

penalty sentencing proceedings if considered relevant and of probative value to the sentencing issues.

A confession or statement which was obtained by coercion, force or threats or in any other involuntary manner would, of course, be obtained in violation of the Constitution and therefore could not be used in either the sentencing proceeding or at the guilt stage of trial. There may, however, be situations in which evidence obtained in clear violation of constitutional rights may be utilized for impeachment purposes at the guilt stage of trial. Walder v. United States, 347 U. S. 62 (1954) (Fourth Amendment violation). When the same jury hears both the guilt stage of trial as well as the death penalty sentencing proceeding, it could be argued that the jury has been fatally tainted by hearing evidence during the guilt stage of the proceedings which may not be introduced during the sentencing stage even though the judge may have given appropriate limiting instructions.

In short, it is impossible to state with precision whether the exclusionary provisions at lines 146-148 of the Bill would invariably exclude evidence otherwise admissible at trial on the issue of guilt, for such questions must be resolved on a case by case interpretation based on the facts involved.

4. New §413(c) requires that any recommendation of the jury for the imposition of the death penalty must be its unanimous decision, but also provides that a life sentence may be recommended upon a majority decision of the jury. You correctly point out that it is possible for a jury to be in a position to recommend the death penalty by majority action but not unanimously, and conversely, be unable to obtain the concurrence of a majority of its members for a recommendation of a life sentence. In essence, this would present the trial judge with a "hung jury" unable to secure the concurrence of the requisite number of its members for either of the two permissible verdicts. You ask what effect or result would follow if the jury is thus unable to recommend a sentence or if it attempts to recommend the death penalty by a majority but less than unanimous vote.

Clearly a less than unanimous recommendation of a death penalty would not constitute a valid recommendation under the plain language of the statute and presumably would not be in accordance with instructions given by the trial judge. Such a recommendation would be tantamount to no recommendation at all. If, after receiving further appropriate instructions from the trial court as to the necessity for any recommendation of death to be unanimous or any recommendation of life imprisonment to be by majority decision, and instructions as to the consequences of the jury's failure to make a valid