DOWNLOAD PDF APPENDIX D : MCGAUTHA V. CALIFORNIA, 1970

Chapter 1 : Capcha | CaseMine

*United States Supreme Court McGAUTHA v. CALIFORNIA, () No. Argued: November 9, Decided: May 3, [Footnote *] Together with No. , Crampton blog.quintoapp.com, on certiorari to the Supreme Court of Ohio.*

Supreme Court of North Carolina. Earl Britt, Fairmont, for defendant appellant. Defendant Lee demanded and was denied the right to make the closing argument to the jury. This is his first assignment of error. Rule 3, Rules of Practice in the Superior Courts of North Carolina, provides that "[i]n all cases, civil or criminal, when no evidence is introduced by the defendant, the right of reply and conclusion shall belong to his counsel. Construing this rule in State v. Federal decisions are in accord. United States, 5 Cir. El Rancho Adolphus Products, Inc. This assignment is without merit and is overruled. Rule 10 thereof provides, inter alia, that "[i]n a criminal case, where there are multiple defendants, if any defendant introduces evidence the closing argument shall belong to the solicitor. Defendant argues that G. We adhere to our former decisions and regard this question as settled unless and until the Supreme Court of the United States holds otherwise. Cases now pending before it which seek to present the question are: Defendant contends the court erred in instructing the jury that defendant Lee could be found guilty of first degree murder on the theory of conspiracy if he joined in the conspiracy at any time before or while the escape was being executed. In this connection the court charged the jury as follows: But, I instruct you that if the defendants, Lee and Resendez, conspired together, that is agreed and planned to escape from the Department of Corrections of Robeson County camp and that murder was committed by the defendant, Resendez, in the escape or attempt to escape, then each is guilty of murder in the first degree, both the defendant, Resendez, and the defendant, Lee. The defendant, Lee, could be [a] conspirator, at any time before or while the escape is being executed. If he concurred, no proof of agreement to concur is necessary. As soon as the union of wills for the unlawful purpose, that is felonious escape, is perfected, the conspiracy is complete. The joint assent of the minds, like all other facts of a criminal case may be established as inference to the jury from the facts proved, in other words, by circumstantial evidence. He who hunts with the pack is responsible for the killing. If the defendant, Resendez, is not guilty of murder, then the defendant, Lee, could not be guilty of murder, under this theory of the case as contended by the State. The court thereupon instructed the jury as follows: The defendant, Lee, could become a conspirator any time before or while the escape is being executed. If he concurred, no proof of an agreement to concur is necessary. As soon as the union of the wills for the unlawful purpose is effected, the conspiracy is complete. He who hunts with the pack is responsible for the kill. Furthermore, a felony murder may be proven by the State although the bill of indictment, as here, charges murder in the statutory language of G. Hence it was permissible in this case for the State to prove, if it could, a conspiracy to escape and that the murder of Earl C. Strickland was committed in the escape attempt. In light of the foregoing principles, was it error to charge the jury as above set out? This unlawful agreement was entered into prior to June 2, Resendez had possessed the. Strickland was summoned by Boyd Strickland and as he approached the door, Resendez pushed Boyd Strickland toward Lee and said "you keep him. The evidence further discloses that some time prior to the murder of Earl Strickland, Resendez had filled a pillowcase with undisclosed items of personalty. At the time he and Lee were leaving with Sergeant Locklear as their hostage, after the killing and after locking the other officers in the dormitory, Resendez said to Lee "go get the sheet. Whether or not it also contained items belonging to Lee is unclear. Be that as it may, this evidence points unerringly to the conclusion that Resendez and Lee had a meeting of the minds prior to the murder. Consideration of the acts or declarations of one as evidence against the co-conspirators should be conditioned upon a finding: Of course a different rule applies to acts and declarations made before the conspiracy was formed or after it terminated. Prior or subsequent acts or declarations are admissible only against him who committed the acts or made the declarations. When the foregoing charge is considered in light of the evidence it is free from reversible error. The charge does not mean, and could not have been understood by the jury to mean, that if Lee joined Resendez in an escape scheme after Resendez had already murdered the guard, Lee also would be guilty of the murder. That is not the law in North Carolina and the charge here had no such connotation because 1 there was no conspiracy until

Lee became a party to the scheme, and 2 the evidence is overwhelming that Lee was an active participant in the escape plot long before Earl Strickland was killed. For his fourth assignment of error defendant contends that in the portion of the charge quoted above the court expressed an opinion on the evidence when it used the language "[h]e who hunts with the pack is responsible for the kill. The purpose of the section is to secure the right of every litigant to have his cause considered by an impartial judge and an unbiased jury. The statute is mandatory and a violation of it is prejudicial error. This Court has consistently endeavored to maintain the integrity of G. We perceive nothing in the instructions which should prejudice a mind of ordinary firmness and intelligence. It will be construed contextually, and isolated portions will not be held prejudicial when the charge as a whole is correct. If the charge presents the law fairly and clearly to the jury, the fact that some expressions, standing alone, might be considered erroneous will afford no ground for reversal. The isolated phraseology "[h]e who hunts with the pack is responsible for the kill," objected to by defendant, was intended as an illustrative statement of the law of conspiracy. It is highly unlikely that the statement was considered by the jury as anything other than an illustration of the law. When considered in the context in which it was used it had no prejudicial effect on the result of the trial and was therefore harmless. This assignment is overruled. Defendant Lee offered no evidence. He cites State v. He could not very well contend that their testimony represented the truth of the matter. This case is quite different from the factual misconception by the trial court in State v. Otherwise an exception thereto will not be considered on appeal. In the trial below we find No error. Sign up to receive the Free Law Project newsletter with tips and announcements.

Chapter 2 : State v. Lee, S.E.2d , N.C. â€“ blog.quintoapp.com

McGautha v. California, U.S. () McGautha v. California. No. Argued November 9, Decided May 3, set out in the Appendix to this opinion, were.

May 3, Petitioners McGautha and Crampton were convicted of murder in the first degree in the courts of California and Ohio respectively and sentenced to death pursuant to the statutes of those States. In each case the decision whether the defendant should live or die was left to the absolute discretion of the jury. McGautha and his codefendant Wilkinson were charged with committing two armed robberies and a murder on February 14, Pon Lock early in the afternoon of the murder. While Wilkinson kept a customer under guard, McGautha trained his gun on Mrs. Roughly three hours later, McGautha and Wilkinson held up another store, this one owned by Mrs. While one defendant forcibly restrained a customer, the other struck Mrs. Smetana on the head. A shot was fired, fatally wounding Mr. Other evidence at the guilt stage was inconclusive on the issue as to who fired the fatal shot. The jury found both defendants guilty of two counts of armed robbery and one count of first-degree murder as charged. Wilkinson testified in his own behalf, relating his unhappy childhood in Mississippi as the son of a white father and a Negro mother, his honorable discharge from the Army on the score of his low intelligence, his regular attendance at church, and his good record for holding jobs and supporting his mother and siblings up to the time he was shot in the back in an unprovoked assault by a street gang. Thereafter, he testified, he had difficulty obtaining or holding employment. He admitted participating in the two robberies but said he had not known that the stores were to be held up until McGautha drew his gun. He testified that it had been McGautha who struck Mrs. Smetana and shot Mr. Wilkinson called several witnesses in his behalf. A former fellow employee testified that Wilkinson had a good reputation and was honest and peaceable. McGautha also testified in his own behalf at the penalty hearing. He admitted that the murder weapon was his, but testified that he and Wilkinson had traded guns, and that it was Wilkinson who had struck Mrs. Smetana and killed her husband. He related his employment record, medical condition, and remorse. He admitted his criminal record, see n. McGautha also admitted to a guilty plea to a charge of carrying a concealed weapon. He called no witnesses in his behalf. The jury was instructed in the following language: Now, in arriving at this determination you should consider all of the evidence received here in court presented by the People and defendants throughout the trial before this jury. However, it is not essential to your decision that you find mitigating circumstances on the one hand or evidence in aggravation of the offense on the other hand. That verdict must express the individual opinion of each juror. In the determination of that matter, if the jury does agree, it must be unanimous as to which of the two penalties is imposed. In response to jury requests the testimony of Mrs. Smetana and of three other witnesses was reread. The trial judge ordered a probation report on McGautha. His contention that standardless jury sentencing is unconstitutional was rejected on the authority of an earlier case. In re Anderson, 69 Cal. Petitioner Crampton was indicted for the murder of his wife, Wilma Jean, purposely and with premeditated malice. He pleaded not guilty and not guilty by reason of insanity. The Cramptons had been married about four months at the time of the murder. On this occasion he stole a knife from the house of his late father-in-law and ran away. He called the house several times and talked to his wife, greatly upsetting her. When she pleaded with him to return to the hospital and stated that she would have to call the police, he threatened to kill her if she did. Wilma and her brother nevertheless did notify the authorities, who picked Crampton up later the same evening. During those three days Collins and Crampton roamed the upper Midwest, committing a series of petty thefts and obtaining amphetamines, to which both were addicted, by theft and forged prescriptions. Joseph, Michigan; after the call he told Collins that he had to get back to Toledo, where his wife was, as fast as possible. They arrived in the early morning hours of January They broke in and stole a rifle, ammunition, and some handguns, including the. Crampton kept this gun with him. He indicated to Collins that he believed his wife was having an affair. The murder weapon was found between the seats of the car. She had been shot in the face at close range while she was using the toilet. A jacket which Crampton had stolen a few days earlier was found in the living room. The coroner who examined the body at They also contained his claim that the shooting was accidental; that he

had been gathering up guns around the house and had just removed the clip from an automatic when his wife asked to see it; that as he handed it to her it went off accidentally and killed her. All the reports concluded that Crampton was sane in both the legal and the medical senses. He was diagnosed as having a sociopathic personality disorder, along with alcohol and drug addiction. Crampton himself did not testify. The jury was given no other instructions specifically addressed to the decision whether to recommend mercy, but was told in connection with its verdict generally: It is your duty to carefully weigh the evidence, to decide all disputed questions of fact, to apply the instructions of the court to your findings and to render your verdict accordingly. In fulfilling your duty, your efforts must be to arrive at a just verdict. The jury deliberated for over four hours and returned a verdict of guilty, with no recommendation for mercy. Sentence was imposed about two weeks later. As Ohio law requires, Ohio Rev. Before proceeding to a consideration of the issues before us, it is important to recognize and underscore the nature of our responsibilities in judging them. Our function is not to impose on the States, ex cathedra, what might seem to us a better system for dealing with capital cases. Rather, it is to decide whether the Federal Constitution proscribes the present procedures of these two States in such cases. In assessing the validity of the conclusions reached in this opinion, that basic factor should be kept constantly in mind. To fit their arguments within a constitutional frame of reference petitioners contend that to leave the jury completely at large to impose or withhold the death penalty as it see fit is fundamentally lawless and therefore violates the basic command of the Fourteenth Amendment that no State shall deprive a person of his life without due process of law. Despite the undeniable surface appeal of the proposition, we conclude that the courts below correctly rejected it. This history reveals continual efforts, uniformly unsuccessful, to identify before the fact those homicides for which the slayer should die. Thus, the laws of Alfred, echoing Exodus Let him who slayeth another of necessity or unwillingly, or unwilfully, as God may have sent him into his hands, and for whom he has not lain in wait be worthy of his life and of lawful bot if he seek an asylum. Stephen, History of the Criminal Law of England 24 In the 13th century, Bracton set it down that a man was responsible for all homicides except those which happened by pure accident or inevitably necessity, although he did not explain the consequences of such responsibility. The Statute of Gloucester, 6 Edw. It appears that in time such pardons-which may not have prevented forfeiture of goods-came to issue as of course. During all this time there was no clear distinction in terminology or consequences among the various kinds of criminal homicide. All were prima facie capital, but all were subject to the benefit of clergy, which after came to be available to almost any man who could read. Although originally those entitled to benefit of clergy were simply delivered to the bishop for ecclesiastical proceedings, with the possibility of degradation from orders, incarceration, and corporal punishment for those found guilty, during the 15th and 16th centuries the maximum penalty for clergyable offenses became branding on the thumb, imprisonment for not more than one year, and forfeiture of goods. By the statutes of 23 Hen. The growth of the law continued in this country, where there was rebellion against the common-law rule imposing a mandatory death sentence on all convicted murderers. This reform was soon copied by Virginia and thereafter by many other States. Other States had similar experiences. The result was characterized in this way by Chief Judge Cardozo, as he then was: I have no objection to giving them this dispensing power, but it should be given to them directly and not in a mystifying cloud of words. In such cases they simply refused to convict of the capital offense. United States, U. Zeisel, The American Jury In order to meet the problem of jury nullification, legislatures did not try, as before, to refine further the definition of capital homicides. Instead they adopted the method of forthrightly granting juries the discretion which they had been exercising in fact. Tennessee was the first State to give juries sentencing discretion in capital cases, [10] Tenn. Shortly thereafter, in Winston v. This Court subsequently had occasion to pass on the correctness of instructions to the jury with respect to recommendations of mercy in Andres v. The Court approved, as consistent with the governing statute, an instruction that: The case was reversed, however, on the ground that other instructions on the power to recommend mercy might have been interpreted by the jury as requiring them to return an unqualified verdict of guilty unless they unanimously agreed that mercy should be extended. The only other significant discussion of standardless jury sentencing in capital cases in our decisions is found in Witherspoon v. The inner quotation is from the opinion of Mr. Chief Justice Warren for four members of the Court in Trop v. In recent years

academic and professional sources have suggested that jury sentencing discretion should be controlled by standards of some sort. The American Law Institute first published such a recommendation in

Chapter 3 : People v. McGautha, 70 Cal. 2d â€“ blog.quintoapp.com

McGautha's conviction was unanimously affirmed by the California Supreme Court. 70 Cal.2d , 76 blog.quintoapp.com , P.2d (). His contention that standardless jury sentencing is unconstitutional was rejected on the authority of an earlier case.

Gilbert Gonzalez, Tucson, Ariz. Advertisement 1 The appellant and his wife were each charged in a two-count indictment with 1 illegal possession of pounds of marijuana, with intent to distribute, 21 U. The appellant was sentenced to two years on each count, to run concurrently, and appeals. He raises the following questions: Because Condes detected the odor of marijuana coming from appellant, who seemed nervous, the agent directed appellant to drive to a secondary inspection area. Advertisement 8 Agent Condes turned appellant over to another officer, and returned to his checkpoint within a few minutes. Condes determined that both entrants were "green card" Mexican nationals, having the same surname, and driving vehicles with Arizona license plates. Condes also ordered Mrs. Figueroa to the secondary area. Under the folded-down rear seats of the station wagon, he found pounds of marijuana. Both motions were denied. Appellant and his wife then took the stand, in that order. Their testimony tended to show that appellant had arranged in Mexico to transport the station wagon to Arizona, and that his wife agreed to assist him by driving it. However, both denied knowing that the vehicle contained marijuana. There is no problem under Bruton v. United States, U. Moreover, his wife, the codefendant, testified and was subject to cross-examination. United States 9 Cir. The mere joint trial of husband and wife does not require severance where, as here, the Government did not introduce the statements of one to incriminate the other. We conclude that there was no prejudice from denial of the motions to sever, which, however, were waived because not renewed at the close of all the evidence. There is a privilege which prevents one spouse from testifying adversely to the other, but it may be waived where, as here, neither spouse raises the privilege when the testimony is offered. It belongs to the communicating spouse, and likewise may be waived. United States 6 Cir. Fraser and Peek, supra, stand for the proposition that the communications privilege must be continuously asserted, or it is waived. The tests applied by the trial judge to the motion, and by a reviewing court to his ruling thereon, are substantially identical. If there appears some doubt, so that the court believes the jury might disagree, the motion must be denied. I think that the jury could,. Appellant waived his objections to denial of his first motion for acquittal, by proceeding to introduce evidence in his behalf. On review, we therefore can and do consider all of the evidence, including that presented by appellant. United States 1 Cir. We find no plain error in the denial of the motion. United States U. But, in our case, appellant testified before his co-defendant. However, in so stating, we do not depart from our rule in Mosca, supra, that in such circumstances all of the evidence received at trial is germane. Explicit post-Cephus statements of the Supreme Court foster and reaffirm our view. See also United States v. Appellant could have rested on his motion instead of testifying. It is neither unusual nor persuasive that appellant has necessarily made one of those hard choices which often confront litigants in the course of trial. Benchwick, supra, F. Requiring such choices is not unconstitutional. McGautha, supra, U.

Chapter 4 : F2d United States v. Figueroa-Paz | OpenJurist

U.S. 91 blog.quintoapp.com 28 blog.quintoapp.com2d Dennis Councle McGAUTHA, Petitioner, v. State of CALIFORNIA. James Edward CRAMPTON, Petitioner, v. State of OHIO.

Supreme Court of North Carolina. Attorney s appearing for the Case W. Earl Britt, Fairmont, for defendant appellant. Defendant Lee demanded and was denied the right to make the closing argument to the jury. This is his first assignment of error. Rule 3, Rules of Practice in the Superior Courts of North Carolina, provides that "[i]n all cases, civil or criminal, when no evidence is introduced by the defendant, the right of reply and conclusion shall belong to his counsel. Construing this rule in State v. Federal decisions are in accord. United States, 5 Cir. El Rancho Adolphus Products, Inc. This assignment is without merit and is overruled. Rule 10 thereof provides, inter alia, that "[i]n a criminal case, where there are multiple defendants, if any defendant introduces evidence the closing argument shall belong to the solicitor. Defendant contends the trial court erred in submitting to the jury the question of his guilt or innocence of murder in the first degree and, at the same time, the question of punishmentâ€”whether he should live or die. Defendant argues that G. We adhere to our former decisions and regard this question as settled unless and until the Supreme Court of the United States holds otherwise. Cases now pending before it which seek to present the question are: Defendant contends the court erred in instructing the jury that defendant Lee could be found guilty of first degree murder on the theory of conspiracy if he joined in the conspiracy at any time before or while the escape was being executed. In this connection the court charged the jury as follows: But, I instruct you that if the defendants, Lee and Resendez, conspired together, that is agreed and planned to escape from the Department of Corrections of Robeson County camp and that murder was committed by the defendant, Resendez, in the escape or attempt to escape, then each is guilty of murder in the first degree, both the defendant, Resendez, and the defendant, Lee. The defendant, Lee, could be [a] conspirator, at any time before or while the escape is being executed. If he concurred, no proof of agreement to concur is necessary. As soon as the union of wills for the unlawful purpose, that is felonious escape, is perfected, the conspiracy is complete. The joint assent of the minds, like all other facts of a criminal case may be established as inference to the jury from the facts proved, in other words, by circumstantial evidence. He who hunts with the pack is responsible for the killing. If the defendant, Resendez, is not guilty of murder, then the defendant, Lee, could not be guilty of murder, under this theory of the case as contended by the State. The court thereupon instructed the jury as follows: The defendant, Lee, could become a conspirator any time before or while the escape is being executed. If he concurred, no proof of an agreement to concur is necessary. As soon as the union of the wills for the unlawful purpose is effected, the conspiracy is complete. The joint assent of the minds like all other facts in criminal cases may be established as an inference by the jury from the facts proved; that is by circumstantial evidence. He who hunts with the pack is responsible for the kill. Furthermore, a felony murder may be proven by the State although the bill of indictment, as here, charges murder in the statutory language of G. Hence it was permissible in this case for the State to prove, if it could, a conspiracy to escape and that the murder of Earl C. Strickland was committed in the escape attempt. In light of the foregoing principles, was it error to charge the jury as above set out? This unlawful agreement was entered into prior to June 2, Resendez had possessed the. When Resendez put the pistol on Boyd Strickland, Lee immediately came closerâ€”within three to four feet of Boyd Strickland. Strickland was summoned by Boyd Strickland and as he approached the door, Resendez pushed Boyd Strickland toward Lee and said "you keep him. The evidence further discloses that some time prior to the murder of Earl Strickland, Resendez had filled a pillowcase with undisclosed items of personalty. At the time he and Lee were leaving with Sergeant Locklear as their hostage, after the killing and after locking the other officers in the dormitory, Resendez said to Lee "go get the sheet. Whether or not it also contained items belonging to Lee is unclear. Be that as it may, this evidence points unerringly to the conclusion that Resendez and Lee had a meeting of the minds prior to the murder. Consideration of the acts or declarations of one as evidence against the co-conspirators should be conditioned upon a finding: Of course a different rule applies to acts and declarations made before the conspiracy was formed or after it terminated. Prior or subsequent acts

or declarations are admissible only against him who committed the acts or made the declarations. When the foregoing charge is considered in light of the evidence it is free from reversible error. The charge does not mean, and could not have been understood by the jury to mean, that if Lee joined Resendez in an escape scheme after Resendez had already murdered the guard, Lee also would be guilty of the murder. That is not the law in North Carolina and the charge here had no such connotation because 1 there was no conspiracy until Lee became a party to the scheme, and 2 the evidence is overwhelming that Lee was an active participant in the escape plot long before Earl Strickland was killed. For his fourth assignment of error defendant contends that in the portion of the charge quoted above the court expressed an opinion on the evidence when it used the language "[h]e who hunts with the pack is responsible for the kill. The purpose of the section is to secure the right of every litigant to have his cause considered by an impartial judge and an unbiased jury. The statute is mandatory and a violation of it is prejudicial error. This Court has consistently endeavored to maintain the integrity of G. We perceive nothing in the instructions which should prejudice a mind of ordinary firmness and intelligence. It will be construed contextually, and isolated portions will not be held prejudicial when the charge as a whole is correct. If the charge presents the law fairly and clearly to the jury, the fact that some expressions, standing alone, might be considered erroneous will afford no ground for reversal. The isolated phraseology "[h]e who hunts with the pack is responsible for the kill," objected to by defendant, was intended as an illustrative statement of the law of conspiracy. It is highly unlikely that the statement was considered by the jury as anything other than an illustration of the law. When considered in the context in which it was used it had no prejudicial effect on the result of the trial and was therefore harmless. This assignment is overruled. Defendant Lee offered no evidence. He cites State v. He could not very well contend that their testimony represented the truth of the matter. This case is quite different from the factual misconception by the trial court in State v. Otherwise an exception thereto will not be considered on appeal. In the trial below we find No error.

Chapter 5 : STATE v. LEE | S.E.2d () | se2d | blog.quintoapp.com

Sard, blog.quintoapp.comD.C. , F.2d , which held that a parolee who testifies on a hearing in revocation of his parole may give testimony that may not be used in a subsequent criminal trial in violation of the Self-Incrimination Clause of the Fifth Amendment.

In light of history, experience, and the limitations of human knowledge in establishing definitive standards, it is impossible to say that leaving to the untrammeled discretion of the jury the power to pronounce life or death in capital cases violates any provision of the Constitution. United States, U. Petitioners McGautha and Crampton were convicted of murder in the first degree in the courts of California and Ohio respectively and sentenced to death pursuant to the statutes of those States. In each case, the decision whether the defendant should live or die was left to the absolute discretion of the jury. I It will put the constitutional issues in clearer focus to begin by setting out the course which each trial took. Pon Lock early in the afternoon of the murder. While Wilkinson kept a customer under guard, McGautha trained his gun on Mrs. Roughly three hours later, McGautha and Wilkinson held up another store, this one owned by Mrs. While one defendant forcibly restrained a customer, the other struck Mrs. Smetana on the head. A shot was fired, fatally wounding Mr. Other evidence at the guilt stage was inconclusive on the issue as to who fired the fatal shot. The jury found both defendants guilty of two counts of armed robbery and one count of first-degree murder as charged. Wilkinson testified in his own behalf, relating his unhappy childhood in Mississippi as the son of a white Page U. Thereafter, he testified, he had difficulty obtaining or holding employment. About a year later, he fell in with McGautha and his companions, and when they found themselves short of funds, one of the group suggested that they "knock over somebody. He admitted participating in the two robberies, but said he had not known that the stores were to be held up until McGautha drew his gun. He testified that it had been McGautha who struck Mrs. Smetana and shot Mr. Wilkinson called several witnesses in his behalf. A former fellow employee testified that Wilkinson had a good reputation and was honest and peaceable. McGautha also testified in his own behalf at the penalty hearing. He admitted that the murder weapon was his, but testified that he and Wilkinson had traded guns, and that it was Wilkinson who had struck Mrs. Smetana and killed her husband. McGautha testified that he came from a broken home, and that he had been wounded during World War II. He related his employment record, medical condition, and remorse. He admitted his criminal record, see n 2, supra, but testified that he had Page U. McGautha also admitted to a guilty plea to a charge of carrying a concealed weapon. He called no witnesses in his behalf. The jury was instructed in the following language: Now, in arriving at this determination, you should consider all of the evidence received here in court presented by the People and defendants throughout the trial before this jury. However, it is not essential to your decision that you find mitigating circumstances, on the one hand, or evidence in aggravation of the offense, on the other hand. Notwithstanding facts, if any, proved in mitigation or aggravation, in determining which punishment shall be inflicted, you are entirely free to act according to your own judgment, conscience, Page U. That verdict must express the individual opinion of each juror. In the determination of that matter, if the jury does agree, it must be unanimous as to which of the two penalties is imposed. In response to jury requests, the testimony of Mrs. Smetana and of three other witnesses was reread. The trial judge ordered a probation report on McGautha. His contention that standardless jury sentencing is unconstitutional was rejected on the authority of an earlier case, In re Anderson, 69 Cal. He pleaded not guilty and not guilty by reason of insanity. The Cramptons had been married about four months at the time of the murder. On this occasion, he stole a knife from the house of his late father-in-law and ran away. He called the house several times and talked to his wife, greatly upsetting her. When she pleaded with him to return to the hospital and stated that she would have to call the police, he threatened to kill her if she did. Wilma and her brother nevertheless did notify the authorities, who picked Crampton up later the same evening. During those three days, Collins and Crampton roamed the upper Midwest, committing a series of petty thefts and obtaining amphetamines, to which both were addicted, by theft and forged prescriptions. Joseph, Michigan; after the call, he told Collins that he had to get back to Toledo, where his wife was, as fast as possible. They arrived in the early morning hours of January

After Page U. They broke in and stole a rifle, ammunition, and some handguns, including the. Crampton kept this gun with him. He indicated to Collins that he believed his wife was having an affair. The murder weapon was found between the seats of the car. She had been shot in the face at close range while she was using the toilet. A jacket which Crampton had stolen a few days earlier was found in the living room. The coroner, who examined the body at They also contained his claim that the shooting was accidental; that he had been gathering up guns around the house and had just removed the clip from an automatic when his wife asked to see it; that as he handed it to her it went off accidentally and killed her. All the reports concluded that Crampton was sane in both the legal and the medical senses. He was diagnosed as having a sociopathic personality disorder, along with alcohol and drug addiction. Crampton himself did not testify. The jury was instructed that: The jury was given no other instructions specifically addressed to the decision whether to recommend mercy, but was told in connection with its verdict generally: It is your duty to carefully weigh the evidence, to decide all disputed questions of fact, to apply the instructions of the court to your findings and to render your verdict accordingly. In fulfilling your duty, your efforts must be to arrive at a just verdict. The jury deliberated for over four hours, and returned a verdict of guilty, with no recommendation for mercy. Sentence was imposed about two weeks later. As Ohio law requires, Ohio Rev. II Before proceeding to a consideration of the issues before us, it is important to recognize and underscore the nature of our responsibilities in judging them. Our function is not to impose on the States, ex cathedra, what might seem to us a better system for dealing with capital cases. Rather, it is to decide whether the Federal Constitution proscribes the present procedures of these two States in such cases. In assessing the validity of the conclusions reached in this opinion, that basic factor should be kept constantly in mind. To fit their arguments within a constitutional frame of reference, petitioners contend that to leave the jury completely at large to impose or withhold the death penalty as it sees fit is fundamentally lawless, and therefore violates the basic command of the Fourteenth Amendment that no State shall deprive a person of his life without due process of law. Despite the undeniable surface appeal of the proposition, we conclude that the courts below correctly rejected it. This history reveals continual efforts, uniformly unsuccessful, to identify before the fact those homicides for which the slayer should die. Thus, the laws of Alfred, echoing Exodus Let him who slayeth another of necessity or unwillingly, or unwillfully, as God may have sent him into his hands, and for whom he has not lain in wait be worthy of his life and of lawful bot if he seek an asylum. Stephen, History of the Criminal Law of England 24 In the 13th century, Bracton set it down that a man was responsible for all homicides except those which happened by pure accident or inevitable necessity, although he did not explain the consequences of such responsibility. The Statute of Gloucester, 6 Edw. It appears that, in time, such pardons -- which may not have prevented forfeiture of goods -- came to issue as of course. During all this time, there was no clear distinction in terminology or consequences among the various kinds of criminal homicide. All were prima facie capital, but all were subject to the benefit of clergy, which, after , came to be available to almost any man who could read. Although originally those entitled to benefit of clergy were simply delivered to the bishop for ecclesiastical proceedings, with the possibility of degradation from orders, Page U. By the statutes of 23 Hen. During the next century and a half, however, "malice prepense" or "malice aforethought" came to be divorced from actual ill will and inferred without more from the act of killing. Correspondingly, manslaughter, which was initially restricted to cases of "chance medley," came to include homicides where the existence of adequate provocation rebutted the inference of malice. The growth of the law continued in this country, where there was rebellion against the common law rule imposing a mandatory death sentence on all convicted murderers. Thus, in , Pennsylvania attempted to reduce the rigors of the law by abolishing capital punishment except for "murder of the first degree," defined to include all "willful, deliberate and premeditated" killings, for which the death penalty remained mandatory. This reform was soon copied by Virginia, and thereafter by many other States. This new legislative criterion for isolating crimes appropriately punishable by death soon proved as unsuccessful as the concept of "malice aforethought. Other States had similar experiences. The result was characterized in this way by Chief Judge Cardozo, as he then was: I have no objection to giving them this dispensing power, but it should be given to them directly, and not in a mystifying cloud of words. In such cases, they simply refused to convict of the capital offense. Zeisel, The American Jury In order to meet

the problem of jury nullification, legislatures did not try, as before, to refine further the definition of capital homicides. Instead they adopted the method of forthrightly granting juries the discretion which they had been exercising in fact. Tennessee was the first State to give juries sentencing discretion in capital cases, [Footnote 10] Tenn. Shortly thereafter, in Winston v.

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The death penalty by Mark V. Tushnet, , Facts on File edition, in English.

Supreme Court of California. Opinion by Wright, C. Stevens, under appointment by the Supreme Court, for Defendant and Appellant. Mancuso, Public Defender, Gordon H. Marson, Joseph Remcho, Peter E. Halvonik as Amici Curiae on behalf of Defendant and Appellant. Younger, Attorney General, Jack R. Young and James M. Busch, District Attorney, Harry B. Sondheim and Jay J. Defendant contends that the revocation of his probation in advance of trial denied him procedural due process because he was forced to forego his opportunity to testify in his own behalf at his revocation hearing in order to avoid incriminating himself at his pending trial. He argues that as long as any testimony which he might have given at his probation hearing could have been used against him at his trial on the related criminal charge, the meaningful opportunity to be heard assured him by Morrissey v. Brewer U. The substantial arguments advanced by defendant in support of his constitutional claim have persuaded us that, regardless of whether we are constitutionally compelled to do so, in the interests of justice and in the exercise of our inherent supervisory powers over the courts of this state, we should alleviate the hard testimonial choice facing probationers subject to the loss of probation for conduct for which they may also be liable to criminal prosecution. Immediately after they parted company, Hollingsworth discovered that his wallet was missing and followed Singletary to the nearby hotel at which she resided. Hollingsworth summoned the police and shortly after their arrival Singletary and defendant were observed as they stepped from the hotel elevator. Following an unproductive search of their hotel room conducted with their consent, defendant and Singletary were taken into custody. Defendant first explained the discrepancy by saying that he had forgotten that he had spent some of the money but later admitted that he had given the remainder to Singletary who had concealed it upon her person. This motion was denied and defendant consequently elected not to testify at the hearing. Kelly U. Manzo U. Ordean U. Brewer, supra, U. Scarpelli U. Vickers 8 Cal. A probationer, moreover, is not limited to denying or defending against a charged violation of the conditions of his probation. Even where a violation is proven or admitted, a probationer has a due process right to explain any mitigating circumstances and argue that the ends of justice do not warrant revocation. Scarpelli, supra, U. It is thus detrimental to the state and the probationer alike if probation is revoked [13 Cal. Another broad policy objective of the constitutional guarantee of an opportunity to testify at a revocation hearing is to enhance the chance of rehabilitating probationers or parolees by treating them with "basic fairness. Arbitrary or otherwise unfair treatment is likely to generate negative reactions and attitudes at odds with the rehabilitative goals of the penal system. When a pending or potential criminal charge forms the basis of an alleged violation of a condition of probation, a probationer who can explain his actions only by jeopardizing his chances of acquittal at a subsequent criminal trial may understandably feel that his opportunity to be heard is more illusory than real and that he is being deprived of his liberty without one of the essential elements of rudimentary fairness -- a meaningful chance to speak on his own behalf. A probationer is by definition a convicted law-breaker. Insofar as a probationer seeks at a revocation hearing to deny or contradict the evidence of a probation violation, he is generally at a disadvantage in terms of the credibility of his testimony. Constitutional values are similarly disserved when the probationer resolves the conflict in the opposite way by risking self-incrimination so as to testify at such a hearing. Together with the demands of due process that an accused be presumed innocent and that his guilt be established beyond a reasonable doubt see In re Winship U. United States U. Naughten U. Arizona U. Shott U. Schader 71 Cal. Talle Cal. Whenever a probationer is charged with a criminal offense the People may, by the simple device of moving to revoke probation prior to trial, seek to force the probationer into a self-incriminatory statement at the revocation hearing. Although a probationer is not faced with contempt if he remains silent at his revocation hearing, he may well find himself in an analogous predicament. He might, as we have stated, seriously incriminate himself if he exercises his right to be heard, particularly where his testimony would consist of a truthful explanation of mitigating circumstances surrounding the charged probation violation. If he remains silent he not only loses his opportunity to present a conceivably convincing case against revocation but also incurs the

risk that notwithstanding the ideals of the Fifth Amendment his silence will be taken as an indication that there are no valid reasons why probation should not be revoked. To avoid the adverse effects of the foregoing alternatives, the probationer may be tempted to testify falsely in a manner which will not damage his defense at a subsequent criminal trial. Thus, when an alleged probation violation also constitutes a criminal offense for which the probationer might subsequently be prosecuted, he may be presented with the "cruel trilemma" of self-accusation, perjury or injurious silence. To force an individual to choose one of three such unpalatable alternatives runs counter to our historic aversion to cruelty reflected in the privilege against self-incrimination. III However evident it may be that requiring a probationer to choose between testifying at his revocation hearing and incriminating himself at a later trial creates a tension between countervailing constitutional rights, it is far from clear that we are under any constitutional duty to obviate this tension. The federal law on the subject is currently in a state of confusion. The court there confronted a situation in which a defendant had given incriminating testimony in support of a [13 Cal. The court reasoned that, in effect, the defendant "was obliged either to give up what he believed, with advice of counsel, to be a valid Fourth Amendment claim or Justice Harlan was again assigned to write the opinion for the court when, in McGautha v. California U. In rejecting the claim that a bifurcated system was constitutionally mandated, the majority in McGautha concluded that Simmons should not be read as invalidating all procedures which produce some tension between constitutional rights. Observing that "[t]he criminal process The determinations of what are constitutional policies, when such a policy is impaired, and whether the impairment is "appreciable," would seem to involve value judgments controlling of the question of the permissibility in a given context of procedures imposing upon litigants a choice between constitutional rights. Thus the McGautha court admitted that one policy ostensibly underlying the privilege against self-incrimination, that of avoiding cruelty, might be "affected" to an appreciable degree insofar as "[i]t is [13 Cal. Yet the court ruled that the policies of the privilege were not "offended" by a defendant in a capital case yielding "to the pressure to testify on the issue of punishment at the risk of damaging his case on guilt" id. It noted that "not everything said in [Simmons] can be carried over to this case without circumspection" McGautha v. California, supra, U. In sum, the court concluded that "[w]hile we have no occasion to question the soundness of the result in Simmons and do not do so, to the extent that its rationale was based on a [13 Cal. The impact of Simmons and McGautha on probation revocation proceedings which precede the disposition of related criminal charges was the precise issue before the court in the recent case of Flint v. In Rhode Island, as heretofore in California, a probationer subject to the revocation of probation for alleged conduct also at issue in concurrent criminal proceedings must choose between full enjoyment of his privilege against self-incrimination at trial, and the exercise of his right to be heard at his revocation hearing. Flint held that this was the sort of constitutionally permissible "strategic" choice sanctioned in McGautha. Flint was decided by a split court. The arguments and authorities marshalled by both sides bear directly on the problem posed by the instant case. The dissent in Flint saw great potential for abuse in allowing the state "to time the violation [of probation] hearing, with its lower burden of proof, so that it comes before the criminal trial on the same charge, enabl[ing] the government to gain evidence for the criminal trial the easy way. Conversely, the dissent saw little inconvenience to the state in requiring it to choose either to grant a probationer immunity for his testimony at his revocation hearing or to postpone the revocation hearing until after trial on the related charges, using bail conditions or similar means to keep pretrial control over the alleged probation violator. The dissent relied primarily on Palmigiano v. Palmigiano deemed the "provision of use immunity" to be "a rational accommodation between the imperatives of the privilege against self-incrimination and the legitimate requirements of prison disciplinary procedures. McGautha was distinguished by Palmigiano as permitting a choice between constitutional rights in a criminal proceeding only when either option offers the defendant a viable "strategic alternative. In McGautha the choice of remaining silent at [13 Cal. By contrast Palmigiano proceeded principally upon the premise that the minimal due process afforded at a prison disciplinary hearing gives an accused prisoner almost no effective defense other than his own testimony. Three distinctions were drawn between the probation revocation proceedings at issue in Flint and the prison disciplinary hearing of Palmigiano. The result of such a broad rule might be to immunize whole classes of testimony from use in subsequent criminal trials, and place an

unwarranted burden upon the state. The Flint majority apparently had in mind the difficult problem of concurrent civil and criminal proceedings. See generally Note 66 Mich. United States, supra, U. More troublesome is the plight of a defendant in a criminal prosecution who must also defend against civil proceedings involving the same facts. The defendant may well be [13 Cal. Some courts have been sympathetic to such a situation and have stayed the civil proceedings until disposition of the related criminal prosecution. Kordel U. Other courts have refused to go beyond allowing civil defendants to refuse to answer particular questions propounded in the course of discovery by expressly invoking their privilege against self-incrimination. Whatever their response to requests for accommodation of the conflicting constitutional rights of a defendant in concurrent civil and criminal proceedings, courts have consistently refrained from recognizing any constitutional need for such accommodation. On the other hand, the fact that a man is indicted cannot give him a blank check to block all civil litigation on the same or related underlying subject matter. Justice is meted out in both civil and criminal litigation. The overall interest of the courts that justice be done may very well require that the compensation and remedy due a civil plaintiff should not be delayed and possibly denied. The court, in its sound discretion, must assess and balance the nature and substantiality of the injustices claimed on either side. Federal Deposit Insurance Corporation F. It is apparent from analysis of Simmons, McGautha, Flint and analogous authority that cases presenting problems of conflicting constitutional rights have key constant and variable elements. In every case one set of constitutional rights arises as an incident of liability to criminal prosecution. What varies is the nature of the concurrent proceedings giving rise to a conflicting set of rights. At one end of the spectrum of concurrent proceedings are those which accord the defendant minimal procedural rights but which have the potential of imposing serious personal deprivations. Prison disciplinary hearings epitomize this class. The need for accommodation is here the greatest, and may well be [13 Cal. At the other end of the spectrum, the concurrent proceeding may accord the defendant a high degree of procedural protection against arbitrariness, as is the case with civil litigation. Here the need for accommodation is far less compelling, and does not appear to be of constitutional dimensions.

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*McGautha v. California ; Crampton v. Ohio U.S. Supreme Court Transcript of Record with Supporting Pleadings [HERMAN F SELVIN, Additional Contributors, U.S. Supreme Court] on blog.quintoapp.com *FREE* shipping on qualifying offers.*

Supreme Court of California. Lynch, Attorney General, William E. Code, and one count of murder in the first degree Pen. Defendant McGautha was also charged with four prior felony convictions, all of which he admitted. The trial court granted a severance as to Fannie Lue Smith. Defendants McGautha and Wilkinson were convicted by a jury of two counts of armed robbery, one committed against Pon Lock and one against Benjamin Smetana. We point out why we have concluded that the judgments against both defendants should be affirmed. On February 14, , at about 2: One of the men asked the owner, Mrs. Pon Lock, for a pint of wine, which she gave him. He then pointed a gun at her and demanded money. At the same time the other man pointed a gun at a customer, Mrs. Lock chased them but they escaped. Both defendants were positively identified by Mrs. Lim as the robbers. Lock indicated that it was McGautha who confronted her and took the money, while Mrs. Lim testified that Wilkinson had kept her at bay with a gun. Sell Morgan, who lived near the Wall Street market, testified that Wilkinson was one of two men who parked in front of his house in a white Pontiac. Morgan indicated that a woman had remained in the car while the two men were gone, and that the men returned to the car and drove away immediately before Mrs. Lock emerged from her market shouting that she had been robbed. Byron Shelton, a second-grade student, testified that he had seen Wilkinson in the store with another man on the afternoon of the robbery. Byron stated that after he left he saw the two men run from the store. Although he was unable to identify the second man, Byron did indicate that this person was carrying a bottle of wine when he left the store with Wilkinson. Lola Smetana testified that at 5: A woman entered the store, followed shortly by two men who asked for a bottle of wine. One of the men, whom Mrs. Smetana identified as Wilkinson, then pulled a gun and told her not to move. Smetana identified McGautha as the other man, and stated that he also had a gun and was holding the arms of the customer across the store from where she and her husband were standing. Wilkinson then struck her on the side of her head and she fell to the floor. She heard a shot and her husband collapsed. She saw neither smoke nor a flash, and was unable to say which of the two men had shot her husband. Smetana was also unable to remember whether the woman who entered immediately prior to the robbery had left before or after the beginning of the offense. Smetana indicated some uncertainty as to which defendant had struck her and which defendant had stood further away with the customer. As a result of the shooting, Mr. Smetana died a few hours after the robbery. Fannie Lue went into the store, followed by the defendants; Miss Dupree remained in the car. After an unstated period of time Fannie Lue returned to the car, followed hurriedly by the defendants. Miss Dupree did not hear a shot fired inside the market. In order to convince Fannie Lue that he had done so he showed her an empty cartridge in the chamber of his gun. A few days later, Miss Dupree testified, McGautha discovered a newspaper article about the robbery and killing. He stated that the two men being sought were Wilkinson and himself, but contended that the story exaggerated the amount of money they had obtained from the robbery. John Watkins testified that he had driven the defendants from Los Angeles to Bakersfield about one week after the robbery. Watkins gave inconsistent testimony as to whether McGautha admitted the shooting, but he was certain that one of the defendants had made such an admission. Kaye Druley, a police ballistics expert, testified that the bullet that killed Mr. Smetana had been fired from the. Lock stated that the gun used by Wilkinson resembled the. Druley further indicated that the fatal shot might have been fired from either of the points in the store where Mrs. Smetana stated the robbers were standing when her husband was shot. At the penalty phase defendant Wilkinson testified in his own behalf. He stated that he had come to California from Mississippi in , and had lived at first with a Baptist minister. During most of the period prior to the robbery he had been gainfully employed and had been sending money to his family in Mississippi. Wilkinson stated that the only gun he had ever owned was a. He contended that, while he was holding the customer, McGautha had hit Mrs. Smetana and shot her husband. They stated that he had a good reputation, was not a violent person, and had

regularly attended church until he met McGautha and Fannie Lue Smith. Sergeant Richard Sullican testified that after his arrest Wilkinson had cooperated fully with the police and answered all their questions. McGautha also testified in his own behalf. He stated that he had owned a. He further contended that it was Wilkinson who struck Mrs. Smetana and killed her husband while he, McGautha, was holding the customer. He expressed regret over Mr. McGautha admitted prior Texas convictions for robbery and manslaughter, but maintained his innocence of the crimes involved. He denied that he had told Miss Dupree that he had shot anyone. Defendant McGautha was not denied his right to a fair and impartial jury. Defendant McGautha contends that their exclusion was in violation of the standards set out in Witherspoon v. Illinois U. We conclude, however, that the Witherspoon requirements, as interpreted by this court, were met by all nine excused jurors. Witherspoon holds that a "sentence of death cannot be carried out if the jury that imposed or recommended it was chosen by excluding veniremen for cause simply because they voiced general objections to the death penalty or expressed conscientious or religious scuples against its infliction. Illinois, supra, U. The court excepted from this ruling only prospective veniremen who "made unmistakably clear Six of the prospective jurors and the excused prospective alternate indicated either that they could conceive of no case in which they would vote for the death penalty, or that they could not vote for the death penalty under any circumstances. Viewing the questioning of the two jurors, however, within "the entire context of the examination and the full setting in which it was conducted" People v. Varnum ante, pp. After the first 12 veniremen were seated in the jury box, the trial court twice instructed the jury that the law "places in the hands of the jury the question of the proper penalty or punishment to be administered where the finding of the jury is that the murder is murder in the first degree," and that the jury would be required to decide in such a case between the imposition of death and life imprisonment. The court then asked, "Is there anyone now in the jury, any of the twelve of you, that entertains such a feeling to the death penalty that you feel under no circumstances in any type of case could you ever vote and render that type of punishment? Rounsley, you raised your hand as well. Rounsley, is that your feeling as well? In other words, you entertain, Mrs. All right, I will excuse you, then, for cause, Mrs. Rounsley that the law itself supplies no definition of "a proper case," we need not rely on this point. When the court asked, "Is that your feeling as well," Mrs. Rounsley must have understood the word "that" to refer either to the question asked of all 12 jurors at once, or to the question asked to Miss Fischkes quoted in the margin supra. Rounsley for cause, the requirements of Witherspoon, as explained in Varnum, are satisfied. The exclusion of Mrs. Helen Wilson can similarly be justified by reference to the context of her remarks. The complete voir dire of Mrs. Wilson is set out in the margin. We cannot conclude beyond the possibility of doubt that Mrs. Wilson correctly understood the phrase "proper case" as used by the court merely because two days before the court had stated that the law placed the decision as to penalty in the hands of the jury. Only a few moments earlier, however, the following discussion had transpired between the prosecuting attorney and another prospective juror. Did you know that? You are going to have to look to your conscience and the circumstances and decide in your own mind whether this is a proper case; do you understand that? Now, knowing that the law is not going to help you in determining what is a proper case do you still think you can be fair to the People and fair to the defendants? Wilson almost certainly must have accepted this explanation in the light of the failure by either the trial court or the defense attorneys to question its accuracy. Within this context Mrs. Defendant McGautha was not prejudiced by the introduction of prior inconsistent statements to prove the truth of the matter stated. Watkins responded to this ambiguous statement by asking, "You really shot the guy? Who were you asking? For felony murder purposes it would not matter which of two armed robbers actually shot the victim.

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May 3, Mr. In my view the unitary trial which Ohio provides in first-degree murder cases does not satisfy the requirements of procedural Due Process under the Fourteenth Amendment. Petitioner was indicted and tried for murder in the first degree for the killing of his wife. The issues of guilt, punishment, and insanity were simultaneously tried and submitted to the jury. Petitioner did not testify at the trial. But a psychiatrist testified on his behalf, offering medical records of his case from two state hospitals. His mother testified concerning his childhood, education, and background. On the issue of punishment the jury was charged: It is your duty to carefully weigh the evidence, to decide all disputed questions of fact, to apply the instructions of the court to your findings, and to render your verdict accordingly. In fulfilling your duty, your efforts must be to arrive at a just verdict. He was found guilty of murder in the first degree without a recommendation of mercy and the court sentenced him to death. The Supreme Court of Ohio sustained the single-verdict procedure and the absolute discretion of the jury in the matter of punishment. On the issue of guilt the State was required to produce evidence to establish it. On the issue of insanity the burden was on petitioner to prove it by a preponderance of the evidence, State v. Austin, 71 Ohio St. On the issue of mercy, viz. State, 49 Ohio App. If a defendant wishes to testify in support of the defense of insanity or in mitigation of what he is charged with doing, he can do so only if he surrenders his right to be free from self-incrimination. Once he takes the stand he can be cross-examined not only as respects the crime charged but also on other misdeeds. In Ohio impeachment covers a wide range of subjects: Allocution, though mandatory, [6] is thus a ritual only. It therefore seems plain that the singleverdict procedure is a burden on the exercise of the right to be free of compulsion as respects self-incrimination. For he can testify on the issue of insanity or on other matters in extenuation of the crime charged only at the price of surrendering the protection of the Self-Incrimination Clause of the Fifth Amendment made applicable to the States by the Fourteenth. On the question of insanity and punishment the accused should be under no restraints when it comes to putting before the court and the jury all the relevant facts. Yet he cannot have that freedom where these issues are tied to the question of guilt. For on that issue he often dare not speak lest he in substance be tried not for this particular offense but for all the sins he ever committed. Petitioner also had to surrender much of his right to a fair hearing on the issue of punishment to assert his defense of insanity. To support his insanity plea he had to submit his hospital records, both of which contained information about his convictions and imprisonment for prior crimes and about his use of drugs as well. United States, U. But that is an effort to weigh the credibility of the proffered testimony as to character. Yet Spencer was a five-to-four decision which meant it bearly passed muster as a constitutional procedure. The dissent of Mr. Chief Justice Warren, in which three other Justices joined, will have, I think, endurance beyond the majority view. There is mounting evidence shown in court decisions id. Chief Justice Warren said: We pointed out the vice in allowing the jury that determines guilt also to determine whether the confession was voluntary. But the New York procedure influenced the verdict or that its finding of voluntariness, if this is the course it took, was affected by the other evidence showing the confession was true. Yet the risk of prejudice in Jackson v. Denno seems minor compared with the risk of prejudice in a unitary trial where the issues of guilt, insanity, and punsihment are combined, submitted to one jury with evidence of prior convictions coming in under cover of hospital records pertinent to insanity, and certainly likely to be prejudicial on the issue of guilt. I see no way to make this unitary trial fair in the sense of procedural due process unless the issue of insanity is segregated and tried to a separate jury. Under Ohio law the determination of whether to grant or withhold mercy is exclusively for the jury and cannot be reviewed by either the trial court [9] or an appellate court. State, Ohio St. This instruction means that while the jury may not consider general sociological or environmental data, it may consider any such factors which have specifically been admitted into evidence in the case for other purposes. Caldwell, Ohio St. Yet Howell, Caldwell, and Ashbrook show that once evidence is admitted for other purposes the jury is free to consider it

for any purpose. In Caldwell the objection of the court was to going outside the record for evidence in considering sociological and environmental matters. This background evidence often comes in through character witnesses. In one case a defendant presented 12 witnesses who testified to his reputation as a peaceful and law-abiding citizen of good character. But the right of allocution is at best partial and incomplete when the accused himself is barred from testifying on the question of sentencing, and when the only evidence admissible comes from other people or is introduced for different and more limited purposes. The line between the legislative function and the judicial function is clear. The State can make criminal such conduct as it pleases, save as it is limited by the Constitution itself, as for example by the ban on ex post facto laws in Art. It can punish such conduct by such penalties as it chooses, save as its sanctions run afoul of the ban in Art. The Court is not concerned with the wisdom of state policies, only with the constitutional barriers to state action. Procedural due process [14] is one of those barriers, as revealed over and again in our decisions. Some of its requirements are explicit in the Bill of Rights-a speedy trial, Klopfer v. North Carolina, U. Other requirements of procedural due process are only implied, not expressed; their inclusion or exclusion turns on the basic question of fairness. In that category are notice and the right to be heard. City of New York, U. It is a phase of that right to be heard that looms large here. Crampton had the constitutional right as a matter of procedural due process to be heard on the issue of punishment. We emphasized in Townsend v. As was said in Green v. But we see no reason why a procedural rule should be limited to the circumstances under which it arose if reasons for the right it protects remain. None of these modern innovations lessens the need for the defendant, personally, to have the opportunity to present to the court his plea in mitigation. The most persuasive counsel may not be able to speak for a defendant as the defendant might, with halting eloquence, speak for himself. But where the opportunity to be heard on the sentence is denied both counsel and the defendant, the denial reaches constitutional proportions. See United States v. The hearing, whether on guilt or punishment, is governed by the requirements of due process. We said in Specht v. Yet where the trial is a unitary one, the right of allocution even in a capital case is theoretical, not real, as the Ohio procedure demonstrates. To obtain the benefit of the former he would have to surrender the latter. Justice Harlan, speaking for the Court, said in Simmons v. We held that the protection of his Fourth Amendment rights did not warrant surrender or dilution of his Fifth Amendment rights. In United States v. Justice Stewart speaking for the Court said: If the provision had no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it would be patently unconstitutional. For the unitary trial or single-verdict trial in practical effect allows the right to be heard on the issue of punishment only by surrendering the protection of the Self-Incrimination Clause of the Fifth Amendment. New Jersey, U. Engaging in interstate commerce is one. Sard involved protection of a statutory right to a hearing. Garrity involved only employment rights. In the same category is Thomas v. United States, F. If exaction of a constitutional right may not be made for assertion of a statutory right such as the right to a hearing on parole revocation or the right to appeal , it follows a fortiori that the constitutional right to be free from the compulsion of self-incrimination may not be exacted as a condition to the constitutional right to be heard on the issue of punishment. The truth is, as Mr. It is as though a dam had suddenly been placed across the stream of the law on procedural due process, a stream which has grown larger with the passing years. The Court has history on its side-but history alone. Though nations have been killing men for centuries, felony crimes increase. The vestiges of law enshrined today have roots in barbaric procedures. Barbaric procedures such as ordeal by battle that became imbedded in the law were difficult to dislodge. But our own Federal Bureau of Investigation teaches that brains, not muscle, solve crimes. Coerced confessions are not only offensive to civilized standards but not responsive to the modern needs of criminal investigation. Psychiatry has shown that blind faith in rightness and wrongness is no reliable measure of human responsibility. The convergence of new technology for criminal investigation and of new insight into mental disorders has made many ancient legal procedures seem utterly unfair. Who today would say that trial by battle satisfies the requirements of procedural due process? We need not in deference to those sadistic instincts say we are bound by history from defining procedural due process so as to deny men fair trials. Yet that is what the Court does today. The whole evolution of procedural due process has been in the direction of insisting on fair procedures.

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California. Although this was a Fourteenth Amendment case Although this was a Fourteenth Amendment case to which Trop was not directly applied, it was an important pre-cursor to the landmark case of Furman v.