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Constitutional Law - Right to Counsel

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CONSTITUTIONAL LAW—Right to Counsel—Where an investigation has begun to focus upon a particular suspect, whose request for counsel has been denied and who has not received a warning as to his right to remain silent, he has been deprived of his rights under the sixth amendment.

Escobedo v. State of Illinois, 84 Sup. Ct. 1758 (1964).

In the recent case of *Escobedo v. Illinois*[1] the United States Supreme Court decided a question left unanswered in the landmark case of *Gideon v. Wainwright.*[2] An opportunity to determine the time and circumstances when a right to counsel accrues was presented by the facts which follow.

Danny Escobedo, after being questioned and released in connection with the murder of his brother-in-law, was implicated by Benedict DiGerlando then in police custody. While en route to the station after the defendant's arrest, an officer informed him of DiGerlando's statement. At the police station Escobedo made repeated requests to see his attorney, all of which were denied. When Escobedo's attorney arrived, he was refused permission to speak to his client.[3] The attorney waited approximately three hours then left the homicide bureau. During the interrogation, Escobedo was confronted with his accuser and after calling him a liar said, "I didn't shoot Manuel, you did it."[4] He thereafter made statements implicating himself in the murder plot.

Both before and during the trial, motions were made in an attempt to suppress the incriminating statement. They were denied. After his conviction the defendant appealed claiming that the confession was inadmissible since it was obtained after his request for counsel had been denied.

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1. 84 Sup. Ct. 1758 (1964).

2. 372 U.S. 335 (1963).

3. Ill. Rev. Stat. ch. 38, §477 (1959) (now Ill. Rev. Stat. ch. 38, §736c (1961)).

> All public officers . . . having the custody of any person . . . for any alleged cause whatever, shall, except in cases of imminent danger of escape, admit any practicing attorney at law of this state, whom such person so restrained of his liberty may desire to see or consult, to see and consult such person so imprisoned, alone and in private, at the jail or other place of custody; . . . .

4. The petitioner testified that he then made a statement because of Officer Montejano's promise that "he would see to it that we would go home and be held only as witnesses, if anything, ..." Officer Montejano denied this.

The Supreme Court of Illinois reversed the decision finding that the statement was induced by a promise that the defendant would be released and immune from prosecution if he gave a statement.[5] However, on rehearing, the conviction was affirmed. The court said, "(T)he officer denied making the promise and the trier of fact believed him. We find no reason for disturbing the trial court's finding that the confession was voluntary."[6] The Illinois Supreme Court stated that the petitioner's testimony indicated "he did not rely on this alleged promise when making the statement."[7] The court, relying on authoritative decisions,[8] held the confession was admissible even though counsel was denied.

In a case decided on the same day as this decision of the Illinois Supreme Court, the United States Supreme Court said:

> Our conclusion is in no way foreclosed, as the State contends, by the fact that the state trial judge or the jury may have reached a different result on this issue.
>
> It is well settled that the duty of constitutional adjudication resting upon this Court requires that the question whether the Due Process Clause of the Fourteenth Amendment has been violated by admission into evidence of a coerced confession be the subject of an *independent* determination here, see, *e.g. Ashcraft v. Tennessee,* 322 U.S. 143, 147-148, 'we cannot escape the responsibility of making our own examination of the record,' *Spano v. New York,* 360 U.S. 315, 316. (Emphasis in original).[9]

The United States Supreme Court, granting certiorari, recognized the possible applicability of the fifth amendment[10] to *Escobedo,* but declined to discuss it since the decision on the issue of right to counsel was sufficient to constitute a reversal.

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5. The officer, originally from the defendant's neighborhood, spoke to him in Spanish. From the alleged conversation, an assupmtion that the officer was sympathetic could be drawn, especially by the defendant.

6. Illinois v. Escobedo, 28 Ill.2d 41, 46, 190 N.E.2d 825, 827 (1963).

7. *Ibid.*

8. Crooker v. California, 357 U.S. 433 (1958); Cicenia v. LaGay, 357 U.S. 504 (1958).

9. Haynes v. Washington, 373 U.S. 503, 515 (1963).

10. "We hold today that the Fifth Amendment's exception from compulsory self-incrimination is also protected by the Fourteenth Amendment against abridgment by the States." Malloy v. Hogan, 84 Sup. Ct. 1489, 1492 (1964).

Since the Fourteenth Amendment prohibits the States from obtaining a confession through "sympathy falsely aroused," Spano v. New York, 360 U.S. 315, 323 (1959), and this emotional bond was created by one of the officers, the Court could have decided the case on these grounds.

Having eliminated the contention that the appeal must be decided by viewing the facts as the trial court had, the Court then discussed the right of the petitioner to have counsel present at the investigation. It was argued that at this stage of the investigation many confessions were obtained and that an attorney, advising his client at this time, would diminish the number of confessions, but the Court replied that the number of confessions obtained demonstrates the need of the suspect to have legal advice. A practice of reliance exclusively on self-incrimination by the suspect is undesirable. "(H)istory amply shows that confessions have often been extorted to save law enforcement officials the trouble and effort of obtaining valid and independent evidence. . . ."[11] Convictions should be based on extrinsic evidence for *"any system of administration which permits the prosecution to trust habitually to compulsory self-disclosure as a source of proof must itself suffer morally thereby."*[12] This method of law enforcement, if administered in such a manner, will obliterate the rights guaranteed by the Constitution and any system which fears an accused learning of his rights and exercising them should not be permitted to survive.

Therefore, where the investigation has begun to focus on a particular individual in police custody and they interrogate him in order to obtain a confession, if he has requested and been denied an opportunity to confer with counsel and has not been told of his constitutional right to remain silent, he has been denied "the Assistance of Counsel" in violation of the sixth amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment,"[13] and the prosecution cannot use a statement obtained in this manner at the trial.

The Court stated that a contrary holding is not a natural result of *Crooker v. California* and *Cicenia v. LaGay*[14] cited by the Illinois Supreme Court in their decision of this case.[15]

In *Crooker,* where the defendant was arrested for the murder of his former employer, the court held that lack of counsel at the interrogation was not prejudicial since he was aware of his rights.[16] The Court there refused to state that the denial of a request to engage counsel is *ipso facto* a violation of due process. The lack of

11. Haynes v. Washington, *supra* note 9 at 519.

12. 8 WIGMORE, EVIDENCE 309 (3d ed. 1940). (Emphasis in original).

13. Gideon v. Wainwright, *supra* note 2 at 340.

14. *Supra* note 8.

15. Escobedo v. Illinois, *supra* note 1.

16. Crooker had completed one year of law school which the Court felt gave him sufficient knowledge of the legal process.

counsel must prejudice his case so that he was tried without the fundamental fairness essential to the very concept of justice.

The Court, again in *Cicenia,* required lack of counsel to be prejudicial before it constituted a reversible error. Cicenia, after acquiring counsel, surrendered to police officers. He was held incommunicado and all efforts of his attorney to see him were abortive. In this case, too, the Supreme Court said that all circumstances must be examined to see if the conviction was basically unfair.

In both of the previous cases, the petitioner was asking for an absolute rule that every denial of a request for counsel violated due process. However, it is a violation only if the circumstances meet the requirements set forth in the holding of the Supreme Court in *Escobedo.* Any principle announced in *Crooker* or *Cicenia,* inconsistent with *Escobedo,* is no longer controlling.[17]

The Court has evolved from the amoebic idea that to allow counsel during the interrogation would seriously reduce police effectiveness. Of course this rule will limit the number of confessions, but it will guard an individual's rights even while charged with a crime. The United States Supreme Court limited their holding in *Escobedo* to the factual situation presented. Danny Escobedo requested counsel and was not warned of his right to remain silent. These are the facts that limit the scope of the decision.

If the Constitution grants the right to counsel, it should not be dependent upon one's request. If there is a right to counsel, it should be absolute. Of course, an individual may waive his privilege against self-incrimination and his right to counsel either at the pretrial stage or at the trial if he so desires,[18] but if he is unaware of his rights and does not request counsel, he should not be prejudiced by his ignorance. Although the holding is within the confines of the factual situation, the general overtone of the case and the statement "no system of criminal justice can, or should, survive if it comes to depend for its continued effectiveness on the citizens' abdication through unawareness of their constitutional rights"[19] leads to the conclusion that the suspect has a right to both the warning concerning self-incrimination (fifth amendment) and effective representation of counsel at all stages of the criminal proceeding (sixth amendment). A failure, by the police, to inform the defendant of his constitutional right to either of these basic protections may prevent obtaining a conviction based on a voluntary confession.

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17. *Supra* note 1.
18. Johnson v. Zerbst, 304 U.S. 458 (1938).
19. Escobedo v. Illinois, *supra* note 1 at 1764.