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## Criminal Procedure--Right to Counsel Prior to Trial

G. D. G.

*West Virginia University College of Law*

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CRIMINAL PROCEDURE--RIGHT TO COUNSEL PRIOR TO TRIAL.—The defendant objected to his conviction for murder on the basis that a confession obtained from him during his incarceration was not voluntary and that he was denied counsel during his interrogation by police officers in violation of U.S. CONST. amend XIV. *Held*, with four of the Justices dissenting, that where the defendant was a college educated man with law school training and knew of his right to keep silent, use of a voluntary confession made by the defendant after denial of his request to contact his attorney while in police custody did not violate due process. *Crooker v. California*, 78 Sup. Ct. 1287 (1958).

The right to counsel spoken of above has an interesting and colorful history. See generally, Becker & Heidelbaugh, *The Right to Counsel in Criminal Cases—An Inquiry Into the History and Practice in England and America*, 28 NOTRE DAME LAW. 351 (1953); *Benefit of Counsel in Criminal Cases in the Time of Coke*, 6 MIAMI L. Q. 546 (1952).

The federal right is guaranteed by U.S. CONST. amend VI, which provides: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and have the assistance of counsel for his defense." In state courts the right is derived either from state constitutions and state statutes or from U.S. CONST. amend. XIV. Note, 31 CALIF. S.B.J. 465 (1956).

Difficulty is not encountered until an effort is made to determine the scope of these guarantees. Without a doubt the right extends to the actual trial unless waived by the defendant under carefully guarded conditions. *State v. Murphy*, 87 N.J.L. 515, 94 Atl. 640 (1915). A majority of the states also recognize that the right extends to the arraignment stage where the defendant is required to plead. *Winn v. State*, 232 Ind. 70, 111 N.E.2d 653 (1953); *State v. Lindsey*, 231 Ind. 126, 106 N.E.2d 230 (1952); *Johnson v. State*, 790 Okla. Crim. 363, 155 P.2d 259 (1945). *Contra, People v. Crandell*, 270 Mich. 124, 258 N.W. 224 (1935). Beyond this point only a minority of the states, through recent legislation, have made efforts to further protect the rights of an accused against coercive police practices. For a complete enumeration of these state statutes see, *Betts v. Brady*, 316 U.S. 455 (1942).

The majority of states, as well as the controlling opinion in the principal case, feel as if the other procedural safeguards established for the trial of the accused are sufficient, in themselves, to determine

whether or not the defendant's confession has been unlawfully obtained and for this reason he does not need the additional advice of counsel at the pre-trial stage. *State v. Tune*, 13 N.J. 203, 98 Atl. 881 (1953); *Commonwealth v. Bryant*, 367 Pa. 135, 147, 79 A.2d 193, 198 (1951). As stated in *State v. Grillo*, 11 N.J. 173, 175, 93 A.2d 328, 329 (1952): "A prisoner making a confession is not confronted with any witnesses, at least never in the sense that they are examined in his presence, he can have no process for witnesses in his favor upon such an occasion and, consequently, he is not entitled to the assistance of counsel to save him from himself." The court here was referring to a voluntary confession the defendant might make during police interrogation.

Perhaps the best statement of this theory is contained in the opinion written by Chief Justice Maxey in the murder trial of *Commonwealth v. Agoston*, 364 Pa. 464, 480, 72 A.2d 575, 583 (1950): "The only function counsel could have at the time of a suspect's interrogation would be to instruct him to 'keep his mouth shut'. It is well-known that the 'secret which the murderer possesses commences to possess him' and that his guilty conscience exerts a tremendous pressure on his vocal faculties. This is especially true when shortly after the crime's commission there is a let down in the criminal's nervous energy and remorse is in the ascendant. If a criminal, desiring to release his troublesome secret, is to be frustrated by action of the state in providing him at that time with an advocate who will counsel silence, the number of unsolved American murders will be greatly augmented, for he who plans a murderous assault does not plan to have it witnessed by anyone except the victim, and *his* lips, the felon quickly and permanently seals."

This argument would be less than persuasive with the dissenting members of the Court in the principal case since they have recognized that all persons suspected and held for murder and subjected to police tactics of interrogation are not guilty and consequently their rights could very easily be abused.

Nevertheless, as stated in Note, 44 Ky. L.J. 103, 106 (1955), from which Mr. Justice Douglas quoted, the right to counsel does not exist either in federal or state courts prior to the defendant's appearance before the committing officer, and even though the dissenting opinion in the principal case, advocated by Mr. Chief Justice Warren and three of our ablest Supreme Court Justices, contains praiseworthy ideals of what our justice should be, the law is well estab-

lished that the federal constitution does not extend the right to counsel beyond the trial stage into the area preceding the preliminary hearing. *Larkins v. State*, 202 Md. 212, 96 A.2d 246 (1953); *Commonwealth v. McNeil*, 328 Mass. 436, 104 N.E.2d 153 (1952); *State v. Murphy*, *supra*; *State v. Grillo*, *supra*; *State v. Tune*, *supra*; *Commonwealth v. Agoston*, *supra*; *Commonwealth v. Bryant*, *supra*.

It is submitted that as long as the Court can not find an absence of "that fundamental fairness essential to the very concept of justice" confessions obtained while the defendant is without the assistance of counsel, as in the principal case, will be acceptable as evidence. Perhaps efforts should be made to improve the crime detection system to a point where the type of interrogation suggested in the dissenting opinion would not be necessary and the arguments contained in this article supporting the denial of counsel theory would be without foundation.

G. D. G.

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LABOR LAW--FEDERAL PRE-EMPTION IN THE FIELD OF LABOR RELATIONS.—*P* brought an action against *D* in a circuit court of Alabama alleging malicious interference with his lawful occupation. *D*, a union, of which *P* was not a member, called a strike, and in the course of picketing refused to allow *P*, an employee, by threats of bodily harm and damage to his personal property, to enter the plant. *P* sought to recover for loss of earnings, mental anguish, and punitive damages. *D* filed a plea to the jurisdiction of the court on the basis that the National Labor Relations Board, by virtue of the Taft-Hartley Act, had exclusive jurisdiction. The trial court sustained *P*'s demurrer to that plea; the case went to trial and *P* obtained judgment for \$10,000. The Supreme Court of Alabama affirmed both the circuit court's jurisdiction and the judgment. On certiorari the Supreme Court, *held*, that the award of compensatory and punitive damages was valid and the fact that both the National Labor Relations Board and the state court had concurrent jurisdiction in awarding back pay did not create a conflict of remedies. *UAW-CIO v. Russell*, 78 Sup. Ct. 932 (1958).

The principal case raises the question of federal pre-emption and how readily it is to be inferred, particularly in the field of labor relations. The first principal congressional legislation in this field was the National Labor Relations Act of 1935, 46 STAT. 499 (1935), 26 U.S.C. § 151 (1946), which created the National Labor Relations