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Abstracts of Recent Cases

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ABSTRACTS OF RECENT CASES

Immunity From Prosecution Automatically Results When A Witness Is Compelled To Give Testimony Before A Grand Jury—Petitioner, a public official, was called as a witness before a special grand jury investigating corruption in the county government. Under the appropriate statute, immunity from prosecution must be requested and specifically conferred before incriminating testimony may be compelled from a witness. Petitioner freely testified without a specific grant of immunity and was subsequently indicted as a result of his testimony. He moved to dismiss the indictment on the ground that his constitutional privilege against self-incrimination was violated. The Court of Appeals of New York affirmed the lower court's dismissal, holding that the New York statute could not place the burden of claiming the privilege upon the witness when his testimony is compelled by the grand jury. The protection from prosecution resulting from the use of incriminating testimony given by a witness before the grand jury arises automatically when the witness is compelled to testify. *People v. Steuding*, 160 N.E. 2d 468 (N.Y. 1959).

The dissent insisted that the privilege against self-incrimination is one personal to the witness and may be waived. The subpoena and subsequent oath did not compel incriminating testimony, but if defendant gave such testimony after being apprised of his rights, then he is deemed to have waived his privilege and to have testified freely. "There is not the slightest warrant of law for saying that in the absence of statute any one may be quit of his crimes by testifying before a grand jury. A man has a right to stand mute, if he will, but if he speaks he does not by that purge himself of his crime."

In *Raley v. Ohio*, 360 U.S. 423 (1959), a similar problem was presented. Petitioners were convicted of contempt of a legislative commission which was investigating subversive activities. Petitioners refused to answer certain questions put to them, after being advised of their privilege against self-incrimination. Their conviction for contempt was based upon a state statute which automatically granted immunity from prosecution to anyone who testified before a legislative commission. The United States Supreme Court reversed, holding that the inexplicably contradictory commands made by the statute and the legislative commission

should be judicially denied the force of criminal sanctions. Affirmance "would be to sanction the most indefensible sort of entrapment by the State—convicting a citizen for exercising a privilege which the State clearly had told him was available to him."

Ordinance Creating a Presumption of Guilt When a Person Is Found in Place Where Narcotics Are Unlawfully Kept Held Unconstitutional—Defendant was convicted of violating a Seattle municipal ordinance making it unlawful for anyone to be found in any place where narcotics are unlawfully kept. Upon appeal defendant contended that the ordinance was an invalid exercise of the police power since it made unlawful the performance of "innocent acts which are unrelated in any way to the narcotic traffic and the punishment of which could not conceivably tend to discourage that traffic." The Supreme Court of Washington, agreeing with defendant's contention, held that the ordinance was an unreasonable extension of the city's police power. *City of Seattle v. Ross*, 344 P.2d 216 (Wash. 1959).

The defendant viewed the ordinance as creating an irrebuttable presumption that any person found in proximity to unlawfully kept drugs, and not carrying with him some official authorization, was guilty of participating in the narcotics traffic. The court concluded that "in a place where narcotics are illegally kept, used, or disposed of there is no physical characteristic which would serve to warn an innocent person of the presence of such narcotics." Thus the statutory presumption could not be sustained since there was "no rational connection between the fact proved and the ultimate fact presumed."

Evidence of Established Character May Alone Generate Reasonable Doubt of Guilt—Petitioner was convicted of the robbery of an employee of a federally insured bank. The trial court failed to instruct the jury that proof of defendant's established reputation for good character may alone generate a reasonable doubt of his guilt, although without such proof other evidence of guilt might be convincing. The United States Court of Appeals reversed the conviction, holding that the failure of the trial court to give the requested instruction was prejudicial error. *Johnson v. United States*, 269 F.2d 72 (10th Cir. 1959).