

SALDANA *v.* UNITED STATES.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT.

No. 176. Argued March 20, 1961.—Decided April 3, 1961.

Petitioner was convicted on four counts of a five-count indictment charging offenses under the narcotics laws. The Solicitor General suggested to this Court that the combination of circumstances in the case, beginning with one judge's clearly expressed intention to impose a five-year sentence and ending with another judge's imposition of a twenty-year sentence, was not consistent with the orderly administration of criminal justice in the federal courts. *Held*: A due regard for the fair administration of justice requires that the convictions under Counts 3, 4 and 5 be set aside; but the conviction under Count 2, to which petitioner originally pleaded guilty, is affirmed. Pp. 646-647.

274 F. 2d 352, affirmed in part and reversed in part.

Stephen R. Reinhardt, acting under appointment by the Court, 364 U. S. 807, and *Herbert A. Bernhard*, by special leave of Court, *pro hac vice*, argued the cause and filed a brief for petitioner.

Solicitor General Cox argued the cause for the United States. With him on the brief were *Acting Assistant Attorney General Foley*, *Beatrice Rosenberg* and *Theodore George Gilinsky*.

John T. McTernan, *A. L. Wirin* and *Fred Okrand* filed a brief for the American Civil Liberties Union, as *amicus curiae*, urging reversal.

PER CURIAM.

The petitioner was convicted on four counts of a five-count indictment charging offenses under the narcotics laws. 21 U. S. C. § 174. He complains of a number of alleged trial errors. In addition, he points to a series of events occurring during the course of the prosecution

which, he says, operated to deprive him of constitutionally guaranteed rights. It is unnecessary to detail here the course of those proceedings, since we are advised that a change in the calendar system of the District Court for the Southern District of California insures that what occurred in this case will not occur again.

During oral argument in this Court the Solicitor General suggested that the combination of circumstances in this case, beginning with one judge's clearly expressed intention to impose a five-year sentence, and ending with another judge's imposition of a twenty-year sentence under the indictment, was not consistent with that regularity and fairness which should characterize the administration of criminal justice in the federal courts. In the light of the Solicitor General's suggestion, and upon an independent examination of the record, we have concluded that a due regard for the fair administration of justice requires that the convictions under counts 3, 4, and 5 of the indictment be set aside. 28 U. S. C. § 2106; see *Communist Party v. Subversive Activities Control Board*, 351 U. S. 115, 124; *Mesarosh v. United States*, 352 U. S. 1, 14; *Marshall v. United States*, 360 U. S. 310. Cf. *Petite v. United States*, 361 U. S. 529. The conviction under count 2, to which the petitioner originally pleaded guilty, is affirmed.

Because of this disposition of the case, we do not reach for consideration the alleged trial errors with respect to limitation of cross-examination, sufficiency of the evidence of a "sale" under count 5, and instructions to the jury as to entrapment.

So ordered.