Abstracts of Recent Cases

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examination of witnesses by section 69 (3). They believe that this result is necessary to avoid circumvention of the direct prohibitions of sections 136 and 136a by such practices as first questioning a suspect as a witness to determine with the aid of lie-detector tests whether they have the right person to prosecute.  

Some of the authorities who favor the use of lie-detector tests concede that they cannot be used in the examination of witnesses in view of the limited application of Section 81c of the Code which, literally translated, provides:

Persons other than the accused, when they are witnesses, can be searched without their consent only when it is necessary for ascertainment of the truth whether on their body exist positive signs or effects of a criminal act.

However, others favoring the tests contend that their use results only in obtaining more objective impressions of the witness' reaction to particular questions and that this is a factor which normally is considered in determining the truthfulness of the witness. The argument that a witness should be subjected to a lie-detector test, even against his will if necessary, is supported by the fact that the witness, unlike the accused, is obliged to tell the truth.

CONCLUSION

Of course, the decision of the Supreme Court is accepted as a legal reality; however, advocates of the sociological approach which considers the rights of the individual in relation to the well-being of society maintain that the decision is based upon discredited liberal ideology and that it conflicts with the reality of actual necessity.

Authorities who support the constitutional state idea hail the Supreme Court as the guardian and preserver of the ideological concepts of a constitutional state—a guardian who in a clear and convincing manner prevented the penetration of the innate sphere of a free personality. On the other hand, the advocates of the methods of modern criminology reject the decision because it interferes with the search for truth; while it preserves the free will and personality of the accused, the price is a greater risk of unjust convictions as well as unjust acquittals. These authorities do not oppose the ideas of human dignity and democracy, because the issue is not one of their total rejection or complete acceptance. There are necessary limitations to any right, and some authorities believe that the public interest in efficient law enforcement justifies limiting the freedom of the individual to the extent of allowing the use of lie-detector tests.

The Supreme Court of West Germany, faced with the alternative of foregoing the right to punish some crimes or of opening the door to possible infringements upon personal freedom, obviously thought that it elected the lesser evil.

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ABSTRACTS OF RECENT CASES

When Witness Falsely Denies He Testified For State In Return for Leniency, Prosecutor Must Reveal Truth—One Mantzinos, apprehended while picking up a quantity of marijuana from a bus terminal locker, identified the defendant Savvides as the person from whom he had obtained the narcotic. Mantzinos pleaded guilty to a charge of illegal possession of narcotics with intent to sell, pursuant to an agreement with the prosecutor that, upon Mantzinos' "continued, truthful co-operation," the district attorney would permit him to withdraw his plea and plead guilty to a lesser offense. At the defendant's trial on a narcotics charge, Mantzinos testified for the state as to the defendant's illegal activities. The court and
jury were never informed of the promise of clemency made to Mantzinos as consideration for his continued co-operation. In addition, when questioned about this subject, Mantzinos expressly denied that he anticipated "any consideration" for his testimony. The prosecutor, who had himself made the agreement with the witness, remained silent.

Shortly after the defendant was found guilty, the prosecutor assured the judge who had accepted Mantzinos' guilty plea that the latter's co-operation was "the ultimate factor" in obtaining the defendant's conviction. Whereupon the judge suspended the sentence previously meted out to Mantzinos. Having learned of the "deal", the defendant moved to set aside the verdict entered against him, and upon denial of his motion, petitioned for an order in the nature of a writ or error coram nobis. The New York Court of Appeals reversed the denial of defendant's petition and ordered a new trial, holding that failure to disclose the witness' lie denied defendant a fair trial.

People v. Samvides, 1 N.Y.2d 554 (1956).

The court considered immaterial the fact that the falsehood bore upon the credibility of the witness rather than directly upon the defendant's guilt. "A lie is a lie," the court said, "no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth." The court criticized the practices of offering leniency to "co-operative" accomplices; such agreements, it was said, encourage false testimony. The failure to disclose a promise of leniency, the court said, would seriously hamper the jury in assessing the worth of the witness' testimony. In addition, it was said, knowledge that the defendant had lied under oath might well have affected the jury's evaluation of his other testimony. Such conduct denied the defendant a fair trial, the court concluded, and required reversal.

Trial Court Must Halt Prosecutor's Prejudicial Argument Despite Failure of Defendant to Object—The defendant and one Irwin were indicted for an armed robbery which Irwin had committed while the defendant waited in the get-away car. At the trial, defendant denied knowing that his partner intended to commit a robbery until after completion of the crime. On the issue of defendant's knowledge, the prosecutor in his closing argument stated to the jury that there was sufficient evidence to prove defendant's knowledge since otherwise the judge would have taken the case away from the jury. The defendant, the prosecutor further remarked, was "trying to hook Irwin." The prosecutor characterized the defendant as a "gunman—a man who had waged war on society since 1928 and always with a gun." He further described the defendant as the worst offender he had ever encountered. Other juries, he said, had taken pity on the defendant "not only on an armed robbery charge but on a larceny charge as well." Failure of the jury to convict, the prosecutor said, would indicate that they lacked "guts." Despite defendant's failure to object to the prosecutor's remarks, the Supreme Court of Illinois reversed the defendant's conviction, holding that the prosecutor's statements denied the defendant a fair trial. People v. Moore, 137 N.E.2nd 246 (Ill. 1956).

The general rule, the court said, is that prejudicial argument by the state will not be considered on appeal unless objection to the statement is made during the trial. However, if the argument is significantly prejudicial, the court said, the trial judge should, on his own motion, stop the argument and instruct the jury to disregard it. It is permissible for the state to vigorously denounce the accused and to urge the jury to enforce the law by returning a guilty verdict, but the prosecutor may not interject his personal impressions of the case or comment on facts not introduced in evidence. The court found particularly prejudicial the inference that the judge would have directed a verdict for the defendant were the evidence insufficient. Such argument, the court concluded, denied the defendant a fair trial.

Multiple Prosecutions For Mass Murder Do Not Constitute Double Jeopardy; Evidence Of Other Deaths During Same Incident Is Ad-
missible—During the course of an evening the defendant had allegedly shot to death his wife and three children. Thereafter at two consecutive trials, the defendant was convicted and sentenced to prison terms for the killings of his wife and one daughter. Subsequently, the defendant was indicted for the murder of his son. At this trial, the defendant made a “motion to dismiss” on the grounds that the present prosecution placed him in double jeopardy. The trial court, denying the motion, rejected the defendant’s argument that the two previous prosecutions for the murders of his wife and two daughters were for the same offense as that charged in the present indictment. During the course of the trial, the state introduced, over defendant’s objection, evidence of the deaths of his wife and two daughters. The defendant was convicted and sentenced to death. On appeal, the Supreme Court of Illinois affirmed. People v. Ciucci, 137 N.E.2d 40 (Ill. 1956).

Evidence of the deaths of the other members of defendant’s family, it was said, is clearly within the scope of the res gestae. As to the claim of double jeopardy, the court observed that the test is whether the facts charged in the second indictment would, if true, have justified a conviction under the earlier indictment. Applying this test to the present case, the court concluded that, under the indictment for the murder of the defendant’s wife, a conviction could not be sustained for the murder of his son. “It is the identity of the offense,” it was said, “and not of the act, which is referred to in the constitutional guarantee against double jeopardy; and where two or more persons are unlawfully killed, even though by a single act, there is a corresponding number of distinct offenses.” In addition, the court said, the deaths involved in the present case were caused by a series of separate shootings rather than by a single act.

Numbers Racket Pick-Up Man Need Not Pay Gamblers’ Tax—The defendant was arrested for failure to pay the gamblers’ occupational tax imposed by the Internal Revenue Code upon an individual “who is engaged in receiving wagers for” the former individual. The defendant was employed as a “pick-up” man by a numbers racket “bank.” His job consisted of collecting the yellow slips upon which the bets are noted from the “writer,” the bank’s agent with whom customers place their wagers, and delivering the yellow slips to the bank which recorded the bets and paid off the winners. The United States Court of Appeals for the Third Circuit reversed the trial court, holding that defendant was exempt from payment of the tax. United States v. Calamaro, 236 F.2d 182 (3rd Cir. 1956).

The prosecution conceded that a pick-up man is not engaged in the business of “accepting wagers” but insisted that all who participate in the numbers racket, other than bettors, are engaged “in receiving wagers.” Rejecting this notion, the majority based its holding on a literal application of the language of the statute. Before the pick-up man enters the picture, the court pointed out, the writer has physically received the wager from the bettor. At the same time, it was said, the wager, in legal contemplation, came into possession of the bank, since the writer is the bank’s agent. A pick-up man, the court observed, is merely a messenger who transports the record of the gambling transaction, not the wager itself, from the writer to the bank.

The dissent maintained that receipt by the pick-up man of the ticket on which the bet is recorded amounts to “receiving a wager.” The majority’s position, it was argued, will offer everyone connected with the numbers game the opportunity to avoid payment of the tax by asserting that they are merely pick-up men. The dissent pointed out that the majority’s view is in disagreement with Daley v. United States, 231 F.2d 123 (1st Cir. 1956) and Sagonias v. United States, 223 F.2d 146 (5th Cir. 1955) which held numbers racket pick-up men subject to the gambling tax.

Illinois Provides Free Transcripts Of Record For Indigent Defendants—In Griffin v. Illinois, 351 U. S. 12 (1956), the United States Supreme Court had reversed a judgment of the Illinois Supreme Court denying free transcripts to
indigent defendants in non-capital cases. The Court held that the Fourteenth Amendment requires the states to provide equal opportunity for full appellate review to all defendants regardless of their ability to pay for the costs of such review.

The case was remanded to the Illinois Supreme Court for further action in accord with the ruling of the United States Supreme Court. The first question considered on remand by the Illinois court was whether to provide review to indigents by provision for free transcripts or to make such review available through other means such as bystander's bill of exceptions. The court resolved this issue through the promulgation of Illinois Supreme Court Rule 65-1 which provides that, upon a showing of indigence; persons sentenced after April 23, 1956, the date of the United States Supreme Court decision in the Griffin case, may obtain transcripts at the expense of the state. “Twenty-nine states,” the court said, “provide free transcripts as of right to indigents convicted in non-capital crimes. That this course is highly desirable has long been apparent. The decision of the Supreme Court now makes it imperative.”

A question not presented by the Griffin case but dealt with by the court was that of the application of the Griffin ruling to defendants sentenced prior to that decision who had been unable to obtain appellate review of their convictions because of indigence. The United States Supreme Court did not expressly set out the scope of its decision. The Illinois court, however, amended rule 65-1 to provide free transcripts to indigents sentenced prior to the Griffin decision. The failure of a prisoner to have requested a free transcript within the period provided by Illinois law, the court indicated, will not constitute a waiver of his right. “Waiver assumes knowledge,” it was said, “and we are unwilling to hold, under the circumstances of this case, that the constitutional rights of prisoners have been waived.” In addition, the court said, prisoners who had appealed under the Illinois Post Conviction Hearing Act but had failed to raise the issue of denial of a free transcript would not be barred by res judicata from now presenting that question in a new proceeding.

Public May Be Excluded From Courtroom During Defendant's Testimony When Witness Is Emotionally Disturbed—At her trial on a charge of murder, the defendant made a motion, acquiesed in by the prosecution, that the public be excluded from the courtroom during the entire proceedings. The defendant proposed to testify on her own behalf, she said, concerning abnormal sexual practices enforced upon her by the murder victim. Her emotional disturbance at the prospect of so testifying in public would, she claimed, prevent her from co-operating with her counsel and render her unable to testify freely. The trial court granted the motion on the grounds that the presence of the public and the press would deprive the defendant of a fair trial and that publicizing the witness’ testimony would not be in the public interest. Thereupon, local newspapers petitioned an appellate court for a writ commanding the trial court to admit the public to the courtroom. The appellate court, deciding the question even though the trial had since been completed, held that the trial court erred in excluding the public and press during the entire trial. However, the court said, it would be within the trial court's discretion to exclude the public during the defendant's testimony if such action were necessary in order to insure a fair trial. Kirstowsky v. Superior Court, 300 P.2d 163 (Cal. Dist. Ct. of Appeal 1956).

The court rejected the defendant's argument that public trial is a right granted for the protection of the defendant and may be waived by her. Statutory and constitutional provisions for public trial, it was said, are declaratory of the common law which accorded the public the privilege of attending criminal trials apart from the right of an "open courtroom" possessed by the defendant. Thus, the court said, a waiver of the defendant's right is not sufficient to exclude the public. However, the court concluded, where a witness, because of emotional disturbance, would be unable to testify freely in the presence of spectators, the trial court, in order to insure the defendant a fair
Denial Of A Hearing To Determine Sanity Of Defendant At Time Of Trial Violates Due Process Of Law—Defendant was indicted and brought to trial on a charge of burglary. No motion had been made prior to the trial for a sanity hearing. During the trial, defendant's counsel stated to the court that his observation of the defendant convinced him that he was insane and unable to cooperate with his counsel. At that time the attorney moved for an adjournment to permit a psychiatric examination of the defendant. The motion was denied by the court who said that defendant would receive such an examination at a later time. Upon completion of the evidence the jury returned a guilty verdict, at which time defendant's counsel moved for a psychiatric examination before sentence. The court denied the motion, stating that he did not think that the defendant was insane and that a psychiatric examination was unnecessary. Therefore, defendant obtained a hearing before the trial court under the Illinois Post Conviction Hearing Act at which it was alleged that failure to afford the defendant a sanity hearing at the time of his trial to determine whether he was insane at the time of trial and at the time of commission of the crimes violated due process of law. At this hearing, defendant's attorney testified that, prior to the trial, the defendant was able to discuss the case with his counsel coherently, but when the defendant testified at the trial he told a story different from that which he previously had told his attorney, and, thereafter, was unable to give rational answers to his attorney's queries. At the conclusion of the hearing, the trial court held that, because the request for a sanity hearing was not made until after the trial had begun, the request came too late. The Supreme Court of Illinois reversed and ordered a new trial. Brown v. People, 134 N.E.2d 760 (Ill. 1956).

As a general rule, the court said, whether the issue of insanity should be determined before the trial is within the discretion of the trial court. However, it was said, this discretion is not absolute and where the defendant's attorney stated to the court in good faith that he thought the defendant insane, the judge should have investigated the defendant's mental condition. The investigation by the judge should be more than a perfunctory inquiry, the court observed; the parties should have the opportunity to present evidence and argument. The court considered it immaterial that the defendant's motion for a sanity examination did not technically comply with the formal requirements of the statute providing for such a hearing. A construction of the statute which would deny a hearing unless technical rules of procedure are followed, it was said, would deprive the defendant of due process of law. However, the court indicated that its remarks were directed to the issue of insanity at the time of trial. The defense of insanity at the time of the crime must be formally raised at the time of trial and submitted to the jury or it is waived.

Guilty Plea Cannot be Entered by Stipulation of Defendant's Counsel—The defendant, a conscientious objector, pleaded not guilty to a charge of willfully evading an order of his draft board. During the trial before a federal district judge, without a jury, the defendant's attorney stipulated in open court that the defendant, with knowledge of the draft board's order, had intentionally disobeyed it. "We have no defense," the attorney said, "the Government had established a prima facie case and we are unable to upset it." The trial court thereafter found the defendant guilty and later stated that where a defendant stipulates to the pertinent facts and admits that the prosecution has established a prima facie case, "it is equivalent for all facts and purposes to a guilty plea." The United States Court of Appeals for the Sixth Circuit reversed defendant's conviction, holding that a conviction cannot be based on stipulations by the defendant's attorney. Julian v. United States, 236 F.2d 155 (6th Cir. 1956).

The stipulation by the attorney that defendant had intentionally committed the offense, the court said, is in effect the entry by stipulation of a plea of guilty. At common law, it was said, a defendant had to personally plead;
a plea by counsel was not acceptable unless approved in person by the defendant. In the present case, there is no evidence, the court said, that the defendant had approved his attorney's stipulations. In addition, rule 11 of the Federal Rules of Criminal Procedure provides that a judge shall not accept a guilty plea without inquiring whether it is made voluntarily and with understanding by the defendant.

Since the judge in the present case considered the stipulations to be in effect a guilty plea, the court concluded he should have asked the defendant whether he understood and acquiesced in them.

(For other recent case abstracts see "Police Science Legal Abstracts and Notes," infra pp. 624–628)