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PROCEDURE

CRIMINAL TRIAL PROCEDURE

*Francis C. Sullivan**

SPEEDY TRIAL

In *State v. Devito*¹ the defendant raised his incarceration in a New Jersey prison as a bar to a prosecution for armed robbery in Louisiana, basing his claim of prescription on article 578 of the Code of Criminal Procedure.² The prosecution was instituted by a bill of information on February 16, 1977, and trial was not commenced until after the expiration of the statutory two year period. This time lapse set the stage for a mandatory dismissal of the prosecution unless some interruption of prescription could be established under article 579 of the Code.³ Although the prosecution clearly knew of the defendant's whereabouts even prior to filing the charges, the argument was made that prescription was interrupted because the defendant's presence for the trial could not be obtained for reasons beyond the control of the state. The state alleged that the accused would not waive extradition and that the state made a good faith but ineffective effort to extradite him. In the original opinion Justice Blanche speaking for the majority, with three dissenters,⁴ pointed out that prior jurisprudence⁵ was inconsistent, and found that since the state failed to establish a valid and continuing interruption under article 579 the absolute bar of article 578 must operate to dismiss the prosecution.

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1. 391 So. 2d 813 (La. 1980).

2. LA. CODE CRIM. P. art. 578 provides in part: "[N]o trial shall be commenced: . . . (2) In other felony cases after two years from the date of institution of the prosecution; . . ."

3. LA. CODE CRIM. P. art. 579 provides:

The period of limitation established by Article 578 shall be interrupted if:

(1) The defendant at any time, with the purpose to avoid detection, apprehension, or prosecution, flees from the state, is outside the state, or is absent from his usual place of abode within the state; or

(2) The defendant cannot be tried because of insanity or because his presence for trial cannot be obtained by legal process, or for any other cause beyond the control of the state.

The periods of limitation established by Article 578 shall commence to run anew from the date the cause of interruption no longer exists.

4. Chief Justice Dixon, and Justices Marcus and Lemmon dissented.

5. *State v. Dupree*, 256 La. 146, 235 So. 2d 408 (1970); *State v. Shushan*, 206 La. 415, 10 So. 2d 185 (1944). *Dupree* was "expressly disapproved" on rehearing, 391 So. 2d 813, 816 (La. 1980).

On rehearing, the same result was reached with the Justices maintaining their original voting positions. Justice Dennis, now speaking for the majority, emphasized the importance of the Uniform Extradition Act adopted by Louisiana⁶ as well as New Jersey and some forty-six other states in implementation of the federal constitutional authority.⁷ When the state learns of the presence of the accused in another state the means of obtaining his presence for trial is clearly available though extradition. The prosecution has a heavy burden of showing that it is excused from the clear requirements of article 578 to bring charges within the mandated period.⁸ In *Devito* the court found that the state had failed to carry this burden; apparently, the case in which this burden could be met would be extremely rare indeed, given such knowledge. Considered in this light, the refusal of the accused to waive extradition had no effect except to force the prosecution to utilize legal remedies available. The refusal of the accused certainly can not excuse a refusal or inability by the state to extradite within the period provided by article 578.

The dissenters focused on the first clause of article 579 rather than the second,⁹ but from different points of view. The Chief Justice and Justice Marcus would interrupt prescription against prosecution at any time when a defendant flees and is out of the state. This approach appears to be a very simple rule, easy to apply, but what of the language in article 579(1) "with the purpose to avoid detection, apprehension or prosecution"?¹⁰ Unless we are to be faced with yet another dubious presumption, the proof of the purpose for clause-one acts simply adds another heavy burden to the prosecution and a poor factual substitute for extradition. Justice Lemmon looked at the fact of the refusal to waive extradition as proof of clause-one grounds of remaining out of the state for the purpose of avoiding prosecution thereby interrupting prescription. The difficulty with this approach is that it tends to ignore the importance of the rights afforded an accused in the extradition process and to expand unduly the scope of article 579(1) to situations involving the exercise of valid legal rights.

In short, where the prosecution can obtain the presence of an accused for trial through extradition within the period prescribed in article 578 it must do so or dismiss the case.

6. LA. CODE CRIM. P. arts. 261-80.

7. U.S. CONST. art IV, § 2.

8. *State v. Driever*, 347 So. 2d 1132 (La. 1977).

9. 391 So. 2d at 815.

10. See text of article 579 cited in note 3, *supra*.

RIGHT TO COUNSEL

The basic doctrines of right to counsel are now hornbook law. The right to counsel is a fundamental right essential to a fair trial.¹¹ No accused may be imprisoned for any offense of any category unless the person is represented by counsel or knowingly and intelligently waives this right.¹² A number of cases have considered the validity of waivers of counsel,¹³ but rarely has the question of the determination of indigency been presented for review. The supreme court had the opportunity to speak to this point in *State v. La Fleur*¹⁴ where the defendant's financial ability to employ counsel was never evaluated properly by the trial judge who accepted a waiver of counsel in a perjury case. On March 25th the defendant was arraigned for petty theft and asked the court to appoint counsel. The judge refused to do so on the basis that the accused had been employed until his arrest and had raised \$150.00 for bail.¹⁵ On April 1 the defendant pleaded guilty to this charge and made the statements that led to the present perjury charge. On April 8 the defendant was charged with perjury, waived counsel and pleaded guilty. In the perjury proceeding the defendant did not request counsel, and the judge made no comment. Under the circumstances the supreme court said there simply was no free and voluntary waiver of counsel. Further, the court refused to apply the rule allowing an implied waiver of counsel where the defendant clearly is able to obtain counsel yet persists in demanding court-appointed counsel, because it could not find the clear evidence that defendant could afford an attorney. The statute which sets forth the procedure for determining indigency¹⁶ provides specifically that release on bail

11. *Argersinger v. Hamlin*, 407 U.S. 25 (1972); *Gideon v. Wainwright*, 372 U.S. 335 (1963).

12. *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

13. *See State v. Bell*, 381 So. 2d 393 (La. 1980); Sullivan, *Developments in the Law, 1979-1980—Criminal Trial Procedure*, 41 LA. L. REV. 582, 584 (1981).

14. 391 So. 2d 445 (La. 1980).

15. On learning that the accused had been earning \$8.00 an hour with a construction company, the judge observed: "There's no reason why the Court should appoint an attorney for you. I don't suppose these lawyers clear eight dollars an hour." *Id.* at 448.

16. LA. R.S. 15:147 (1950) states:

A. The determination of indigency of any accused person shall be made by the court at any stage of the proceedings. The chief indigent defender or his assistants, or a member of the indigent defender panel appointed by the board or the court for such purpose, shall be allowed to summon witnesses to testify before the court concerning the financial ability of any accused person to employ counsel for his defense.

In determining whether or not a person is indigent and entitled to the appointment of counsel, the court shall consider:

a) Whether the person is a needy person and the extent of his ability to pay,

alone shall not disqualify one for appointment of counsel, although this is one matter of dispute among many members of the general public. The tone of this decision indicates that trial judges should make a full and fair examination of the accused on the record in determining his need for appointed counsel, and when in doubt should appoint counsel since partial reimbursement may be ordered should the defendant later appear to have financial resources.¹⁷ In general, it seems to this author that the time has come to require financial participation by all defendants in the costs of their defense—and to enforce the obligation. By making periodic payments a condition of probation and parole a greater degree of respect for the right to counsel might be obtained.

RECUSATION OF JUDGES

The motion to recuse a trial judge is often the result of long trials, personal feelings or other unfortunate circumstances. Its purpose is clear—to assure that the judge is not biased, prejudiced, or personally interested in a particular case so as to be fair and impartial—and the grounds are set out in article 671 of the Code.¹⁸ The basis for the disqualification must be factual, specific and substantial and must appear on the face of the motion.¹⁹ In *State v. Baldwin*²⁰ the supreme court refused to sanction the use of the motion as a device to evoke immediate review of trial conduct of one trial judge by another trial judge. Calling this procedure an undue burden on trial courts the supreme court stated that all such matter related to the presentation of the evidence appears on the record and can be reviewed adequately on appeal. The court also pointed out that complaints relating to how the trial judge conducts the proceedings can

the court shall consider such factors as income, property owned, outstanding obligations, number and ages of dependents;

b) Release on bail alone shall not disqualify a person for appointment of counsel. In each case, the person subject to the penalty of perjury shall certify in writing such material factors relating to his ability to pay as the court prescribes.

17. LA. R.S. 15:148 (1950) states:

A. To the extent that a person is financially able to provide for an attorney, other necessary services and facilities of representation and court costs, the court shall order him to pay for these items. The court may order payment in installments, or in any manner which it believes reasonable and compatible with the defendant's financial ability.

B. Payments so made shall be transmitted to and become a part of the indigent defender fund of the district in which the person is prosecuted.

18. LA. CODE CRIM. P. art. 671.

19. *State v. Gordy*, 380 So. 2d 1347 (La. 1980). The procedure for recusation of trial judges is covered in Code of Criminal Procedure article 674.

20. 388 So. 2d 679 (La. 1980).

be raised by a motion for mistrial.²¹ This result is not subject to criticism except in the situation where the conduct of the judge at trial for the first time discloses the actual existence of a ground for recusation.²² In such a case the legislature clearly intended the recusation procedure to operate.²³

The court through Justice Lemmon chose to add some dicta concerning the duty of trial judges:

While trial courts have a duty to remain impartial and neutral, judges are not merely umpires or moderators. They also have a duty to apply the law and assist in the search for truth. . . . As Judge Hand said . . . : "A judge is more than a moderator; he is charged to see that the law is properly administered, and it is a duty which he can not discharged by remaining inert."²⁴

Perhaps the most interesting aspect of this view of the role of the judge is the absence of Louisiana citation and the use of two federal citations.²⁵

PREJUDICIAL PUBLICITY

Perhaps as a result of increased public interest in crime and law enforcement and the consequent expanded media coverage of such matters, claims are frequently made that for the accused to receive a fair and impartial trial in the parish where the prosecution is pending is impossible. The primary corrective for such prejudice is the change of venue to a non-affected parish,²⁶ but to obtain the desired change the defendant has the burden of showing that because of the existence of the prejudice in the collective mind of the community a fair and impartial trial cannot be obtained.²⁷ As is usual with this type of decision by a trial judge, it is a matter for the sound discretion of the judge and the decision will not be reversed on appeal, absent a clear showing of abuse of this discretion.²⁸ As an aid in determining whether to grant a motion for change of venue the supreme court in 1975 in the leading case of *State v. Bell*²⁹ set out seven factors to be considered: (1) the nature of the pretrial pub-

21. LA. CODE CRIM. P. arts. 772 & 775.

22. LA. CODE CRIM. P. art. 674.

23. *Id.*, comment (b).

24. 388 So. 2d 679, 686 (La. 1980).

25. Knapp v. Kinsey, 232 F.2d 458 (6th Cir. 1965); *United States v. Marzano*, 149 F.2d 923 (2d Cir. 1945).

26. LA. CODE CRIM. P. arts. 621-27.

27. *State v. Sonnier*, 379 So. 2d 1336 (La. 1980); LA. CODE CRIM. P. art. 622.

28. See *State v. Sheppard*, 350 So. 2d 615 (La. 1977).

29. 315 So. 2d 307, 311 (La. 1975).

licity and the degree to which it has circulated in the community; (2) the connection of government officials with the release of the publicity; (3) the length of time between dissemination of the publicity and trial; (4) the severity and notoriety of the offense; (5) the area from which the jury is to be drawn; (6) other events occurring in the community which either affect or reflect the attitude of the community or individual jurors toward the defendant; and (7) any factors likely to affect the candor and veracity of the prospective jurors on voir dire.

In *State v. Adams*³⁰ the court pointed out that it had previously authorized the "dry run voir dire"³¹ as a proper method of inquiring into the questions of community prejudice and pretrial publicity.³² In this process potential jurors are called and examined as on voir dire to determine the nature and extent of the publicity and the attitude of the community towards the accused. If the trial judge is unconvinced as a result of the questioning and denies the motion, the actual selection of trial jurors then begins. Chief Justice Dixon in a brief concurrence in which Justice Blanche joined, stated that he did "not agree that this court approved 'dry run voir dire' in change of venue hearings,"³³ but despite this, the dry run seemingly is the most effective tool available to the trial judge in his efforts to determine the community reaction to media reports. This question is most difficult to determine and is without other readily available means of proof. Other than the time necessary to conduct the hearing, few real objections probably may be made, and the time is well spent on such pretrial efforts.

DISCOVERY SANCTIONS

The Louisiana Supreme Court was presented with two significant opportunities this term to examine the application of the sanction provisions of Louisiana criminal discovery practice. In *State v. Statum*³⁴ the defendant filed a pretrial motion for discovery and inspection³⁵ of photographs and tangible objects to be used at trial. The state filed an answer on a standard form indicating that it had none. Additionally, the defendant was authorized by the state to inspect all photos and objects at the sheriff's office. At trial, photos were offered by the prosecution and admitted, no defense objection

30. 394 So. 2d 1204 (La. 1981).

31. Referred to as the "try me" voir dire by Justice Lemmon speaking for the court in *State v. Baldwin*, 388 So. 2d 679, 682 n.2 (La. 1980).

32. *State v. Bell*, 394 So. 2d 1204, 1208 (La. 1981).

33. 394 So. 2d at 1214 (Dixon, C.J., dissenting).

34. 390 So. 2d 886 (La. 1980).

35. See LA. CODE CRIM. P. art 718.

being made based on the state's failure to disclose the photographs in answer to the discovery motion. The state also offered the knife retrieved from the defendant's vehicle. Here the defendant properly objected to the failure to disclose. The trial judge excluded the knife and ruled that no further reference was to be made to the knife during the trial. Article 729.5 makes available a full range of sanctions to enable the discovery system to operate.³⁶ The supreme court reiterated the basic proposition that where the defendant is misled as to the strength of the state's case and suffers prejudice as a result of improper discovery conduct reversible error results.³⁷ In this case, however, the court found no prejudice to the defendant considering the absence of any intent to deceive the accused, the photographs were not themselves prejudicial, and the judge acted properly with reference to the knife. The court closed its consideration of this matter with a warning:

We certainly do not condone the trickery that can evolve from the misuse of the discovery motions and answers. The penalties of C. Cr. P. Art. 729.5 are readily at hand for the trial judge to employ, as was done in this case. If they are not used, and the situation warrants, this Court will not hesitate to reverse.

In *State v. Meshell*³⁸ the court was presented with such a case. The defendant filed a proper motion for discovery prior to trial requesting a copy of any record of his arrest and conviction.³⁹ The state filed an answer indicating that it had none; however, the assistant district attorney discovered the defendant's rap sheet in the file the day prior to trial revealing that the accused previously had been convicted of child abuse. This information first was disclosed to

36. LA CODE CRIM. P. art 729.5 states:

A. If at any time during the course of the proceedings it is brought to the attention of the court that a party has failed to comply with this Chapter or with an order issued pursuant to this Chapter, the court may order such party to permit the discovery or inspection, grant a continuance, order a mistrial on motion of the defendant, prohibit the party from introducing into evidence the subject matter not disclosed, or enter such other order, other than dismissal, as may be appropriate.

B. In addition to the sanctions authorized in Part A hereof, if at any time prior or subsequent to final disposition the court finds that either the state through the district attorney or assistant district attorney or the defendant or his counsel has willfully failed to comply with this Chapter or with an order issued pursuant to this Chapter, such failure shall be deemed to be a constructive contempt of court.

37. *State v. Hatter*, 350 So. 2d 149 (La. 1977).

38. 392 So. 2d 433 (La. 1980).

39. LA. CODE CRIM. P. art. 717 requires the district attorney to furnish a copy of the defendant's rap sheet (a copy of any record of his criminal arrests and convictions) upon proper request.

the defendant after the state had rested its case on a charge of cruelty to a juvenile. However, article 729.3 imposes a continuing duty at any time to advise promptly both the other party and the court of the availability of information previously requested.⁴⁰ The trial judge denied the defendant's motion for a mistrial on the grounds that "the state afforded that information at the first opportunity after it discovered its existence."⁴¹ Acting in full support of its language in *Statum*, the supreme court had no difficulty in finding this conduct a substantial violation of the defendant's right to prepare a defense and the action of the trial judge a reversible abuse of discretion. In a well-considered analysis of the difficult position in which withholding of such potentially damaging impeaching material places defense counsel, Justice Marcus makes it clear that discovery in criminal cases many times dictates the future course of the trial—or lack of trial. Discovery is designed to work outside of court, which requires fair and honest use of the devices by all participants. The sanctions must be used in those rare situations where willful disregard⁴² or carelessness produce a misuse of the discovery provisions and the trial judge must accept the responsibility of enforcement. The reversal in *Meshell* is certainly not the most efficient or effective method of correcting the problem caused by one prosecutor who will not be affected directly. The cost to the public is great. One is left to speculate as to what effect a different and correct answer to the discovery motion might have had on the trial strategy of defense counsel in *Statum*.

JURY

In *State v. Jones*⁴³ the defendant was charged in one bill of information with negligent injuring⁴⁴ and a separate count of resisting arrest.⁴⁵ The defendant demanded a jury trial, but on the day of trial the state's motion to sever the two counts was granted and the defendant was convicted on the negligent injuring charge after a

40. LA. CODE CRIM. P. art. 729.3 states:

If, subsequent to compliance with an order issued pursuant to this Chapter and prior to or during trial, a party discovers additional evidence or decides to use additional evidence and such evidence is or may be, subject to discovery or inspection under the order issued, he shall promptly notify the other party and the court of the existence of the additional evidence, so that the court may modify its previous order or allow the other party to make an appropriate motion for additional discovery or inspection.

41. 392 So. 2d at 434.

42. See LA. CODE CRIM. P. art. 729.5(B).

43. 396 So. 2d 1272 (La. 1981).

44. LA. R.S. 14:39 (1950 & Supp. 1978).

45. LA. R.S. 14:108 (1950).

bench trial. Subsequently, the defendant entered a conditional guilty plea to the resisting arrest charge. The law is settled that an accused has a right to a jury trial if two or more petty offenses are joined so that the aggregate punishment to which the defendant is exposed exceeds the level of six months imprisonment or fines totaling five hundred dollars.⁴⁶ The maximum penalty to which the defendant was exposed under this bill of information was one year imprisonment and a fine of \$1,000, thus giving him a right to a jury trial. The question presented to the supreme court was whether the prosecutor could, in effect, cancel this right by severing the counts for trial since individually neither count warranted a jury trial. Under article 495.1 the court may sever for trial if prejudice results to either party as a result of the joinder.⁴⁷ The court held that prejudice in this context meant detriment to one's legal rights or claims and that mere inconvenience or loss of strategy advantage as a result of a jury trial does not qualify. Here, the prosecutor could show no prejudice and was seeking to sever only to avoid the delay and cost involved in trying these minor charges to a jury. This reason was held not to be sufficient. As the court put it: "Depriving a defendant of a right to jury trial is not a legitimate prosecutorial end."⁴⁸ To this author this result is unrealistic. The defendant was entitled to a jury trial only by virtue of an accident of joinder—he was not entitled to it and could not reasonably expect it. This trial situation probably arose only because a plea bargain fell apart. To allow the severance would place the defendant in no worse position than if charged originally in separate bills of information. This decision simply says to the prosecutor that he should charge each petty offense in a separate bill of information.

The court was also faced this term with the question whether a defendant who knowingly and intelligently has waived his right to a jury trial may later have this right reinstated. *State v. Cantanese*,⁴⁹ holds that where a defendant moves to reinstate his right sufficiently in advance of trial so that reinstatement of the right to jury trial will not interfere with the orderly administration of the business of the court, result in undue delay or inconvenience to witnesses, or prejudice the legitimate interests of the prosecution, the trial court

46. *State v. Nettleton*, 367 So. 2d 755 (La. 1979). LA. CODE CRIM. P. art. 779(A) provides:

A defendant charged with a misdemeanor in which the punishment may be a fine in excess of five hundred dollars or imprisonment for more than six months shall be tried by a jury of six jurors, all of whom must concur to render a verdict.

47. LA. CODE CRIM. P. art 495.1 (added in 1975).

48. 396 So. 2d at 1275.

49. 385 So. 2d 235 (La. 1980).

should exercise its discretion in favor of allowing trial by jury.⁵⁰ This solution to a problem that can result from many causes, such as change in trial counsel, seems excellent and well considered.

The court emphasized once again the proper method of alleging that the petit jury was improperly drawn. In *State v. Ramos*,⁵¹ Justice Dennis pointed out that errors regarding the improper selection of the petit jury venire cannot be raised by a motion in arrest of judgment nor for the first time upon appeal. If such errors are to be considered by the supreme court they must be raised by a proper and timely motion to quash.⁵²

The Louisiana Constitution provides that one accused shall have a right to "full voir dire examination" of prospective jurors.⁵³ This has been interpreted to mean the right to make sufficient inquiry to enable him to show grounds for challenges for cause⁵⁴ and also to discover information which will enable the defendant to exercise intelligently his peremptory challenges.⁵⁵ May the trial judge grant a prosecution challenge for cause without giving defense counsel an opportunity to question the prospective juror for the purpose of rehabilitation? In *State v. Claiborne*⁵⁶ the supreme court answered "no," that examination of the prospective juror by counsel might result in convincing the trial judge that the person could render a fair and impartial verdict. Justice Blanche concurred and despite his doubts as to any prejudice to the defendant believed that the trial judge should have "indulged" counsel. Justice Marcus in dissent rested simply on the discretion possessed by the trial judge, as did the other two dissenters.⁵⁷ The court here seems to be concerned primarily with making the so-called doctrine of rehabilitation available to defendants because the court has in the past permitted the doctrine to be used in favor of prosecutors.⁵⁸ This concern is, of course, not a very good reason. If the trial judge actually has "much discretion" in ruling on challenges for cause, the process should end with the decision of the court. Unless this examination process is to become even more of a burden and cause of delay than it is now, the

50. *Id.* at 237. See also LA. CODE CRIM. P. art. 780, comment (d).

51. 390 So. 2d 1262 (La. 1980).

52. *Id.* at 1263. *State v. Collins*, 359 So. 2d 174 (La. 1979). See also LA. CODE CRIM. P. art. 532(9).

53. LA. CONST. art. I, § 17.

54. See generally LA. CODE CRIM. P. art. 797.

55. See generally *State v. Boen*, 362 So. 2d 519 (La. 1978). LA. CODE CRIM. P. art. 799.

56. 397 So. 2d 486 (La. 1981).

57. Ad hoc Judges Covington and Chiasson dissented.

58. 397 So. 2d at 489.

process must end somewhere, and this author submits that the point of conclusion can best—if not only—be determined by the trial judge. At some point, after being the center of prolonged hostile exposure almost any prospective juror will say what he thinks the questioner wants to know—just to end the interrogation. This statement is particularly true when the trial judge takes an active role in the process. Such a result is much more than the constitution, good judgment or common sense requires. Rehabilitation should be disapproved for both defense and prosecution.⁵⁹

PRESENCE OF THE DEFENDANT

The problem of the disruptive defendant came before the supreme court in two cases during this term and in both cases the discretion exercised by the trial judge was approved. The Supreme Court of the United States has approved three methods for dealing with the obstreperous defendant: (1) bind and gag him and allow him to remain in the courtroom; (2) cite the person for contempt of court and allow him to remain in the courtroom; or (3) remove the person from the courtroom until he promises to conduct himself properly.⁶⁰ In *State v. Rochon*,⁶¹ the accused, after repeated warnings to remain seated quietly and a citation for contempt, disrobed in front of the jury. Although he was removed from the courtroom, a sound system was set up so that he could hear the trial proceedings and co-counsel sat with him throughout. In *State v. Lee*,⁶² the accused repeatedly interrupted proceedings by singing the Star Spangled Banner, reciting scripture and otherwise. After reprimand and warnings he too was removed to an outer-room where he was provided with sound and the services of an attorney. Clearly the trial judges acted properly in each of these cases. The fact that the defendant has a right to be present at his trial⁶³ grants him no right to disrupt the orderly proceedings of the court, and when disruption occurs the consequences are chargeable solely to him.⁶⁴ Trial courts have been very fair, in the author's opinion, in applying sanctions to recalcitrant defendants. The key is in first warning the disruptive person of the consequences. A person facing a substantial sentence in a felony case apparently is not deterred by a contempt citation, and the reports indicate that most judges favor removal from the courtroom

59. See Sullivan, *Developments in the Law, 1979-1980—Criminal Trial Procedure*, 41 LA. L. REV. 582, 588-89 (1981).

60. *Illinois v. Allen*, 397 U.S. 337 (1970).

61. 393 So. 2d 1224 (La. 1981).

62. 395 So. 2d 700 (La. 1981).

63. See LA. CODE CRIM. P. arts. 831-836.

64. *Illinois v. Allen*, 397 U.S. 337 (1970).

over binding and gagging the defendant because of the danger of extreme prejudice of this method in a jury trial. This method has also been approved by the supreme court,⁶⁵ but if adequate facilities are available the removal solution seems preferable.

65. *State v. Burnett*, 337 So. 2d 1096 (La. 1976).