Journal of Criminal Law and Criminology

Volume 53
Issue 1 *March*

Article 10

Spring 1962

Abstracts of Recent Cases

of all the ways and means at our disposal today. These experts should also share in the responsibility for fixing the date of release. Thus even the more serious cases will be released after receiving intensive and deep-going treatment during two, three, or four years, and only the practically incurable will have to serve the very long sentences. The senile, the seriously mentally deficient, and those with organic brain damage or other serious illness disturbing their mental organisation and function should be kept in non-penal institutions as long as necessary.

There should never be a court action against a sex offender without a preceding social and medico-psychological examination, as the selection of the right treatment and sentence is particularly important in these cases, and the danger of an emotional and vengeful attitude on the part of those dealing with the offender is still greater here than generally.

ABSTRACTS OF RECENT CASES

Carolyn B. Jaffe*
Abstractor

Accomplice Witnesses—*De Gesualdo v. People*, 364 P.2d 374 (Colo. 1961). See **Prejudicial Conduct by Prosecutor**, *infra*.

Accomplice Witnesses—*People v. Mangi*, 176 N.E.2d 86 (N.Y. 1961). See **Witnesses**, *infra*.

Arrest—*People v. Goss*, 14 Cal. Rptr. 569 (Dist. Ct. App. 1961). Defendant, a parolee, was convicted of grand theft. On appeal from the judgment and from the order denying his motion for a new trial, defendant contended that he had been detained for 27 days between arrest and arraignment, in violation of CAL. PEN. CODE §825 (1955) and CAL. CONST. art. I, §13. The District Court of Appeal affirmed, holding that since as a parolee defendant was under legal custody of the Department of Corrections and was subject to being taken back within the prison at any time during his parole (CAL. PEN. CODE §3056 (1955)), his detention was not illegal inasmuch as he was not "arrested" but had merely been transferred from constructive to actual custody of the state.

Arrest—*People v. Foster*, 176 N.E.2d 397 (N.Y. 1961). The Appellate Division affirmed defendant's conviction of third degree assault, committed upon a New York city police officer while he was attempting to arrest defendant for disorderly conduct. On appeal, defendant contended that since the misdemeanor of disorderly conduct had not been committed in the officer's presence, the arrest without a warrant was illegal, and consequently she did not commit criminal assault but was within her rights when she used reasonable force to resist such arrest. The Court of Appeals affirmed, holding that defendant's arrest was lawful, either because the police officer witnessed the final phase of the original assault which constituted defendant's disorderly conduct, or because the victim of the original assault had made a valid constructive citizen's arrest before the police officer arrived on the scene. Judge Fuld concurred in the result, agreeing that the arrest was valid, but solely because of the first reason stated by the court. Three judges dissented, stating that the evidence did not support a finding that the officer witnessed any part of the misdemeanor, and that actual physical restraint of defendant is requisite to a valid citizen's arrest.

Arrest, Search and Seizure—*Taglavore v. United States*, 291 F.2d 262 (9th Cir. 1961). Defendant was convicted of illegal possession of narcotics. On appeal, he contended that evidence procured in violation of his constitutional rights and admitted over his objection was the basis of conviction. The Court of Appeals for the Ninth Circuit reversed and remanded, holding that where a vice squad inspector, who suspected that defendant was connected with narcotics violations, swore out a warrant for his arrest for traffic violations committed in the inspector's presence, search of

* Student, Northwestern University School of Law.

defendant's person by officers serving the warrant violated his constitutional rights, even though his actions (attempting to destroy narcotics) upon being searched may have constituted probable cause to arrest him for a narcotics violation without a warrant, since the police had engaged in a deliberate attempt to evade the requirements of the Fourth Amendment by using a traffic arrest warrant as an excuse to search defendant for narcotics which they merely suspected he possessed.

Arrest, Search and Seizure—*People v. Wootan*, 15 Cal. Rptr. 833 (Dist. Ct. App. 1961). Defendant was convicted of conspiracy to commit forgery. On appeal, defendant contended that the entry into his office by one Williams for the purpose of obtaining evidence for the police was unlawful, and consequently no evidence derived therefrom should have been admitted at the trial. The District Court of Appeal affirmed, holding that since Williams, a constant visitor at the office and a confederate of defendant, had no duty to disclose that his purpose in making the visit complained of was to obtain evidence against defendant, his entry with defendant's consent was lawful; that where arresting officers saw that defendant possessed marked money which he had accepted from Williams just prior to their peaceable entry, they had reasonable grounds to arrest him; and hence evidence derived from Williams' entry and from a search by the officers incidental to defendant's arrest was properly admitted.

Arrest, Search and Seizure—*People v. Ker*, 15 Cal. Rptr. 767 (Dist. Ct. App. 1961). Defendants, a husband and wife, were convicted of possession of marijuana. On appeal from the judgment and from an order denying their motion for a new trial, defendants contended that evidence unlawfully seized pursuant to an unlawful arrest without a warrant had been admitted at the trial. The District Court of Appeal affirmed, holding that where the arresting officers had been told of defendant husband's dealings in narcotics by an informer known by them to be reliable, and had observed a furtive transaction between defendant husband and one Murphy, a known narcotics offender, the officers had reasonable grounds to believe that defendant husband had just secured marijuana from Murphy and was committing the felony of having it in his possession; that it was lawful for the officers to secretly and quietly gain entry to defendants' apartment by means of a key provided by the manager, inasmuch as circumstances justified the reasonable belief that upon warning of their imminent entry, defendants would have destroyed the narcotics; and since the arrest was valid, evidence seized during a reasonable search pursuant thereto was admissible.

Arrest, Search and Seizure—*People v. Aleria*, 14 Cal. Rptr. 162 (Dist. Ct. App. 1961). Defendant was convicted of possession of narcotics. On appeal, defendant contended that a search of his hotel room without a warrant as an incident to a valid arrest without a warrant in the lobby of his hotel was unreasonable, and consequently use against him at the trial of contraband seized in defendant's room as a result of the search was violative of his constitutional rights. The District Court of Appeal affirmed, holding that where immediately upon arresting defendant in his hotel lobby for being under the influence of narcotics, the police officers took him up one flight of stairs and 20 to 30 feet down the hall to his room, which they proceeded to search, the search was reasonable and lawful as incidental to arrest, since there was such close proximity of both distance and time of arrest and search that they could be deemed a continuous transaction; and hence evidence seized during the valid search was properly admitted at defendant's trial.

Assimilative Crimes Act—*United States v. Barner*, 195 F. Supp. 103 (N.D. Cal. 1961). Defendant was charged by an information with drunken driving on a highway within a United States Air Force base, in violation of the Assimilative Crimes Act, 18 U.S.C. §13 (1959), insofar as it incorporates CAL. VEHICLE CODE §23102 (1960). Moving the court to dismiss the information on the ground that it failed to state facts constituting an offense against the United States, defendant contended that since the roadways on the air force base were not open to the public, they were not "highways" within the meaning of the California statute. The District Court denied the motion, holding that although those who have no business upon the base may be barred from using them, the roadways were "highways" covered by the state statute since the public had a general right to use them, subject to reasonable restrictions and regulations essentially the same as those properly imposed by a state in the exercise of its police power. The court noted that the policy of the Assimilative

Crimes Act is to afford to people on Federal enclaves the same protection that they would be afforded in the surrounding territory.

Burden of Proof of Guilt—*Ciccarelli v. People*, 364 P.2d 368 (Colo. 1961). See **Presumption of Innocence**, *infra*.

Confessions—*Bolger v. Cleary*, 293 F.2d 368 (2d Cir. 1961). The District Court enjoined defendant, a state waterfront detective, from testifying against plaintiff in state criminal proceedings as to statements made by plaintiff during his illegal detention by federal officials with whom defendant had cooperated. See *Bolger v. United States*, 189 F. Supp. 237 (S.D. N.Y. 1960), abstracted at 52 J. CRIM. L., C. & P.S. 425 (1961). On appeal, defendant contended that the order constituted an unwarranted federal interference with the administration of criminal justice by the states. The Court of Appeals for the Second Circuit affirmed, holding that the state official must be enjoined in order to protect the integrity of the federal judicial process and to insure that federal officials comply with the requirements of fair criminal law administration. Relying on *Rea v. United States*, 350 U.S. 214 (1956), in which a federal narcotics agent was enjoined from testifying in a state prosecution as to evidence seized by him in an illegal search, the court reasoned that *Rea* differed from the present case only with regard to the time at which federal officials attempted to make the results of their illegal activities available to the state. The court noted that the injunction would be unnecessary if it were clear that the evidence involved were inadmissible in the state proceeding under *Mapp v. Ohio*, 81 Sup. Ct. 1684 (1961), abstracted at 52 J. CRIM. L., C. & P.S. 292 (1961). Judge Anderson dissented on the ground that in light of *Mapp v. Ohio*, which in his opinion clearly prohibited the admission of the evidence in question in a state prosecution, plaintiff's rights were adequately protected by the state of New York.

Confessions—*United States v. Richmond*, 197 F. Supp. 125 (D. Conn. 1961). See **Right to Counsel**, *infra*.

Confessions—*People v. Kendrick*, 14 Cal. Rptr. 13 (1961). Defendant was convicted of second degree burglary, first degree robbery, and first degree murder. On appeal from the judgment and from an order denying his motion for a new trial, defendant contended that his admissions and confessions should not have been admitted as evidence since they had been induced by promises and psychological coercion. The Supreme Court of California affirmed, holding that where defendant was not taken before a magistrate within the time required by statute, was denied counsel prior to and during interrogation, was told by a police officer that defendant's wife and mother might be subject to arrest, and was promised that if he confessed, the officer would try to get defendant's friends released, the circumstances complained of, either alone or in combination, did not render his subsequent admissions and confessions involuntary as a matter of law; and consequently the trial court did not abuse its discretion when it admitted defendant's admissions and confessions as evidence with an instruction that the jury disregard them if it found them to be involuntary.

Double Jeopardy—*Cardenas v. Superior Court*, 14 Cal. Rptr. 657 (1961). After the trial court declared a mistrial, petitioner sought a writ of prohibition to prevent further proceedings upon an information charging him with possession of narcotics. He contended that any further proceedings would place him in double jeopardy, since the mistrial had been granted on motion of the prosecution over petitioner's objection. The Supreme Court of California issued the writ, holding that where petitioner's motion for mistrial was joined in by the prosecutor, and petitioner's request to withdraw his motion was denied, his plea of once in jeopardy was valid, since the mistrial must be treated as having been granted on motion of the prosecution over petitioner's objection.

Double Jeopardy—*People v. Friason*, 177 N.E.2d 230 (Ill. 1961). After the state had accepted the jury, made an opening statement, and presented testimony of two witnesses, the trial court granted the state's motion for mistrial on the ground that its peremptory challenges had been erroneously restricted. Defendant was subsequently convicted of burglary at a second trial. On writ of error, he contended that the trial court erred in denying his motion for discharge, made when the mistrial was declared, on the ground of *autrefois acquit*. The Supreme Court of Illinois reversed, holding that since under the facts and circumstances presented

there was neither danger to public justice due to restriction of the state's peremptory challenges, nor manifest necessity for discharging the jury, declaring a mistrial was an abuse of the trial court's discretion; and consequently to protect his constitutional guaranty against double jeopardy, defendant should have been discharged after the mistrial was declared.

Double Jeopardy—*State v. Quintana*, 364 P.2d 120 (N.M. 1961). Defendant was convicted of armed robbery and grand larceny. On appeal, he contended that the imposition of consecutive sentences for his convictions amounted to double punishment for the same offense in violation of his constitutional guarantee against double jeopardy [N.M. CONST. art. II, §15]. The Supreme Court of New Mexico remanded with directions to vacate sentence imposed for larceny and affirmed in all other respects, holding that although defendant was properly convicted of both armed robbery and grand larceny, he could not consistently with the prohibition against double jeopardy be punished for both crimes, since under the evidence, which showed that the offenses arose out of the same transaction and were part of a single criminal act, the act of grand larceny was a lesser offense necessarily included within the greater offense of armed robbery, and because the constitutional guarantee protects against double punishment of as well as against multiple trials for the same criminal act.

Drunken Driving—*United States v. Barner*, 195 F. Supp. 103 (N.D. Cal. 1961). See **Assimilative Crimes Act**, *supra*.

Entrapment—*Commonwealth v. Conway*, 173 A.2d 776 (Pa. 1961). Defendant was convicted of bookmaking. On appeal, he contended that the trial court erred in instructing that the evidence was insufficient to warrant a finding of entrapment. The Supreme Court of Pennsylvania reversed and remanded, holding that where there was no evidence tending to show defendant's disposition to commit the crime, and evidence offered by defendant suggested that the law enforcement officer had persuaded defendant to place bets for her, the defense of entrapment should have been submitted to the jury.

Evidence—Dying Declarations—*Connor v. State*, 171 A.2d 699 (Md. 1961). Defendant was convicted of second degree murder for having run over his former wife with an automobile. On appeal, defendant contended that the trial court erroneously admitted the statement "It was no accident," made by his former wife to a police officer while she was lying in the street waiting for an ambulance, inasmuch as the statement was an expression of opinion, and because the victim was unaware of her impending death. The Court of Appeals of Maryland affirmed, holding that the "opinion rule" has no application to dying declarations; and that since before making the declaration the victim had said, "Get a priest," and had repeatedly said, "Take care of my baby," it was clear that although she had not explicitly so stated, she did not expect to survive the injury.

Habeas Corpus—*McNeal v. Culver*, 132 So. 2d 151 (Fla. 1961). See **Right to Counsel**, *infra*.

Homicide—*Persampieri v. Commonwealth*, 175 N.E.2d 387 (Mass. 1961). Petitioner was convicted of manslaughter. On petition for writ of error, he contended that since suicide is not a crime, the trial court erred in accepting his plea of guilty of manslaughter pursuant to an indictment charging him as a principal in the second degree to his wife's suicide. The Supreme Judicial Court of Massachusetts affirmed, holding that where petitioner taunted his emotionally distraught wife, told her where the gun was, loaded it for her, and instructed her as to its use, petitioner was sufficiently reckless and without regard for the possible consequence of his conduct that a manslaughter conviction was justified.

Husband-Wife Privilege—*People v. Melski*, 176 N.E.2d 81 (N.Y. 1961). See **Witnesses**, *infra*.

"Implied Consent" Laws—The supreme courts of three states have recently interpreted statutes which deem that one who drives within the state has consented to take chemical tests for the purpose of determining the alcoholic content of his blood, and provide for the suspension or revocation of the driver's license of one who refuses to submit to such tests. In *Prucha v. Dep't of Motor Vehicles*, 110 N.W.2d 75 (Neb. 1961), the Supreme Court of Nebraska held that its implied consent statute was not repugnant to the privilege against self-incrimination, since the state and federal constitutional privileges protected only against the compulsion of oral testimony, or to the due process

clause, since a license to operate an automobile is a privilege rather than a property right. The Supreme Court of North Dakota, in *Timm v. State*, 110 N.W.2d 359 (N.D. 1961), held that the type of test to be given is determined by the arresting officer, not by the person charged with drunken driving, since to hold otherwise would defeat the purpose of the statute. In *State v. Batterman*, 110 N.W.2d 139 (S.D. 1961), the Supreme Court of South Dakota held that a motorist's consent to chemical tests is not invalidated by the fact that he was not informed of the consequences of his exercise of the right to refuse to submit, so long as he was informed of that right.

Kidnapping—*Cotton v. Superior Court*, 15 Cal. Rptr. 65 (1961). Petitioners brought prohibition proceedings to challenge the jurisdiction of the Superior Court to try them on an indictment charging them with kidnapping, conspiracy to commit kidnapping, and other offenses allegedly committed during a riot arising out of a labor union strike. They contended that the evidence was insufficient to sustain the various counts of the indictment. Noting that the case was one of first impression in California, the Supreme Court issued a writ restraining respondent court from taking proceedings other than dismissal as to the kidnapping counts, holding that where asportation of victims by petitioners was the consequence of a spontaneous altercation occasioned by the strike and was incidental to assault and rioting, the evidence did not sustain a finding of the illegal purpose or intent which must be coupled with asportation to constitute kidnapping under CAL. PEN. CODE §207 (1955). In interpreting the statute, the court relied on *People v. Oliver*, 12 Cal. Rptr. 865 (1961), abstracted at 52 J. CRIM. L., C. & P.S. 429 (1961).

Kidnapping—*Cowan v. State*, 347 S.W.2d 37 (Tenn. 1961). Defendant was convicted of kidnapping. On appeal, defendant contended that he did not violate the applicable statute [TENN. CODE ANN. §39-2601 (1955)] when he forcibly confined two teen-age couples in their car for seven hours for the purpose of coercing one or both of the girls to have sexual intercourse with him. Noting that the case was one of first impression in the state, the Supreme Court of Tennessee affirmed, holding that forcible confinement by defendant, coupled with his intent to cause the victims to be secretly confined, amounted to kidnapping under the statute, since its policy is to secure the personal liberty of citizens of the state.

Lesser Included Offenses—*State v. Quintana*, 364 P.2d 120 (N.M. 1961). See **Double Jeopardy**, *supra*.

Lie Detector Evidence—*State v. Trimble*, 362 P.2d 788 (N.M. 1961). Defendant was convicted of incest. On appeal, he contended that the trial court erred in admitting over his objection testimony of one Hathaway as to the results of a polygraph test conducted by Hathaway and voluntarily submitted to by defendant. The Supreme Court of New Mexico reversed and remanded, holding that since the results of polygraph tests were inadmissible on the ground that their reliability is uncertain, the testimony should have been excluded even though defendant had signed a waiver agreeing to be bound by the results of the test; and inasmuch as the inadmissible testimony may well have been the decisive factor in the case, defendant was entitled to a new trial.

Mann Act—*Nelms v. United States*, 291 F.2d 390 (4th Cir. 1961). Defendant was convicted on two counts of violating the Mann Act [18 U.S.C. §2421 (1959)]. On petition to correct illegal sentence, defendant contended that under the facts developed at the trial, he had committed but one offense when he transported his wife on a round trip between two states for purposes of prostitution. The Court of Appeals for the Fourth Circuit affirmed, holding that since the gravaman of an offense under the Mann Act is the interstate *transportation*, and since the number of separate transportations determines the number of offenses, defendant's round trip transportation of his wife constituted two separate and distinct offenses, inasmuch as prostitution was the purpose of each of the interstate transportations. The court distinguished the present case from those where an interstate round trip begun for legitimate purposes but subsequently becoming immoral cannot be split into two parts to sustain a single offense.

Mayhem—*State v. Bass*, 120 S.E.2d 580 (N.C. 1961). Defendant, a physician, was convicted of being an accessory before the fact to mayhem. On appeal, defendant contended that when he anesthetized the hand of the victim, one Rogers,

and gave medical advice to him, knowing that Rogers intended to have one Bryson cut off his fingers in order to collect insurance money, defendant was not an accessory before the fact to mayhem, since mayhem had not been committed inasmuch as Rogers had requested that Bryson maim him. The Supreme Court of North Carolina affirmed, holding that under N.C. GEN. STAT. §14-29 (1953), consent of the victim is no defense to mayhem. In reaching its conclusion the court traced the development of the law of mayhem from its early English origins to the present North Carolina statute.

Prejudicial Conduct by Prosecutor—*De Gesualdo v. People*, 364 P.2d 374 (Colo. 1961). Defendant was convicted of burglary and of conspiring with one Ciccarelli to commit burglary. [The transaction was the same one for which Ciccarelli was later tried and convicted. See **Presumption of Innocence**, *infra*.] On writ of error defendant contended that his rights were prejudiced when the trial court allowed the district attorney to call Ciccarelli to the stand for the purpose of extracting from him a claim of privilege against self-incrimination, inasmuch as the jury may have considered it as an incriminating fact against defendant. The Supreme Court of Colorado reversed and remanded, holding that where it was known to the trial court and the district attorney that criminal charges were pending against Ciccarelli and that he did not intend to turn "state's evidence," the district attorney's conduct in calling him as a witness for the state was a calculated attempt to bring to the jury's attention Ciccarelli's claim of privilege; and since the trial court neither prevented the prejudicial conduct nor cautioned the jury to draw no inference of defendant's guilt therefrom, defendant's rights were prejudiced to the extent that he was entitled to a new trial.

Presumption of Innocence—*Ciccarelli v. People*, 364 P.2d 368 (Colo. 1961). Defendant was convicted of burglary. On writ of error, he contended that the trial court's instruction that "exclusive and unexplained possession of property recently stolen raises the presumption that he who is in such possession is guilty of the theft; the burden of explaining such possession is upon the defendant, and his explanation must be sufficient to raise in your mind a reasonable doubt as to his guilt. . . ." was prejudicially erroneous, in that it shifted to defendant the burden of proving his innocence in violation of the fundamental rule that the prosecution always has the burden of proving guilt beyond a reasonable doubt. The Supreme Court of Colorado affirmed, holding that the effect of the instruction was not to prejudicially shift the burden of proof of innocence to defendant, but to properly require him to bear the onus of making an explanation sufficient to rebut the presumption of guilt which arose from recent possession of stolen goods by raising a reasonable doubt in the minds of the jury as to his guilt. The court distinguished the present instruction from those which have constituted reversible error on the ground that they required proof of innocence to successfully rebut the presumption of guilt.

Promises of Leniency—*People v. Bannan*, 110 N.W.2d 673 (Mich. 1961). Petitioner was convicted of breaking and entering in the nighttime. On petition for writ of habeas corpus, he contended that where the defense attorney stated to the trial court, "[T]he prosecuting attorney . . . informs me that . . . he would not be opposed to probation with a six months' jail term; and the defendant wishes to enter a plea of guilty . . . .", the trial court should not have accepted petitioner's plea without first exploring the statement in detail to determine that the plea had been voluntarily made rather than in reliance upon any promise of leniency, and consequently that petitioner should be released from a much more severe sentence. Analogizing the present case to cases of self-conviction by means of coerced confessions, and stating that due process is violated in both situations, the Supreme Court of Michigan set aside the conviction and sentence, and remanded petitioner for further proceedings, holding that since enough was said by defense counsel in open court to warrant one of petitioner's lack of education, low mentality, and unfamiliarity with court procedures to fairly and reasonably conclude that a bargain had in fact been made, it was the duty of the prosecutor to clarify the matter, and of the court to determine whether petitioner's plea of guilty was made in reliance upon the promise of leniency presumed by petitioner to have been made; and that since these duties were not discharged, petitioner was entitled to a trial on the merits. The court noted that where a defendant pleads guilty in reliance on a statement made by the prosecutor or judge which, fairly interpreted by the defendant, is a promise of leniency, and the promise is not kept, the plea may be withdrawn.

Promises of Leniency—*People v. Mangi*, 176 N.E.2d 86 (N.Y. 1961). See **Witnesses**, *infra*.

Right to Counsel—*United States v. Richmond*, 197 F. Supp. 125 (D. Conn. 1961). After the district court discharged petitioner's application for writ of habeas corpus for release from confinement under sentence of death on a state conviction of murder, the Court of Appeals for the Second Circuit remanded to the district court for rehearing on the entire state court transcript. On rehearing, petitioner contended that the use at his trial of confessions which he had made after being formally accused of murder, while he was in ignorance of his rights and without benefit of counsel, constituted a violation of due process. The district court ordered that petitioner be released, allowing the state to retry him, if it wished, within a reasonable time, holding that where petitioner, a 19-year-old Negro of limited intelligence with little education and ignorant of his legal rights, was charged with a capital offense, the state trial court was under a duty to inform him of his right to counsel and to provide counsel if petitioner proved to be indigent; and that confessions, albeit voluntary, which were obtained while petitioner was deprived of his right to counsel were inadmissible under the circumstances, and their use against petitioner violated his Fourteenth Amendment right to due process of law.

Right to Counsel—*McNeal v. Culver*, 132 So.2d 151 (Fla. 1961). Petitioner was convicted of assault to commit murder in the second degree. After the Supreme Court of Florida dismissed his application for writ of habeas corpus without a hearing, the United States Supreme Court, on certiorari, reversed and remanded to the Florida Supreme Court, directing that the state court conduct a hearing to determine the truth of petitioner's allegations regarding denial of counsel, since if they were found to be true, due process would compel that the writ be granted. See **Right to Counsel**—*McNeal v. Culver*, 81 Sup. Ct. 413 (1961), abstracted at 52 J. CRIM. L., C. & P.S. 300 (1961). Upon a full hearing of his allegations, the Supreme Court of Florida remanded petitioner to the Criminal Court for a new trial, holding that although allegations concerning his request for and the trial court's denial of counsel were false, petitioner's trial at which he was not represented by counsel was fundamentally unfair, since due to lack of education, mental illness, and unfamiliarity with court procedure, he was in fact unable to effectively conduct his defense, and was unaware of his constitutional right to counsel.

Robbery—*Smith v. United States*, 291 F.2d 220 (9th Cir. 1961). Defendants were convicted of bank robbery. On appeal, they challenged the sufficiency of the evidence to establish a necessary element of the crime, contending that there could have been no trespass since the bank, knowing of the planned robbery attempt, submitted and consented thereto. The Court of Appeals for the Ninth Circuit affirmed, holding that the taking constituted a trespass without consent of the bank, since in failing to attempt to prevent defendants from taking the money, the bank merely allowed the crime to be committed in order that defendants could be apprehended in the act and did not consent to their taking the money with the intent to grant right of possession to defendants.

Search and Seizure—*United States v. Merritt*, 293 F.2d 724 (3d Cir. 1961). Defendant was convicted of a narcotics violation. On appeal, defendant contended that the trial court erred in denying her motion to suppress, since the evidence which established her guilt had been obtained as a result of an illegal search and seizure. The Court of Appeals for the Third Circuit reversed and remanded, holding that since the search warrant provided for service in the daytime, it was legally invalid when served at night; and consequently the officers' entry into defendant's apartment was unlawful, and the fruits of their ensuing search were inadmissible.

Search and Seizure—*People v. Kelly*, 16 Cal. Rptr. 177 (Dist. Ct. App. 1961). Defendant, a university student, was convicted of burglary. On appeal, he contended that the trial court erred in admitting, over his objection, evidence seized as the result of an unlawful search of his dormitory room. The District Court of Appeal affirmed, holding that where the officers had reasonable cause to believe that defendant was involved in the burglaries, and where it was implicit in dormitory rules that defendant had agreed that the university's Master of Student Houses might enter the room in the performance of his duties, search of defendant's room in the company of the master was lawful albeit without a warrant and prior to defendant's arrest, since the officers believed in

good faith that the situation confronting them was an emergency which, under dormitory rules, would justify the master's entry into the room.

Self-Incrimination—*Glotzbach v. Klavens*, 196 F. Supp. 685 (E.D. Va. 1961). The District Director of Internal Revenue sought an order directing respondents, one Glotzbach and his attorney, to turn over to Internal Revenue agents certain books and records in custody of the attorney. Respondents contended that although Klavans had previously made the records available to Internal Revenue agents voluntarily and with full knowledge of his constitutional rights, he nevertheless could subsequently assert his Fifth Amendment immunity privilege. Noting that the case seemed to be one of first impression, the District Court entered the order, holding that the general rule [that a witness is estopped from asserting his constitutional immunity to avoid further disclosure which may fairly tend to incriminate him, and must make full disclosure, where the previous disclosure was an actual admission of guilt or incriminating facts, but that he is not so estopped or compelled where the previous disclosure was not of such nature] did not apply, since in turning over the records originally, Klavans had made full disclosure with regard to those records, and consequently his Fifth Amendment privilege could not be asserted in the same proceeding [*i.e.*, the investigation of Klavans' records] in which it had been waived.

Speedy Trial—*State v. Hale*, 172 A.2d 631 (Me. 1961). Defendant was convicted of having taken indecent liberties with a 14-year-old boy. On appeal, defendant contended that the trial court should have granted his motion to quash the indictment on the ground that he had been denied a speedy trial. The Supreme Court of Maine affirmed, holding that where delay in commencement of trial was due to the fact that defendant had been a fugitive from justice [since he fled the state after having incurred guilt therein], he waived his right to be tried during that period, even though he was unaware that an indictment was pending against him; and that the state was under no duty to inform him of the pendency of the indictment, since arrest was a prerequisite to such disclosure, and since as a fugitive he was not entitled to speedy arrest or extradition.

Witnesses—*People v. Mangi*, 176 N.E.2d 86 (N.Y. 1961). Denial by the Court of General Sessions of defendant's petition for writ of error coram nobis to vacate judgment of conviction for violation of N.Y. PEN. LAWS §1751(2) and (3) (1950) was affirmed by the Appellate Division. On appeal by permission, defendant contended that his trial was unfair, since the jury was unaware of facts affecting the credibility of an accomplice witness whose testimony constituted a large part of the state's case. The Court of Appeals of New York sustained the writ and remanded defendant for a new trial, holding that where one Gordon, an accomplice witness under indictment during defendant's trial, testified that no promise had been made to induce him to testify favorably for the state, when in fact the District Attorney had told Gordon that if he would cooperate the District Attorney would call such cooperation to the attention of the court and would request leniency in sentencing Gordon, and Gordon in fact relied on this promise, the prosecutor of defendant's trial should have so informed the jury, inasmuch as Gordon's credibility may well have been a decisive factor in reaching the verdict. Noting that it did not imply that the prosecutor deliberately intended to mislead the jury, the court stated that intent of the prosecutor to influence the outcome of the trial was immaterial to disposition of defendant's appeal.

Witnesses—*People v. Melski*, 176 N.E.2d 81 (N.Y. 1961). Defendant's conviction of grand larceny in the second degree was affirmed by the Appellate Division. On appeal by permission, defendant contended that his wife should not have been allowed to testify against him over his objection. The Court of Appeals of New York affirmed, holding that since the statute [N.Y. PEN. LAWS §2445 (1950)], deems privileged only those communications which were made in confidence and would not have been made but for the marital relationship, defendant's wife was properly permitted to testify as to a communication concerning the presence in their home of defendant's accomplices, inasmuch as it was made in the presence of the accomplices and was not induced by the marital relationship. Three judges dissented on the ground that in their opinion, the communication was confidential and consequently privileged by the statute.