February 1959

Constitutional Law--Due Process in Determination of Sanity of Condemned Prisoners--Remedial Procedures

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CASE COMMENTS

CONSTITUTIONAL LAW—Due Process in Determination of Sanity of Condemned Prisoner—Remedial Procedures.—Petitioner claimed denial of due process of law under the Fourteenth Amendment of the Constitution of the United States by operation of a California statute allowing the prison warden to determine the prisoner's sanity prior to execution. The statute provides that a prison warden shall be the only person to raise the question of a prisoner's sanity after conviction and prior to execution. The statute also gives the warden absolute discretion as to the admission of evidence concerning the prisoner's sanity. The warden's refusal to hear evidence concerning previous mental illness of the prisoner was sustained by the Supreme Court of California, and the case came to the Supreme Court of the United States on a writ of certiorari. Held, that there was no denial of due process of law as the test of fundamental fairness was met. The state may condition a prisoner's right to a sanity trial upon a preliminary determination by a responsible official that good reason exists for the belief that the prisoner has become insane. No evidence of arbitrary judgment or bad faith was shown here. Caritativo v. California, 78 Sup. Ct. 1263 (1958).

The decision in this case seems to be an affirmation of the undesirable result in Solesbee v. Balkcam, 339 U.S. 9 (1950), where it was held that due process is not violated by a statute which confers upon the governor of the state the exclusive authority to pass upon a claim that a person has become insane after conviction and sentence of death. Despite the fact that the statute does not make provisions for an adversary hearing in which the convicted can be present by friends, attorneys, or in person with the privilege of cross-examining witnesses and offering evidence, and even though the findings of the governor are not subject to judicial review, the statute was declared constitutional.

The California statute carries this undesirable result one step further by lodging the final determination of the prisoner's sanity not with the governor but with a prison warden. The Solesbee case and the principal case effectively deny the prisoner's fundamental rights guaranteed in almost every other situation as essential to "due process".

To insure justice, it is not necessary that a jury trial be given every time the prisoner raises the question of his sanity. Nobles v. Georgia, 168 U.S. 398 (1897). This would permit him to delay execution indefinitely. The fact that executive clemency is not ordi-
narily reviewable helps to insure a minimum of delay. *Ex parte United States*, 242 U.S. 27 (1916). This fact alone provides a formidable barrier to prolonged delays of the prisoner's execution. The statute could lead to undesirable results as it embraces methods completely repugnant to "due process" as spelled out in other cases.

In criminal cases, the accused is allowed to have his friends, relatives or counsel present to speak for him. *In re Oliver*, 333 U.S. 257 (1948). Why should this opportunity be denied when the prisoner's very life is in jeopardy? Adversary proceedings in which both sides of the issue can be heard are assured where property interests are at stake. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). There should be equal assurance where a life is at stake. The warden's refusal to hear evidence of prior insanity may not be evidence of bad faith. It could, however, give rise to some question as to the reliability of his decision in view of the fact that the excluded evidence may have been quite relevant to a logically correct decision. It might also be argued that persons other than the warden and prison psychiatrist have relevant information concerning the prisoner's present mental state. In other states the right to raise the question of a prisoner's sanity is not restricted to a particular individual by statute. See e.g., *People v. Carpenter*, 13 Ill. 2d 470, 150 N.E.2d 100 (1958); *State v. Upton*, 60 N.M. 205, 290 P.2d 440 (1955); *State v. Alexander*, 87 Utah 376, 49 P.2d 408 (1935); *Green v. State*, 88 Tenn. 635, 14 S.W. 489 (1890). This apparently does not cause any unnecessary delay in execution of sentence which seems to be the primary justification for the defense of the statute in the principal case.

In West Virginia the statutory procedure for determining the question of a prisoner's sanity provides for the appointment of two physicians by the judge of the circuit court to examine the prisoner and submit their findings to the judge who makes the final determination of the prisoner's sanity. W. Va. Code ch. 62, art. 3, § 9 (Michie 1955). The state's highest executive still has the constitutional right to grant clemency or pardon where he believes a prisoner has become insane prior to execution. West Virginia has no provisions for adversary hearings to determine a prisoner's sanity or to allow evidence of his insanity to be presented by his attorney or other interested persons.

In the principal case, the speedy and efficient administration of justice which is so eagerly sought could probably be accom-
plished even with the removal of the undesirable provisions of the California statute. At a reasonable time before the scheduled execution of the prisoner, the state could allow an adversary proceeding in which the question of the prisoner's sanity could be determined. At this proceeding, the prisoner or any persons desiring to speak for him should be permitted to introduce any evidence relevant to the question of the prisoner's sanity. The warden of the prison may represent the state and make an initial determination of the prisoner's sanity at this proceeding. His decision could be reviewable by the highest executive of the state. The precedent against reviewing executive clemency would insure that the decision made by him on review of the warden's decision would be final. To assure the prisoner an opportunity to be heard, the determination of the question of his sanity should be on a procedural basis and not a discretionary one as is the usual case. When one takes cognizance of the finality of an execution, the suggested procedure hardly seems unduly time-consuming. Since neither the State of California nor the Supreme Court of the United States has devised a satisfactory method of recalling a departed prisoner from the great beyond and compensating him for the unpleasantness which would necessarily be occasioned by an improper execution, it hardly seems unreasonable to expect adequate procedural safeguards to prevent such an improper execution from occurring.

J. J. P.

**Constitutional Law—Interstate Commerce—State Control of Interstate Activities.**—D, an interstate motor carrier, was convicted and fined by the Public Service Commission of Virginia for operating in intrastate commerce without a certificate of convenience and necessity. The facts disclosed that D accepted goods in the state for transportation to other points within the state, shipped them to a point outside the state, and then to their destination. The normal routes for transportation between these points of origin and destination did not require that the goods leave the state. Held, that use of such circuitous routes nonetheless constituted intrastate commerce and the carrier was subject to penalties for so operating without a state certificate. *Service Storage & Transfer Co. v. Commonwealth*, 102 S.E.2d 339 (Va. 1958).

That the state has exclusive control of internal commerce under U. S. Const. art. I, § 8, and U. S. Const. amend. X is a doctrine