Report No. 30
January 1971

MASS TRIALS —
COURTROOM DISRUPTION AND THE RIGHTS OF DEFENDANTS

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A. Joinder and Severance of Co-Defendants: Generally

The Federal Rules of Criminal Procedure provide in Rule 8 (b) for joinder of defendants who have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Under Rule 14 of the Federal Rules of Criminal Procedure the court may order a separate trial of counts, grant a severance of defendants, or provide whatever other relief justice requires. A discussion of Rule 14 as interpreted in decisions is found in Orfield, "Relief From Prejudicial Joinder in Federal Criminal Cases," 36 Notre Dame Law. 495 (1961).

Most states generally allow joinder of defendants when there is good reason for bringing them to trial together, although this is at the discretion of the court. The following states, however, grant defendants an absolute right to a separate trial for certain offenses:

Alabama	- Absolute right only in capital offense cases - Ala. Circuit and Inferior Courts (Crim.) R. 31 (1958).
Georgia	- Absolute right - Ga. Code Ann. § 27-2101 (1953).
Mississippi	- Absolute right only in felony cases - Miss. Code Ann. § 2514 (1942).
Oklahoma	- Absolute right only in felony cases - Okla. Stat. Ann. § 838 (1969).
Vermont	- Absolute right only in felony cases punishable by more than five years; right does not apply to conspiracy cases - Stat. Ann. § 6507 (1958).
Virginia	- Absolute right only in felony cases - Code of Va. Ann. § 19.1 - 202 (1960).
West Virginia	- Absolute right only in felony cases - W. Va. Code Ann. §. 62-3-8 (1965).
Wyoming	- Absolute right only in felony cases - Wyo. Stat. Ann. § 7-230 (1957).

See 64 W. Va. L. Rev. 110 (1961) for abstract on defendant's absolute right to a separate trial.

Arguments in favor of joint criminal trials suggest that the use of this procedure will further judicial economy by cutting down the expense of additional multiple trials, end needless delay and congestion in the court system, limit the danger of injustice and incongruity resulting from successive juries reaching inconsistent verdicts on the same evidence, and avoid inconvenience to both witnesses and the prosecutor. Those opposed to joint criminal trials argue that the practice will confuse the jurors, who are forced to keep separate the different evidence applying to each defendant, and will also tend to bring about guilty verdicts based on association rather than on the evidence presented. Standards Relating to Joinder and Severance, American Bar Association Project on Minimum Standards for Criminal Justice, November, 1967, reflects the concern over the difficulties stemming from this collision between the ideal that a defendant be tried only upon the evidence relevant to the specific charge against him and the costs to the system of trying to achieve that ideal because of the burden it puts on prosecutors and witnesses.

B. Problems Created by the Mass Trial

1. Disruption of Courtroom Procedure

a. Freund, "Contempt of Court" 1 Human Rights 4 (1970).
A general discussion of contempt of court with the conclusion that order in the courtroom is as much the responsibility of counsel as of the judge.

b. Cummings, "The Political Trial, Justice and the Preservation of Freedom," 16 Catholic Law. 210 (1970).
This article treats the evolvement of new left dissidents and analyzes the problems they bring to the courtroom. The author concludes that defendants are mistaken in seeking to destroy what is best in the Anglo-American tradition of law.

c. "Dealing with Unruly Persons in the Courtroom," 48 N. C. Law Rev. 886 (1970).
Note discusses the handling of unruly persons in the courtroom including the various methods of restraint, exclusion of the defendant or defendants, exclusion of unruly spectators and criminal contempt. The note concludes that binding seems to be the one effective, while not wholly satisfactory, remedy for dealing with unruly defendants.

d. Flaum & Thompson, "The Case of the Disruptive Defendant: Illinois v. Allen," 61 J. Crim. L., C. & P. S. 327 (1970).
A discussion of Illinois v. Allen in which the Supreme Court said "that a defendant can lose his right to be present at trial, if after he has been warned by the judge that he will be removed if he continues his disruptive behavior, he nevertheless insists

on conducting himself in a manner so disorderly, disruptive and disrespectful of the court that his trial cannot be carried on with him in the courtroom."

e. See generally: Nizer, Louis, "What To Do When The Judge Is Put Up Against The Wall," The New York Times Magazine, March 29, 1970.
A discussion of the employment of mass political trials as a forum for both defendants and counsel to disrupt the judicial process through airings of political views. Specific reference is made to the 1944 conspiracy trial and the Chicago Seven trial.

2. Prejudice to Defendant

a. Generally: see Note, "Joinder of Defendants in Criminal Prosecutions," 42 N.Y.U. L. Rev. 53 (1967).
This note discusses the formal requirements that must be presented for defendants to be joined initially. Particular attention is given those situations in which joinder, although meeting the formal requirements, nevertheless results in substantial prejudice or indirectly deprives the defendants of constitutional rights. The desirability of ordering severance in some cases and employing devices short of severance to lessen or eliminate prejudice in others is given particular attention. The treatment is confined to the Federal Rules of Criminal Procedure.

b. See also Comment, "Exercise of the Privilege Against Self-Incrimination by Witnesses and Co-Defendants: The Effect Upon the Accused" 33 U. Chi. L. Rev. 151 (1965).
Section II of this comment refers specifically to the problems arising from refusals of co-defendants to testify as witnesses at a joint trial.

c. Another relevant article is "Prejudicial Joinder: Confession of Co-Defendant," 3 Defender Newsletter 1 (1966).
This article discusses the following cases that have bearing on prejudicial joinder:

1. Federal Decisions:
   a. Delli Paoli v. United States, 352 U.S. 232 (1957).
   b. Jackson v. Denno, 378 U.S. 368, 388 (1964).
2. State Decisions:
   a. State v. Goodyear, 404 P. 2d 379 (Ariz., 1965).
   b. People v. Connolly, 210 N.E. 2d 523 (Ill., 1965).
   c. People v. Aranda, 407 P. 2d 265 (Cal., 1965).
   d. Escobedo v. Illinois, 28 Ill. 2d 41 (378 U.S. 478 (1964)).
   e. People v. Brinn, 204 N.E. 2d 724 (Ill., 1965).

   f. Underwood v. Commonwealth, 390 S.W. 2d 635 (Ky., 1965).
   g. State v. Robinson, 136 N.W. 2d 401 (Minn., 1965).
   h. State v. Vitaglina, 206 N.E. 2d 864 (N.Y., 1956).
   i. People v. Realmuto, 262 N.Y.S. 2d 178 (Sup. Ct. App. Div., 2d Dept. (1965)).

C. Suggested Solutions to the Problems Created by Mass Criminal Trials

1. Disruption of Courtroom Procedure

a. "Disruption of the Judicial Process," 75 Case & Com. 2026 (1970).
Report and Recommendation by the American College of Trial Lawyers on the problem of disruption of the judicial process. Following a preamble are recommended principles to be applied to avert threatened disruption of the judicial process. These principles include: equal justice for all, court room atmosphere and the right to a fair trial, the lawyer's obligations, the judge's obligations, contempt power and sanctions. Each principle is followed by a brief commentary explaining the principle. This article can also be found reprinted in 16 Catholic Law. 242 (1970).

b. Kalven, "Confrontation Comes to the Courtroom," 1 Human Rights 10 (1970).
The author discusses the problem that there is no single rationale governing the conduct of the courtroom. As possible solutions he suggests that trials should not be quite so public, particularly controversial ones as the Scopes trial and the Chicago Seven trial. He also advocates that the judge should attempt to employ political realism in dealing with an unruly courtroom. Finally he suggests that to shorten the trials would cut down on the problems that build up in the large political trials.

c. Grillo, "The Lawyer's Role: Officer of the Court," 44 Conn. B.J. 255 (1970).
This article concludes with the idea that for a lawyer to remain inactive when circumstances require him to assist in maintaining dignity in the courtroom is unprofessional. The lawyer can play an important part in maintaining the decorum of the courtroom through control of his client or clients.

d. Nizer, op. cit.
The article includes five suggestions that would enable the judge to control the courtroom and prevent the obstruction of justice in a mass trial. These include the suggestions that any defendant who deliberately violates decorum in the courtroom shall be removed from the court and placed in jail, and that any lawyer who deliberately obstructs justice may be removed from the trial by the judge.

2. Prejudice to Defendants

a. Note, "Joint and Single Trials Under Rules 8 and 14 of the Federal Rules of Criminal Procedure, 74 Yale L. J. 553 (1965). The note includes a discussion of the four doctrines generally used by trial judges to support a finding of absence of prejudice in cases involving a joinder of defendants or offenses denying relief provided for under Rule 14 of the Federal Rules of Criminal Procedure. The author feels that the four standards are inadequate to determine whether prejudice has occurred and do not serve the purposes of Rule 14. He advocates abolishing similar offense joinder and a revision of the opportunities for a defendant to obtain a separate trial. This reform, he feels, would lack the symmetry of the current rules, but would protect rights that he deems more important than the saving of time and money by the use of joinder.

b. Wessel, Milton, K., "Procedural Safeguards for the Mass Conspiracy Trial," 48 A. B. A. J. 628 (1962).
The basic problem of the mass conspiracy trial, Wessell maintains, is the inability of the defendant to control his own defense: confusion-of-evidence problems are always present. The interest of defendants in mass conspiracy trials can be better protected without real harm to the public by the adoption of certain safeguards to insure procedural due process. Mr. Wessel offers for consideration of such defendants five procedural safeguards which the defendants may either adopt for themselves or seek to have imposed upon the prosecution.

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