POWELL v. ALABAMA

SUPREME COURT OF THE UNITED STATES
287 U.S. 45
November 7, 1932

OPINION: Mr. Justice SUTHERLAND…The petitioners, hereinafter referred to as defendants, are negroes charged with the crime of rape, committed upon the persons of two white girls. The crime is said to have been committed on March 25, 1931. The indictment was returned…on March 31, and the record recites that on the same day the defendants were arraigned and entered pleas of not guilty. There is a further recital to the effect that upon the arraignment they were represented by counsel. But no counsel had been employed, and aside from a statement made by the trial judge several days later during a colloquy immediately preceding the trial, the record does not disclose when, or under what circumstances, an appointment of counsel was made, or who was appointed. During the colloquy referred to, the trial judge, in response to a question, said that he had appointed all the members of the bar for the purpose of arraigning the defendants and then of course anticipated that the members of the bar would continue to help the defendants if no counsel appeared. Upon the argument here both sides accepted that as a correct statement of the facts concerning the matter.

There was a severance upon the request of the state, and the defendants were tried in three separate groups…As each of the three cases was called for trial, each defendant was arraigned, and, having the indictment read to him, entered a plea of not guilty. Whether the original arraignment and pleas were regarded as ineffective is not shown. Each of the three trials was completed within a single day. Under the Alabama statute the punishment for rape is to be fixed by the jury, and in its discretion may be **from ten years imprisonment to death**. **The juries found defendants guilty and imposed the death penalty upon all.** The trial court overruled motions for new trials and sentenced the defendants in accordance with the verdicts. The judgments were affirmed by the state supreme court. Chief Justice Anderson thought the defendants had not been accorded a fair trial and strongly dissented.

In this court the judgments are assailed upon the grounds that the defendants, and each of them, were denied due process of law and the equal protection of the laws, in contravention of the Fourteenth Amendment, specifically as follows: (1) They were not given a fair, impartial, and deliberate trial; (2) they were denied the right of counsel, with the accustomed incidents of consultation and opportunity of preparation for trial; and (3) they were tried before juries from which qualified members of their own race were systematically excluded…

The only one of the assignments which we shall consider is the second, in respect of the denial of counsel; and it becomes unnecessary to discuss the facts of the case or the circumstances surrounding the prosecution except in so far as they reflect light upon that question.

The record shows that on the day when the offense is said to have been committed, these defendants, together with a number of other negroes, were upon a freight train on its way through Alabama. On the same train were seven white boys and the two white girls. A fight took place between the negroes and the white boys, in the course of which the white boys, with the exception of one named Gilley, were thrown off the train. A message was sent ahead, reporting the fight and asking that every negro be gotten off the train. The participants in the fight, and the two girls, were in an open gondola car. The two girls testified that each of them was assaulted by six different negroes in turn, and they identified the seven defendants as having been among the number. None of the white boys was called to testify, with the exception of Gilley, who was called in rebuttal.

Before the train reached Scottsboro, Ala., a sheriff's posse seized the defendants and two other negroes. Both girls and the negroes then were taken to Scottsboro, the county seat. Word of their coming and of the alleged assault had preceded them, and they were met at Scottsboro by a large crowd. It does not sufficiently appear that the defendants were seriously threatened with, or that they were actually in danger of, mob violence; but it does appear that the attitude of the community was one of great hostility. The sheriff thought it necessary to call for the militia to assist in safeguarding the prisoners. Chief Justice Anderson pointed out in his opinion that every step taken from the arrest and arraignment to the sentence was accompanied by the military. Soldiers took the defendants to Gadsden for safe-keeping, brought them back to Scottsboro for arraignment, returned them to Gadsden for safe-keeping while awaiting trial, escorted them to Scottsboro for trial a few days later, and guarded the courthouse and grounds at every stage of the proceedings. It is perfectly apparent that the proceedings, from beginning to end, took place in an atmosphere of tense, hostile, and excited public sentiment. During the entire time, the defendants were closely confined or were under military guard. The record does not disclose their ages, except that one of them was nineteen; but the record clearly indicates that most, if not all, of them were youthful, and they are constantly referred to as 'the boys.' They were ignorant and illiterate. All of them were residents of other states, where alone members of their families or friends resided.

However guilty defendants, upon due inquiry, might prove to have been, they were, until convicted, presumed to be innocent. It was the duty of the court having their cases in charge to see that they were denied no necessary incident of a fair trial. With any error of the state court involving alleged contravention of the state statutes or Constitution we, of course, have nothing to do. The sole inquiry which we are permitted to make is whether the federal Constitution was

contravened; and as to that, we confine ourselves, as already suggested, to the inquiry whether the defendants were in substance denied the right of counsel, and if so, whether such denial infringes the due process clause of the Fourteenth Amendment.

First. The record shows that immediately upon the return of the indictment defendants were arraigned and pleaded not guilty. Apparently they were not asked whether they had, or were able to employ, counsel, or wished to have counsel appointed; or whether they had friends or relatives who might assist in that regard if communicated with. That it would not have been an idle ceremony to have given the defendants reasonable opportunity to communicate with their families and endeavor to obtain counsel is demonstrated by the fact that **very soon after conviction**, able counsel appeared in their behalf. This was pointed out by Chief Justice Anderson in the course of his dissenting opinion. 'They were nonresidents,' he said, 'and had little time or opportunity to get in touch with their families and friends who were scattered throughout two other states, and time has demonstrated that they could or would have been represented by able counsel had a better opportunity been given by a reasonable delay in the trial of the cases judging from the number and activity of counsel that appeared immediately or shortly after their conviction.'

It is hardly necessary to say that the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice. Not only was that not done here, but such designation of counsel as was attempted was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard. This will be amply demonstrated by a brief review of the record…

Six days after indictment, the trials began. When the first case was called, the court inquired whether the parties were ready for trial. The state's attorney replied that he was ready to proceed. No one answered for the defendants or appeared to represent or defend them. Mr. Roddy, a Tennessee lawyer not a member of the local bar, addressed the court, saying that he had not been employed, but that people who were interested had spoken to him about the case. He was asked by the court whether he intended to appear for the defendants, and answered that he would like to appear along with counsel that the court might appoint. The record then proceeds:

> 'The Court: If you appear for these defendants, then I will not appoint counsel; if local counsel are willing to appear and assist you under the circumstances all right, but I will not appoint them.
>
> 'Mr. Roddy: Your Honor has appointed counsel, is that correct?
>
> 'The Court: I appointed all the members of the bar for the purpose of arraigning the defendants and then of course I anticipated them to continue to help them if no counsel appears.
>
> 'Mr. Roddy: Then I don't appear then as counsel but I do want to stay in and not be ruled out in this case.
>
> 'The Court: Of course I would not do that—

'Mr. Roddy: I just appear here through the courtesy of Your Honor.

'The Court: Of course I give you that right…'

And then, apparently addressing all the lawyers present, the court inquired: '…Well are you all willing to assist?

'Mr. Moody: Your Honor appointed us all and we have been proceeding along every line we know about it under Your Honor's appointment.

'The Court: The only thing I am trying to do is, if counsel appears for these defendants I don't want to impose on you all, but if you feel like counsel from Chattanooga—

'Mr. Moody: I see his situation of course and I have not run out of anything yet. Of course, if Your Honor purposes to appoint us, Mr. Parks, I am willing to go on with it. Most of the bar have been down and conferred with these defendants in this case; they did not know what else to do.

'The Court: The thing, I did not want to impose on the members of the bar if counsel unqualifiedly appears; if you all feel like Mr. Roddy is only interested in a limited way to assist, then I don't care to appoint—

'Mr. Parks: Your Honor, I don't feel like you ought to impose on any member of the local bar if the defendants are represented by counsel.

'The Court: That is what I was trying to ascertain, Mr. Parks.

'Mr. Parks: Of course if they have counsel, I don't see the necessity of the Court appointing anybody; if they haven't counsel, of course I think it is up to the Court to appoint counsel to represent them.

'The Court: I think you are right about it Mr. Parks and that is the reason I was trying to get an expression from Mr. Roddy.

'Mr. Roddy: I think Mr. Parks is entirely right about it, if I was paid down here and employed, it would be a different thing, but I have not prepared this case for trial and have only been called into it by people who are interested in these boys from Chattanooga. Now, they have not given me an opportunity to prepare the case and I am not familiar with the procedure in Alabama, but I merely came down here as a friend of the people who are interested and not as paid counsel, and certainly I haven't any money to pay them and nobody I am interested in had me to come down here has put up any fund of money to come down here and pay counsel. If they should do it I would be glad to turn it over—a counsel but I am merely here at the solicitation of people who have become interested in this case without any payment of fee and without any preparation for trial and I think the boys would be better off if I step entirely out of the case according to my way of

looking at it and according to my lack of preparation for it and not being familiar with the procedure in Alabama…'

Mr. Roddy later observed: 'If there is anything I can do to be of help to them, I will be glad to do it; I am interested to that extent.

'The Court: Well gentlemen, if Mr. Roddy only appears as assistant that way, I think it is proper that I appoint members of this bar to represent them, I expect that is right. If Mr. Roddy will appear, I wouldn't of course, I would not appoint anybody. I don't see, Mr. Roddy, how I can make a qualified appointment or a limited appointment. Of course, I don't mean to cut off your assistance in any way—Well gentlemen, I think you understand it.

'Mr. Moody: I am willing to go ahead and help Mr. Roddy in anything I can do about it, under the circumstances.

'The Court: All right, all the lawyers that will; of course I would not require a lawyer to appear if—

'Mr. Moody: I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.

'The Court: All right.'

Is this an Abbott and Costello routine, or what? I'm not sure what all of that was about, but, apparently, neither was the Supreme Court.

And in this casual fashion the matter of counsel in a capital case was disposed of.

It thus will be seen that until the very morning of the trial no lawyer had been named or definitely designated to represent the defendants. Prior to that time, the trial judge had 'appointed all the members of the bar' for the limited 'purpose of arraigning the defendants.' Whether they would represent the defendants thereafter, if no counsel appeared in their behalf, was a matter of speculation only, or, as the judge indicated, of mere anticipation on the part of the court. Such a designation, even if made for all purposes, would, in our opinion, have fallen far short of meeting, in any proper sense, a requirement for the appointment of counsel. How many lawyers were members of the bar does not appear; but, in the very nature of things, whether many or few, they would not, thus collectively named, have been given that clear appreciation of responsibility or impressed with that individual sense of duty which should and naturally would accompany the appointment of a selected member of the bar, specifically named and assigned.

That this action of the trial judge in respect of appointment of counsel was little more than an expansive gesture, imposing no substantial or definite obligation upon any one, is borne out by the fact that prior to the calling of the case for trial on April 6, a leading member of the local bar accepted employment on the side of the prosecution and actively participated in the trial. It is true that he said that before doing so he had understood Mr. Roddy would be employed as counsel for the defendants. This the lawyer in question, of his own accord, frankly stated to the court; and no doubt he acted with the utmost good faith. Probably other members of the bar had a like understanding. In any event, the circumstance lends emphasis to the conclusion that during perhaps the most critical period of the proceedings against these defendants, that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that period as at the trial itself.

Nor do we think the situation was helped by what occurred on the morning of the trial. At that time…Mr. Roddy stated to the court that he did not appear as counsel, but that he would like to appear along with counsel that the court might appoint; that he had not been given an opportunity to prepare the case; that he was not familiar with the procedure in Alabama, but merely came down as a friend of the people who were interested; that he thought the boys would be better off if he should step entirely out of the case. Mr. Moody, a member of the local bar, expressed a willingness to help Mr. Roddy in anything he could do under the circumstances. To this the court responded: 'All right, all the lawyers that will; of course I would not require a lawyer to appear if—.' And Mr. Moody continued: 'I am willing to do that for him as a member of the bar; I will go ahead and help do anything I can do.' With this dubious understanding, the trials immediately proceeded. The defendants, young, ignorant, illiterate, surrounded by hostile sentiment, haled back and forth under guard of soldiers, charged with an atrocious crime regarded with especial horror in the community where they were to be tried, **were thus put in peril of their lives within a few moments after counsel for the first time charged with any degree of responsibility began to represent them.**

It is not enough to assume that counsel thus precipitated into the case thought there was no defense, and exercised their best judgment in proceeding to trial without preparation. Neither they nor the court could say what a prompt and thorough-going investigation might disclose as to the facts. No attempt was made to investigate. No opportunity to do so was given. Defendants were immediately hurried to trial. Chief Justice Anderson, after disclaiming any intention to criticize harshly counsel who attempted to represent defendants at the trials, said: '…The record indicates that the appearance was rather pro forma than zealous and active…' **Under the circumstances disclosed, we hold that defendants were not accorded the right of counsel in any substantial sense…**This conclusion finds ample support in the reasoning of an overwhelming array of state decisions…

It is true that great and inexcusable delay in the enforcement of our criminal law is one of the grave evils of our time. Continuances are frequently granted for unnecessarily long periods of time, and delays incident to the disposition of motions for new trial and hearings upon appeal have come in many cases to be a distinct reproach to the administration of justice. The prompt disposition of criminal cases is to be commended and encouraged. But in reaching that result a

defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the claimed spirit of regulated justice but to go forward with the haste of the mob.

As the court said in *Commonwealth v. O'Keefe*:

> 'It is vain to give the accused a day in court, with no opportunity to prepare for it, or to guarantee him counsel without giving the latter any opportunity to acquaint himself with the facts or law of the case…A prompt and vigorous administration of the criminal law is commendable and we have no desire to clog the wheels of justice. What we here decide is that to force a defendant, charged with a serious misdemeanor, to trial **within five hours of his arrest**, is not due process of law, regardless of the merits of the case.'

Second. The Constitution of Alabama provides that in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel; and a state statute requires the court in a capital case, where the defendant is unable to employ counsel, to appoint counsel for him. The state Supreme Court held that these provisions had not been infringed, and **with that holding we are powerless to interfere**. The question, however, which it is our duty, and within our power, to decide, is whether the denial of the assistance of counsel contravenes the due process clause of the Fourteenth Amendment to the Federal Constitution.

HISTORY ALERT!

If recognition of the right of a defendant charged with a felony to have the aid of counsel depended upon the existence of a similar right at common law as it existed in England when our Constitution was adopted, there would be great difficulty in maintaining it as necessary to due process. Originally, in England, a person charged with treason or felony was denied the aid of counsel, except in respect of legal questions which the accused himself might suggest. At the same time parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel. After the revolution of 1688, the rule was abolished as to treason, but was otherwise steadily adhered to until 1836, when by act of Parliament the full right was granted in respect of felonies generally.

An affirmation of the right to the aid of counsel in petty offenses, and its denial in the case of crimes of the gravest character, where such aid is most needed, is so outrageous and so obviously a perversion of all sense of proportion that the rule was constantly, vigorously and sometimes passionately assailed by English statesmen and lawyers. As early as 1758, Blackstone, although recognizing that the rule was settled at common law, denounced it as not in keeping with the rest of the humane treatment of prisoners by the English law. 'For upon what face of reason,' he says 'can that assistance be denied to save the life of a man, which yet is allowed him in prosecutions for every petty trespass?' One of the grounds upon which Lord Coke defended the rule was that in felonies the court itself was counsel for the prisoner. But how can a judge, whose functions are purely judicial, effectively discharge the obligations of counsel for the accused? He can and should see to it that in the proceedings before the court the accused shall be dealt with justly and fairly. He cannot investigate the facts, advise and direct the defense, or participate in those

necessary conferences between counsel and accused which sometimes partake of the inviolable character of the confessional.

The rule was rejected by the colonies…[I]n at least twelve of the thirteen colonies the rule of the English common law, in the respect now under consideration, had been definitely rejected and the right to counsel fully recognized in all criminal prosecutions, save that in one or two instances the right was limited to capital offenses or to the more serious crimes; and this court seems to have been of the opinion that this was true in all the colonies…

One test which has been applied to determine whether due process of law has been accorded in given instances is to ascertain what were the settled usages and modes of proceeding under the common and statute law of England before the Declaration of Independence, subject, however, to the qualification that they be shown not to have been unsuited to the civil and political conditions of our ancestors by having been followed in this country after it became a nation. Plainly, as appears from the foregoing, this test, as thus qualified, has not been met in the present case…

The Sixth Amendment…provides that in all criminal prosecutions the accused shall enjoy the right 'to have the Assistance of Counsel for his defence.'…In…*Chicago, Burlington & Q.R. Co. v. Chicago,* this court held that a judgment of a state court, even though authorized by statute, by which private property was taken for public use without just compensation, was in violation of the due process of law required by the Fourteenth Amendment, notwithstanding that the Fifth Amendment explicitly declares that private property shall not be taken for public use without just compensation…

Likewise, this court has considered that freedom of speech and of the press are rights protected by the due process clause of the Fourteenth Amendment, although in the First Amendment, Congress is prohibited in specific terms from abridging the right. *Gitlow; Stromberg; Near v. Minnesota.*

…The fact that the right involved is of such a character that it cannot be denied without violating those 'fundamental principles of liberty and justice which lie at the base of all our civil and political institutions' is obviously one of those compelling considerations which must prevail in determining whether it is embraced within the due process clause of the Fourteenth Amendment, although it be specifically dealt with in another part of the Federal Constitution. Evidently this court, in the later cases enumerated, regarded the rights there under consideration as of this fundamental character. That some such distinction must be observed is foreshadowed in *Twining v. New Jersey*, where Mr. Justice Moody, speaking for the court, said that: '…It is possible that some of the personal rights safeguarded by the first eight Amendments against national action may also be safeguarded against state action, because a denial of them would be a denial of due process of law. If this is so, it is not because those rights are enumerated in the first eight Amendments, but because they are of such a nature that they are included in the conception of due process of law.' While the question has never been categorically determined by this court, a consideration of the nature of the right and a review of the expressions of this and other courts makes it clear that **the right to the aid of counsel is of this fundamental character**.

It never has been doubted by this court, or any other so far as we know, that notice and hearing are preliminary steps essential to the passing of an enforceable judgment, and that they, together with a legally competent tribunal having jurisdiction of the case, constitute basic elements of the constitutional requirement of due process of law. The words of Webster, so often quoted, that by 'the law of the land' is intended 'a law which hears before it condemns,' have been repeated in varying forms of expression in a multitude of decisions. In *Holden v. Hardy*, the necessity of due notice and an opportunity of being heard is described as among the 'immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.' And Mr. Justice Field, in an earlier case, *Galpin v. Page*, said that the rule that no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear and afforded an opportunity to be heard. 'Judgment without such citation and opportunity wants all the attributes of a judicial determination; it is judicial usurpation and oppression, and never can be upheld where justice is justly administered.'…

What, then, does a hearing include? Historically and in practice, in our own country at least, it has always included the right to the aid of counsel when desired and provided by the party asserting the right. The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he [may] have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect. If in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, **employed by and appearing for him**, it reasonably may not be doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense.

The decisions all point to that conclusion. In *Cooke v. United States*, it was held that where a contempt was not in open court, due process of law required charges and a reasonable opportunity to defend or explain. The court added, 'We think this includes the assistance of counsel, if requested…' In numerous other cases the court, in determining that due process was accorded, has frequently stressed the fact that the defendant had the aid of counsel. In *Ex parte Hidekuni Iwata*, the federal district judge enumerated among the elements necessary to due process of law in a deportation case [is] the opportunity at some stage of the hearing to secure and have the advice and assistance of counsel. In *Ex parte Chin Loy You*, also a deportation case, the district judge held that under the particular circumstances of the case the prisoner, having seasonably made demand, was entitled to confer with and have the aid of counsel. Pointing to the fact that the right to counsel as secured by the Sixth Amendment relates only to criminal prosecutions, [the] judge said, '…but it is equally true that that provision was inserted in the Constitution because the assistance of counsel was recognized as essential to any fair trial of a case against a prisoner.' In *Ex parte Riggins*, a case involving the due process clause of the Fourteenth Amendment, the court said, by way of illustration, that if the state should deprive a

person of the benefit of counsel, it would not be due process of law. Judge Cooley refers to the right of a person accused of crime to have counsel as perhaps his most important privilege, and after discussing the development of the English law upon that subject, says: 'With us it is a universal principle of constitutional law, that the prisoner shall be allowed a defense by counsel.' The same author…regarded the right of the accused to the presence, advice and assistance of counsel as necessarily included in due process of law. The state decisions which refer to the matter, invariably recognize the right to the aid of counsel as fundamental in character.

In the light of the facts outlined in the forepart of this opinion—the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility, the imprisonment and the close surveillance of the defendants by the military forces, the fact that their friends and families were all in other states and communication with them necessarily difficult, and above all that they stood in deadly peril of their lives—**we think the failure of the trial court to give them reasonable time and opportunity to secure counsel was a clear denial of due process.**

But passing that, and assuming their inability, even if opportunity had been given, to employ counsel, as the trial court evidently did assume, we are of opinion that, under the circumstances just stated, the necessity of counsel was so vital and imperative that the failure of the trial court to make an effective appointment of counsel was likewise a denial of due process within the meaning of the Fourteenth Amendment. Whether this would be so in other criminal prosecutions, or under other circumstances, we need not determine. All that it is necessary now to decide…is that in a capital case, where the defendant is unable to employ counsel, and is incapable adequately of making his own defense because of ignorance, feeble-mindedness, illiteracy, or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law; and that duty is not discharged by an assignment at such a time or under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case. To hold otherwise would be to ignore the fundamental postulate, already adverted to, 'that there are certain immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard.' *Holden v. Hardy*. In a case such as this, whatever may be the rule in other cases, the right to have counsel appointed, when necessary, is a logical corollary from the constitutional right to be heard by counsel.

In *Hendryx v. State*, there was no statute authorizing the assignment of an attorney to defend an indigent person accused of crime, but the court held that such an assignment was necessary to accomplish the ends of public justice, and that the court possessed the inherent power to make it. 'Where a prisoner,' the court said, 'without legal knowledge is confined in jail, absent from his friends, without the aid of legal advice or the means of investigating the charge against him, it is impossible to conceive of a fair trial where he is compelled to conduct his cause in court, without the aid of counsel…Such a trial is not far removed from an exparte proceeding.'

Let us suppose the extreme case of a prisoner charged with a capital offense, who is deaf and dumb, illiterate, and feeble-minded, unable to employ counsel, with the whole power of the state arrayed against him, prosecuted by counsel for the state without assignment of counsel for his defense, tried, convicted, and sentenced to death. Such a result, which, if carried into execution, would be little short of judicial murder, it cannot be doubted would be a gross violation of the

guarantee of due process of law; and we venture to think that no appellate court, state or federal, would hesitate so to decide. The duty of the trial court to appoint counsel under such circumstances is clear, as it is clear under circumstances such as are disclosed by the record here; and its power to do so, even in the absence of a statute, can not be questioned. **Attorneys are officers of the court, and are bound to render service when required by such an appointment.**

The United States by statute and every state in the Union by express provision of law, or by the determination of its courts, make it the duty of the trial judge, where the accused is unable to employ counsel, to appoint counsel for him. In most states the rule applies broadly to all criminal prosecutions, in others it is limited to the more serious crimes, and in a very limited number, to capital cases. A rule adopted with such unanimous accord reflects, if it does not establish the inherent right to have counsel appointed at least in cases like the present, and lends convincing support to the conclusion we have reached as to the fundamental nature of that right.

The judgments are reversed and the causes remanded for further proceedings not inconsistent with this opinion.

DISSENT: Mr. Justice BUTLER/McREYNOLDS…[Not provided as irrelevant to our study.]

This notorious case became known as the Scottsboro Boys vs. Alabama. There were a total of nine black defendants ranging in age from 13 to 21. On the first trial, the youngest was not convicted, but the other eight were convicted and sentenced to death. These cases wound up in two major United States Supreme Court opinions – this one and Norris v. Alabama, where Alabama's administrative exclusion of blacks from juries was held unconstitutional.

Haywood Patterson was tried four times, convicted and sentenced to 75 years.

Clarence Norris was ultimately sentenced to death, but his sentence was reduced in 1938 and he was paroled in 1946. 30 years later the Governor of Alabama pardoned Norris. At that time, he was the last Scottsboro Boy still living.

Andrew Wright was sentenced to 99 years.

Charles Weems was sentenced to 75 years.

Ozie Powell pled guilty to assaulting a sheriff and was sentenced to 20 years.

Leroy Wright, Eugene Williams, Olen Montgomery and Willie Roberson were all freed after charges were dropped in 1937.