Research Memorandum #69: Suppression Hearing Testimony

L.C. Proof, "Can a Defendant Take the Stand After *Hovie*?," 26 Jamner L. Rev. 306, 314 (20XX-7): "Evidentiary rules and constitutional principles have criss-crossed in *State v. Hovie,* 269 Maj. 3d 342 (20XX-8). For several years prior to *Hovie,* courts have allowed otherwise suppressed evidence, forbidden to be used in the State's case in chief by the exclusionary rule, to be brought in for impeachment. Trumpeting that 'a criminal defendant may not use the exclusionary rule as a shield against perjury,' *Cleader v. State*, 198 Maj. 2d 315 (20XX-19), courts have permitted illegally seized evidence, *Cleader v. State*, supra, and illegally obtained statements, *Fitz v. Warden* 199 Maj. 2d 523 (20XX-19), to be brought in to impeach a testifying defendant. Recently, the courts have similarly allowed a 'Seaman' statement to be used for impeachment. *Morris v. State*, 17 Maj. App. 3d 621 (20XX-10).

"In *Seaman v. State*, 201 Maj. 2d 137 (20XX-18), the court recognized the dilemma a defendant faces when considering testifying at a suppression hearing. 'In order to vindicate his 4th Amendment rights at the hearing, defendant risks giving up 5th Amendment rights at trial if the prosecution can use his testimony from the suppression hearing in the case in chief.' *Seaman v. State*, supra, 201 Maj. 2d at 151. Accordingly, the *Seaman* court developed a prophylactic rule whereby defendant's testimony at a suppression hearing may not be used in the State's case in chief.

"In an unrelated line of cases, our courts have held that criminal defendants who take the stand waive their right against self-incrimination as to all appropriate cross-examination, *Brune v. State*, 200 Maj. 2d 34 (20XX-18), which under accepted evidentiary rules includes 'all areas reasonably indicated by the direct examination.' *Sprunie v. State*, 143 Maj. App. 2d 751 (20XX-22). Herein is where the *Hovie* criss-cross takes place.

"In *Hovie,* the trial court had suppressed certain narcotics paraphernalia which had been found upon the defendant in what the court found to be an illegal search. Defendant Hovie took the stand at trial and denied involvement with the drug conspiracy with which he was charged, but made no mention of the paraphernalia. On cross-examination the prosecutor examined defendant about his knowledge of the methods of drug dealers and users, leading up to, 'You know about the kind of paraphernalia that's used, don't you? You know about carburetors? You know about . . . ? Etc.' His denial of special knowledge about a device known as a 'carburetor' was followed by a court ruling that the suppressed evidence could be used for impeachment. While the cross-examination arguably was proper under evidentiary rules, permitting the prosecution to set up admission of suppressed evidence by its cross-examination is problematic. After *Hovie,* a defendant on direct examination may be careful not to make a general denial of any knowledge of narcotics or otherwise invite subsequent impeachment with suppressed evidence. Yet the latitude given the cross-examiner under evidentiary rules is so great that this defendant can never take the stand to deny the elements of the charged offense without knowing that somehow the prosecution can set up impeachment with the suppressed evidence on cross-examination."