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Procedure: Evidence

Geoge W. Pugh

or district attorney. Remarks by witnesses do not have the same weight with jurors as do official statements. Also, witnesses cannot be fully controlled and there is not the same official responsibility for their utterances. In these situations judicial admonition is the normal remedy. In *State v. Arena*[51] a police officer, who was testifying in a bad check case as to serving notice of the checks being dishonored, spontaneously stated that he had recognized the defendant as a person previously arrested. It was obvious that the district attorney was as surprised by the utterance as was the defense. Thus the case was one where the normal remedy of an admonition to disregard the remark was sufficient. The prejudice was not so great as to require drastic relief by way of a mistrial.[52]

EVIDENCE

*George W. Pugh**

JUDICIAL NOTICE

In *Brown v. Collins*[1] an issue arose as to whether plaintiffs in a personal injury suit had been guilty of contributory negligence by riding with a driver whom they allegedly knew was under the influence of intoxicating beverages. In order to establish the driver's state of inebriation, evidence had been introduced that the alcoholic content of his blood was .255 mg. percent. There was, however, no expert testimony as to the significance of this datum, nor had blood-alcohol charts been introduced in evidence. The Third Circuit Court of Appeal took the position that "this is a matter of scientific opinion of which the judge may not take judicial notice,"[2] concluding that no weight could be given to the evidence of alcoholic content. With deference, it seems to this writer that some weight could properly have been given to the evidence. This was a case tried to a judge alone, and one of the advantages in judge-tried cases is that a judge is normally more competent to weigh and evaluate evidence than an untrained juror. A scientific chart was readily

51. 254 La. 358, 223 So.2d 832 (1969).

52. After stating the normal relief by way of a prompt admonition to the jury to disregard, LA. CODE CRIM. P. art. 771 concludes that "the court may grant a mistrial if it is satisfied that an admonition is not sufficient to assure the defendant a fair trial."

* Professor of Law, Louisiana State University.

1. 223 So.2d 453 (La. App. 3d Cir. 1969).

2. *Id.* at 456.

available and cited to the court. It seems that such charts could properly have been used—not to determine exactly and precisely the degree of the driver's inebriation, but as a basis for inferences of his general condition. As somewhat recognized by the court, this is very similar to the problem of stopping charts, and in the *Guidry* case[3] the Third Circuit Court of Appeal very properly stated that unless such charts have been properly introduced in evidence "with proof that they are reasonably accurate and relevant to the facts of the particular case, they should be used by the court with great caution; i.e., they should be used only for broad general comparisons and not for precise calculations to determine speed or stopping distances."[4]

PRESUMPTION

Alcoholic Test

LA. R.S. 32:666 provides that under certain circumstances the refusal to submit to a chemical alcoholic test shall be admissible in criminal actions arising out of the alleged conduct of the defendant in driving while intoxicated. The constitutionality of admitting such evidence seems to this writer doubtful.[5] In any event, as the supreme court held in *City of Monroe v. High*,[6] the statute does not create any presumption from the refusal to submit to the chemical test; it merely makes the evidence admissible to be weighed along with other relevant evidence.

OPINION

The court held in *State v. Garner*[7] that a police officer's identification of a substance found on a board next to the victim of a homicide as "blood" was not "opinion testimony." Instead, the court took the position that the identification was "the recital of a fact within the knowledge of the witness. If he was

3. Guidry v. Grain Dealers Mutual Ins. Co., 193 So.2d 873 (La. App. 3d Cir. 1967), discussed in *The Work of the Louisiana Appellate Courts for the 1967-1968 Term—Evidence*, 29 LA. L. REV. 310, 314 (1969).

4. Guidry v. Grain Dealers Mutual Ins. Co., 193 So.2d 873, 877 (La. App. 3d Cir. 1967). The court refused to apply LA. R.S. 32:662 (1968) relative to the admissibility of blood-alcohol content findings on the grounds that its application is explicitly limited to criminal cases.

5. *See The Work of the Louisiana Appellate Courts for the 1968-1969 Term—Evidence*, 30 LA. L. REV. 321, 331 (1969) and Note, 78 YALE L.J. 1074, 1082 (1969).

6. 254 La. 362, 223 So.2d 834 (1969).

7. 255 La. 115, 229 So.2d 719 (1969).

mistaken in his identification of the substance as blood, this would affect the weight of his testimony but not its admissibility."[8] With deference, the writer disagrees. Identification of a substance as blood seems to be the result of inference drawing rather than direct sense perception.[9] Whether the testimony was admissible probably should be a matter within the sound discretion of the trial judge: admissibility should not necessarily hinge upon whether it is properly characterized as fact or opinion. Under certain circumstances, lay persons should be permitted to testify that a substance was blood, and other times not, depending on the opportunity to observe, the condition of the substance, etc.[10] The facts presented in the instant case may be a good illustration of the kind of situation in which a layman should be permitted to express an opinion. The police officer had ample opportunity to observe and to draw very reliable inferences and it probably would have been difficult for him to describe all of the circumstances sufficiently well for the jury to be put in as good a position as the officer to draw the conclusion that the substance observed was blood.

PRIVILEGE

Doctor-Patient Privilege

In *State v. O'Brien*[11] the Supreme Court of Louisiana took the position that LA. R.S. 13:3714 relative to the admissibility of certified copies of hospital records as prima facie proof of their contents overrides and pro tanto supersedes the general provisions of LA. R.S. 15:476 establishing a doctor-patient privilege in criminal cases. It seems questionable to this writer whether R.S. 13:3714 should be so interpreted. Absent a clear contrary indication in the statute, it could well be argued that the hospital record article applied only to non-privileged matter. It seems difficult for this writer to accept the proposition that the statute authorizes the doctor, by entering confidential privileged information in the hospital record, to waive his patient's doctor-patient privilege.

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8. *Id.* at 118, 229 So.2d at 720.

9. *See* 2 J. WIGMORE, EVIDENCE § 568 (1940) and C. MCCORMICK, EVIDENCE §§ 11-12 (1954).

10. *See* note 9 *supra.*

11. 255 La. 704, 232 So.2d 484 (1970). For additional discussion of the case and the hospital records act, *see* p. 388 *infra.*

Informer Privilege

In *State v. O'Brien*[12] the Supreme Court of Louisiana, following *State v. Freeman*[13] and *Scher v. United States*,[14] recognized the existence of an informer privilege and held that it is not necessary for the state to reveal the name of the informer or person providing the police with the information underlying the affidavit supporting the search warrant, unless it is shown that revelation of the informer's identity is "material and essential to appellant's defense."[15] The writer agrees that an informer privilege should be recognized in Louisiana; it should be remembered, however, that there is no statutory basis for same. In the opinion of the writer, it is necessary and appropriate in certain circumstances for the courts to recognize a testimonial privilege not established by the legislature.[16] This area is one peculiarly addressing itself to the administration of justice, and it is submitted that under the inherent power of the judiciary the courts have the authority, within appropriate limits, to recognize and establish evidentiary privileges.[17]

Accountant Privilege

Mercantile Credit Corporation v. Engstrom's of Alexandria, Inc.[18] was a suit on a note between two concerns that had had financial dealings with each other for several years. With approval of defendant, defendant's accountant had given reports from time to time to the plaintiff on defendant's financial condition. By so doing, the Third Circuit, in one of the rare appellate cases dealing with the accountant privilege, held that defendant had, vis-à-vis the plaintiff, waived the privilege.

HEARSAY AND CONFRONTATION

Whether an oral out-of-court statement is inadmissible hearsay or is admissible non-hearsay often depends upon the rele-

12. *Id.*
13. 245 La. 665, 160 So.2d 571 (1964).
14. 305 U.S. 251 (1938).
15. 255 La. 704, 712, 232 So.2d 484, 487 (1970).
16. Consider, for example, the priest-penitent relationship. There is express statutory authority for the priest-penitent privilege in criminal cases (LA. R.S. 15:477 (1950)), but none such for civil cases.
17. An earlier interesting, but quite different, case involving the assertion of an informer privilege is *In re* Kohn, 227 La. 253, 79 So.2d 81 (1955). In the opinion of the writer, the court in the *Kohn* case was correct in denying the availability of the informer privilege under the circumstances there presented.
18. 223 So.2d 428 (La. App. 3d Cir. 1969).

vancy of the statement in the context of the trial; thus, admissibility will often turn upon whether the pertinence of the statement is the fact that it was said or the truth of the contents of the statement. In *State v. Nails*[19] the Supreme Court of Louisiana held that a statement made by a witness as to what her mother had said, that "the police had been looking in the car,"[20] was admissible. Since apparently the relevancy was to show not that the police had come but that the hearer of the statement had reason to believe the police had come, the holding seems correct.

Similarly, whether a written instrument is inadmissible hearsay or admissible non-hearsay is not always an easy question.[21] The opinion in *Freeman v. Garic*[22] is a very nice, succinct handling of the problem. In *Freeman* the Fourth Circuit Court of Appeal quite properly held that a written instrument by which lessor-servitude owner granted lessee the right to exercise the servitude in question was non-hearsay.

Information Received by Police Officer

The fact alone of an arresting officer's having received certain information may at times have independent relevance and be admissible as non-hearsay—as, for example, outside the presence of the jury to show probable cause bearing on the validity of an arrest or search and seizure. Usually, however, the police officer should not be permitted to testify at the trial before the jury as to the substance of the information received by him, for the real relevancy of such testimony would normally be to prove the truth of the out-of-court utterance, and hence the testimony as to the out-of-court statement would be hearsay. The mere fact that an arresting officer had acted on information might be relevant admissible non-hearsay (as, for example, to explain the police officer's conduct), but this vehicle for the admissibility of the fact that the officer acted upon information should not become a passkey to get to the jury the substance of the out-of-court information, directly or indirectly, that otherwise might be barred by the hearsay rule.

In 1948, in *State v. Kimble*,[23] the Supreme Court of Louisiana

19. 255 La. 1070, 234 So.2d 184 (1970).
20. *Id.* at 1086, 234 So.2d at 190.
21. For able, extensive discussion, *see* Comment, 14 LA. L. REV. 611 (1954).
22. 235 So.2d 107 (La. App. 4th Cir. 1970).
23. 214 La. 58, 36 So.2d 637 (1948).

reversed a defendant's conviction of a liquor violation because the trial judge had overruled defense counsel's hearsay objections to the following question put by the district attorney to four deputy sheriffs called by him to the stand: "Have you had complaints that the defendant was engaged in the business of handling and storing intoxicating liquors for the purpose of sale?" In so ruling, the court stated:

> "We think that the judge erred in not excluding the evidence on the ground that it was clearly hearsay. While it is not violative of the hearsay rule for a police officer to state that he made an arrest or a search and seizure as the result of information received or a complaint, the exception is limited to the statement of the fact—for, whenever he is permitted to explain the nature of the information or complaint, he does not testify to a fact but to what someone else told him."[24]

During the past term, the supreme court, in *State v. Favre*,[25] rejected defense counsel's hearsay objection grounded upon *State v. Kimble*, and ruled that the trial court had not committed error in permitting the district attorney to elicit from the arresting officer the fact that the police officer who made the arrest had relied upon information given to him by two confidential informers who previously had given information which had resulted in convictions.[26] With deference, it seems to this writer that the evidence in question should have been excluded. It does not appear that there was any real question before the jury as to the propriety of the officer's action. The purpose of the questioning seems to have been to get to the jury the fact that prior to the arrest two reliable informers had reported that defendant was one of the guilty parties. The prejudicial effect of this testimony presumably was greatly compounded by the testimony extolling the virtues of the informers, the effect of which was to uphold the veracity of the out-of-court accusers. Had this been a proceeding *outside* the presence of the jury, where the issue was whether the police had acted reasonably, then, of course, the testimony would have been admissible as non-hearsay to show the police officers acted upon probable cause. Here the

24. *Id.* at 59, 36 So.2d at 638.
25. 255 La. 690, 232 So.2d 479 (1970).
26. Justice Barham vigorously dissented to that portion of the opinion which approved admitting testimony relative to the reliability of the informers.

issue is not the reasonableness of the policeman's conduct but the verity of the out-of-court accusations.

Workmen's Compensation—Prima Facie Effect of Medical Reports

Section 1122 of the Louisiana Workmen's Compensation Act[27] stipulates that if a party disputes "the report or any statement therein" provided him by the opposing party pursuant to the section, he should so notify his opponent within six days and that "otherwise the report shall be prima facie evidence of the facts therein stated in subsequent proceedings under this Chapter."

Does the prima facie quality accorded "facts" therein stated apply only to "objective findings" or does it extend to opinions based upon such findings? Was the word "facts" used as contradistinguished from opinions, or as a substitute for the word "statements"? The matter is not free from doubt. The Third Circuit Court of Appeal, in 1966,[28] took the position that opinions were not to be treated as prima facie evidence. The Fourth Circuit, however, during the past term took the contrary view.[29] The writer is inclined to agree with the position taken by the Fourth Circuit, feeling that the word "facts" as used in the statute should not be given such a technical meaning. In the context of the statute, it appears to this writer that "facts" and "statements" were intended to be used synonymously. As noted, the statute states that if the party receiving the report disputes *the report or any statement therein* he should notify the other within a stipulated period. Of course, medical reports normally contain both objective findings and opinions, and dispute as to any "statement" therein could be as to the opinions as much as to the objective findings. The prima facie effect resulting from the failure to object should presumably be accorded as much to one as to the other.

Business Records

The stringent provisions of Civil Code article 2248 provide that "the books of merchants can not be given in evidence in their favor." Modern Louisiana jurisprudence, however—reacting

27. LA. R.S. 23:1122 (1950).
28. Hoffpauir v. Hardware Mutual Cas. Co., 192 So.2d 588 (La. App. 3d Cir. 1966).
29. Doss v. American Ventures, Inc., 224 So.2d 470 (La. App. 4th Cir. 1969).

to the needs of society—has greatly limited the ambit of the article's operation. In *Pritchard v. Wolfe*,[30] Judge (now Justice) Tate cited and quoted with approval a succinct statement of the teaching of modern Louisiana jurisprudence proposed by Robert Hawthorne in a 1961 student comment in this Review.[31]

Hospital Records—Right of Confrontation

LA. R.S. 13:3714 authorizes admissibility of certified copies of hospital records as prima facie proof of their contents, with right of the adverse party to call the person making the original record under cross-examination. In *State v. Kelly*,[32] without discussion as to whether the statute is applicable only to civil cases, the court applied the statute in a criminal case. The constitutionality of the article as applied to criminal cases, however, was cast in doubt in 1965 by *Pointer v. Texas*,[33] which held that the Sixth Amendment right of confrontation, through the Fourteenth Amendment, is applicable to the states. During the past term, the problem was squarely presented to the Supreme Court of Louisiana. In *State v. O'Brien*[34] a defendant was convicted of possession of morphine tablets and sentenced as a multiple offender to twenty-five years in the penitentiary. Apparently, two days after his arrest, and at his request, defendant was taken to Charity Hospital. At the trial the state, over objection, was permitted to introduce (1) a "Route Sheet" of Charity Hospital "diagnosing appellant's illness as withdrawal symptoms and classifying him as a dilaudid addict"[35] and (2) a letter from the Director of Charity Hospital (offered to establish the route sheet's authenticity) "stating that appellant was brought to the hospital in a car by a detective on May 18 and that his illness was diagnosed as dilaudid addiction."[36] Stressing that the statute gave the defendant the right to call the person making the entry under cross-examination, the court concluded that use of the hospital records did not violate defendant's constitutional right of confrontation.[37] With deference, the writer cannot agree. Both the letter and the hospital record went to the crux of the alleged

30. 230 So.2d 612 (La. App. 3d Cir. 1970).
31. Comment, 21 LA. L. REV. 449 (1961).
32. 237 La. 956, 112 So.2d 674 (1959).
33. 380 U.S. 400 (1965).
34. 255 La. 704, 232 So.2d 484 (1970).
35. *Id.* at 716, 232 So.2d at 488.
36. *Id.*
37. As to the problem raised by the admissibility of these statements with respect to the doctor-patient privilege, *see* p. 383 *supra*.

crime. In the opinion of this writer, the mere fact that the entries were made by a doctor (or nurse) and the director of the hospital does not overcome the fact that the statements were not under oath and not subject to cross-examination when made. The state should be forced to produce the witnesses who made the condemnatory statements rather than force the defendant to bear the burden of finding and calling the persons who made the entries—who, incidentally, might no longer be available. That the statute would authorize the defendant to cross-examine the persons who made the entries does not remove the confrontation problem. The statute is a very salutary one in civil cases, and it is submitted that its use should be limited to civil cases. It seems very questionable also whether the letter from the hospital director was properly admissible, for it appears to have gone much further than the certification envisioned by the statute.

Co-Defendant's Confession—Confrontation

In *State v. Wright*[38] the Supreme Court of Louisiana reversed the conviction of one of two persons jointly tried on the grounds that his federal constitutional right of confrontation as set forth in *Bruton v. United States*[39] had been violated when the confession of the second defendant implicating the first had been introduced in evidence. Following the federal case law, the supreme court held that the limiting instruction duly given by the trial court that the confession be used only against the party making it was insufficient safeguard. As pointed out by Justice Sanders in his well-reasoned dissent, the first defendant had not objected to the admissibility of the confession on the confrontation grounds, nor had he previously moved to sever. The writer agrees with the majority position, however, that this should not have barred relief. Federal constitutional rights were involved and it would appear clear that they were not waived by non-assertion.[40] Since presumably the defect was one which would ultimately prove fatal to the conviction, it seems proper to this writer for the Supreme Court of Louisiana to have remedied it in the instant proceeding, despite the absence of the confrontation objection. Otherwise, defendant would have been relegated to relief via writs to the United States Supreme Court or by col-

38. 254 La. 521, 225 So.2d 201 (1969).
39. 391 U.S. 123 (1968).
40. *See* Comment, 26 LA. L. REV. 705 (1966).

lateral attack in habeas corpus proceedings in state or federal courts—and dockets are already over-encumbered by collateral attacks.

IDENTIFICATION

Several cases decided during the past term involved the propriety of identification testimony. Of particular interest is *State v. Pratt*.[41] In *United States v. Wade*[42] the United States Supreme Court held that a defendant is entitled to counsel at a line-up proceeding. It further held, however, that the fact that the in-court identification had been prefaced by an out-of-court line-up at which the defendant was unrepresented by counsel did not in that case require a new trial if the government could "establish by clear and convincing evidence that the in-court identifications were based upon observations of the suspect other than the line up identification."[43]

In *State v. Pratt*[44] the Supreme Court of Louisiana held that despite the fact that defendant had not been represented at an out-of-court line-up proceeding, in-court identification was untainted and admissible as being of "independent origin" and based on "a prior opportunity to observe."[45] Whether an in-court identification is "purged of the primary taint" is, of course, not easy to determine. The court in *Pratt* did not extensively elaborate the factual foundation for the finding, and it seems questionable to this writer whether the facts outlined by the court would satisfy the showing required by the United States Supreme Court. It seems that the *Wade* case was designed to insure certain protections for a suspect in police custody, and it is dangerous for investigatory personnel not to follow these procedures and to rely upon an expectation that it will be possible to show that in-court identification is based on a source independent of the line-up.[46]

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41. 255 La. 919, 233 So.2d 883 (1970).
42. 388 U.S. 218 (1967).
43. *Id.* at 240.
44. 255 La. 919, 233 So.2d 883 (1970).
45. *Id.* at 939, 233 So.2d at 890, quoting the trial judge's per curiam.
46. For an interesting case decided during the past term reflecting methods designed to insure representation of suspects at line-ups, *see* State v. Johnson, 255 La. 314, 230 So.2d 825 (1970). The opinion sets forth testimony by an "attorney connected with Legal Aid" as follows:

" 'I went over to the Federal Lockup [Orleans] and interviewed a number of people who were booked at that time with the crime of armed robbery. I interviewed them on this premise: Whether or not they had a counsel or a lawyer of their own at that time and for those who said they did not, I told

Apparently, in the *Pratt* case there was no testimony before the jury as to the improper out-of-court line-up identification. If there had been, it would presumably have been a fatal defect, for in *Wade* there is strong indication that the United States Supreme Court would apply a "*per se* rule of exclusion" where there is in-court testimony of an out-of-court illegal line-up. In *Wade,* the Court stated:

> "Where, as here, the admissibility of evidence of the lineup identification itself is not involved, a *per se* rule of exclusion of courtroom identification would be unjustified. A rule limited solely to the exclusion of testimony concerning identification at the lineup itself, without regard to admissibility of the courtroom identification, would render the right to counsel an empty one."[47] [Footnote and citation of authority omitted.]

Does the rule of the *Wade* case apply to out-of-court showing of photographs as well as to physical line-up procedures? In *State v. Nails*[48] out-of-court identifications had initially been made by the witness from sets of photographs shown to him by deputies of the sheriff's department. At this time, defendant had not yet been arrested. Pointing out that at the time the photographs were originally shown to the witness defendant was unrepresented by counsel, defense counsel (relying on *United States v. Wade*) urged that the in-court identification testimony was inadmissible as tainted by the out-of-court identification. Rejecting this argument, the court properly differentiated cases where defendant has already been arrested or indicted, and cases in the pre-arrest, investigative stage. In the latter instance, it obviously is impractical to have lawyers present on behalf of all persons whose photographs are shown to eyewitnesses. Nonetheless, it seems clear that there is a potential for abuse where such photographs are shown even in the investigative stage, and the police should proceed fairly. Speaking of initial pretrial photographic identification, the United States Supreme Court in *Simmons v. United States* stated:

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them that I would be available as their attorney for the purpose of the line-up alone to make sure that they got a fair line-up, and Number Two, to be able to report to their attorneys at a later date as to what transpired at that line-up. And to each of these men I gave my card if I had one available and to each of them I promised I would let them know the results of the line-up after it was finished. Mr. Johnson was one of these men who said he did not have counsel.'" *Id.* at 323-24, 230 So.2d at 828.

47. 388 U.S. 218, 240 (1967).

48. 255 La. 1070, 234 So.2d 184 (1970).

> "We are unwilling to prohibit its employment, either in the exercise of our supervisory power or, still less, as a matter of constitutional requirement. Instead, we hold that each case must be considered on its own facts, and that convictions based on eyewitness identification at trial following a pretrial identification by photograph will be set aside on that ground only if the photographic identification procedure was so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification."[49]

There is no indication in *State v. Nails* that the police had proceeded unfairly.

RIGHT TO PRODUCTION

Present Recollection Revived

Wigmore and McCormick both take the position that when a party on the stand uses a memorandum to refresh his recollections, the opponent's lawyer is entitled to inspect the document.[50] They also would go further and extend the rule to apply where the witness before taking the stand has consulted a writing to refresh his memory. In *State v. Nails*[51] the Supreme Court of Louisiana rejected the latter view, however, and upheld the trial court's refusal to force the district attorney to produce a memorandum prepared by the deputy sheriff following his interview with a robbery eyewitness, and read to the witness prior to the witness's taking the stand. The problem is apparently one of first impression in Louisiana. Although the writer would prefer the Wigmore-McCormick view, the position taken by the Supreme Court of Louisiana seems to accord with the majority American position.

BILLS OF EXCEPTION

Several cases decided during the past term reflect the need for a new look at our bill of exception procedure in criminal cases. The availability of electronic recording devices, federal decisions relative to an indigent's right to a free transcript of trial testimony,[52] and federal case law as to waiver of federal

49. 390 U.S. 377, 384 (1968).
50. 3 J. WIGMORE, EVIDENCE § 762 (1940) and C. MCCORMICK, EVIDENCE § 9 (1954).
51. 255 La. 1070, 234 So.2d 184 (1970).
52. *See* Griffin v. Illinois, 351 U.S. 12 (1956) and its progeny.

constitutional rights, all militate in favor of change. Justice Barham's dissent in *State v. Garner*[53] makes the point especially well.[54]

HARMLESS ERROR

In a cogent and well-reasoned dissent in *State v. Anderson*,[55] Justice Barham persuasively analyzes the problems encountered with respect to the application of state and federal harmless error rules to the violation in state court of defendant's federal constitutional rights. His able dissent incisively elucidates the dangers inherent in a joint trial of defendants where it is contemplated that their confessions implicating themselves and each other are to be used, but by court instruction are to be given limited effect only.[56] Louisiana's persistence in refusing to grant an indigent defendant a right to a full, free transcript of the trial testimony[57] compounds the difficulties in deciding that a particular trial court error was "harmless."

53. 255 La. 115, 229 So.2d 719 (1970).

54. *See also* the discussion of State v. Wright, 254 La. 521, 225 So.2d 201 (1969) p. 389 *supra*.

55. 254 La. 1107, 229 So.2d 329 (1969).

56. *See, e.g.*, State v. Wright, 254 La. 521, 225 So.2d 201 (1969), discussed p. 389 *supra*. *See also* Justice Barham's earlier dissent in this connection in State v. Hopper, 253 La. 439, 218 So.2d 551 (1969).

57. *See* State v. Anderson, 254 La. 1107, 229 So.2d 329 (1969).