**Buffalo Law Review**

Volume 8 | Number 1 Article 31

10-1-1958

# Constitutional Law—Admissibility of Confession Obtained Prior to Arraignment

Buffalo Law Review

stances.[34] In that case the defendant needed counsel assigned to examine the record of the trial, which was inaccessible to him on account of his imprisonment. That case relied on the New York Constitution. The majority of the Court distinguished it as another case dealing with the right of an indigent to a free transcript of the trial proceedings.

It would seem that the decision that the Court has reached is within the framework of existing case law, but it also seems proper to note again the underlying rationale of the *Griffin* case: "There can be no equal justice where the kind of trial a man gets depends on the amount of money he has."[35]

## Admissibility of Confession Obtained Prior to Arraignment

In *People v. Spano*,[36] the defendant was surrendered to the police by his attorney pursuant to a bench warrant issued on an indictment for murder in the first degree. He was taken into custody at 7:15 P.M. and arraigned the next morning. Before his arraignment, however, Spano had been questioned for several hours by the police, and contrary to the instructions of his attorney, had made a complete confession. At the trial the confession was admitted into evidence. The defendant was convicted and sentenced to death.

On appeal the defense argued that even though the confession was voluntarily made it should not have been admitted into evidence because Spano's detention by the police was illegal. The majority affirmed the conviction and pointed out that even if the detention had been illegal (a fact not established) the confession would be admissible since it was voluntarily given.[37]

The dissent agreed that the test of voluntariness is still valid but argued that it was not controlling in the case at bar. Judge Desmond, writing for the dissent, maintained that the confession should have been excluded since it was extracted in the very course of *judicial proceedings*, and that therefore the defendant was deprived of his constitutional right to counsel and his privilege against self-incrimination.

The argument based on the right against self-incrimination was disposed of by the majority by pointing out that it is available only in cases where incriminating disclosures have been extorted by the constraint of legal process.[38]

34. People v. Kalan, 2 N.Y.2d 278, 159 N.Y.S.2d 480 (1957).
35. Griffin v. Illinois, 351 U.S. 12, 19 (1955).
36. 4 N.Y.2d 256, 173 N.Y.S.2d 793 (1958).
37. N. Y. CODE CRIM. PROC. §395; Stein v. New York, 346 U.S. 156 (1953).
38. People v. Defore, 242 N.Y. 13, 150 N.E. 585 (1926); Adams v. New York, 192 U.S. 585 (1904).

In his dissent, Judge Desmond seems to extend the meaning of the term judicial proceedings beyond its traditional scope. Heretofore it has applied only to formal court room proceedings and not to informal questionings.[39] In New York, by statute, the right to counsel accrues upon arraignment.[40] The dissent would give a defendant the right to have counsel present at any informal questionings which take place after indictment.[41]

There has been little judicial restriction on the right of the police to question an accused at any time.[42] The right of the accused is to remain silent. It is a personal right and is not dependent upon whether or not he has retained an attorney.[43] Perhaps it is a hollow right when a person is initially accused of a crime since at that moment the accused, often under pressure from the police, does not have the presence of mind to exercise it prudently.[44] On the other hand, interrogation is a useful technique in criminal investigations and often results in the immediate release of the innocent. Even so, the state would not be prejudiced if the police were denied the opportunity to question a defendant in secret after an indictment has been returned, since at that time the state has a prima facie case and presumably enough evidence to sustain the charge.

While the position of the dissent may not appear logically justified, it seems to reflect a general dissatisfaction with the New York doctrine as to the admissibility of illegally obtained confessions and a desire to limit its scope.

## Unconstitutionality of City Ordinance Against Lounging or Loitering on Public Streets

The Fourteenth Amendment of the Constitution imposes the requirement that penal legislation avoid "the injustice of prohibiting conduct in terms so vague as to make the understanding of what is proscribed a guess-work too difficult for confident judgment . . . ."[45] *People v. Diaz*[46] called for the appli-

39. Mitchel v. Cropsey, 177 App.Div. 663, 164 N.Y.S. 336 (2d Dep't 1917).

40. N. Y. CODE CRIM. PROC. §§188, 189, 296-a, 308, 699. *But see Gilmore v. U. S.*, 129 F.2d 199 (1942), where the court held that the defendant's constitutional right to the assistance of counsel accrues with the returning of an indictment against him.

41. *But see Ciceria v. La Gay*, 78 S.Ct. 1297 (1958), where the court held on almost identical facts that the constitutional right to counsel had not been violated. But note that no indictment was outstanding when questioning took place.

42. See Crooker v. California, 78 S.Ct. 1287 (1958).

43. In re Black, 47 F.2d 542 (1931).

44. See dissent by Justice Douglas in Ciceria v. La Gay, *supra* note 40 and Crooker v. State of California, *supra* note 41. *Cf.* People v. McMahon, 15 N.Y. 384 (1857), and People v. Mondon, 103 N.Y. 211, 8 N.E. 496 (1886). *But see* People v. Ferola, 215 N.Y. 285, 109 N.E. 500 (1915); WIGMORE, EVIDENCE §851 (3d ed. 1940).

45. Screws v. United States, 325 U.S. 91, 157 (1945).