEK 2319 (Pa. Jan. 6, 1959).

Although the court could not find any Pennsylvania cases relating to this question, it did determine that the great weight of authority only extends the privilege of self-incrimination to matters incriminating under the laws of the state where the privilege is invoked. However, the court found some authority for the view that the privilege is available if the prosecution in the other state is *actually impending* rather than remote. *Ballman v. Fagin*, 200 U.S. 186 (1906). This was the view adopted by the court. (See Comment,

Self-Incrimination And The Two Sovereignities Rule, 49 J. CRIM. L., C. & P. S. 240 (1958)).

Two Courts Extend Constitutional Rights to Juvenile Court Hearings—The petitioner, a boy twelve years of age, applied for a writ of habeas corpus, because he had been adjudged a juvenile delinquent for the murder of two persons and had later been certified for trial as an adult in the criminal court. He alleged that the proceedings in the juvenile court were unconstitutional inasmuch as unsworn testimony was admitted in evidence against him and no record was made of the proceedings which might form the basis for appeal. The Criminal Court of Appeals of Oklahoma granted the writ, quashed the pending criminal proceedings, and remanded the case to the juvenile court for a new hearing. *In Re Smith*, 326 P. 835 (Okla. 1958). The court held that a juvenile offender is entitled to the constitutional safeguards which surround the trials of adult offenders. Even though the statute made no provision for a transcript of proceedings in the juvenile court, the court said that due process required it. And the same ruling was applied to the requirement of sworn testimony against the defendant. The court

noted that proceedings involving the property rights of juveniles were conducted with great care and that the same standard should be applied in cases involving the juvenile's life and liberty.

In the second case, the defendant had been adjudged a juvenile delinquent in the juvenile court of the District of Columbia. He was later indicted and brought to trial in the District Court as an adult. He pleaded that this second trial placed him in double jeopardy in violation of his constitutional rights and this defense was sustained by the District Court which dismissed the indictment. *United States v. Dickerson*, 168 F. Supp. 899 (D.C. 1958).

This District of Columbia case is apparently the first one which squarely holds that a juvenile offender is entitled to all the constitutional rights of an adult offender. While the opinion deals specifically with the provision against double jeopardy, the *dictum* in the case extends to other fundamental rights, e.g., privilege against self-incrimination, right to counsel.

Most of the previous authority in this field has held the other way. Rights such as the privileges against double jeopardy and self-incrimination were held not to apply to juvenile court hearings on the grounds that these were not *criminal* cases, that they were *civil* hearings conducted under the *parens patriae* powers of the state. The court in the instant case held, however, that what matters is not the name applied to the hearing, but whether the result of the hearing might be a deprivation of liberty. If it was, all the constitutional safeguards applied.

"Precious constitutional rights cannot be diminished or whittled away by the device of changing names of tribunals or modifying the nomenclature of legal proceedings," said the court. And if the juvenile delinquency acts denied juveniles these rights, the court concluded they would be unconstitutional.

The Insanity Defense and the Durham Rule—In two very similar cases, the states of Massachusetts and Connecticut had occasion to review their rules on the insanity defense, when two murder defendants argued that the *Durham rule* (*Durham v. United States*, 214 F. 2d 862 (D.C. Cir. 1954)) should be adopted. The *Durham rule*, in substance, holds that an accused is not criminally responsible if his unlawful act was the product of mental disease.

The Connecticut Supreme Court of Errors re-

jected the proposed *Durham rule* in no uncertain terms. *State v. Davies*, 27 U.S.L. WEEK 2385, (Jan. 20, 1959). It realized that there was a great need for improvement in the area of the insanity defense. However, it believed that what was needed was clarification, and the *Durham rule* does nothing at all towards supplying this. The chief criticism directed against the *Durham rule* was that it leaves the words "disease", "defect" and "product" undefined, thus making its legal test vague and ambiguous. Under such an indefinite standard, a juror would have nothing more to base his decision on, other than his personal sense of justice. This could mean that an accused, subject only to the *Durham rule*, could know the nature and quality of his act, know that it was wrong, have the will power to restrain his act, and yet, by reason of his mental disease, develop egocentric or sadistic tendencies which could produce homicide with criminal impunity. Connecticut saw no good reason to adopt such a test of criminal liability.

The Supreme Judicial Court of Massachusetts reached a similar result in regard to the qualities of the *Durham rule*. *Commonwealth v. Chester*, 150 N.E. 2d 914 (1958). However, the Massachusetts court went much further in its discussion of the insanity defense and, in effect, levelled a severe criticism at the whole area of the law and at its own rule, which is based on whether the defendant "acted from an irresistible and uncontrollable impulse." The court's working premise was that the present state of the law leaves much to be desired. Specifically, it said that the Massachusetts irresistible impulse test is not satisfactory, and the court does not labor under the illusion that it is. But, whatever may be said against the Massachusetts and Connecticut tests of criminal responsibility, they at least have a standard to guide the triers of fact, while the *Durham rule* leaves the triers with virtually none.

Court Prescribes Proper Jury Instruction Regarding Insanity Defenses—The defendant was indicted for robbery, and, at his trial, he entered a plea of "not guilty by reason of insanity." The jury returned a verdict of guilty, and the defendant appealed, charging that the trial court had given the jury erroneous instructions concerning the defense of "not guilty by reason of insanity." The United States Court of Appeals for the District of Columbia affirmed the jury verdict, holding that the instructions to the jury were not

improper, but that similar instructions should not be used in subsequent cases. The court then outlined what it considered to be the proper jury instruction on the defense of not guilty by reason of insanity. *Lyles v. United States*, 254 F. 2d 725 (D.C. Cir. 1957).

In dealing with this problem of what, if anything, the court should instruct the jury concerning the consequences of a verdict of not guilty by reason of insanity, the court said, "We think the jury has a right to know the meaning of this possible verdict, as accurately as it knows, by common knowledge, the meaning of the other two possible verdicts—guilty or not guilty." Thus, the court suggested that when the instruction is given, the jury should simply be informed that "a verdict of not guilty by reason of insanity means that the accused will be confined in a hospital for the mentally ill until the superintendent has certified, and the court is satisfied, that such person has recovered his sanity and will not, in his reasonable future, be dangerous to himself or to others, in which event, and, at which time, the court shall order his release, either unconditionally, or under such conditions as the court may see fit."

Intent to Defraud Necessary for Moral Turpitude—An attorney notified the Treasury Department that he would not pay his income tax because he had been classified as a security risk and thus made a "second-class citizen." The tax authorities reciprocated with a criminal charge of tax-evasion, and the attorney was sentenced to six months in jail after he entered a plea of *nolo contendere*. Following this, The Washington State Bar Association began summary disciplinary proceedings against the attorney, and a complaint was filed with the Supreme Court of Washington. The court held that disbarment would be too drastic a sanction to impose in this case, but that the attorney should be censured and reprimanded for his action. *In Re Molthan*, 327 P.2d 427 (Wash. 1958).

The court based its decision on the finding that there was no moral turpitude involved in this case. It followed the rationale that it is not the act itself, but the *corrupt and criminal motive* with which the act is done, that determines the offense. The facts did not indicate that the attorney in-

tended to defraud or deceive the government. On the contrary, he notified the tax authorities of his intention not to file a tax return, and he kept adequate records of his finances. Therefore, fraud and deceit were not inherent in his conduct, which was at most only lacking in good judgment. (See Comment, *Tax Evasion And Moral Turpitude*, 49 J. CRIM. L., C. & P. S. 145 (1958)).

Violation of Illegal Condition Does Not Void Probation—The defendant in a criminal case was given probation, one of the conditions imposed being that he post a \$1500 appearance bond to guarantee his regular attendance when summoned in the future by the court or the probation officer. The defendant and his sureties appealed and the Supreme Court of Colorado reversed, holding that the action of the trial court was beyond its power. *Logan v. People*, 332 P.2d 897 (Colo. 1958). The court, in its review of the probation statute, found nothing authorizing the trial court to require a probationer to post an appearance bond. On the contrary, the statute provided that a bond could be required *after* a defendant violated his probation. The court also noted that such a condition would work a hardship on a defendant who was in all other respects worthy of probation, but who was not able to afford the cost of a bond.

The court reviewed the general considerations relevant to the granting of probation and concluded that "Either the applicant is a worthy risk for probation, or he is not. If he is worthy, his release on probation should not be weighted with terms and conditions having nothing to do with the purpose and policy of probation laws. If he is not a worthy risk, probation should be denied."

The court's opinion seems to furnish this guide for attorneys in cases where the judge insists upon a condition not clearly authorized by the applicable probation law: that they should accept the probation with the illegal condition attached—rather than risk the ire of the judge who might otherwise deny the probation as a matter of discretion if the condition were disputed—and then later advise their clients that the illegal condition might be disregarded without risking the loss of probation. (For other recent case abstracts see "*Police Science Legal Abstracts and Notes*", *infra* pp. 97-99 and "*Abstracts Of Recent Cases*", *infra* pp. 68-70).