

DENIAL OF A BASIC RIGHT

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WITHOUT doubt Illinois presents the most irreconcilable conflict in all the country in the matter of basic rights of citizens. On one side is Illinois' great tradition of freedom. This goes back 31 years before its statehood to the Northwest Territory Ordinance of 1787. Under that historic charter, human slavery has been prohibited on Illinois soil for 160 years. Under it, Illinoisans had freedom of religion guaranteed to them, not only before the Bill of Rights came into being but even before the Federal Constitution was drawn.

Conflict with this shining tradition of liberty comes in Illinois' unconcern for a right so fundamental as the right of accused persons to be represented at trials by counsel for their defense. In this regard, no state in the Union has so black a record. As they contemplate it, lawyers, prosecutors and judges of Illinois should lower their heads in shame.

At the last term of the United States Supreme Court, approximately 300 of about 500 *in forma pauperis* cases were filed from Illinois. A rough estimate is that perhaps half of these were filed by inmates of Illinois prisons who say that they were convicted without defense counsel.

It is very difficult to state just what the rule of the United States Supreme Court is with respect to right to counsel. The high justices have refused to guarantee it in such decisions as *Betts vs. Brady* (1942) and *Foster and Payne vs. Illinois* (1947). They have stood by it in *Tomkins vs. Missouri* (1945) and *De Meerleer vs. Michigan* (1947).

The latest decision, in the Illinois case, left it to the state in that instance at least to protect this basic right. Since Illinois does not protect it to the extent of *advising* defendants of their right to counsel, the safeguard is denied time after time to those who do not know of it.

This most recent decision, however, was by the hairline margin of 5 to 4. Chief Justice Vinson and Justices Reed, Frankfurter, Jackson and Burton were the content majority. Justices Black, Douglas, Murphy and Rutledge condemned the decision as "watering down the Bill of Rights." Speaking through Justice Black, they gravely declared: "We cannot know what Bill of Rights provision will next be attenuated by this court."

A statement so grim as this should be enough in itself to give the bar of Illinois pause. When the Missouri right-to-counsel cases were decided in

favor of two prison inmates two and a half years ago, the Missouri Supreme Court took steps greatly to its credit. Within a month, the state's Judicial Conference, then presided over by Supreme Judge Albert M. Clark, set forth the precautions which Missouri trial courts should employ to assure satisfaction of the right to counsel. It said:

If it appears to the court that the prisoner is mentally unable to decide his need of counsel because of ignorance, feeble-mindedness, illiteracy or the like, the record should show the appointment and names of counsel whether requested or not.

An accused gets no such protection in Illinois. If he does not ask for counsel the Illinois procedure does not guarantee it for him. Justice Rutledge, in his dissent in the Payne and Foster case, said Illinois makes it possible for the trial court to appear to avoid *deliberately* any mention of the defendant's right to counsel.

How necessary is it that right to counsel be guaranteed? The answer is that it is the most basic of all rights of accused persons. Speedy trial, trial by jury, protection against double jeopardy and against cruel and unusual punishment—all these can be of no avail if an innocent defendant lacks the guidance of counsel.

Fifteen years ago, the late Justice Sutherland, generally considered to have been a reactionary judge in the early days of the New Deal, said it well in *Powell vs. Alabama*, the 1932 *Scottsboro* decision:

Even the intelligent and educated layman lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel in every step in the proceedings against him. Without it, though he may not be guilty, he faces the danger of conviction because he does not know how to establish his innocence.

Yet in Illinois an accused person, no matter how unlearned, can be sent to the penitentiary without ever being told in court that he has the right to be represented by counsel.

Where is the Illinois Bar Association? What can it possibly concern itself with if it does not move to end a denial of justice so flagrant as this one?

We believe that the forceful public inquiry called for by the *Post-Dispatch* editorial must also be directed to other crucial legal problems in Illinois. The remaining articles in this number of the *Review* are therefore devoted to a discussion of such issues in the hope that an informed and alert profession will take the lead in pressing for reform of an antiquated constitutional and legal system.

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