Louisiana Law Review

Volume 11 | Number 2
The Work of the Louisiana Supreme Court for the 1949-1950 Term
January 1951

Procedure: Evidence

Huey B. Howerton

of jurisprudence under the present as well as previous constitutions containing similarly worded provisions has justified such an interpretation as a demand of due process of law. The soundness of this conclusion has been seriously questioned previously in these pages.[27] Having established their rights to challenge the validity of the tax sale in this fashion, the plaintiffs were then permitted to succeed by showing that the property had been assessed and sold in the name of their father who had died some ten years prior to the year of tax delinquency and without being required to show any genuine prejudice. This is another aspect of tax sale annullment which has been seriously questioned.[28] Finally, plaintiffs were allowed the relief requested despite the fact that previous authoritative adjudications of the same court had held that they did not in fact own the land in dispute, but were, at best, possessors in good faith within the meaning of Article 3451 of the Civil Code, title to the property having been clearly determined to be vested in others. Justice McCaleb in a dissent, in which he was joined by Justice LeBlanc, saw no valid reason for the extension of the doctrine that peremption is suspended by corporeal possession by the *owner* of the property. The writer shares this view, particularly in view of the doubtful propriety of the original proposition.

III. Procedure

EVIDENCE

*Huey B. Howerton**

For good or ill, exclusionary rules of evidence retain their vitality in Louisiana criminal cases. Civil cases in which an evidence point is raised on appeal are negligible. In the holdings which follow, all criminal cases, no novel or startling problems of evidence present themselves. But the decisions of the Louisiana Supreme Court on evidence questions illustrate graphically the judicial process ceaselessly at work in attempting to reconcile the irreconcilable demands of order for the community, and liberty for the citizen.

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27. Fordham and Hunter, supra note 23 at 464-467.
28. Id. at 468.

* Assistant Professor of Law, Louisiana State University.

EVIDENCE OF DEFENDANT'S OTHER CRIMES; PRESUMPTION OF GOOD CHARACTER

An accused is required to answer only to the crime with which he is charged in the indictment, and the state is forbidden initially to attack his character. The necessity of allowing the state to make out its case has resulted in establishment of a number of specific exceptions to the rule, that is, when the other crimes are offered as part of the *res gestae*,[1] or to prove identity,[2] intent,[3] motive,[4] or common scheme or plan.[5] Relevant evidence can always be offered by the state and is to be rejected only when its single tendency is to show accused's bad character.[6]

Four recent supreme court decisions concerned admissibility of evidence of other crimes, in two cases offered as part of the *res gestae*, and in two others offered to prove intent or motive. *State v. Alexander*[7] was a prosecution of defendant for committing incest with his daughter. On cross-examination accused was asked whether he had had intercourse previously with another daughter, and whether he had also tried to attack his stepdaughter. He answered both questions in the negative; the state in rebuttal produced the two women, who testified that he had had intercourse with the daughter and had attempted it with the stepdaughter. On appeal the state contended that evidence of the acts with other daughters was admissible to show accused's criminal intent. The court disagreed and held that the elements of incest "are the intercourse coupled with a knowledge of the relationship."[8] With intent the court was not here concerned,[9] and thus the evidence of other crimes was not to be allowed.

Here the evidence offered was of acts with a daughter other than the one named in the indictment, and generally such evidence is rejected. But evidence of previous acts committed by accused with the same daughter is a different matter, and is usually admitted.[10]

Res gestae is a phrase that can be translated easily enough

1. State v. Jugger, 47 So. 2d 46 (La. 1950); State v. Sears, 217 La. 47, 46 So. 2d 34 (1950); Arts. 447, 448, La. Code of Crim. Proc. of 1928.
2. State v. Wales, 168 La. 322, 122 So. 52 (1929).
3. State v. Stewart, 157 La. 494, 102 So. 584 (1924).
4. Ibid.
5. State v. Jackson, 163 La. 34, 111 So. 486 (1927). See also Arts. 445, 446, La. Code of Crim. Proc. of 1928.
6. 2 Wigmore, Evidence, § 300 et seq. (3 ed. 1940).
7. 216 La. 932, 45 So. 2d 83 (1950).
8. 216 La. 932, 939, 45 So. 2d 83, 85 (1950).
9. Art. 446, La. Code of Crim. Proc. of 1928.
10. State v. Grantham, 150 La. 621, 91 So. 66 (1922); State v. De Hart, 109 La. 570, 33 So. 605 (1903).

but defined only with difficulty. "Thing done" is the literal meaning; circumstances connected with the particular fact under investigation is usually the idea underlying the definition of the phrase.[11] It has been suggested that the phrase is cumbersome and that its use should be abandoned.[12] Chief objection is that standing alone it is meaningless; invariably an explanatory clause must accompany the phrase to give it meaning. To illustrate: "If evidence of the commission of another crime constitutes a part of the *res gestae*, it is admissible," from Wharton's Criminal Evidence,[13] tells us nothing, when one is looking for an answer to the question whether such evidence is admissible. Equally valueless is the last sentence in Article 447 of the Code of Criminal Procedure, "What forms any part of the *res gestae* is always admissible in evidence."

Examples of the necessity of explaining the phrase each time it is used are these two quotations, one from Wharton and one from Marr, the latter quoted by the supreme court: "[Proof of a different crime is allowed] where the offense is so closely connected with the crime as to bring it within the rule of *res gestae*,"[14] and, "when both offenses are closely linked and constitute a part of the *res gestae*. . . ."[15] The problem in each case is *not* deciding whether the other crime is so closely connected with the crime-in-issue as to bring it within the rule of *res gestae*; the problem is deciding whether the other crime is closely connected period; that is, the question to be answered is relevancy. For a satisfactory determination of this issue, there need be no reference to the artificial and ambiguous categorization, *res gestae*.

In *State v. Sears*,[16] accused was charged with murder of his mother-in-law in his apartment. Shortly after the alleged homicide occurred, police officers found a marijuana cigarette on accused's dresser. Although this showed defendant guilty of a different crime, the trial judge permitted evidence of the finding as "part of the *res gestae*." The supreme court held this was error. It is interesting to notice that the opinion first specified the reasons for not allowing the evidence; there was no showing by the state that it was offered to establish malice, motive, or intent; and it was not connected with the crime of murder in any causal relation. That is, plainly the evidence offered was not

11. State v. Sears, 217 La. 47, 46 So. 2d 34 (1950).
12. 6 Wigmore, Evidence, § 1757 (3 ed. 1940).
13. Wharton, Criminal Evidence, § 345 (11 ed. 1935).
14. Id. at § 213.
15. State v. Guillory, 201 La. 52, 9 So. 2d 450 (1942).
16. 217 La. 47, 46 So. 2d 34 (1950).

relevant. And then the court concludes: "but under the circumstances of the instant case, as set out hereinabove, it clearly was not admissible as part of the *res gestae*. . . ."[17]

In *State v. Jugger*[18] defendants were charged with rape and had stolen jewelry from the house where the crime was committed. The court approved admission in evidence of the stolen articles, for "it is well settled that evidence of a different crime from the one charged may be received *when both offenses are closely linked and so as to form part of the res gestae*."[19] (Italics supplied.)

A case in which the evidence was wholly circumstantial was *State v. Dowdy*.[20] There, one Dorman was killed under mysterious circumstances when his cabin was dynamited; and defendants, father and son, were charged with murder. At the trial evidence was admitted of proposals made by defendants to various persons; these schemes called for obtaining an insurance policy, faking the death of the insured, and then collecting illegally. Defendants objected that this evidence tended only to impeach their character, but the supreme court held that the appropriate sections[21] of the Code of Criminal Procedure were broad enough to justify admission. Justice LeBlanc stated that the schemes for defrauding the insurance companies tended to show the motive or object of accused in dynamiting deceased's cabin. They tended to explain an otherwise inexplicable occurrence. It should be noted that the two code sections authorize evidence of other acts for the purpose of showing *intent*; neither section uses the word *motive*. Thus, the court appears to be holding that evidence offered to show motive also has a tendency to establish accused's state of mind at the time of the crime.

In *State v. Winey*,[22] accused offered no evidence of his reputation but requested a charge to the jury that "the law presumes that she has a fair and respectable character." The judge refused the charge; on appeal accused relied on Underhill.[23] The supreme court stated that Underhill is wrong, that its previous holding

17. 46 So. 2d 34, 37 (La. 1950).
18. 47 So. 2d 46 (La. 1950).
19. Id. at 53.
20. 47 So. 2d 496 (La. 1950).
21. Arts. 445, 446, La. Code of Crim. Proc. of 1928.
22. 216 La. 560, 44 So. 2d 115 (1950).
23. "If, however, he offers no evidence of good character, the law presumes he has a fair and respectable, if not, indeed, an excellent character. . . ." Underhill, Criminal Evidence (4 ed. 1935) § 165. Few cases are cited by this authority to substantiate this statement, and the very first case referred to holds that in the absence of proof, there is no presumption either way as to character. Steele v. State, 19 Ala. App. 598, 99 So. 745 (1924).

contradicts him,[24] that Professor Wigmore has approved the Louisiana rule, and therefore, the supreme court approves Professor Wigmore. The rule reaffirmed in *State v. Winey* is that there is no presumption and accused's reputation is a "non-existent quantity in the evidence."[25] It comes into the evidence only when defendant through his character witnesses brings it in. This holding clearly appears to be the majority view.[26]

CONFESSIONS

Admissibility of confessions is a much-litigated matter in Louisiana and the rules are fairly well settled.[27] Generally, a confession is involuntary and thus inadmissible when made under hope of reward or benefit held out to accused by a person in authority, or when obtained by duress, threats or fear.[28] Untrustworthiness is the criterion; and in theory at least, a *true* confession obtained by torture will never be rejected solely because of the violence employed.[29]

The Louisiana Constitution ordains that an arrested person shall not be treated in any way designed to extract a confession,[30] and the statutes require that the state show affirmatively that the alleged confession was voluntary before it is received in evidence.[31] A distinction is drawn between an admission and a confession;[32] and if the statement offered in evidence is only the admission of an incriminating fact not disclosing criminal intent,

24. State v. Davis, 154 La. 295, 97 So. 449 (1908).
25. 2 Wigmore, Evidence, § 290 (3 ed. 1940).
26. Ibid.
27. See, generally, Arts. 449-455, La. Code of Crim. Proc. of 1928. Presently pending in the supreme court is State v. Alleman, No. 39,992, on an appeal from the Fifteenth Judicial District Court, which presents a question not yet passed on in Louisiana. Accused was arrested, charged with murder and placed in the Lafayette parish jail. He was interrogated by several police officials in the sheriff's office, and he confessed to the crime. Hanging on the wall back of the accused was a microphone, by which his confession was recorded on a machine in the next room. This was done without accused's knowledge. At the trial the record of this confession was played to the jury, the judge holding the record admissible despite accused's objection.
The specific question as to admissibility of a wire-recorded confession has been passed on in few cases; but where passed on, the question is usually decided in favor of admission. See Note, 168 A.L.R. 927 (1947). The supreme court must reconcile conflicting policies. Admission of recorded confessions is desirable because the jury can know directly all that occurred while the confession was being obtained. Opposed is the possibility that the state's officials might be tempted to offer fabricated records of confessions that were never received, or perhaps, by the use of modern tape-recording procedure, to present only the incriminating portions of the record and omit any exculpatory statements.
28. 3 Wigmore, Evidence, § 822 et seq. (3 ed. 1940).
29. Wilson v. State, 19 Ga. App. 759, 92 S.E. 309 (1917).
30. La. Const. of 1921, Art. I, § 11.
31. Arts. 451, 452, La. Code of Crim. Proc. of 1928.
32. Id. at Art. 449.

it may be admitted even though it was coerced in a manner which would require rejection of a confession.[33] The supreme court is well aware that Louisiana law enforcement officials are saved much effort by an accused's confessing. It has consistently interpreted these statutes to place a heavy burden on the state, and many decisions have been rendered holding that the testimony adduced by the state must show not merely affirmatively but beyond a reasonable doubt that the confession was obtained voluntarily.[34]

Six recent cases decided by the supreme court were concerned mainly with the question whether the state had carried the burden and the confession was thus admissible. In only one of these, *State v. Honeycutt*,[35] did the court hold that the state at the preliminary hearing had failed to show the voluntariness of the offered confession. Honeycutt was arrested and put in jail at 6:30 in the evening. His confession was given and taken down the next morning at 7:30 in the presence of a deputy sheriff and several police officers. These witnesses for the state on the hearing as to admissibility all testified that no force or threats were used when the confession was given at this time. But defendant's story at the hearing was that, the night before the confession was given, he was beaten and threats were made to return him to the community where the rape occurred. He admitted that he was not beaten in the morning when the confession was taken down in the presence of the several officials, but stated that the beatings the night before caused him to confess then; and on the morning after, his confession at that time was merely a reduction to writing of what he had stated the previous evening. The state's only testimony as to what occurred at the time defendant said he was beaten was that of a deputy sheriff, although there were five other officers present at the jail at this time.

The specific question to be decided by the court was whether the state's failure to call one or more of these five witnesses to corroborate the deputy sheriff's testimony created a reasonable doubt as to the voluntariness of the alleged confession. Some or all of these witnesses should have been called, the court decided. The trial judge admitted the confession because he did not think

33. Id. at Art. 454; State v. Terrell, 175 La. 758, 144 So. 488 (1932).

34. State v. Honeycutt, 216 La. 610, 44 So. 2d 313 (1950); State v. Jugger, 47 So. 2d 46 (La. 1950); State v. Wilson, 214 La. 317, 37 So. 2d 804 (1948); State v. Ross, 212 La. 405, 31 So. 2d 842 (1947); State v. Ellis, 207 La. 812, 22 So. 2d 181 (1945).

35. 216 La. 610, 44 So. 2d 313 (1950).

the accused worthy of belief. But *merely disbelieving* an accused's testimony is not enough to prove beyond a reasonable doubt, or even affirmatively, that a confession was voluntarily obtained. The court concluded that its decision was a holding only that the state had not presented enough evidence to show voluntariness and was not to be interpreted as a finding that the confession was obtained involuntarily. Thus, the state at the new trial would be allowed to put on additional witnesses as to voluntariness, if it could find them.[36]

Frequently an accused in custody confesses not once, but several times. Assuming that the first of his confessions is obtained under circumstances rendering it inadmissible because involuntary, will the trial judge hold that the fatality of the first vitiates all the rest? The problem arose in *State v. Jugger*.[37] Jugger and Washington were arrested and charged with aggravated rape; they confessed orally five times and gave one written confession. At the trial the judge excluded the first three oral statements and admitted the others. The first confession was given by Washington to two deputy sheriffs, after they had urged him to "come clean and tell the truth," and it would "be better for him." The second resulted when a deputy the next day in jail told Jugger he would get a fair trial if he told his part, and the third statement was given by both men the next night in jail in the presence of two brothers-in-law of the murder victim, together with a detective and the jailer. The trial judge felt there existed sufficient inducement or coercion in each instance to render the offered evidence objectionable.

Oral confessions four and five came when the two defendants were being transferred by two deputies from the Harahan jail to the Gretna jail. The group stopped at two different Negro saloons, and at each a deputy called out the colored manager who knew the defendants. When the manager confronted both the accused, the deputy suggested that they tell the Negro what happened; and in each instance defendants told the full story. At the hearing on the admissibility of these two statements all witnesses present at each saloon including several colored bystanders testified that the statements were given voluntarily; defendants put on no witnesses at all.

On appeal defendants argued that the trial judge should have excluded all of the confessions because the first three were invol-

36. Honeycutt has since been tried and found guilty, and his appeal is pending.

37. 47 So. 2d 46 (La. 1950).

untary. The supreme court did not agree and approved admissibility of the last two oral confessions. It stated that the rule that conditions inducing involuntary confessions are presumed to continue is not even applicable here. The trial judge's exclusion of the first three confessions was *not* a finding that they were involuntary, but only that the state had failed to establish affirmatively to the judge's satisfaction that the confessions were uncoerced.[38] No presumption as to involuntariness of subsequent confessions arises simply from the failure of the state to convince the judge of the voluntariness of prior confessions. Especially is this true in an instance such as here, where accused offered no testimony that the first three confessions were obtained involuntarily.[39]

State v. Joseph[40] and *State v. Wilson*[41] are recent cases of interest. In each a confession was given by accused, and in each it was established plainly that some time after arrest he had been subjected to some, though slight, physical violence. In both cases, however, the supreme court believed that the mistreatment in no way contributed to the giving of the confession and that the confessions were properly admitted. That a confession and an instance of violence are found to co-exist in a legal proceeding against an accused does not require the inference that the one was the cause of the other. The existence of the cause-and-effect relation will not be assumed by the court and defendant must testify at least to its existence in order to create a reasonable doubt as to voluntariness of the confession.

Real Evidence

Under what conditions may the state in murder prosecutions introduce photographs of the deceased? Is gruesomeness a ground for rejection, even though the photographs will enlighten the jury? In several cases the supreme court has answered these questions.[42] It has stated that photographs of the deceased may be admitted after proper identification and when made by an expert photographer, for the purpose of showing the nature of the crime, the *corpus delicti*, to assist witnesses in their testimony, or to give the jury a better understanding of the nature of

38. Compare the similar holding in the *Honeycutt* case, 216 La. 610, 44 So. 2d 313 (1950).

39. 47 So. 2d 46, 53 (1950).

40. 217 La. 175, 46 So. 2d 118 (1950).

41. 217 La. 470, 46 So. 2d 738 (1950).

42. State v. Messer, 194 La. 238, 193 So. 633 (1940); State v. Henry, 197 La. 999, 3 So. 2d 104 (1941); State v. Johnson, 198 La. 195, 3 So. 2d 556 (1941); State v. Morgan, 211 La. 572, 30 So. 2d 434 (1947).

deceased's wounds.[43] Specifically, the photographs are admitted in order to show the position of the body, the scene of the crime, and the place of penetration of bullet or knife.[44] The photographs of the body may present a gruesome spectacle; but if they are offered for an admittedly legitimate purpose, such as these just stated, they are not to be rejected because their incidental effect is prejudice of defendant in the eyes of the jury.[45] But if the pictures are inflammatory and prejudicial and are not relevant to any fact in issue at the time of their introduction, they are not admissible.[46]

In *State v. Morgan*,[47] two gruesome photographs of the body were offered by the state, but not until *after* the state had put on the coroner and had him testify as to the corpus delicti and the nature of deceased's wounds. The court held that the prejudicial pictures were to be excluded, because they were immaterial since offered for the proof of facts which had already been established.[48]

In two recent cases, *State v. Dowdy*[49] and *State v. Ross*,[50] defendant objected to the photographs, in the one case of remnants of a corpse and in the other of deceased's bloody face and chest, on the ground that they were prejudicial and not related to any fact in issue. In each, defendant relied on the ruling in the *Morgan* case, and in each the court held the case was not controlling. In *Dowdy*, the court, through Justice LeBlanc, held that the photograph of a human foot (the decedent having been done away with by dynamite) was clearly admissible for the purpose of identifying deceased. *State v. Morgan* does not interfere, the court said, for its rule is merely the converse of the present holding, and requires exclusion when the "gruesome photograph is not at all necessary or material evidence in a criminal prosecution."[51] Here there was a fact, identity, to be established and the photograph was relevant. And to make

43. Ibid.
44. State v. Henry, 197 La. 999, 3 So. 2d 104 (1941).
45. State v. Johnson, 198 La. 195, 3 So. 2d 556 (1941).
46. State v. Morgan, 211 La. 572, 30 So. 2d 434 (1947).
47. Ibid.
48. Two judges dissented in the *Morgan* case and relied on the previous holding in State v. Johnson, 198 La. 195, 3 So. 2d 556 (1941), which allowed the gruesome photographs to be admitted in evidence in corroboration of the testimony of the coroner. Defendant in the *Johnson* case had objected to the photographs, arguing that the coroner alone could describe the wounds and establish the corpus delicti, but the court there overruled him and said the photographs also helped establish the corpus delicti.
49. 47 So. 2d 496 (La. 1950).
50. 47 So. 2d 559 (La. 1950).
51. 47 So. 2d 496, 505 (La. 1950).

admission of the photographs clearly correct, the court concluded that the picture of the foot was not gruesome at all.

In *State v. Ross*,[52] defendant argued that the coroner had already testified to and established the *corpus delicti* when the gruesome photographs were offered, thus requiring rejection of the pictures. This was the argument raised and acceded to by the court in the *Morgan* case. But here, the court said, a different situation was presented. Two of the three allegedly gruesome photographs were not offensive; the third showing the bloody face and chest of deceased was "somewhat repellent," but had it been plainly gruesome it would still have been admissible, for it was relevant to the establishment of an important fact-in-issue. Defendant claimed the killing was in self-defense; and contrary to defendant's statement that deceased held a pistol at the time, the picture showed him holding a pencil in his right hand.[53] This was the disputed fact to which the admission of the photograph was clearly relevant.

Reputation of Deceased

State v. Basco[54] was a murder prosecution in which defendant pleaded self-defense. At the trial his offer of evidence of deceased's reputation was rejected. The supreme court approved, stating that defendant had failed to establish an overt act or hostile demonstration on the part of the deceased at the time of the shooting.[55] Defendant's testimony was that he had shot at a hawk; a rifle was then fired at him, and he had shot in the direction of the sound of the rifle. In view of the fact that deceased was found shot in the back, the trial judge took a dim view of defendant's story, and did not believe that deceased had committed the overt act, thus requiring rejection of evidence of deceased's reputation. The supreme court agreed that defendant's story was weak and added that the trial court in determining whether the overt act was done may exercise a wide discretion and disbelieve anyone it wishes.[56] This holding is in accord with many previous decisions.[57]

52. 47 So. 2d 559 (La. 1950).
53. 47 So. 2d 559, 560 (La. 1950).
54. 216 La. 365, 43 So. 2d 761 (1950).
55. "In the absence of proof of hostile demonstration or of overt act on the part of the person slain or injured, evidence of his dangerous character or of his threats against accused is not admissible." Art. 482, La. Code of Crim. Proc. of 1928.
56. 216 La. 365, 371, 43 So. 2d 761, 763 (1949).
57. State v. Pullen, 130 La. 249, 57 So. 906 (1912); State v. Richardson, 175 La. 823, 144 So. 587 (1932); State v. Washington, 184 La. 544, 166 So. 669 (1936); State v. Scott, 198 La. 162, 3 So. 2d 545 (1941).

Generally, evidence of deceased's reputation on a plea of self-defense in a murder prosecution is offered for one of two distinct but occasionally undifferentiated reasons: to explain defendant's action as reasonable because resulting from his knowledge that deceased had a reputation for violence, and second, to allow the jury to infer that deceased was the aggressor, since he had a reputation for violence, even though defendant had no knowledge of this reputation.[58] Many courts hold that the proper foundation for admission of deceased's reputation consists in presenting first, evidence that defendant knew of the reputation, and second, evidence that deceased was the aggressor. As to this second criterion, the majority of courts rule that this evidence need only tend to show the aggression of deceased. But on this point of requiring evidence of aggression to justify admitting evidence of reputation, Louisiana under Article 482[59] goes much further. Showing deceased was the aggressor is insufficient; the judge must be convinced that deceased actually committed an overt act, such as pulling a knife. It has been argued repeatedly by Chief Justice O'Niell that the trial judge's deciding this issue violates defendant's constitutional right of trial by jury.[60] But the majority of the court have never agreed with him. Justice O'Niell's view is that the trial court's function is limited to the determination whether the evidence offered *tends* to establish the fact-in-issue, that is, logical relevancy, and is unconcerned with the question whether the evidence offered *establishes* the fact-in-issue, which is properly a jury function.

EXAMINATION AND CROSS-EXAMINATION REBUTTAL

The Code of Criminal Procedure provides that a witness "intentionally sworn" and testifying in chief to a single fact may be cross-examined upon the whole case,[61] and also that an accused who takes the stand is to be treated as any other witness and may be cross-examined upon the whole case.[62] In *State v. Angelle*,[63] the statute was applied to a witness; and in *State v. Jugger*,[64] the rule was used against a party defendant.

The *Angelle* case involved a deputy sheriff's testimony in the

58. Note, 64 A.L.R. 1022, 1029 (1929).
59. See Note 55, supra.
60. See his opinion in State v. Richardson, 175 La. 823, 144 So. 587 (1932).
61. Art. 376, La. Code of Crim. Proc. of 1928.
62. Id. at Art. 462.
63. 47 So. 2d 664 (La. 1950).
64. 47 So. 2d 46 (La. 1950).

course of a manslaughter prosecution that he had obtained a voluntary statement from the accused in jail. Counsel for the accused sought to show that the statement when obtained had not been written down but was later typed out from memory, and on cross-examination asked the deputy whether he had had pencil and paper or a typewriter with him in the jail cell. The trial judge ruled that the witness could not be asked this question, since on his direct examination he had not testified that the statement was taken down in writing. This was error, the supreme court said, citing Article 376. When the deputy testified that he had obtained the statement, accused had the right to cross-examine him as to all the circumstances under which the statement was made. He was to be subjected to questions on the whole case, which included the particular fact to which the witness had testified in chief.

In the *Jugger* case, in which several confessions were offered in evidence, the state rested its case; and accused asked to be allowed to take the stand for the sole purpose of showing that the confessions were obtained under duress. The court held that not allowing him to do so was correct. Article 462 requires accused as a witness to be subjected to complete cross-examination.[65]

CRIMINAL PROCEDURE

*Dale E. Bennett**

RIGHT TO COUNSEL

The right of one charged with a federal felony to have the assistance of counsel to aid in his defense is provided for in the Sixth Amendment of the United States Constitution. The constitutions of the various states, including that of Louisiana,[1] contain similar provisions. The Louisiana Code of Criminal Procedure further provides that it shall be the duty of the court to assign counsel in cases when a defendant charged with a felony makes an affidavit that he is unable to procure such legal assistance.[2] While it is well settled that failure to appoint counsel upon request constitutes reversible error, the court need not appoint counsel for the defendant unless he requests it. A related question, which has given courts in Louisiana and other states con-

65. Id. at 55.

1. La. Const. of 1921, Art. I, § 9. Similar provisions are found in earlier Louisiana constitutions beginning with Art. VI, § 18, of the Constitution of 1812.

2. Art. 143, La. Code of Crim. Proc. of 1928.