

BAR NEWS ITEM

CARLISLE—The Dickinson School of Law will hold its third annual Tax Seminar and Workshop for accountants and lawyers on September 16 and 17 at Americana Host Inn in Harrisburg. The program will feature the "Impact of the Economic Recovery Tax Act of 1981 on Income Tax Planning for Small and Closely Held Business." The seminar will emphasize the new Accelerated Cost Recovery System and investment and rehabilitation tax credits. For more information call the Dickinson School of Law Continuing Legal Education Office at (717) 243-5529.

EDITOR'S NOTE

As you may have already surmised, if you have not been so informed, personally, by the editor, this year's bound volume is a little slow in completion. We were advised by Geo. T. Bisel Company, a number of years ago, that it would be best not to adopt a policy of issuing a bound volume each year, on or about the same day. Rather, they suggested that we decide to publish a book of such size and content as we felt was worthy of our effort. This way, each year, or thereabouts, we would come up with a volume of about the same size as before, thus creating a kind of uniformity and general attractive appearance for our publication.

This advise, we have endeavored to follow, with a result, the editor and staff believe to be among the finest of the county publications of this nature in our state. And we have always been able to publish one bound volume a calendar year.

A number of factors have slowed down the production this year, however, among them an editorial policy of economic conservatism, which we hope has not overshot its mark. As a result of this policy, we have been able to continue with our more basic policy of always publishing the weekly Court calendar, always including some Court opinion pages in each issue, as often as possible including announcements of public or Bar Association importance (free of charge), sometimes including news items, and always making certain there is enough room for our commercial and legal notice advertisements, without giving any of this a crowded appearance. We have also been able to continue using quality paper and printing, all, we hope, within the approximate ambit of our budget, as espoused at the beginning of our last fiscal year. This, despite continuing inflation and general concern over the economy, and without increase in charges to our customers.

Now, however, we are going to have to bring Volume 5 to a close, in short order, or we will have overdone the belt tightening involved. We cannot permit our expenses for Volume 5 to eat into our receipts for fiscal year 1982-83, to too great an extent, by prolonging the completion of that volume. For this reason, the editor has requested a meeting of the board of directors, to decide on exactly what page we shall stop Volume 5 and start Volume 6.

Shortly, you will be receiving notice, in an advance sheet issue, of the date of completion. We thank you for your patience thus far, in awaiting this announcement, and we trust that you will bear with us a little longer.

to effective assistance of counsel in trial counsel's failure to provide the District Attorney with sufficient notice of his alibi defense. Before a defendant is entitled to relief under a theory of ineffective assistance of trial counsel, it must appear that the lawyer's act of omission or commission was arguably ineffective and that it is likely that such ineffectiveness was prejudicial to the defendant. *Commonwealth v. Wade*, 480 Pa. 160, 389 A.2d 560 (1978) citing *Commonwealth v. Hubbard*, 472 Pa. 259, 372 A.2d 687 (1977). As earlier noted, any error committed by trial counsel in failing to provide the required alibi defense was not prejudicial to defendant.

Having concluded that defendant's second post trial motions were not timely filed and are meritless in substance, we will deny them. We further note that a timely appeal was not filed and this was a condition of granting an appeal bond. So the bond will be revoked and the defendant will be ordered to report to the Franklin County Prison to begin serving the sentence.

ORDER OF COURT

June 29, 1982, the defendant's post trial motions are denied as untimely filed and meritless and the appeal bond is revoked. The defendant is directed to report to the Franklin County Prison on July 2, 1982, at 6:00 P.M. to begin serving his sentence. Should the defendant fail to appear at that time, it is ordered that a bench warrant shall issue and the defendant shall be apprehended by the Sheriff of Franklin County and placed in the Franklin County Prison to begin serving his sentence.

COMMONWEALTH V. WEST (No. 2) C.P., Franklin County Branch, No. 422 of 1981

Criminal Law - Witnesses' Refusal to Testify - 5th Amendment Right

1. Whether a witness may invoke her 5th Amendment privilege against self-incrimination is left to the sound discretion of the trial court after consideration of all the circumstances.
2. The privilege against self-incrimination extends not only to those disclosures which in themselves establish guilt, but also to any fact which might constitute an essential link in a chain of evidence by which guilt can be established.

District Attorney

Timothy W. Misner, Esq., Attorney for Defendant

OPINION

EPPINGER, P. J., June 14, 1982:

George Peter West, Jr., was convicted of burglary by a jury, filed post-trial motions which were denied without opinion and has been sentenced. He appealed from the sentence.

During the trial he called Teresa Corbett as a witness. On advice of counsel, she refused to testify, claiming her Fifth Amendment right. The court was told by defendant's attorney that she would say that she and West were in another room of the house and never participated in planning the crime nor dividing the proceeds and that they were there the entire time during which these events occurred, including the time when the crime was committed. She was excused from testifying after she had claimed the privilege and argument by her counsel at side-bar.

On arguments, the failure of the court to compel the witness to testify was the only matter presented. West claims that his Sixth Amendment right to offer testimony of witnesses in his behalf was violated.

If Corbett testified as West claimed she would, that she was at the house but not participating in the crime, it nevertheless placed her in jeopardy for being at the scene where the crime was planned and where the proceeds were distributed. Considering this alone, it is not perfectly clear that the witness was mistaken in her apprehension of self-incrimination and the answers could not possibly have such a tendency. Therefore the court could not properly overrule her claim of the privilege. *Commonwealth v. Carrera*, 424 Pa. 551, 553-554, 227 A.2d 627 (1967).

Even though the witness may have given defendant's attorney the impression that she would provide an alibi for his client, there is no way for the court to know whether she was speaking the truth then, or whether coming to the stand under oath her testimony would be different and incriminate her beyond placing her at the house. How to determine what her testimony would be without asking her, eluded counsel and the

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LEGAL NOTICES, cont.

show cause, if any they have, why the prayer of said Petition should not be granted.

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7-23-82, 7-30-82, 8-6-82, 8-13-82

NOTICE

Court of Common Pleas of
the 39th Judicial District
of Pennsylvania
Franklin County Branch
Miscellaneous Docket
Volume Y, Page 145

NOTICE IS HEREBY GIVEN that on July 8, 1982, the Petition of Jonathan Cornelius Adams was filed in the above-named Court, praying for a decree to change his name to Jonathan Cornelius Bishop.

The Court has fixed Tuesday, August 17, 1982, at 9:30 A.M., in Court Room No. 1, as the time and place for the hearing of said Petition, when and where all persons interested may appear and show cause, if any they have, why the prayer of said Petition should not be granted.

Dennis A. Zeger
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NOTICE OF PUBLIC SALE OF REAL ESTATE

Pursuant to Order of Court the Citizens National Bank and Trust Company of Waynesboro, Pennsylvania, guardian of the estate of James Edward Strang, an incompetent, will offer for public sale approximately 19 acres of real estate situate for the most part in Hamiltonban Township, Adams County, Pennsylvania, and partly in Quincy Township, Franklin County, Pennsylvania, on August 14, 1982, at 12:30 p.m. at the premises located on South Mountain Road, South Mountain, Pennsylvania. For deed reference see Adams County Deed Book Volume 253, Page 559, and Franklin County Deed Book Volume 208, Page 543. Terms of sale made known day of sale.

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court. We concluded that she had the right to exercise her privilege.

Whether a witness may invoke the privilege against self-incrimination is left to the sound discretion of the court which must consider all the circumstances. *Commonwealth v. Rodgers*, 472 Pa. 435, 457, 372 A.2d 771 (1977). See also *Commonwealth v. Rolon*, 486 Pa. 573, 406 A.2d 1039 (1979) and *In Re Grand Jury*, 251 Pa. Super. 43, 379 A.2d 323 (1977).

The privilege against self-incrimination extends not only to those disclosures "which would in themselves establish guilt, but also to any fact which might constitute an essential link in a chain of evidence by which guilt can be established," *Carrera*, at 553, or any "questioning which might forge a link in a chain of evidence." *Commonwealth v. Lenart*, 430 Pa. 144, 242 A.2d 259 (1968). See also *In Re Grand Jury* at 48.

For the reasons above stated we denied defendant's post-trial motions and proceeded to sentence. This opinion is filed in support of our actions.

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BRENER, ET AL, C.P. Franklin County Branch, A.D. 1981 -
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Assumpsit and Trespass - Legal Malpractice

1. The elements of a legal malpractice claim must indicate: 1. The employment of the attorney or other basis for duty; 2. The failure of the attorney to exercise ordinary skill and knowledge; and 3. That such negligence was the proximate cause of damage to the plaintiff.

2. Where a party is required to repay proceeds from a sale, they suffer no damages in giving up that to which they were not entitled and such repayment cannot be the basis for a legal malpractice claim.

Timothy W. Misner, Esq., Attorney for Plaintiff