Journal of Criminal Law and Criminology

Volume 56
Issue 4 *December*

Article 11

Winter 1965

Abstracts of Recent Cases

ABSTRACTS OF RECENT CASES

Prepared by

James R. Thompson

Assistant Editor-in-Chief

Indigency and the Right to Counsel—*Allen v. People*, 404 P.2d 266 (Colo. 1965). The defendant, accused of aggravated robbery and free on bond, appeared in the trial court without counsel. Under questioning by the court, he related an effort to obtain counsel which had been unsuccessful because the attorney had demanded a retainer beyond the defendant's financial means. Defendant told the court that he was making $150 a month, had no family obligations, and was furnished board and room. The trial judge told defendant that he could not appoint counsel under these circumstances and continued the case to allow defendant to obtain private counsel. In all, the case was continued three times. Each time defendant was warned that he would have to hire an attorney. Each time he indicated that he could, and would, comply with the court's order. At a later appearance the defendant told the court that he had lost his first job, found a second, but was then working at a third in Utah. The court made no further inquiry into defendant's financial status.

After the last continuance, the case was tried without counsel representing the defendant. Following a conviction, defendant appealed on the ground that the court had erred in failing to appoint an attorney for him although he was "indigent" at the time of his trial. The conviction was affirmed.

Allen is one of the first cases to discuss what has been called the trial judge's *continuing* duty to determine the financial status of an unrepresented defendant. The opinion of the Supreme Court of Colorado unequivocally rejects the notion that such a duty rests upon a court where, as here, the defendant, in his first appearance, appears financially able to retain private counsel.

"The intent of the rule [requiring appointed counsel]," the court said, "is that after the court has informed the accused of his right to counsel, some kind of *showing* must be made *by the defendant* as to his indigence. . . . The rule does not require the trial court to maintain a *continuing vigilance* over the financial affairs of one accused of crime in order to ferret out his *poverty potential* . . . [and] the burden rested upon the defendant to apprise the court of any change in circumstances resulting in indigency." (Emphasis added.)

In answer to the argument that the fact of defendant's changes of employment should have put "the court on notice that further inquiry should be made of his financial ability to obtain counsel," the court commented that, "The defendant is not entitled to a presumption of poverty. The mere fact that he lost one job and obtained another does not warrant the inference that he was making less money. * * * It is just as reasonable to suppose that his reason for changing jobs was to improve his financial condition."

Comment: Admittedly, the question of what criminal defendants are "indigent" and therefore entitled by the constitution to the appointment of counsel without cost is one of the most difficult facing trial judges in the administration of criminal justice today. Whether indigency is a state in which a defendant has no money, some money, enough to keep himself and his family, not enough to employ counsel, or enough to employ a lawyer, but not a really good lawyer, is a question which has been left unanswered by the decisions requiring the appointment of counsel when indigency has been found. Trial judges must also wrestle with the problems posed by defendants who spend their available funds for bail and then claim indigency, with defendants who have affluent relatives willing to provide funds for bail, investigators, and the like, but not for counsel or transcripts on appeal. And the defendant who owns material possessions not necessities, but, at the same time, in present-day America, not luxuries, also presents unique problems. Must the family sell the television set, the automobile or the freezer in order to obtain funds to hire counsel? And yet, while it is important to ensure that the administration of criminal justice, already costly, does not impose unjustified burdens upon the taxpayer, one reads opinions like *Allen* with uneasy feelings.

The Colorado court may be correct in holding

that there is no continuing duty upon a trial judge to ferret out a defendant's "poverty potential" without a showing of indigency, or at least changed circumstances inferring the possibility of indigency, after it has been initially determined that the appointment of counsel is neither necessary nor allowable. The problem with *Allen*, however, is the initial assumption of the court that defendant was able to hire counsel before any change in circumstances.

The opinion recites that the defendant originally told the court that he would not obtain counsel because "I didn't figure I needed one." The court then told Allen he thought that was a "foolish" attitude and that "the Court feels that you should have an attorney." To this the defendant responded that "I can't afford an attorney, so I'll go without one." The judge then said "The court can appoint an attorney for you if you have *no* funds, property, or anything of that kind." (Emphasis added.) The defendant replied that he was employed and was paid a salary of $150 a month plus room and board, but that his one attempt to hire private counsel had failed for lack of a sufficient retainer. The court then said that "if you are working and have $150.00 a month coming in, this Court cannot bind the taxpayers of this county with attorney fees in your behalf. I would suggest that you get an attorney. I'm sure that you could find one. However, that's up to you." So far as the opinion, reveals, there was no further discussion of indigency.

While as an abstract legal proposition a defendant may be required to show indigency in order to qualify for the appointment of counsel, it is one thing to place a burden of evidentiary persuasion upon a defendant represented by counsel, and quite another to place it upon an uncounseled defendant. Though defendant Allen was told that counsel could be appointed if he had *no* property or funds, there is at least serious question about the validity of that standard. And the trial court told Allen that he could not have appointed counsel because he was employed at a salary of $150.00 a month without any further examination of the ordinary monthly disposition of those funds in support of the defendant, his debts, if any, or other financial circumstances, except for the conclusion by the court that he had no "family obligations."

The question of a continuing duty of inquiry aside, courts should not make initial assumptions of solvency upon the tenuous facts revealed by the *Allen* opinion. And it may be time that courts, now caught up in the new and difficult problems of determining indigency, reconsider whether the burden of proof in these cases ought to be thrown upon defendants who appear in court without counsel.

No Free Transcripts for Misdemeanants—*City of Toledo v. Smith*, 209 N.E.2d 410 (Ohio 1965). The defendant was convicted of being drunk and disorderly and resisting arrest. Upon his application to be provided with a free transcript of the evidence heard at the trial in order to prepare an appeal, the trial judge found that "the case was one in which a narrative bill of exceptions [apparently a statement of facts prepared by a litigant] would adequately exemplify the errors claimed," and offered "to assist in the preparation of such a narrative bill of exceptions" in place of a court reporter's transcript which would cost $350. This offer was refused by defendant, who was in fact indigent, and the question then raised upon appeal was whether "in *every misdemeanor case* an indigent defendant is entitled to a bill of exceptions, including a complete transcription of the stenographer's notes at public expense." (Emphasis added.) The Supreme Court of Ohio decided that the answer to the question was "No" and affirmed.

Distinguishing *Griffin v. Illinois*, 351 U.S. 12, upon which defendant relied, the court held that that opinion did not even apply to all felony cases (presumably, the court meant that *Griffin* does not require a court reporter's transcript of the evidence to be furnished where adequate alternatives are available), and, if it did, it applied *only* to felony cases. "This seems to us," the court said, "to draw the line where it should be drawn. The problem is that the cost of a transcript and a bill of exceptions, as well as other costs of defense, are considerations which confront the accused in all cases. To remove this consideration in misdemeanor cases only as to indigents is certainly not equal justice. It is to say that indigents may frivolously appeal while others must consider the costs."

Comment: The court's answer to defendant's argument not only proves too little, it proves too much.

First, since it is undoubtedly true that, as the court holds, "the cost of a transcript and a bill of exceptions, as well as other costs of defense, are considerations which confront the accused in *all* cases" (emphasis added), that would seem to be an argument for the extension of free transcripts

to convicted defendants in *all* cases. Certainly, it is not a justification for the refusal to give free transcripts to convicted misdemeanants while routinely supplying them to convicted felons.

Second, it may not be "equal justice" to furnish free transcripts only to indigent defendants while requiring all other defendants to pay for them. One of the most difficult problems now faced by society in the administration of the criminal law to provide for the defendant who does not have the funds to obtain the kind of lawyer, investigation aids, expert testimony, and appeal that the wealthy may obtain, and yet is not impecunious enough to qualify for appointed counsel. It is not a proper answer to this dilemma, however, to deny a needed transcript to an indigent because a person who is not indigent foregoes appeal on account of the cost.

Third, a holding extending the right to a free transcript to misdemeanants is not to say, as the court says, "that indigents may frivolously appeal while others must consider the costs." The Supreme Court of the United States, in *Griffin* or any other case, has not said that the state must bear the cost of frivolous appeals. And, more importantly, there was no finding by the court in the instant case that the appeal was frivolous.

There may well be considerations which would constitutionally justify drawing the line for free transcripts, or free counsel, between felons and misdemeanants, especially if the rationale of *Griffin* and later cases is pitched more upon a due process, and not equal protection, foundation. The reasons put forth by the Supreme Court of Ohio, however, in support of its refusal to supply indigent misdemeanants with transcripts in *all* cases are insufficient, though, because the defendant here refused the offer of a narrative bill of exceptions which might have been adequate to carry his appeal (the court did not pass upon this point, but assumed that the narrative bill would have been adequate), the result may be correct.

Denial of Bail on Appeal—*Colavecchio v. McGettrick*, 208 N.E.2d 741 (Ohio 1965). Defendants were convicted of burglary and larceny and appealed their convictions to the court of appeals. Bail pending appeal was denied by both the trial court and the court of appeals and defendants then brought an original action for habeas corpus in the supreme court in an effort to obtain bail. Relief was denied.

In support of their petitions for bail defendants argued that they were "long-time residents of Cleveland, that they are married and have children, and that they were under bail prior to their convictions and appeared when they were required to do so . . . [consequently,] there is no reason to believe that if they were released on bail they would abscond" and, as the supreme court conceded, there were "undoubtedly sound grounds for petitioners' appeals."

Replying to this argument, the state proved that each defendant had been previously convicted of a felony, that they were considered to be "professional" criminals by the Cleveland police department, associated "with known criminals", and had no known occupations. The state also showed that one of the defendants had been caught in an act of burglary while awaiting trial in the instant case and was then under indictment in Florida for burglary and safe tampering.

The supreme court found that the "possibility that the person seeking bail may abscond during the time he is at large is only *one* of the factors which must be taken into consideration in granting or denying bail. The conduct of an accused in relation to the possibility of his *committing further crimes* while at large on bail may well enter into the consideration of the court." (Emphasis added.)

Comment: From the prosecutor's standpoint, the problem of explaining to the public why it is that criminals are repeatedly freed on bail, commit new crimes, are bailed, and then are caught committing still further crimes is extraordinarily difficult. Especially is this true when all of this occurs before the original indictment is tried (and the accused has been responsible for the delay) and it appears that a bailed defendant is caught in the vicious circle of committing crimes to pay again and again for lawyers' and bondsmens' fees in the first, second, and even third cases. (See GOLDFARB, RANSOM: A CRITIQUE OF THE AMERICAN BAIL SYSTEM (1965); *Bail Under Scrutiny*, The New York Times, Sept. 12, 1965.) The courts have repeatedly held, however, that the constitutional right to bail *pending trial* is absolute (save, in some states, in murder cases) and cannot be denied or revoked upon the commission of other crimes by the accused. *Bail pending appeal*, however, is another matter, since this is not a right within the constitutional guarantee of bail, and, as the Ohio Supreme Court holds in the *Colavecchio* case, may be denied if the evidence supports an assumption that the accused will abuse his freedom by committing other crimes pending an appeal

from the original conviction. See also *Coleman v. McGettrick*, 207 N.E.2d 552 (Ohio 1965).

State Court Rejects Wong Sun—*Dailey v. State*, 212 A.2d 257 (Md. 1965). Responding to a burglar alarm, a police officer and an agent of the alarm company entered the premises of an American Express office and found that a window in the rear had been broken and a bar sawed through. In an areaway outside the window, the police officer found a man's coat, with a case containing two keys in the pocket, along with a kit of tools. Reasoning that the person who had left the keys lived in a rooming house in the vicinity of the burglary, the police proceeded to fit the larger key to the outside doors of various rooming houses in the neighborhood and, about an hour and a half later, found "that it fitted the door of 115 W. Mulberry Street, about two or three blocks from the scene of the crime." Since the other key was stamped with the number 5, the police went to that room, the key unlocked the door, and inside the room the police found defendant who asked, "How did you find me so fast?" Arrested and taken to the station, defendant made a number of incriminating oral admissions which, at the trial, he sought to suppress as the fruits of his unlawful arrest and detention. Affirming the conviction, the Court of Appeals of Maryland agreed that the arrest was unlawful but refused to find that the admissions were incompetent as evidence.

Wong Sun v. United States, 371 U.S. 471, argued defendant, holds that confessions or admissions which are made while a defendant is in custody following an illegal arrest must be suppressed. The Maryland court held, however, that "Wong Sun does not control prosecutions in State courts, and that the rule of the Supreme Court, as well as that of Maryland, is that the critical test of admissibility of a confession is whether it was in fact voluntarily made."

Comment: Compare the recent holding of the Supreme Court of California in *People v. Bilderbach*, 401 P.2d 921, 926–927 (Cal. 1965). "Clearly, the United States Supreme Court test in Wong Sun relating to evidence excludable as the product of an illegal *search and seizure* applies to the *states* . . . [and] . . . statements . . . voluntarily rendered . . . are not exempt from attack on constitutional grounds if they are the product of an illegal search." However, the court, noting cases from other jurisdictions following the rationale of *Dailey*, was careful to say that "We do not pass on any questions involving the admissibility of statements given by an accused after he has been illegally *arrested*." 401 P.2d at 926, n. 5 (Emphasis added.)

Obscenity, Search and Seizure, and the Proof of *Scienter*—*State v. Mazes*, 209 N.E.2d 496 (Ct. App., Ohio 1965). Defendant was convicted for the possession of an obscene book entitled "Orgy Club." On appeal he contended, *inter alia*, that the state had not proved *scienter*, i.e., that he was aware of the nature or contents of the book, and that it had been illegally seized by the police at the time of his arrest. The conviction was affirmed by the court of appeals.

In answer to defendant's argument that the state had not proved *scienter*, the appellate court noted that the book was found by police in a rack labelled "adults only," and that the tag "obviously demonstrates a conscious classification of material on the part of the merchant." "In addition to this," the court said, "the exhibit was found in the midst of others [bearing] equally exotic titles and jackets announcing with crystal clarity that this is the sex, sin and sadism department." Although the court recognized that "the problem of the book dealer in attempting to screen the extensive output offered him for display and sale is . . . a difficult one," it concluded that "a fifteen second reading either of the back cover or the front page of 'Orgy Club' . . . [would] indicate an appeal to pruriency as the dominant theme."

The court also found that the officers could properly seize the book without warrant at the time of defendant's arrest since "they took the book in good faith as contraband after examination and after a determination that its possession then and there constituted a felony in being."

Comment: See also *State v. Vollmar*, 389 S.W.2d 20 (Mo. 1965) and **Abstracts of Recent Cases**, 56 J. CRIM. L., C. & P.S. 338–339 (1965).

Possession of Narcotic Residue Not Illegal—*People v. Sullivan*, 44 Cal. Reptr. 524 (Cal. App. 1965). Defendant was found guilty of the unlawful possession of heroin and on appeal he contended that "the quantity of heroin seized was insufficient to sustain a conviction. . . ." The California Appellate court agreed and reversed the conviction.

The evidence showed that the police had found a narcotics "kit" in defendant's room. The kit consisted of "a blue plastic case containing a syringe, an extra bulb, an extra syringe, a match cover folded over to protect the needle, a measuring spoon, and an ordinary kitchen spoon." A police

chemist testified at the trial that "there was a residue on the spoons and the residue contained heroin. The residue on the spoons was visible to the naked eye, he stated, but the heroin crystals themselves were detectable only through chemical testing and by microscopic observation."

The court held that the "powder had been liquefied and the residue which remained was different in form from the original substance." In addition, the court noted, the defendant, at the time of arrest, did not seem to be "aware of the heroin . . . [and it] . . . 'is not scientific measurement and detection which is the ultimate test of the known possession of a narcotic, but rather the awareness of the defendant of the presence of the narcotic. * * * The presence of the narcotic must be reflected in such form as reasonably imputes knowledge to the defendant.' "

In answer to the state's argument that defendant's admission that he had recently used narcotics with the kit meant that "he knew or should have known that a residue of heroin would remain on the spoons," the court held that under this reasoning every defendant under the influence of narcotics at the time of his arrest could be convicted of "possession of a narcotic, since he must have had possession of the narcotic in the recent past in order to come under its influence." This was obviously not the intent of the legislature, the court held, since the offenses of possession of narcotics paraphernalia and being under the influence of narcotics had been made *misdemeanors*, while possession of narcotics was punishable as a *felony*.

"We conclude," the court said, "that possession of a minute crystalline residue of narcotic not intended for consumption or sale and useless for either of these purposes is insufficient evidence to sustain a conviction for known possession of a narcotic."

The *Pointer* Case and the Confrontation Clause—*Franklin v. State*, 212 A.2d 279(Md.1965). Following a sale of narcotics to an undercover police officer in a transaction arranged by a police informer, the defendant was convicted of the offense of sale and appealed on the ground that it was a violation of the confrontation clause of the federal constitution, made applicable to the states in *Pointer v. Texas*, 380 U.S. 400 and *Douglas v. Alabama*, 380 U.S. 415 (See Abstracts of Recent Cases, 56 J. Crim. L., C. & P.S. 335-336 (1965)), to allow the informer to claim the privilege against self-incrimination when called as a witness by the defense. The Court of Appeals of Maryland rejected the argument and affirmed.

Defendant reasoned that since the confrontation clause was binding upon the states and the Supreme Court, in *Pointer* and *Douglas*, had held that the "right to cross-examine is inherent in the right of the accused to be confronted with the witnesses against him in a criminal case," the failure of the court to compel the informer to testify after he had invoked his privilege against self-incrimination was a denial of the right to "cross-examine" and hence a violation of the constitution.

In rejecting defendant's claim, the court distinguished *Pointer* and *Douglas* on the ground that what the Supreme Court did in those cases was merely to "prohibit the use of accusatory testimony of a witness wherever it is shown that the accused was not given an opportunity to cross-examine the witness who gave it. . . ." Those cases, said the court, did not hold "that the right of confrontation and cross-examination is paramount to the right of refusing to incriminate oneself." Since the court found in the instant case that "there was substantial reason for the witness to refuse to give evidence that might incriminate him" and since "the informer was called as a witness by the appellant instead of by the State" and had, in fact, given no testimony for the state, "it is clear that no right of the appellant was violated."

Pennsylvania Limits *Escobedo* Rule—*Commonwealth v. Senk*, 212 A.2d 222 (Pa. 1965). Defendant was convicted of the crime of murder and sentenced to death. On appeal he claimed that his confession had been admitted in evidence against him in violation of the rule of *Escobedo v. Illinois*, 378 U.S. 478, since he had not intelligently waived his privilege against self-incrimination and had not been informed of his right to counsel during the interrogation process leading to the giving of the confession. The conviction and sentence were affirmed.

The record established that two days before defendant gave the written confession at issue he had been warned by a police officer that he need not answer any questions and that he could not be compelled to do so. Just before the written statement was taken he was also warned that what he said would be used against him in court. The Pennsylvania court concluded that both warnings could be taken together and that defendant, just prior to giving the written statement, was aware

of the full reach of his privilege against self incrimination and had intelligently waived it.

The defendant further contended, however, that before "there can be a valid waiver of the right to remain silent . . . a lawyer must be *present*, or at least *such assistance* intelligently waived. . . ." (Emphasis added.) In answer to this, the court held that "the right to have a lawyer actually present during a police investigation is not absolute . . . [and] such a requirement would be in direct conflict with other established legal principles, and beyond the realm of reason and logic."

"If this were the law," the court said, "then it would logically follow that other equally important constitutional rights, *such as the assistance of counsel itself* could not be waived without a lawyer being physically present, and ad infinitum. The absurdity of the resulting consequences is readily evident."

The court then went on to decide whether an accused undergoing interrogation which is designed to produce an incriminating statement must be at least *warned* of the right to counsel. *Escobedo*, decided the court, does not so hold. "The main purpose and true significance of [that] decision is to guarantee to an accused . . . full protection of his right not to convict himself out of his own mouth." Since the court had already held that the defendant here was sufficiently aware of his privilege against self-incrimination, in the court's view, "what more protection could the assistance of counsel possibly provide?"

Comment: For a discussion of related cases see **Abstracts of Recent Cases**, 56 J. Crim. L., C. & P.S. 221–222 (1965).

New Jersey Rejects Mere Evidence Rule—*State v. Bisaccia*, — A.2d — (N.J.1965). Defendant was arrested for armed robbery and, prior to trial, moved to suppress as evidence a pair of shoes seized from his apartment under authority of a search warrant on the ground that since the shoes were not an "instrumentality" of the offense, but were "mere evidence" of the offense, the seizure violated the fourth amendment.

The Supreme Court of New Jersey first noted that the seizure was authorized by Rule 3:2A-2 of that court which, in addition to authorizing a search for, and the seizure of, any property "which has been used *in connection with*" an offense, also authorized the seizure of any property "constituting *evidence of* or tending to show" any offense.

Although the state and the trial court were of the view that the shoes were, in fact, *instrumentalities* of the offense because "a robber could hardly pursue his plans in the nude" (see *United States v. Guido*, 251 F.2d 1(7th Cir.1958)), the supreme court rejected this approach and held that the broad New Jersey rule authorizing the seizure of evidentiary items not instrumentalities of the crime was not violative of the fourth amendment.

The court found that earlier federal cases (for a discussion of the cases see INBAU AND SOWLE, CASES AND COMMENTS ON CRIMINAL JUSTICE 752–753 (2d ed.1964)) which had developed the theory that the state could not seize personal property belonging to a defendant which was not the instrumentality or fruit of an offense were concerned primarily with the protection of *private papers*. Distinguishing these cases, and rejecting the notion that the "property" rights of a defendant in evidence should prevent its seizure unless it had been "forfeited" by its use as an instrumentality of crime, the court declared that it "is far more palatable to say directly that title and possession are beyond the point; that the Fourth Amendment, striking a balance between the right of the individual suspected of crime and the duty of the State to protect its citizens, permits a search for the avowed purpose of finding evidence with which to convict, so long at least as there is not involved the evil of the general warrant . . . [and] the unrestricted invasion of the privacy of a man's papers with which . . . [the earlier cases] were concerned."

The *Dorado* Rule and Handwriting Samples—In *People v. Graves*, — Cal. Reptr. — (Cal.App. 1965), a California appellate court held that handwriting samples taken from a defendant during the accusatory stage of an investigation were the equivalent of oral admissions of guilt and, hence, could not be received in evidence under the rule of *People v. Dorado*, 398 P.2d 361, unless the defendant, prior to giving the exemplars, had been warned of his privilege against self-incrimination and his right to counsel. The following commentary, by Mr. Ordway Hilton, a New York Examiner of Question Documents and Police Science Editor of the *Journal* concerns the implications of this decision.

"The recent California decision dealing with the problem of obtaining specimens of writing from a criminal suspect after he was charged or suspected of a crime raises some significant points from the document examiner's point of view. It is my recollection that the conviction was set aside at least in part because the suspect was asked for

further writings and these writings were used to prove his guilt. This was after the document examiner had furnished a report suggesting that the man might have been involved but stating that more writing was necessary to prove it.

It would seem to me that from the document examiner's point of view some errors were made. He evidently had reached an opinion that the writer in question might be the guilty person, but actually he was still undecided. Probably his report should have been simply that with the writing at hand he could not eliminate the suspect and he could not identify him. I do not know what effect this would have had on the court's opinion, but in all probability, since the additional writings proved the man guilty, they would have still frowned on their use by the prosecution.

Writing specimens taken at request, that is those specimens obtained during an interrogation when the writer is asked to prepare specimens for comparison purposes only, are generally not very satisfactory. However, police examiners have to use them in a great number of cases. Regardless of how many times investigators are told that they must get large quantities of writing of this kind, they collect very meager samples. These sometimes clearly eliminate the individual. On a few rare occasions, they thoroughly identify him as the guilty writer. However, it has been my experience in cases that I have handled, both prosecution and defense, that these specimens often have to be supplemented before any positive opinion can be reached.

If the courts are going to say that the document examiner can only use those specimens which are taken at the very beginning of the investigation, they are forcing the expert to render opinions that have a higher probability of error. In many cases where the suspect has not written the questioned writing, there are still a number of points of similarity between his writing and that in question. These are the things that the investigator is sure proves the man guilty, but regardless of how many similarities there are in handwriting, one or only a few repeated significant differences can show that a man did not do the writing. This generally means evaluation of apparent divergencies in limited specimens of handwriting must be made.

In the case at hand, it turned out that the writer was identified. His additional writings might have shown that several letters that were "question marks" were actually repeated points of difference. I have had this happen in more cases than one. If you have only one or two examples of a letter or a letter combination, you cannot tell whether this is a true difference if it is not exactly like the questioned writing. Other specimens of the man's writing may show that sometimes he does it one way and sometimes does it like the questioned writing. So you can see that more extensive specimens may be absolutely necessary to get a correct opinion.

I would say that the limiting factors placed on the document examiner by the California courts are going to mean that either the expert will render an opinion on what he has, and certain less careful men may well do this when they should not, or else whatever extra specimens are taken can only work one way. That one way is to clear the innocent fellow.

Basically judges are attorneys. I find it hard with the attorney who is unexperienced with handwriting problems to make him understand that we need a great deal of writing.

I have noticed a tendency with judges in cases where a man will deny his signature on the witness stand to limit the cross-examiner in how many times the man should sign his name. If the cross-examiner knows something about signatures, he may want to get 10 or 12 specimens, as he should, but the judge will cut him off after only one or two.

To get around the legal hurdles set up by the California opinion, it is always possible to get other writings besides request writings prepared by the suspect. However, if he is a transient criminal (and many criminals are constantly on the move), there may be very little of his writing in the community or anywhere in the state for that matter.

To summarize somewhat briefly—for accurate handwriting opinions, large quantities of handwriting are often necessary. Writing taken by police interrogators and police investigators are frequently inadequate. For the best administration of justice, from the point of view of those in my profession, the handwriting opinion in a criminal case must be 100 per cent accurate. A cautious and conscientious examiner may realize after he starts working on a case that he needs more writing. This cannot always be anticipated before any work is done. The courts would do well to make sure that experts always get the full amount of writing necessary if they want to protect individuals from false convictions.

Decisions by some courts that make available all writings obtained by the prosecution from the