Wyoming Law Journal

Volume 7 | Number 1 Article 3

December 2019

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be sufficient, or should the court consider the possibility of maladjustment to both the person seeking to adopt and the child, resulting from diametrically opposed personalities? Would the granting of the adoption petition deprive the parent and the children of the natural and normal feelings that should exist between every parent and child? These are all questions that every court should consider prior to making a decision, and each case that comes before the court will present a different factual situation and could conceivably result in a different decision.

Until the Wyoming Statutes dealing with this subject are strictly construed the answer to these questions will remain in doubt. Two of the statutes[17] clearly state that the consent of the parent is an essential part of the adoption proceeding, but another[18] does indicate a manner in which the adoption proceeding could be carried out without the consent of the natural parent.

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WIRE TAPPING AS A DEPRIVATION OF PRIVACY OF COUNSEL

In a prosecution of a government employee for copying, taking, concealing and removing documents filed with the Justice Department relating to espionage activities and the national defense, the defendant charged that Federal Bureau of Investigation agents intercepted telephone conversations between her and her counsel, both before and during her trial in the District of Columbia, and that she was therefore denied the effective assistance of counsel. From the denial of a motion for a new trial made upon this ground defendant appealed. *Held*: the trial court erred in holding that the interception of telephone messages between the defendant and her counsel before and during her trial, if it occurred, was nothing more than a serious breach of ethics, since if the interception taak place the defendant's right to effective aid of counsel was violated and the verdict would have to be set aside. *Coplon v. United States*, 191 F.2d 749 (D.C. Cir. 1951).

The question involved in the *Coplon* case is the right to private consultation with counsel both before trial and during the trial, regardless of whether such interceptions of telephone conversations between the accused and her counsel operated as a means of procuring evidence used to convict. It is well established that an accused does not enjoy the effective aid of counsel if he is denied the right of private consultation with

17. See Notes 9 and 10, supra.
18. See Note 12, supra.

him,[1] but this appears to be the first time the question has arisen in federal prosecutions as a result of wire-tapping.

The Fifth Amendment of the federal constitution provides that no person shall be deprived of life, liberty or property without due process of law. Such due process includes the right of one accused of crime to have the effective and substantial aid of counsel.[2] Moreover, under the Sixth Amendment, the federal courts have no jurisdiction or power to render judgment and sentence against accused unless he has, or waives the assistance of, counsel, and judgment of conviction thus pronounced without jurisdiction is void.[3] In some State jurisdictions this right to counsel is limited to capital cases[4] and to non-capital cases where the lack of representation would result in particular unfairness to the accused.[5] The right to have the assistance of counsel means effective assistance[6] and cannot be satisfied by a mere formal appointment.[7]

It was not until 1836 that the English criminal system by act of Parliament conferred the full right to have aid of counsel in respect to felonies generally.[8] Prior to that, only parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel.[9] Lord Coke defended the early rule on the grounds that in felonies the court itself was counsel for the prisoner. But obviously a judge 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. However, he can and should see to it that in the proceedings before the court the accused shall be dealt with justly and fairly.[10] It appears that this early English rule was rejected in at least twelve of the thirteen colonies, and the right to counsel fully recognized in all criminal prosecutions, save that in one or two instances that right was limited to capital offenses or to the more serious crimes.[11]

The right to "effective and substantial assistance" of counsel as secured by the Sixth Amendment is recognized as essential to any fair trial of a case against a prisoner. To hold otherwise would be in effect to deny those fundamental rights of life and liberty guaranteed by the Constitution

1. 14 Am. Jur., Criminal Law (1938), 885 Sec. 171; In State ex rel. Tucker v. Davis, 9 Okla. Crim. Rep. 94, 130 Pac. 962, 44 L.R.A. (N.S.) 1083 (1913); In Ex Parte Rider, 50 Cal. App. 797, 195 Pac. 965 (1920); People ex rel. Burgess v. Riseley, 13 Abb N.C. 186, 1 N.Y. Crim. Rep. 492 (1883); Ex parte Snyder, 62 Cal. App. 697, 217 Pac. 777 (1923).
2. Neufield v. United States, 73 App. D.C. 174, 182, 118 F.2d 375, 383 (1941).
3. Johnson v. Zerbst, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938).
4. McDonald v. Com., 173 Mass. 322, 53 N.E. 874, 73 Am. St. Rep. 293, affirmed in 180 U.S. 311, 45 L. Ed. 542, 21 S. Ct. 389 (1901).
5. Betts v. Brady, 316 U.S. 455, 62 S. Ct. 1252, 86 L. Ed. 1595 (1942).
6. Thomas v. District of Columbia, 90 F.2d 424, 67 App. D.C. 179 (1937); McDonald v. Hudspeth, 41 F. Supp. 182 (1937).
7. U.S. ex rel. Mitchell v. Thompson, 56 F. Supp. 683 (1946).
8. Powell v. Alabama, 287 U.S. 45, 60, 53 S. Ct. 55, 61, 84 A.L.R. 27, 535 (1932).
9. Ibid.
10. Id. at 287 U.S. 61, 53 S. Ct. 61, 84 A.L.R. 536.
11. Ibid.

in the Fifth Amendment.[12] This right is unqualifiedly guarded by the Fifth and Sixth Amendments without making the vindication of the right depend upon whether its denial resulted in demonstrable prejudice.[13] It is true 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 the right of private consultation in preparing his defense. It is not due process of law, regardless of the merits of the case if the constitutional rights of the accused are not scrupulously observed.[14] In *United States v. Venuto,* the court said, "We can find no justification for imposing a restriction of silence between accused and counsel during a trial recess. We reject the Government contention that defendant and his counsel must prove affirmatively the exact prejudice produced by this injunction in a federal prosecution. Not only would this require them to disclose what would have been privileged communication between attorney and client, but, as stated in *Glasser v. United States, supra,* 315 U.S. 60 at page 76, 62 S. Ct. 457 at page 467, 86 L. Ed. 680: 'The right to have the assistance of counsel is too fundamental and absolute to allow courts to indulge in nice caluclations as to the amount of prejudice arising from its denial.' "[15]

The *Glasser* case also related that, "Upon the trial judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused."[16]

As to just when and where consultations between prisoners and their attorneys may be had will vary with the circumstances of each case, within the discretion of the officer having the custody of such prisoner; but this discretion is subject to the review of the courts, and it must not be arbitarily used.[17] The attorney should not be compelled to give the officer the reason for a private interview, if he is to grant it, because to adopt such a rule would be to substitute the judgment of the officer, upon questions involving the prisoner's defense, in place of the judgment of the prisoner and his counsel.[18] No attorney should be compelled to disclose to any person any fact which would directly or indirectly affect the defense of his client.[19] In some jurisdictions a wilful denial of the right by the sheriff, warden or other officer, constitutes a criminal offense.[20] The judge, therefore, should not be able to permit such violations of the right to assistance of counsel on the grounds of no prejudice to the accused, since he would be subject to punishment if he were the jailor in such a case and not the

12. U.S. Const. Amend. V: "No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of the law."
13. Glasser v. United States, 315 U.S. 60, 76, 62 S. Ct. 457, 467, 86 L. Ed. 680, 702 (1942).
14. Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 A.L.R. 527 (1932).
15. 182 F.2d at 522 (1950).
16. 315 U.S. at 71, 62 S. Ct. at 465, 86 L. Ed. at 699 (1942).
17. 23 A.L.R. 1384 (1923).
18. Ex Parte Snyder, 62 Cal. App. 697, 699, 217 Pac. 777, 779, 54 A.L.R. 1226 (1923).
19. Ibid.
20. 23 A.L.R. 1382 (1923) and 54 A.L.R. 1225 (1928).

judge. The right to be heard by counsel would, in the language of Saint Paul, 1 Cor. 13, 1, "become as sounding brass, or a tinkling cymbal," if it did not include the right to a full and confidential consultation with such counsel, with no other persons present to hear what was said. This is a material right, essential to justice.[21]

The Federal Constitutional provisions guaranteeing the assistance of counsel are duplicated in most State Constitutions including Wyoming.[22] In some jurisdictions, the Constitutions are often supplemented by statutes expressly concerned with this right of consultation.[23] Wyoming has a statute providing for the assignment of counsel for indigent prisoners which guarantees free access to the accused by his counsel at all reasonable hours.[24] But it appears there are no Wyoming decisions on the right to private consultation, and very few decisions relating to the assistance of counsel. The court in *James v. State*,[25] recognized the importance of the right to advice of counsel, as guaranteed by section 10, article 1 of our Constitution, and the statute noted above.

In light of the cases considered there can be little doubt of the soundness of the *Coplon* decision, and its adoption by the Wyoming courts. To hold otherwise would be to ignore the fundamental postulate, "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."[26]

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21. State ex rel. Tucker v. Davis, 9 Okla. Crim. Rep. 94, 95, 130 Pac. 962, 963, 44 L.R.A. (N.S.) 1083 (1913).
22. Powell v. Alabama, 287 U.S. 45, 53 S. Ct. 55, 77 L. Ed. 158, 84 A.L.R. 527 (1932); State ex rel. Tucker v. Davis, 9 Okla. Crim. Rep. 94, 44 L.R.A. (N.S.) 1083, 130 Pac. 962 (1913); Dietz v. State, 149 Wis. 462, 136 N.W. 166, Ann. Cas. 1913C, 732 (1912); Decker v. State, 113 Ohio St. 512, 150 N.E. 74, 42 A.L.R. 151 (1925); Lancaster v. State, 82 Tex. Crim. Rep. 473, 200 S.W. 167, 3 A.L.R. 1533 (1918); People v. Thorn, 156 N.Y. 286, 50 N.E. 947, 42 L.R.A. 368 (1898); Wyo. Const. Art. 1, Sec. 10.
23. 23 A.L.R. 1382 (1923) and 54 A.L.R. 1225 (1928).
24. Wyo. Comp. Stat. 1945 Sec. 10-805.
25. 27 Wyo. 378, 196 P. 1045 (1921).
26. Powell v. Alabama, 287 U.S. 45, 65, 53 S. Ct. 55, 72, 84 A.L.R. 527, 541 (1932).