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THE DEFENDANT'S RIGHT TO WAIVE JURY TRIAL IN CRIMINAL CASES

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The right of a defendant in a criminal proceeding to trial by an impartial jury[1] is one of several constitutional safeguards in the attempt to insure a fair trial and to protect the accused from oppression.[2] There are times, however, when a defendant considers it desirable to waive this right and to elect trial by the court alone.[3] The crime charged may be of a revolting nature, such as rape; the victim may have been a prominent member of the community or a public official; the crime may have received sensational press notice. He may feel the need for trial by a judge when technical or complicated fact situations are involved. There may be something in the defendant's past life, reputation, or appearance likely to arouse prejudice against him in the minds of a jury. In addition, various psychological and strategic factors may lead defense counsel to believe that a trial without a jury would be advantageous, such as an intuitive lining up of the jury as a prosecution jury, a feeling that the judge's policy or attitude in regard to certain offenses is favorable, or fear of the professional juror's subservience to the prosecutor's office.

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[1]"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed . . . ." U.S. CONST. amend. VI. Art. III, §2, cl. 3, also provides for jury trial in all criminal cases except impeachment. These clauses are to be construed *in pari materia,* Callan v. Wilson, 127 U.S. 540, 549 (1888), and are not jurisdictional, Patton v. United States, 281 U.S. 276, 298 (1930). FLA. CONST. Decl. of Rights, provides: §11, "In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury"; §3, "The right of trial by jury shall be secured to all, and remain inviolate forever."

[2]The rights are particularly set out in U.S. CONST. amend. V, VI, and FLA. CONST. Decl. of Rights §§11, 12.

[3]See Oppenheim, *Waiver of Trial by Jury in Criminal Cases,* 25 MICH. L. REV. 695, 714 (1927).

Aside from waiver, there are three devices available to a defendant for countering jury bias and prejudice. He may request a change of venue,[4] ask for a continuance,[5] or accept trial by jury and rely on the voir dire to eliminate prejudiced jurors. But these alternatives have limitations. Change of venue is practicable only if hostility against an accused will be reduced by changing the place of trial. Extensive and intensive press coverage usually removes any advantage in a change of venue. A continuance is effective only if it may be expected that bias against an accused will subside, but this is unlikely in the case of defendants charged with sex or political offenses. And the value of the voir dire as an effective means of eliminating biased jurors is seriously impaired when widespread community animosity against an accused exists. A person aware of a prejudice is reluctant to admit it under public questioning.[6] Unconscious bias, while not uncommon, is difficult to detect.[7] Therefore there are situations in which a defendant legitimately feels that the only way he can obtain an impartial hearing is to waive jury trial.

Prior to 1930 conflicting views had been expressed in the federal courts as to the nature and purpose of the constitutional guarantee of jury trial. The question was whether the provisions were designed to establish a tribunal as a part of the frame of government or only to confer a personal privilege on the accused which he could waive. The weight of opinion followed the former view that the jury trial provisions are structural and not subject to waiver.[8] In *Patton v. United States*,[9] however, it was settled that a defendant in a federal criminal proceeding can waive his right to trial by jury. Mr. Justice

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[4]FED. R. CRIM. PROC. 21 (a) provides for change of venue on defendant's motion if the court is satisfied that prejudice against the defendant precludes a fair and impartial trial in the district. See FLA. STAT. §911.02 (1955) for the Florida procedure; also see Note, 54 HARV. L. REV. 679 (1941).

[5]Although the federal rules do not specifically provide for continuance, courts will postpone trials because of prejudicial publicity. Delaney v. United States, 199 F.2d 107, 111-16 (1st Cir. 1952), 53 COLUM. L. REV. 651 (1953). FLA. STAT. c. 916 (1955) deals with continuances in Florida.

[6]See Dennis v. United States, 339 U.S. 162, 175-85 (1950) (dissenting opinions); Busch, LAW AND TACTICS IN JURY TRIALS §141 (1949); Nizer, *The Art of the Jury Trial*, 32 CORNELL L.Q. 59, 63 (1946).

[7]See Notes, 53 COLUM. L. REV. 651, 659 (1953); 58 YALE L.J. 638 (1949).

[8]HELLER, THE SIXTH AMENDMENT 66-71 (1951); Grant, *Waiver of Jury Trials in Felony Cases*, 20 CALIF. L. REV. 132, 147-56 (1932); Griswold, *The Historical Development of Waiver of Jury Trial*, 20 VA. L. REV. 655 (1934).

[9]281 U.S. 276 (1930).

Sutherland, delivering the opinion of the Court, said:[10]

> "We come, then, to the crucial inquiry: Is the effect of the constitutional provisions in respect of trial by jury to establish a tribunal as a part of the frame of government, or only to guaranty to the accused the right to such a trial? . . .
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> ". . . .
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> "The record of English and colonial jurisprudence antedating the Constitution will be searched in vain for evidence that trial by jury in criminal cases was regarded as a part of the structure of government, as distinguished from a right or privilege of the accused. On the contrary, it uniformly was regarded as a valuable privilege bestowed upon the person accused of crime for the purpose of safeguarding him against the oppressive power of the King and the arbitrary or partial judgment of the court. . . .
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> ". . . .
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> "In the light of the foregoing it is reasonable to conclude that the framers of the Constitution simply were intent upon preserving the right of trial by jury primarily for the protection of the accused. If not, and their intention went beyond this and included the purpose of establishing the jury for the trial of crimes as an integral and inseparable part of the court, instead of one of its instrumentalities, it is strange that nothing to that effect appears in contemporaneous literature or in any of the debates or innumerable discussions of the time. . . . The reasonable inference is that the concern of the framers of the Constitution was to make clear that the right of trial by jury should remain inviolable, to which end no language was deemed too imperative. . . .
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> "Another ground frequently relied upon for denying the power of a person accused of a serious crime to waive trial by jury is that such a proceeding is against public policy. . . .
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> "It is difficult to see why the fact, frequently suggested, that the accused may plead guilty and thus dispense with a trial altogether, does not effectively disclose the fallacy of the public policy contention; for if the state may interpose the claim of

[10] *Id.* at 293, 296, 297, 302, 305.

> public interest between the accused and his desire to waive a jury trial, *a fortiori* it should be able to interpose a like claim between him and his determination to avoid any form of trial by admitting his guilt. If he be free to decide the question for himself in the latter case, notwithstanding the interest of society in the preservation of his life and liberty, why should he be denied the power to do so in the former? It is no answer to say that by pleading guilty there is nothing left for a jury to try, for that simply ignores the question, which is not what is the effect of the plea? the answer to which is fairly obvious, but, in view of the interest of the public in the life and liberty of the accused, can the plea be accepted and acted upon, or must the question of guilt be submitted to a jury at all events? Moreover, the suggestion is wholly beside the point, which is, that public policy is not so inconsistent as to permit the accused to dispense with *every* form of trial by a plea of guilty, and yet forbid him to dispense with a *particular* form of trial by consent."

The Florida Constitution, like most constitutions, is silent in regard to waiver of jury trial in criminal cases. By statute,[11] however, a jury may be waived in all cases except those in which the death penalty may be imposed. In two decisions[12] the *Patton* case was quoted at considerable length and approved. In 1953, in *Sneed v. Mayo*,[13] the situation in Florida was summarized by Justice Sebring as follows:

> "As to the provision of section 11, Declaration of Rights, which guarantees the right of trial by jury, it has been the statutory law of this state since 1868 that in a trial for a misdemeanor a jury may be waived, *provided the waiver is entered of record*. . . . In May 1939, this Court held, in Zellers v. State, 138 Fla. 158, 189 So. 236, that even though the existing statute

[11] FLA. STAT. §912.01 (1955).

[12] Jones v. State, 155 Fla. 558, 20 So.2d 901 (1945); Zellers v. State, 138 Fla. 158, 189 So. 236 (1939).

[13] 66 So.2d 865, 871 (Fla. 1953). Although a jury cannot be waived in a capital case in Florida, the same result can be reached by a plea of guilty. Thus, in McCall v. State, 135 Fla. 712, 726, 185 So. 608, 614 (1939), the Court said: "There can be no doubt that where the statute authorizes the acceptance of a plea of guilty of a capital offense that the accused may waive the constitutional right to trial by jury by a plea of guilty and have the evidence submitted to the trial court to determine the degree of punishment . . . ."

authorized waiver of a jury trial only in case of misdemeanors, a *competent* defendant accused of felony might waive his right to trial by jury and consent to the trial of the issues by the court, *provided the fact of his waiver was entered on the record.* On October 10, 1939, the Florida Criminal Procedure Act became effective. . . . Section 181 thereof provided that 'In all cases except where a sentence of death may be imposed trial by jury may be waived by the defendant. Such waiver *shall be made in open court* and an indorsement thereof made on the indictment or information and signed by the defendant. . . .

"Thus, while the right of an accused to waive trial by jury in all criminal cases except death penalty cases is now firmly established in this jurisdiction, it is clear that in order for a waiver to be binding on the accused the waiver must be made in open court and the fact of the waiver must appear affirmatively either from the record proper or from the transcript of the trial proceedings."

Assuming that it is now well settled that a jury trial may constitutionally be waived in criminal cases, is it a right of the defendant alone or must the prosecutor or court or both consent? The Florida statutes do not deal expressly with this problem, but rule 23 (a) of the Federal Rules of Criminal Procedure[14] requires court approval and government consent before waiver is permitted. This rule is based upon the following dictum in the *Patton* case:[15]

"In affirming the power of the defendant in any criminal case to waive a trial by a constitutional jury and submit to trial by a jury of less than twelve persons, or by the court, we do not mean to hold that the waiver must be put into effect at all events. That perhaps sufficiently appears already. . . . Not only must the right of the accused to a trial by a constitutional jury be jealously preserved, but the maintenance of the jury as a fact finding body in criminal cases is of such importance and has such a place in our traditions, that, before any waiver can become effective, the consent of government counsel and the sanction of the court must be had, in addition to the express

[14]"Cases required to be tried by jury shall be so tried unless the defendant waives a jury trial in writing with the approval of the court and the consent of the government."

[15]281 U.S. 276, 312 (1930).

> and intelligent consent of the defendant. And the duty of the trial court in that regard is not to be discharged as a mere matter of rote, but with sound and advised discretion, with an eye to avoid unreasonable or undue departures from that mode of trial or from any of the essential elements thereof, and with a caution increasing in degree as the offenses dealt with increase in gravity."

Of the some twenty-two jurisdictions permitting waiver in felony cases, thirteen require the consent of either the court or the prosecutor, or both; and eight require only the consent of the defendant.[16] The jurisdictions may be grouped in the following categories: (1) consent of both the court and the prosecutor required; (2) consent of the court required; (3) consent of the prosecutor required; (4) consent of the defendant alone required. It is not clear how Florida should be classified. In *Jones v. State*[17] the defendant through counsel in open court announced that he would waive a jury and submit to trial by the court. The state made no objection, but the trial judge declined to accept the offer of waiver and required the defendant to go to trial before a jury. On appeal the Supreme Court, citing the *Patton* dictum, held that the trial judge's consent is required for waiver and that neither the Constitution nor state statutes require him to dispense with a jury when a defendant waives. Although this decision requires court consent, it is still an open question as to whether consent of both court and prosecutor is required.

In those jurisdictions requiring consent by either the court or the prosecution, or both, consent to a defendant's request for waiver is ordinarily obtained as a matter of course.[18] The possibility of hostile juries in certain types of cases, however, suggests that the requirement of prosecutor or court consent may clash with a defendant's constitutional right to trial by an impartial jury.

The constitutionality of Federal Rule of Criminal Procedure 23 (a) was attacked in the recent case of *United States v. Silverman*.[19] The eight defendants were indicted under the Smith Act[20] for conspiracy to advocate the overthrow of the government by force and violence.

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[16]JUDICIAL COUNCIL OF THE STATE OF NEW YORK, FIFTH ANN. REP. 161 (1939).

[17]155 Fla. 558, 20 So.2d 901 (1945).

[18]See Note, 65 YALE L.J. 1032, 1039, n.45 (1956).

[19]Crim. No. 9111, D. Conn., Mar. 29, 1956, *notice of appeal filed*, 2d Cir., April 20, 1956. This case is the subject of an excellent note in 65 YALE L.J. 1032 (1956).

[20]18 U.S.C. §2385 (1952).

Before trial they moved under rule 23 (a) to waive a jury and requested trial by the court alone. The government refused consent to the waiver. In support of the motion the defendants contended that waiver of jury trial rests solely with an accused and that rule 23 (a), by restricting that election, is unconstitutional on its face. They also maintained that in their case an impartial jury was unobtainable and that to compel trial by jury would violate the impartial jury requirement of the sixth amendment. Finally, the defendants claimed that the withholding of consent by the government must be supported by an adequate reason and cannot be arbitrarily exercised.

The court denied the defendants' motion. It recognized that compelling arguments existed for allowing an accused alone to determine the mode of trial, but held that rule 23 (a) has the force of a statute and unconditionally requires government consent. The court also upheld the constitutionality of the rule but did not discuss the constitutional arguments raised by the defendants.

The defendants' claim that they had an unqualified right to waive a jury is unsupported either by case law or by the sixth amendment. Although the *Patton* case decided that jury trial can be waived, it did not hold that a defendant has an unqualified right to waive a jury. Indeed, the Supreme Court in the dictum quoted above stated that government consent is needed for waiver. This dictum has been followed by a number of lower federal courts[21] in refusing to recognize a defendant's request for waiver when the government withheld consent, and in fact was the basis for rule 23 (a).[22]

The sixth amendment right to jury trial does not establish the existence of an unqualified right to waive a jury. It confers upon a defendant a privilege not to be subjected against his will to another form of trial, but it does not give him a right to insist upon that different form.[23] It is true that federal courts have allowed defendants to waive rights similar to the right of trial by jury,[24] but in none of

[21]*E.g.*, C.I.T. Corp. v. United States, 150 F.2d 85, 91-92 (9th Cir. 1945); Rees v. United States, 95 F.2d 784, 790-91 (4th Cir. 1938); United States v. Dubrin, 93 F.2d 499, 505 (2d Cir. 1937), *cert. denied*, 303 U.S. 646 (1938).

[22]See advisory committee note to rule 23 (a).

[23]See Palmer v. State, 195 Ga. 661, 669, 25 S.E.2d 295, 301 (1943); People v. Scornavache, 347 Ill. 403, 414, 179 N.E. 909, 913 (1931); Commonwealth v. Millen, 289 Mass. 441, 465, 194 N.E. 463, 474, *cert. denied*, 295 U.S. 765 (1935).

[24]Johnson v. Zerbst, 304 U.S. 458 (1938) (assistance of counsel); United States v. Murdock, 284 U.S. 141 (1931) (self-incrimination); Trono v. United States, 199 U.S. 521 (1905) (double jeopardy); Morland v. United States, 193 F.2d 297 (10th Cir. 1951) (speedy trial); United States v. Sorrentino, 175 F.2d 721 (3d Cir.), *cert.*

these instances was the decision based on constitutional grounds.

Although rule 23 (a) is not unconstitutional on its face, its application in specific cases may result in a violation of the sixth amendment guarantee of an impartial jury by forcing a defendant to trial before a biased jury when he has sought trial by the court. Widespread community hostility toward a defendant may render ineffective the usual devices for eliminating prejudiced jurors. For example, in *United States v. Dennis*,[25] the first communist trial under the Smith Act, the defendants contended on appeal to the Court of Appeals for the Second Circuit that the trial court erred in denying their motions for a continuance. They argued that public opinion was such that any jury would be predisposed to regard the Communist Party as an illegal revolutionary conspiracy — one of the central issues to be tried. The court held that a Smith Act defendant must be brought to trial even in the face of "heated public feeling against Communists" that might produce a biased jury. Judge Learned Hand said:[26]

> "[B]ut there was no reason to supposed that it would subside by any delay which would not put off the trial indefinitely. The choice was between using the best means available to secure an impartial jury and letting the prosecution lapse. It was not as though the prejudice had been local, so that it could be cured by removal to another district; it was not as though it were temporary, so that there was any reasonable hope that with a reasonable continuance, it would fade. . . . Certainly we must spare no effort to secure an impartial panel; but those who may have in fact committed a crime cannot secure immunity because it is possible that the jurors who try them may not be exempt from the general feelings prevalent in the society in which they live; we must do as best we can with the means we have."

In the *Dennis* case the defendants did not seek to waive a jury trial. Thus the alternative to jury trial was to allow the prosecution to

denied, 338 U.S. 868 (1949) (public trial); Grove v. United States, 3 F.2d 965 (4th Cir.), *cert. denied*, 268 U.S. 691 (1925) (confrontation of witnesses). But the requirement of a unanimous verdict may not be waived in the federal courts. Hibdon v. United States, 204 F.2d 834 (6th Cir. 1953) (unanimous verdict considered element of due process); see FED. R. CRIM. P. 31 (a).

[25]183 F.2d 201 (2d Cir. 1950), *aff'd*, 341 U.S. 494 (1951).

[26]*Id.* at 226.

lapse, an unacceptable solution. In *Silverman,* on the other hand, the defendants in requesting waiver invoked the frequently employed alternative of trial by the court. The dilemma presented in *Dennis* was thereby avoided. The real issue was whether an unbiased jury was obtainable at all. The court should therefore have explicitly decided whether an impartial jury was obtainable; a finding that any jury would probably be biased would have required granting the defendants' motion for waiver, for denial of waiver under those circumstances would also deny the right to an impartial jury.

In the *Silverman* case the government contended that rule 23 (a) allows it to withhold consent arbitrarily. Certain reasons, however, were given for its action: (1) trial by jury is the normal and accepted method to be used in disposing of serious criminal cases; (2) considering the nature of the charge — conspiracy to advocate the overthrow of the government by force and violence — jury trial would be the appropriate means of trying the defendants. Rule 23 (a) could have been interpreted to allow consent to be withheld only upon reasonable grounds. This would avoid the constitutional issue, for, if the court determined the jury bias question favorably to the defendants, government refusal to consent would be clearly unreasonable. On the other hand, if the court decided differently on the bias question, it would then be necessary to evaluate the reasons given for refusing consent.

The reasons given by the government in the *Silverman* case suggest a "public interest" in trial by jury that must be protected. But the *Patton* case clearly rejected the public interest argument as an unsound reason for refusing waiver, on the ground that a defendant may dispense with a trial altogether by a plea of guilty. The argument that the public has an interest in conducting trials by jury rests on the theory that the jury will protect an accused from unfounded conviction. But when widespread hostility against a defendant exists this argument is blunted. It is also weakened when a defendant makes an intelligent waiver. That the waiver was the voluntary act of the defendant, done with a full understanding of his constitutional privilege, should be the extent of the public's interest.

In the *Patton* case the Supreme Court in the main portions of its opinion stated that trial by jury is not a part of the frame of government nor does public policy require it. The right to trial by jury is primarily for the protection of the accused. If this is so, then the defendant alone should be consulted as to whether he wishes

to claim or forego this privilege. If the consent of either the court or the prosecutor, or both, is required to make the waiver effective — in other words, if the defendant's desire is subject to veto — the very purpose of the waiver may be nullified. For these reasons, Rule 23 (a) of the Federal Rules of Criminal Procedure should be revised to eliminate entirely the need for government consent to waiver and to require court approval only as assurance that waiver has been intelligently made. Similarly, the Florida statutes should be changed to permit waiver in capital cases, to make it clear that prosecutor consent is not required, and to limit court approval to a determination that the waiver was made voluntarily and with understanding.

Prosecutor consent should be eliminated for the additional reason that it is questionable whether he may be relied upon to protect a defendant's rights. Although, in theory, it is the prosecuting attorney's function not to convict but to see that justice is done, in practice the desire for a verdict of guilty may substantially weaken his role on behalf of an accused. And, except to assure that a defendant makes an intelligent choice, knowing his rights, there is little more reason to require court approval than government consent to a waiver.

A final question arises. Would these proposed changes offend any constitutional provisions? The dictum in the *Patton* case suggesting government consent and court approval would not appear to be a statement of a constitutional requirement under the sixth amendment but rather an announcement of a desired policy of judicial administration. With respect to the latter, the Court cautioned that the "public policy of one generation may not, under changed conditions, be the public policy of another."[27] At the present time strong arguments can be made that it is in the public interest to encourage waiver of jury trial in criminal cases. The jury system has been attacked on numerous occasions as an expensive, cumbersome, and time-wasting institution. The guarantee of a jury trial is undoubtedly still necessary for the protection of the defendant. If he is satisfied to forego this privilege and understands exactly what rights he is giving up, however, there would appear to be no objection on grounds of public policy to having him tried by the court without a jury.

It could be argued that a statute permitting an accused to waive jury trial at his discretion would be a legislative infringement on judicial power. But, since the Federal Rules of Criminal Procedure are promulgated by the Supreme Court, such an objection probably

[27]Patton v. United States, 281 U.S. 276, 306 (1930).

would be obviated on the federal level. Nevertheless this argument has caused some trouble in the states. The history of the problem in Illinois is illustrative.

One year after the *Patton* case the Supreme Court of Illinois decided *People v. Scornavache.*[28] The defendant had been charged with murder. He waived a jury and requested that his case be heard by the court. The state's attorney insisted that the case be tried before a jury, and the trial judge concurred. The defendant was convicted of manslaughter. A single issue was present for review – the right of the state to a jury trial in a felony case. The defendant contended that the Illinois constitution did not establish the jury as an integral part of the frame of government but merely guaranteed the accused this right. The state argued that the constitutional provision operated equally on behalf of the state and of the accused. The court adopted the position of the prosecution as follows:[29]

> "There is, of course, nothing in the constitution conferring the right of jury trial on the State, but such has for centuries been the established mode of trial in criminal cases. The maintenance of a jury as a fact-finding body occupies that place in government, as we know it in America, which, in the absence of a statute so providing, requires that such trial be not set aside merely on the choice of the accused.
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> "While it is true . . . that the right of jury trial is so conferred on the accused that it may not be taken from him without his consent, this is by no means saying that the State may not object to a trial before the court. A trial by the court is not, and never has been, within the protective provisions designed as a shield to the accused. So long, therefore, as objection on the part of the prosecution does not attack the safeguard of trial by jury no constitutional right is jeopardized. Preservation of the instrumentalities of government is of sufficient interest to the people to give them a right to object to jury waiver. The protective provision of the constitution was not designed to enable the accused to say there shall be no jury trial, but, on the contrary, to enable him to say there shall be such a trial. The right to a jury trial is not the right to be tried without a jury. The waiver of the accused is, as the term indicates, a relinquish-

[28] 347 Ill. 403, 179 N.E. 909 (1931).
[29] *Id.* at 415, 179 N.E. at 913.

ment of the right, and is, in effect, a declaration that he is willing that the court try the issue of fact. . . .

". . . . The long recognition by courts everywhere that trial in a criminal case means a jury trial has clearly given to the people the right to object to a trial by the court on waiver of a jury trial by the accused."

This language is obviously much stronger than the *Patton* dictum but is ambiguous as to the basis for the state's right to a jury trial. In 1941 the Illinois Legislature amended the criminal code by providing for waiver by a defendant alone, without the consent of the state's attorney and approval by the court. Thereafter, in *People v. Scott*,[30] the prosecution demanded a trial by jury after the defendant had waived it. The trial court required the case to be tried by a jury, and the defendant was found guilty. On appeal the Supreme Court of Illinois did not pass upon the contention of the state that the statute violated the jury trial provisions of the state constitution but did hold that the statute violated the provision of the constitution placing all judicial powers in the courts:[31]

"The trial of a criminal case is certainly the exercise of judicial power. If the recent proviso is considered as mandatory it requires the circuit judge, upon the election of a defendant in a criminal case, to exercise judicial power in a manner directed by the legislature, and not in a manner as might be determined by the court."

The *Scott* case was recently overruled by the same court in *People v. Spegal*.[32] This was a murder case, and the defendant twice sought to waive a jury. The state interposed no objection to either request, but the court denied the motions to waive. On appeal the defendant contended that the court erred in refusing to allow him to waive a jury and be tried by the court alone. This time the court upheld the statute and reversed the conviction, stating:[33]

"That there are limits beyond which the legislature may

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[30]383 Ill. 122, 48 N.E.2d 530 (1943).

[31]*Id.* at 126, 48 N.E.2d at 532.

[32]25 Ill.2d 211, 125 N.E.2d 468 (1955), 33 CHI.-KENT L. REV. 379 (1955).

[33]25 Ill.2d 211, 220, 125 N.E.2d 468, 472 (1955).

not go in specifying how judicial power is to be exercised is clear. The legislature cannot direct the judiciary how cases should be decided . . . nor can it unduly circumscribe the power of courts to determine facts and apply the law to them . . . .

"None of these cases, however, goes so far as to assert an inherent power in the judiciary to override the choice of the parties in determining whether a particular case is to be tried by a jury or by the court, or to override the determination of the legislature as to the method of trial to be employed where a jury trial is not required by the constitution."

Revision of statutes or court rules to eliminate the need for government consent to waiver and court approval should not be unconstitutional either as violative of constitutional jury trial provisions or as unwarranted legislative infringement on judicial power. That the right of an accused to a jury should be carefully guarded is axiomatic, but it is a safeguard for his benefit that he alone should be permitted to waive, providing he does so intelligently and with full knowledge of his rights. Court approval should be limited to this determination.