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seems to be a major defeat for public health and consumer interest. Cigarette-cancer plaintiff's were moving toward favorable verdicts under implied warranty, but the act apparently nullifies their chances. Future plaintiffs will be faced with the obstacle of notice on cigarette packages resulting in assumption of risk. The tobacco industry has apparently evaded liability under an implied warranty and saved millions of dollars by the enactment of the Federal Cigarette Labeling and Advertising Act.

Harmon B. Allen

CRIMINAL LAW: INADMISSABLE CONFESSIONS

A system of criminal law enforcement which comes to depend on the "confession" is less reliable and more subject to abuses than a system which depends on extrinsic evidence secured through skillful investigation.

This statement by Mister Justice Goldberg in the now famous case of *Escobedo v. Illinois*¹ expresses the philosophy of recent court decisions in cases involving questionable confessions. The rule of the *Escobedo* case (that if the investigation has reached the accusatory stage and the defendant has been denied assistance of counsel, his confessions then made are inadmissible)² has been modified and reinterpreted by two recent California cases.

In *People v. Schader*³, the defendants entered a grocery store in the late evening, each stepping into a separate checkout line. Upon reaching the cashier, defendant Turner demanded all the money in the cash register and after he received it, both defendants left the store. An off-duty police officer saw the two performing the robbery and attempted to stop them outside the store. Defendant Schader got behind the officer, placed his pistol to the officer's neck, and fired, killing him instantly. The defendants were later apprehended while attempting to leave town. Later that same evening both defendants made confessions which were duly recorded. Defendants were convicted of first degree murder. On appeal, defendant Schader attacked the confession alleging he had not been informed of his right to counsel. The court reversed the conviction and in its opinion said: "[I]f he [Defendant] did not request counsel his confession still remained inadmissible . . . since the record does not indicate that the defendant, prior to his confession, had been advised of his rights to counsel and to remain silent or had otherwise waived those rights."⁴

In the *Schader* opinion the court cited another California case, *People*

¹ 378 U.S. 478, 488-89 (1964). (Footnotes omitted.)

² 378 U.S. 478 (1964).

³ 44 Cal. Rptr. 2d 193, 401 P.2d 665 (1965).

⁴ *Id.*, at 199, 401 P.2d at 671.

v. Dorado,⁵ in which a similar situation had arisen. Dorado was a prison inmate and was accused of stabbing to death a fellow inmate. Defendant was interrogated three different times and was never informed of his right to counsel or his right to remain silent. During the second interrogation the defendant confessed to the crime and gave details concerning its perpetration. The court did not admit the confession and in its opinion quoted *Escobedo* stating: "There is necessarily a direct relationship between the importance of a stage to the police in their quest for a confession and *the criticalness of that stage to the accused in his need for legal advice*."⁶ The court is referring to the accusatory stage of the process or where it ". . . has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements. . . ." In *Escobedo* the court determined that if this stage had been reached and the defendant was denied counsel, any confession thereafter made by him whether voluntary or involuntary would be inadmissible. In fact the court held that "no statement" elicited from the defendant under these circumstances would be admissible.

In *Dorado* the court took this rule from *Escobedo* and went one step further, stating:

[D]efendant's confession could not properly be introduced into evidence because (1) the investigation was no longer a general inquiry into an unsolved crime but had begun to focus on a particular suspect, (2) the suspect was in custody, (3) the authorities had carried out a process of interrogations that lent itself to eliciting incriminating statements, (4) *the authorities had not effectively informed defendant of his right to counsel or of his absolute right to remain silent*, and no evidence establishes that he had waived these rights.⁸

By expanding the *Escobedo* rule and holding that defendant must be advised of his right to counsel and the absolute right to remain silent the court reversed the long standing California rule, that voluntary confessions made in the absence of warnings as to rights of counsel and the right to remain silent could be admitted into evidence.⁹

The decision in *Escobedo*, followed by *Schader* and *Dorado*, stresses the importance of the theory that counsel should be present during the interrogation to assure that defendant's rights will be protected.¹⁰ This

⁵ 42 Cal. Rptr. 2d 169, 398 P.2d 361, *cert. denied*, 85 Sup. Ct. 1763 (1965).

⁶ *Id.*, at 175, 398 P.2d at 367. (Emphasis by court.)

⁷ *Escobedo v. Illinois*, *supra* note 1, at 490-91.

⁸ *People v. Dorado*, *supra* note 5, at 179, 398 P.2d at 371. (Emphasis added.)

⁹ *People v. Hoyt*, 20 Cal. 2d 306, 125 P.2d 29 (1942); *People v. Ramirez*, 113 Cal. App. 204, 298 P. 60 (Dist. Ct. App. 1931); *People v. Booth*, 72 Cal. App. 160, 236 P. 987 (Dist. Ct. App. 1925); *People v. Clark*, 28 Cal. App. 735, 153 P. 980 (Dist. Ct. App. 1915).

¹⁰ Note, *The Right to Counsel During Police Investigation*, 25 MD. L. REV. 165, 175 (1965).

is a sound proposition but was first propounded in *Escobedo* where the defendant was actively denied counsel. The California courts have made a liberal interpretation of the general rule as stated in *Escobedo* and held that police officers and prosecutors must inform the defendant that he may be represented by counsel at these interrogations. It would seem obvious that the number of confessions obtained from suspects would be greatly reduced under these circumstances.

Before the adoption of this viewpoint the courts placed great emphasis on whether the confession was voluntary or involuntary.¹¹ However, it has been noted that this test in the future may not be sufficient to decide questions of due process.¹² Justice Burke in his dissent in *Schader* stated: "[T]he prejudice which results from the use of an improperly received *voluntary* confession is not necessarily the same as that which the Supreme Court of the United States has held to result from the use of an *involuntary* confession."¹³

The majority of the court, however, felt that the voluntariness of the confession was less important than the defendant's right to counsel, or was subservient to his right to counsel.¹⁴ Therefore, the court has determined that it is not as important for the defendant to have confessed of his own free will as it is to assure that his rights are not violated by allowing him to confess, or encouraging him to confess, without first informing him of his right to be represented by counsel at interrogations. Thus the emphasis is shifting to guaranteeing individual rights under the constitution as construed by the courts, and confessions improperly obtained are no longer admissible into evidence no matter how truthful or reliable.¹⁵ The merits of this shift are not to be determined here.

Early Oklahoma decisions held that the object of admitting a confession in evidence is to obtain truth. The courts felt the only ground upon which a confession should be rejected is that the circumstances under which it is obtained tend to show that it may be false, and therefore the object is likely to be frustrated.¹⁶ The Oklahoma appellate courts have made no rulings on the specific subject of the admissibility of a confession after failing to advise an accused of his right to counsel, except in a case involving a minor seventeen years of age. The court ruled his confession inadmissible when, in the absence of parent, guardian or counsel, he was not advised of his constitutional right to refuse to answer questions that might incriminate him.¹⁷ In other cases involving this closely

¹¹ *People v. Siemsen*, 153 Cal. 387, 95 P. 863 (1908).

¹² *Criminal Law*, 9 WAYNE L. REV. 62, 67 (1962).

¹³ *People v. Schader*, *supra* note 3, at 204, P.2d at 676 (dissent). (Emphasis by court).

¹⁴ *People v. Schader*, *supra* note 3.

¹⁵ Mamone, *Right to Counsel on Arrests: A Federal Exclusionary Rule Against Confessions and Admissions Illegally obtained in State Prosecutions*, 16 W. RES. L. REV. 725, 779 (1965).

¹⁶ *Guthrie v. State*, 87 Okla. Cr. 112, 194 P.2d 895 (1948); *Carr v. State*, 85 Okla. Cr. 429, 188 P.2d 705 (1948); *Schrack v. State*, 84 Okla. Cr. 260, 181 P.2d 270 (1947).

¹⁷ *Fields v. State*, 77 Okla. Cr. 1, 138 P.2d 124 (1943).