Supplementary Material

Chapter 5: The Jacksonian Era—Criminal Justice/Juries and Lawyers/Right to Counsel

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State v. Cummings, 5 La. Ann. 330 (1850)

John Cummings was indicted for homicide. He requested that an attorney assist him during jury selection. The trial judge refused this request. After being found guilty, Cummings appealed to the Supreme Court of Louisiana. He claimed that his right to counsel under the state constitution included a right to counsel throughout his trial.

The Supreme Court of Louisiana overturned the conviction. Judge Preston asserted that the right to counsel begins at the start of a trial. State v. Cummings *was the first instance when a state appellate court overturned a conviction because the defendant was denied a right to an attorney. Such reversals were more frequent in the second half of the nineteenth century. One explanation for this greater concern with the right to counsel may be the greater professionalization of criminal procedure. Can you think of other explanations?*

JUDGE PRESTON

. . .

The 107th article of the Constitution guarantees the right of persons accused of crimes of being heard by counsel. A similar provision in the Constitution of the United States and of the several States has, as far as we can learn, been liberally construed to mean the right of being aided by counsel in every step and stage of the prosecution.

The first Legislative Council that assembled in the Territory of Louisiana enacted "that every person accused and indicted shall be admitted to make his full defence by counsel learned in the law; and the court before whom such person shall be tried, or some judge thereof, shall immediately upon his request assign to such person such counsel as such person may desire, to whom such counsel shall have free access at all seasonable hours." This law has remained unaltered ever since, and the lapse of nearly half a century has sanctioned its wisdom.

It was a reproach to the Common Law of England that prisoners were not allowed the aid of counsel when accused of crimes. Their ignorance and timidity when prosecuted by the high officers of government, their want of self possession when life and liberty was put in jeopardy, rendered them incapable of defending themselves, and often the greatest injustice and oppression occurred. This lead to the guarantee of the right to counsel in our liberal constitutions, and the right should be liberally construed.

The moment at which perhaps it is most seasonable and necessary that a person accused of a crime should have aid and counsel, is that when he is about to be put upon his trial for the offence, and to select the jury for his trial.

A good counselor in criminal cases studies the book of man as thoroughly as the statute book, and by that study qualifies himself to aid his client in the selection of the jury to try him as much as by the discharge of his other duties. His better knowledge of men, and better acquaintance with the character, feelings, pursuits, connections and other relations of those whom chance places on the panel is an advantage of which his client should have the benefit in making his challenges, since no law prohibits it. We think, therefore, that the court erred in prohibiting the counsel of the prisoner from aiding him in making his peremptory challenges.

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