

Summer 1960

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, 51 J. Crim. L. Criminology & Police Sci. 76 (1960-1961)

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.

that the hardships necessarily involved in compelling a witness to travel and attend court in Illinois are offset by the benefits derived by society at large.

(2) Suppose, on the other hand, a request is made by a Florida court upon a court in the State of Washington for the procurement of a witness needed in a minor criminal prosecution. If the Washington court is satisfied with the requirements of materiality and necessity, the remaining area of "undue hardship" may be raised. Will it cause the particular witness undue hardship to compel him to travel across the country to testify in a seemingly minor prosecution? In this situation perhaps the value of the testimony is overbalanced by the hardship inflicted on the witness, and thus although a witness' testimony may be material and necessary, his attendance may nevertheless not be required.

What if the hypotheticals are changed so that the supposed murder was committed in Florida and the witness resided in Washington? Does this change the conclusions regarding "undue hardship?" Or further assume that the minor criminal action is in Illinois and the witness is in Indiana. Does this change the conclusions regarding "undue hardship?" The extremities presented in the original hypotheticals can easily be altered to reveal borderline situations which the courts have not yet decided.

ABSTRACTS OF RECENT CASES

Military Court Martial Jurisdiction Over Civilians During Peacetime—In three recent cases, the United States Supreme Court has once again considered the problem of military courts-martial jurisdiction over civilians.

In previous decisions the Court had established that courts-martial do not have jurisdiction over civilians for offenses committed within the continental limits of the United States where the civilian courts were available and in *Reid v. Covert*, 351 U.S. 487 (1956) and *Kinsella v. Krueger*, 351 U.S. 470 (1956), courts-martial were denied jurisdiction over *civilian dependents* of military personnel on overseas military reservations who were charged with the commission of *capital offenses*. Left in doubt was the rationale for the Court's decisions in these cases. Would different treatment be accorded civilian employees charged with capital offenses or dependents or civilian employees charged with non-capital offenses? Did

The decision in each particular case necessitates a balancing between the value conferred upon the state in obtaining the witness, as opposed to the hardship caused to the witness by compelling his attendance. The value derived should clearly offset the hardship encountered in order to justify the witness' burden. When society as a whole greatly profits from the criminal prosecution, then the hardship on the particular individual must be subordinate.

It can be seen that in each particular situation the discretionary power of the judge in either the requesting state or the foreign state plays an important role. Each fact situation necessarily stands separately and must be dealt with accordingly.

Since one accused of a crime has the right to be faced with his accuser, it would be an empty victory for a state to acquire custody of an accused, should the state be unable to procure the necessary witnesses with which to prosecute.²³ The Uniform Act does not place the states in this anomalous position.

²³ In most cases the accused has the right to confront the witnesses against him face to face. See, 14 AM. JUR. 890, *Criminal Law*, §178; 23 C.J.S. 360, *Criminal Law*, §999; 8 *Wigmore, Evidence* §2195e; U.S. CONST. amend. IV. It is usually not legally possible for the prosecution to use the deposition of an absent witness against the accused at his trial. See, 5 *Wigmore, Evidence* §1397, 1399, 1403-11 (3rd ed. 1940). The same constitutional guarantee of confrontation is not present in civil actions and generally the deposition may be used.

the cases cited above employ a test of status of the accused or one based upon the nature of the offense?

Courts-martial jurisdiction over civilians is sanctioned by article 2(11) of the Uniform Code of Military Justice (10 U.S.C. §802(11) (1956)). The constitutional authority for this statute is thought to be found in the United States Constitution, art. IV, §3, wherein Congress is empowered to "make all needful Rules and Regulations" for the "Territories" of the United States. Further authority has been claimed as appearing in art. I, §8, cl. 14, "to make Rules for the Government and Regulation of the land and naval Forces" as supplemented by the Necessary and Proper Clause of art. I, §8, cl. 18. In applying these powers to civilian dependents, however, the statute must also satisfy the requirements of article III and the fifth and sixth amendments of the Constitution.¹ In the cases cited above, the