proof.[91] For in this rare situation the petitioner has no other remedy—if he is lynched or subjected to cruelty there can be no repair. In such a case, proof of past deprivation of constitutional due process by the demanding state, though not sufficient by itself, may be relevant to show the possibility of prospective deprivation of constitutional rights for which no remedy is available.

In the vast majority of cases, however, such an argument should not be possible. State boundaries present no obstacle to a fleeing criminal. The extradition process, essential even in the earliest days of our nation, plays an even more vital role today in the interstate control of crime and the furtherance of criminal justice. The fugitive should not be allowed to delay and disrupt this process as a matter of course by raising constitutional questions involving past or prospective treatment by the demanding state. Assuming that a remedy is available in the federal courts of the demanding state and, as must be assumed, that federal courts throughout the breadth of the land will be vigilant in protecting the liberties of the fugitive, the inconvenience he suffers in being returned is overbalanced by the necessities of law enforcement and the requirements of an integrated federal system. These demand interstate rendition machinery of efficiency and speed. The review upon habeas corpus of the detention of the fugitive by the asylum state must remain as a safeguard to the innocent, primarily for the correction of obvious mistakes; but the fundamental rights of the fugitive, except when remedies are entirely unavailable there, should be left to courts located in the demanding state.

AGENTS' REPORTS AND THE ATTORNEY-CLIENT PRIVILEGE

A problem which has led to divergent and confusing decisions arises from the assertion of the attorney-client privilege to prevent disclosure of reports prepared by corporate agents and eventually transmitted to counsel. In applying the privilege in these situations the courts have usually relied upon tests poorly adapted to correct analysis in terms of the basic rationale of the privilege.

This rationale assumes that full disclosure by the client[1] to the attor-

[91] Perhaps a distinction could be drawn between federal and state courts, allowing the federal court to inquire into the constitutional question only in the exceptional situation noted and the state court not at all. This would prevent the unwholesome situation of one state's criticizing and declaring invalid the laws or institutions of a sister state. This practical differentiation between federal and state courts is contradicted by the fact that both have concurrent jurisdiction over habeas corpus in extradition cases. State courts, however, should be more reluctant, even in the most extreme situations, to inquire into the constitutional question. Federal courts, on the other hand, have as one of their primary tasks the reviewing of the constitutionality of state laws and even state institutions, when they are called into question. Federal supervision of state schools, Sweatt v. Painter, 339 U.S. 629 (1950), and state elections, Smith v. Allwright, 321 U.S. 649 (1944), is an established and relevant fact.

[1] The problems inherent in applying the attorney-client rationale to statements from the attorney to the client are beyond the scope of this comment. The basis for such protection is

ney[2] is necessary for the effective operation of the legal system,[3] and that such disclosure[4] can be achieved only by a guarantee that the client's confidences will be protected. This policy is felt to outweigh the countervailing interest in full and unrestricted testimony at trial.[5] But because of this countervailing interest, the courts have said that the scope of the privilege must be strictly limited.[6]

The privilege, however, is not restricted to direct communication by an individual client, but has generally been extended to agents' reports prepared for and transmitted to the principal's attorney. This protection has been granted in proper cases because the use of agents to aid in the communication between client and attorney is often necessary, and to deny the privilege to this class of documents would, to that extent, unnecessarily frustrate the purpose of the privilege.[7] The requirements for invoking the privilege as to agents' reports, un-

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probably to prevent disclosure of the information contained in the client's communication. Magida v. Continental Can Co., 12 F.R.D. 74 (S.D. N.Y., 1951) (semble).

[2] The communication to an "attorney" acting in another capacity may be non-privileged. Lifschitz v. O'Brien, 143 App. Div. 180, 127 N.Y. Supp. 1091 (2d Dep't, 1911) (attorney employed as agent to procure a loan); Peyton v. Werhame, 126 Conn. 382, 11 A. 2d 800 (1940) (attorney acting as executor); Kent Jewelry Corp. v. Kiefer, 202 N.Y. Misc. 778, 783, 113 N.Y.S. 2d 12, 18 (S. Ct., 1952) (any actions falling outside of strictly legal capacities); McKnew v. Superior Court, 23 Cal. 2d 58, 142 P. 2d 1 (1943) (lawyer acting as witness to an examination of accounts); Gallagher v. Akoff Realty Corp., 197 N.Y. Misc. 460, 95 N.Y.S. 2d 796 (S. Ct., 1950) (attorney acting as negotiator in business transaction). The decisions in the cited cases seem to be based upon an assumption by the courts that the rationale of the privilege is applicable only in those cases where the attorney's legal "capacities" are involved. This accords with the policy of construing the privilege within the narrowest possible limits consistent with its rationale. Foster v. Hall, 29 Mass. 89, 97 (1831). It is not at all certain to what extent the privilege should be broadened to take into account the expanding scope of the lawyer's advisory function. The determination of this issue must be made after a decision as to how much of the total attorney-client relationship should be "sedulously fostered" by a veil of secrecy. But see Palatini v. Sarian, 15 N.J. Super. 34, 83 A. 2d 24 (1951). The expanding function is described in Curtis, The General Practitioner and the Specialist, University of Chicago Law School Conference Series, No. 11, p. 3 (1952).

[3] See, e.g., Kilgo v. Continental Casualty Co., 140 Ark. 336, 215 S.W. 689 (1919); Connecticut Mutual Life Insurance v. Scheafer, 94 U.S. 457, 458 (1876); Blackburn v. Crawfords, 70 U.S. 175, 192 (1865).

[4] These matters are thought to be those damaging to the client's cause. See 1 Thornton, Attorneys at Law § 94 (1914).

[5] See Magida v. Continental Can Co., 12 F.R.D. 74, 76 (S.D. N.Y., 1951). The requirements for any rule of privileged communication are set forth in 8 Wigmore, Evidence § 2285 (3d ed., 1940): "(1) The communications must originate in a *confidence* that they will not be disclosed; (2) This element of *confidentiality must be essential* to the full and satisfactory maintenance of the relation between the parties; (3) The *relation* must be one which in the opinion of the community ought to be sedulously *fostered;* (4) The *injury* that would inure to the relation by the disclosure of the communications must be *greater than the benefit* thereby gained for the correct disposal of litigation."

[6] E.g., McKnew v. Superior Court, 23 Cal. 2d 58, 142 P. 2d 1 (1943); State v. Ingels, 4 Wash. 2d 676, 104 P. 2d 944 (1940) (semble).

[7] Schmitt v. Emery, 211 Minn. 547, 2 N.W. 2d 413 (1942); consult Privileged Communications—Extension of the Privilege to Communications Involving Agents, 50 Mich. L. Rev. 308, 313 (1951). In the Schmitt case the court held that "[w]here a document is prepared by

like those for direct attorney-client communications,[8] have not been clearly defined; the demands of both, however, find their basis in the rationale of the privilege. In determining the proper requirements, it appears important to distinguish between two broad categories of agents' reports: (a) those which originate for purposes other than or in addition to client-attorney communication; and (b) those which come into being for the sole purpose of conveying information to an attorney.

As to the former, it is well settled that if a report originates independently of an attorney-client relationship, it is not privileged,[9] and a later entrusting of such report to an attorney makes no difference.[10] If the privilege's promise of secrecy could have played no part in producing the disclosure, there exists no reason for protection, and the countervailing interest in full testimony at trial will prevail. It has been suggested, however, that the privilege entails no requirement that the document has originated for the exclusive purpose of client-attorney communication.[11] This appears to be faulty reasoning;[12] if a report is made for reasons in addition to that of later use by an attorney, the disclosure usually would have been made regardless of the privilege and, again, no reason would exist for its application. Thus, in the typical business situation the absence of the privilege's protection would not change the decision to require a report useful for the general purposes of the company. And it follows, as well, that where only a part of the document is found to have come into existence for

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an agent or employee by the direction of the employer for the purpose of obtaining the advice of the attorney . . . such document is in effect a communication between attorney and client. The client is entitled to the same privilege with respect to such a communication as one prepared by himself." Schmitt v. Emery, supra, at 552 and 416. State v. Loponio, 85 N.J.L. 357, 88 Atl. 1045 (Ct. Err. & App., 1913); compare Cully v. Northern Pacific Ry. Co., 35 Wash. 241, 77 Pac. 202 (1904).

[8] Wigmore suggests an eightfold test for the privilege to be validly granted: "*(1) Where legal advice of any kind is sought (2) from a professional legal advisor in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal advisor, (8) except the protection be waived.*" 8 Wigmore, Evidence § 2292 (3d ed., 1940).

[9] Schwartz v. Public Service Co-ordinated Transport, 64 A. 2d 477, 480 (N.J. County Ct., 1949); Grant and Burlingham v. United States, 227 U.S. 74 (1913); Pearson v. Yoder, 39 Okla. 105, 134 Pac. 421 (1913). Contra: Davis v. New York, O. & W. Ry. Co., 70 Minn. 37, 72 N.W. 823 (1897). But see Stokoe v. St. Paul, M. & M. Ry. Co., 40 Minn. 545, 42 N.W. 482 (1889) (dictum, release obtained by defendant for personal injuries of employee in possession of attorney is privileged).

[10] Grant and Burlingham v. United States, 227 U.S. 74 (1913); Parkhurst v. City of Cleveland, 77 N.E. 2d 735 (Ohio C.P., 1947).

[11] Clapperton, Privilege on Discovery of Documents, 4 Can. B. Rev. 683 (1926).

[12] In Davies v. Columbia Gas & Electric Co., 68 N.E. 2d 571 (Ohio C.P., 1938), the court instructed the notary to allow discovery because there was nothing to indicate that the documents were prepared exclusively for counsel and had remained in his possession continuously after their preparation.

the sole purpose of client-attorney communication, that part alone should be protected.[13] No doubt it is desirable that there be a full and accurate disclosure to the principal and other agents, but the lawyer-client privilege is not properly used to further this objective.[14]

As to the second group of reports—those which originate solely as attorney-client communications—the privilege should apply unless the document is later revealed to personnel who have no function in securing the legal advice.[15] These communications, although meeting the "sole-purpose" test on analysis, are subjected to an additional requirement, an analogue of the "confidentiality" test[16] applied to communications to attorneys by individual clients. Wigmore states the requirement that such communications be "made in confidence," its purpose being to insure that only those disclosures be protected which were prompted by reliance on the secrecy which the privilege guarantees. If the disclosure was made in the presence of outsiders, or, in the case of a written communication, was shown to an outsider before transmission to the attorney, it may be inferred that there was no reliance on secrecy, and the document is non-privileged ab initio. If the secrecy is violated by the client after communication to the attorney the privilege is waived.[17]

It may appear inappropriate to apply such a requirement to an agent's report, which is typically seen only by other agents standing in a fiduciary relationship to the principal. The alternative, however, is to allow the privilege despite the fact that every employee of an organization may have seen a supposedly confidential communication. Some limitation appears essential. Thus, when the outside party is an agent the rule has been stated that "the privilege is limited to the necessities of the situation."[18] This "necessity" requirement, in the case of the corporate client, which can act only through its agents, is ex-

[13] The courts have not been consistent in their approach to documents where only a part is clearly within the requirements of the privilege. It has been stated that where part of the communication contains legal advice from the attorney, or requests for legal advice by the client, the whole is privileged. 1 Thornton, Attorneys at Law § 98 (1914). This seems to go beyond the necessity of the rule. In Terrel v. Standard Oil Co., 5 F.R.D. 146 (E.D. Pa., 1945), it was held that where a communication is only partially privileged on its face, the whole will be denied the privilege if the claimant does not indicate which segments of the communication fall within the rule. This seems consistent with the doctrine that the party asserting privilege must allege facts sufficient to bring himself within the doctrine.

[14] If the report deserves protection on this ground it is properly done by means of statute. See, e.g., 54 Stat. 926 (1940), 49 U.S.C.A. 320 (f) (1951).

[15] See cases cited in notes 19 and 20 infra.

[16] This requirement is usually insisted on by the courts. E.g., Anderson v. Thomas, 108 Utah 252, 159 P. 2d 142 (1945); Matter of Yachnin v. Bedford Home Builders Inc., 228 App. Div. 795 (N.Y. 2d Dep't, 1930); In re Arnolt's Estate, 127 N.Y. Misc. 579, 217 N.Y. Supp. 323 (Surr. Ct., 1926); Goddard v. Gardner, 28 Conn. 172 (1859).

[17] Consult 8 Wigmore, Evidence § 2327 (3d ed., 1940); cf. Model Code of Evidence, Rule 231.

[18] Schmitt v. Emery, 211 Minn. 547, 552, 2 N.W. 2d 413, 416 (1942).

pressed in the rule that a report is non-privileged unless it is transmitted only through those agents necessary for communication to the attorney.[19]

It may be suggested that the "necessity" doctrine is simply an adjunct of the "sole-purpose" test, rather than an independent requirement. But a report may be circulated to other than "necessary" personnel before transmission to the attorney not only where this was the original intention, but also in cases where subsequent developments have made it convenient that a report originally intended solely for an attorney be given wider distribution. Such distribution may be evidence that client-attorney communication was not the original "sole purpose"; it does not follow, however, that this is necessarily the case. Thus, the "necessity" requirement supplements the "sole-purpose" criterion, although in many cases its importance may be only administrative—in evidencing absence of singularity of purpose of a report.

Although these two criteria—the "sole-purpose" and "necessity" tests—appear to be the proper tools for determining the application of the privilege to agents' reports, they are not commonly used by the courts. Judicial treatment of the problem has been influenced by the leading case of *Davenport v. Pennsylvania Railroad*.[20] In that case the reports held privileged had been submitted to the defendant by his agent prior to the establishment of an attorney-client relationship but after notification by the plaintiff that a claim would be pressed. At trial plaintiff asked for reports taken "in the ordinary course of business," and defendant refused production on the grounds that the reports in question were made for the special reason of resisting litigation and were in the hands of counsel. The court, required by the form of the pleadings to assume that the reports were taken for the purpose defendant alleged, denied discovery. The fact that the documents pre-existed any attorney-client relationship was not deemed decisive.[21] This seems consistent with the rationale of the privilege. If the report is prepared solely for eventual transmission to counsel, the fact that no attorney-client relationship yet exists will not militate against its containing those disclosures which the privilege prompts. When the production of the report is sought, however, it must be in possession of counsel, that is, be a communication to him, to be a proper subject for the privilege.[22]

Application of the privilege to the reports in the *Davenport* case cannot be criticized, for they seem to have been made for the sole purpose of serving as

[19] Hawes v. State, 88 Ala. 37, 7 So. 302 (1890); Davenport Co. v. Pennsylvania R. Co., 166 Pa. 480, 31 Atl. 245 (1895).

[20] 166 Pa. 480, 31 Atl. 245 (1895).

[21] No cases have been found in conflict with this aspect of the Davenport doctrine, although it has been suggested that the rule is or should be otherwise. 28 R.C.L. § 161 (1921). The suggestion is unduly formal, although it gains some support from the assertion that the privilege is to be strictly construed. See Cote v. Knickerbocker Ice Co., 160 N.Y. Misc. 658, 290 N.Y. Supp. 483 (N.Y. Munic. Ct., 1936); consult Attorney-Client Privilege as Applied to Documentary Evidence Originating With Client's Agent, 88 U. of Pa. L. Rev. 467 (1940).

[22] Atchison, T. & S. F. R. Co. v. Burks, 78 Kan. 515, 96 Pac. 950 (1908); People v. Rittenhouse, 56 Cal. App. 541, 206 Pac. 86 (1922).

client-attorney communications. However, some courts have improperly applied the "anticipation-of-litigation" test suggested by defendant's response to the interrogatory, extending the privilege to documents multi-purpose in nature. In *Ex parte Schoepf*[23] a claim agent brought a habeas corpus proceeding to secure release from confinement imposed by the lower court because of his failure to produce certain documents. The documents consisted of accident reports made on blank forms in compliance with the standing order of defendant's employer that every motorman and conductor report all accidents. It was the practice that such reports be eventually transmitted to counsel. In the instant case, they had been filed with the claim agent and were not forwarded to counsel until two or three days after suit was begun. The purpose of the reports was to help prepare the company for possible suit and to advise the company on the extent of its liability *and on the cause of the trouble.* In releasing the petitioner, the court indicated, among its reasons, that the documents were privileged,[24] although they were clearly multi-purpose.[25]

From the *Schoepf* and *Davenport* cases emerges a pattern which the courts have generally followed in dealing with agents' reports. They attempt to fit such documents into a "regular-course-of-business"–"anticipation-of-litigation" dichotomy. A distinction is made by some of these courts between reports which are a matter of general record with the company, these being in the regular course of business, and those which originate as a result of an accident,[26] these being in anticipation of litigation. The former are non-privileged even though eventually transmitted to counsel,[27] and the latter privileged if "[they], accord-

[23] 74 Ohio 1, 77 N.E. 276 (1906).

[24] The Schoepf doctrine has been criticized in recent decisions. See In re Story, 159 Ohio 144, 111 N.E. 2d 385 (1953); Brookshire v. Pennsylvania R. Co., 14 F.R.D. 154 (N.D. Ohio, 1953). The federal court in Ohio has refused to be bound by the state law of privilege. Pannela v. Baltimore & O. R. Co., 14 F.R.D. 196 (N.D. Ohio, 1951); cf. Reeves v. Pennsylvania R. Co., 8 F.R.D. 616 (D. Del., 1949). See also dissent in In re Tichy, — Ohio —, 118 N.E. 2d 128 (1954) (criticizing application of the privilege to accident reports when made in the regular course of duty).

[25] Such reports are typically made on printed forms, and copies may be sent to various departments. See Vironi v. Wheeling & Lake Erie Ry. Co., 10 F.R.D. 45 (N.D. Ohio, 1950). Reports such as these "[are], of course, not necessarily taken for the purpose of being sent to counsel for advice or to be used by him in connection with pending or threatened litigation. [They] may be taken in connection with various reports required by law, or in connection with accident prevention studies of the transportation company. . . ." Robertson v. Commonwealth 181 Va. 520, 540, 25 S.E. 2d 352, 360 (1943).

[26] See In re Keough, 151 Ohio 307, 85 N.E. 2d 550 (1949).

[27] In re Story, 159 Ohio 144, 111 N.E. 2d 385 (1953). The police chief of Cleveland had refused to produce reports made by two police officers to the Department after they had mistakenly killed a person. The officers were now defendants in a wrongful-death action, and the Department had claimed the privilege. The court found the documents to be reports and records of the city and not privileged merely because they may have been turned over to the attorneys for the city. The dissent is interesting because it perhaps gives a clue as to the reason for the loose application of the privilege in cases involving accident reports. The minority maintained that ordering production of the reports would mean that police report at their peril and therefore, the dissent concluded, allowing disclosure might impair the usefulness of the reports, i.e., their accuracy.

ing to custom, are turned over to and remain in the possession of the company's [attorney]."[28]

The "anticipation-of-litigation" terminology[29] has a superficial plausibility in relation to accident reports for at least two reasons: (1) it is doubtless true that litigation arises from the occurrences described in such reports more often than from the subject matter of other business reports; and (2) the terminology itself implies a situation in which the privilege is often properly applicable.

But accident reports as a class do not necessarily meet either the "sole-purpose" or the "necessity" tests, which have been suggested as critical to the rationale of the privilege. The reports in the *Schoepf* case, for example, were clearly taken for purposes in addition to client-attorney communication. And, typically, such reports, or duplicates thereof, are circulated among the accident-prevention, maintenance, personnel, claims, and other departments, besides going to the attorney or legal department for use in the event that legal problems arise; that they may have uses other than for litigation or may be viewed by personnel unnecessary to communication to the attorney seems plain. Any generalization that all accident reports are made in "anticipation of litigation" precludes examination of the specific communications by the tests pertinent to the claim of privilege and is therefore undesirable.

Neither is the "regular-course-of-business" formula for denying the privilege to agents' reports analytically helpful. The test of regularity may wrongly deny privilege to a document which would meet the proper tests, e.g., where the report was regularly taken when an accident occurred for the sole purpose of communication to an attorney and was not circulated to personnel unnecessary for that purpose. And although the test may sometimes properly deny the privilege[30] when the report is multi-purpose, it may, because the other side of the coin is "anticipation of litigation," lead to improper results for the reasons already suggested. Like the "anticipation-of-litigation" test, it precludes scrutiny of the individual communication in light of the tests more pertinent to the rationale of the privilege.

Generally, if it cannot be said that the document originated solely for the

[28] In re Keough, 151 Ohio 307, 314, 85 N.E. 2d 550, 553 (1949); In re Hyde, 149 Ohio 407, 79 N.E. 2d 224 (1948); Ex parte Shoup, 154 Ohio 221, 94 N.E. 2d 625 (1950); In re Tichy, — Ohio —, 118 N.E. 2d 128 (1954) (seems to privilege information and facts contained in an accident report as well as the communication but may be explainable by the fact that the party being questioned and asserting the privilege was the attorney).

[29] What constitutes "anticipation of litigation" or "preparation for trial" is not clear. Perhaps the action must have been commenced [see Rediker v. Warfield, 11 F.R.D.125 (S.D. N.Y., 1951)], although that litigation is more than probable may be sufficient. Shields v. Soberman, 64 F. Supp. 619 (E.D. Pa., 1946).

[30] E.g., Panella v. Baltimore & O. R. Co., 14 F.R.D. 196 (N.D. Ohio, 1951); Curtis v. Indemnity Co. of America, 327 Mo. 350, 37 S.W. 2d 616 (1931); Virginia-Carolina Chemical Co. v. Knight, 106 Va. 674, 56 S.E. 725 (1907); Vironi v. Wheeling and Lake Erie Ry. Co., 10 F.R.D. 45 (N.D. Ohio, 1950) (semble); Eiseman v. Pennsylvania R. Co., 3 F.R.D. 338 (E.D. Pa., 1944) (semble).

purpose of client-attorney communication[31] and that it was circulated only to agents concerned with direct forwarding to the attorney, the importance of full disclosure at trial would seem to dictate denial of the privilege. Categorization of agents' reports as either "in anticipation of litigation" or in the "regular course of business"[32] finds no analytical basis in the rationale of the privilege.

The confusion in the cases cannot be entirely attributed to the impropriety of the tests used. It is evident that the courts have not been given an adequate picture of the circumstances surrounding the reports sought to be protected.[33] Since the burden of proof is on the proponent of the privilege, opposing counsel and the court should be diligent in requiring a clear showing that the claim of privilege is well founded.[34]

DISCLOSURE OF INVESTIGATIVE REPORTS UNDER SECTION 6(j) OF THE SELECTIVE SERVICE ACT—A POSTSCRIPT TO *UNITED STATES v. NUGENT*

In the conscription of men for military service under the Selective Service Act, Congress has provided for the exemption of several classes of registrants. Among those exempted are conscientious objectors, persons whose religious beliefs do not permit them to serve in the armed forces. The task of separating valid from fraudulent claims for exemption has been committed to the selective service boards, local and appellate, as part of their general classificatory function under the Act. Normally, there is no resort to agencies outside the selective

[31] See, e.g., Atlantic Coast Line R. Co. v. Williams, 21 Ga. App. 453, 94 S.E. 584 (1917); Thomson v. Maryland Casualty Co., 11 Ont. L. Rep. 44, 45 (1906).

[32] Although an accident report required by a corporation may not meet the regular-course-of-business standard for business-entry statutes, this should not imply that they cannot be in the "regular course of business" if that test is used in applying the privilege. It is clearly of general concern and in the best interests of a corporation to discover the nature and cause of accidents. Although in Carlton v. Western & A. R. Co., 81 Ga. 531, 7 S.E. 623 (1888), the request for production was denied on other grounds, the court said: "We do not understand such a report to be a privileged communication. It seems that it was a report which the company, by its rules, required the conductor to make where a party was injured . . . a very good rule for the protection of the company and the employee." Ibid., at 534 and 625. Compare Palmer v. Hoffman, 318 U.S. 109 (1943), with Pekelis v. Transcontinental & Western Air, Inc., 187 F. 2d 122 (C.A. 2d, 1951).

[33] Judge Freed described this problem: "One of the chief difficulties which the courts face in deciding questions involving privileged communications . . . arises from the fact that they are seldom fully apprised of the circumstances under which those communications came into existence. When was the communication made? To whom and by whom was it made? . . . What was the relation of the party giving or the party taking the statement to the defendant? How and when did the statement come into the hands of defendant's counsel? Is counsel a salaried employee of the party opposing discovery or is he an independent attorney merely retained by defendant? In any given case each of these questions may be of vital importance in determining whether or not the matters sought are actually privileged." Humphries v. Pennsylvania R. Co., 14 F.R.D. 177, 178 (N.D. Ohio, 1953).

[34] See Robertson v. Commonwealth, 181 Va. 520, 25 S.E. 2d 352 (1943). A voir dire is a form of proceeding well designed to reach such results.