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Constitutional Criminal Procedure

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CONSTITUTIONAL CRIMINAL PROCEDURE

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A. THE RIGHT TO COUNSEL

1. *On trial for a felony and on appeal from a felony conviction.*

Prior to 1963, the right to counsel in state courts of one charged with a crime was determined largely by state law. As late as 1942, in the case of *Betts v. Brady*,[1] the United States Supreme Court affirmed the robbery conviction in a Maryland court of an unrepresented defendant. Due to lack of funds, he had been unable to employ counsel and so informed the judge on arraignment. The defendant requested that the court appoint counsel to defend him. The judge refused the request, however, on the grounds that it was not the practice in that county to appoint counsel for indigent defendants, save in prosecutions for murder and rape.

In 1963, the Supreme Court decided *Gideon v. Wainwright*.[2] The defendant, charged with a felony, had appeared in a Florida court without funds or a lawyer and requested counsel to defend him. Florida law permitted appointment of counsel only when the defendant was accused of a capital offense. He was found guilty and sentenced to five years in the state prison. The Supreme Court of Florida denied habeas corpus. On appeal, the United States Supreme Court reversed:

> We accept Betts v. Brady's assumption . . . that a provision of the Bill of Rights which is "fundamental and essential to a fair trial" is made obligatory upon the States by the Fourteenth Amendment. We think the

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[1] 316 U.S. 455 (1942).
[2] 372 U.S. 335 (1963).

> Court in *Betts* was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of those fundamental rights.[3]

Douglas v. California[4] was decided the same day as *Gideon*. The defendant, who had been convicted of thirteen felonies, had requested the trial court to appoint counsel to represent him on appeal. Pursuant to California law, the court made an investigation and denied the request for counsel. In reversing, the Supreme Court said:

> There is lacking that equality demanded by the Fourteenth Amendment where rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the indigent, already burdened by a preliminary determination that his case is without merit, is forced to shift for himself.[5]

The appointment of counsel requirement which *Gideon* made applicable in state courts caused substantial revision of the practice previously followed in many states. The impact of *Gideon* was not so great in Oklahoma. The Oklahoma Constitution, adopted in 1907, provides that in all criminal prosecutions the accused shall have the right to be heard by himself and counsel.[6] In the case of Ex parte *George*,[7] the Oklahoma Court of Criminal Appeals held that a trial court may lose jurisdiction to pronounce judgment against an accused if, in the absence of an effective waiver of his right, it fails to appoint counsel to represent him.

In *Brown v. State*,[8] the Oklahoma court earlier had held that an accused is entitled to counsel at every stage of the proceeding, that his constitutional right to be heard by counsel is not limited to the trial. Thus, it will be seen that *Gideon*,

[3] *Id.* at 342 (footnote omitted).
[4] 372 U.S. 353 (1963).
[5] *Id.* at 357-58.
[6] OKLA. CONST. art 2, § 20.
[7] 83 Okla. Crim. 99, 173 P.2d 454 (1946).
[8] 39 Okla. Crim. 406, 266 P. 476 (1928).

in effect, merely applied nationally a rule which had been in effect in Oklahoma since statehood.

In 1964, in order to insure that there would be no doubt whether an accused had effectively waived his constitutional right to counsel, the Oklahoma Court of Criminal Appeals established guidelines as to what the record must reflect whenever an accused not represented by counsel wishes to enter a plea of guilty. In *Huggins v. State*[9] the court said:

> [I]n all cases where an accused, not represented by counsel, enters a plea of guilty and is sentenced on that plea by the trial judge, the record of the trial proceeding must affirmatively show that the accused knows and understands the nature of the charge against him, and the punishment that can be imposed therefor; knows and understands his constitutional right to be represented by counsel; knows and understands his right to be represented by Court appointed counsel, if he is unable to employ the same; knows and understands his right to a trial by Jury. And if the accused does not desire to be represented by counsel of his own choice or Court appointed counsel and has entered a plea of guilty of his own free will and accord, with a full and intelligent understanding of the nature of such waiver, and of the consequences of such plea in this connection.[10]

2. *On trial for a misdemeanor and on appeal from a misdemeanor conviction.*

The question today is whether the *Gideon* rule is applicable when the defendant is charged with a misdemeanor. In 1965, the Court of Appeals for the Fifth Circuit extended *Gideon*.[11] A defendant had pleaded guilty in a Mississippi court to the misdemeanor of the unlawful sale of whiskey. He was fined and sentenced to ninety days in jail. He had not been informed of his right to counsel nor been represented by counsel. The court of appeals reversed the district court's denial of a writ of habeas corpus on the grounds that

[9] 388 P.2d 341 (Okla. Crim. App. 1964).
[10] *Id.* at 344-45.
[11] Harvey v. Mississippi, 340 F.2d 263 (5th Cir. 1965).

the state had not accorded the defendant his Constitutional rights.[12]

In spite of the rule adopted by the Fifth Circuit, it appears that the states still have discretion in the assignment of counsel in misdemeanor cases. This conclusion is based upon the following developments: The Supreme Court denied certiorari in the case of *Winters v. Beck*,[13] where the defendant had been convicted of a misdemeanor in an Arkansas court. He had no counsel and was not informed of his right to counsel in the state court. Again in 1966, the Court denied certiorari in *DeJoseph v. Connecticut*[14] where the defendant had been convicted of a misdemeanor in a state court. On trial he had no counsel nor funds to provide counsel. He requested the court to assign counsel, but the request was ignored.

A second question concerns the right to counsel in the appeal of misdemeanor convictions. The Court plainly indicated in *Douglas v. California*[15] that a convicted felon is entitled to appointed counsel on appeal; but the Court has not been specific where appeal of misdemeanor convictions are involved. Perhaps this lack of definiteness can be attributed to the fact that, as of this date, the question has not been squarely before the Court for decision. On the other hand, a recent Michigan decision may indicate the development of a trend in this area. A defendant had been convicted of a misdemeanor and sentenced to ninety days in the house of correction. After serving this sentence, he was remanded to the state prison, as a parole violator, to serve the remainder of a felony sentence. The Michigan Supreme Court held that the

[12] The Fifth Circuit reaffirmed the position taken in Harvey v. Mississippi, 340 F.2d 263 (5th Cir. 1965), in McDonald v. Moore, 353 F.2d 106 (5th Cir. 1965).

[13] 385 U.S. 907 (1966).

[14] 385 U.S. 982 (1966).

[15] 372 U.S. 353 (1963).

defendant was entitled to appointment of counsel to appeal the misdemeanor conviction.[16]

Since the preparation of an appeal, including briefs and arguments, requires more technical knowledge of law and procedure than is required to represent oneself in a trial court when accused of a misdemeanor, it is predicted that, when the question is squarely presented, the Supreme Court will hold that an indigent defendant is entitled to appointment of counsel to represent him on appeal.

3. *At a preliminary judicial proceeding.*

Prior to 1965, it was generally accepted that if a witness testified against an accused on preliminary hearing and his testimony was either cross-examined or subject to cross-examination, the testimony would be admissible against the accused on trial on the merits in the event the witness was unable to attend and testify in person. This practice was discarded by the Supreme Court in *Pointer v. Texas*.[17] In that case the petitioner and another were arrested and taken before a state judge for a preliminary hearing on a charge of robbery by violence. Neither of the defendants had a lawyer. The victim was chief witness for the state, but Pointer did not attempt to cross-examine him. It was said, however, that he did attempt to cross-examine other witnesses at the hearing. The victim moved to California. On trial on the merits and over the objections of Pointer's attorney, whom he had acquired by trial time, the victim's testimony recorded at the preliminary hearing was admitted. The trial judge took the attitude that Pointer had been present at the preliminary hearing and, therefore, had been accorded an opportunity of cross-examining witnesses against him. This ruling was in accord with the generally accepted view prevailing at the time.

[16] People v. Mallory, 378 Mich. 538, 147 N.W.2d 66 (1967).
[17] 380 U.S. 400 (1965).

The Supreme Court reversed, saying:

> [T]his right [to cross-examine witnesses] appears in the Sixth Amendment . . . . [W]e have expressly declared that to deprive an accused of the right to cross-examine the witnesses against him is a denial of the Fourteenth Amendment's guarantee of due process of law. . . .
>
> . . . [S]ince *Gideon v. Wainwright* . . . it no longer can broadly be said that the Sixth Amendment does not apply to state courts. . . .
>
> . . . [T]he Sixth Amendment's guarantee of confrontation and cross-examination was unquestionably denied petitioner in this case. . . . The case before us would be quite a different one had Phillips' statement been taken at a full-fledged hearing at which petitioner had been represented by counsel who had been given a complete and adequate opportunity to cross-examine.[18]

The rule of the *Pointer* case is clear and unmistakable. Where a witness testifies against an accused on preliminary hearing, or at any stage prior to trial, that testimony will be inadmissible at the principal trial unless the defendant had been represented by counsel who had an opportunity to cross-examine.

4. *At a Police line-up.*

Prior to June 12, 1967, the identification of an accused in a police line-up was admissible against him at his trial, even if he had not been represented by counsel at the line-up. The cases of *United States v. Wade*[19] and *Gilbert v. California*[20] changed this prevailing rule. In *Wade* the Supreme Court held that a post-indictment, pre-trial line-up, at which the accused is exhibited to identifying witnesses, is a critical stage of the criminal prosecution; that police conduct of such a line-up without notice to, and in the absence of his counsel, denies the accused his sixth amendment right to counsel and calls in question the admissibility at trial of the in-court

[18] *Id.* at 404-07.
[19] 388 U.S. 218 (1967).
[20] 388 U.S. 263 (1967).

identification of the accused by witnesses who attended the line-up. The same principle was applied in the *Gilbert* case. Therefore where a witness who had previously identified the accused in an illegal pre-trial line-up again identifies the accused in court, the in-court identification will be admissable only if it can be shown to be based upon matter independent of and not tainted by the illegal line-up.[21]

B. CONFESSIONS AND SELF INCRIMINATION

1. *Unnecessary delay.*

For many years, it was accepted in all jurisdictions that the test for admissibility of a confession was whether it was voluntary.

Rule 5 (a) of the Federal Rules of Criminal Procedure provides that an arresting officer shall take the person arrested without unnecessary delay before the nearest available commissioner or other officer empowered to commit persons charged with offenses against the United States. On arraignment, the commissioner shall inform the person of the complaint against him, of his right to retain counsel, of his right to a preliminary examination, and that he is not required to make a statement but that any statement made may be used against him.

The Supreme Court reversed the defendant's conviction for rape in *Mallory v. United States.*[22] Although magistrates were readily available, Mallory was arraigned only after six hours of questioning, a lie detector test *and* his confession. The Court held that the arraignment was not without unnecessary delay; in effect it promulgated the rule that confessions secured prior to arraignment are inadmissible.

[21] This principle is not retroactive, however. Stovall v. Denno, 388 U.S. 293 (1967).

[22] 354 U.S. 449 (1957).

[23] OKLA. STAT. tit. 22, § 176 (1961).

The *Mallory* rule has not been made applicable to the states. However, a review of state cases since *Mallory* leads to a conclusion that it has had an effect upon state decisions. For example, Oklahoma for years has required an officer making a felony arrest to take the accused before a magistrate[23] without delay.[24] Another Oklahoma statute declares that an officer who wilfully fails to take an arrested person before a magistrate is guilty of a misdemeanor.[25] Until recently these statutes have been generally ignored although Oklahoma courts have given lip service to the doctrine that unnecessary delay in taking an arrested person before a magistrate violates his statutory and constitutional rights. They have, however, been hesitant in nailing down conclusively the period of time beyond which a delay would be unreasonable. The case of *Benton v. State*,[26] decided by the Oklahoma Court of Criminal Appeals in 1948 is illustrative of the language used: "The delay, herein involved, constitutes a violation of the defendant's statutory rights. . . . Under these provisions it was the duty of the arresting officer to have taken the defendant before a magistrate without delay."[27] In *Benton* the court held that detention from May 22 to June 11 was unreasonable and that a confession made during that time should not have been used to support the conviction. In 1960, twelve days was held to be unreasonable,[28] and in 1963, eight days.[29] These two cases, decided after the *Mallory* case, indicate a decided scaling down in the number of days an officer may delay in taking an accused before a magistrate and still use a confession made during the delay. Would the Oklahoma court deny admission of a confession obtained during a six hour delay as the federal courts must do under the *Mallory* rule? Probably not, if the con-

[24] OKLA. STAT. tit. 22, § 181 (1961).
[25] OKLA. STAT. tit. 21, § 534 (1961).
[26] 86 Okla. Crim. 137, 190 P.2d 168 (1948).
[27] *Id.* at 157-58, 190 P.2d at 177.
[28] *In re* Fowler, 356 P.2d 770 (Okla. Crim. App. 1960).
[29] Brown v. State, 384 P.2d 54 (Okla. Crim. App. 1963).

fession is voluntary. Of course since *Miranda v. Arizona*,[30] a confession made prior to the accused being warned of his rights, and without a waiver, would be inadmissible. It is predicted that the *Mallory* decision will continue to have more influence on reducing the time that officers may delay taking an accused before a magistrate after arrest.

2. *Denial of Access to Counsel.*

In 1964, the Supreme Court decided in *Escobedo v. Illinois*[31] that the refusal by police to honor defendant's request to consult with his attorney during the course of interrogation constituted a denial of the assistance of counsel in violation of the sixth amendment to the Constitution of the United States, as made obligatory upon the states by the fourteenth amendment.

> We hold . . . that where, as here, the investigation is no longer a general inquiry into an unsolved crime but 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, the suspect has requested and has been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment" . . . and that no statement elicited by the police during the interrogation may be used against him at a criminal trial.[32]

Considerable confusion resulted from the *Escobedo* decision as to exactly how far the Court intended to go. This confusion was dispelled by *Miranda v. Arizona*.[33]

[W]hen an individual is taken into custody, or other-

[30] 384 U.S. 436 (1966).
[31] 378 U.S. 478 (1964).
[32] *Id.* at 490-91, *quoting* Gideon v. Wainwright, 372 U.S. 335, 342 (1963).
[33] 384 U.S. 436 (1966).

> wise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self incrimination is jeopardized. Procedural safeguards must be employed to protect the privilege, and unless other fully effective means are adopted to notify the person of his right of silence and to assure that the exercise of the right will be scrupulously honored, the following measures are required. He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires. Opportunity to exercise these rights must be afforded to him throughout the interrogation. After such warnings have been given, and such opportunity afforded him, the individual may knowingly and intelligently waive these rights and agree to answer questions or make a statement. But unless and until such warnings and waiver are demonstrated by the prosecution at trial, no evidence obtained as a result of interrogation can be used against him.[34]

3. *Spontaneous confessions and admissions.*

The Supreme Court has not yet been called on to pass upon the admissibility of spontaneous confessions and admissions. The question was faced by the Court of Appeals for the Ninth Circuit, however, in *Pitman v. United States*.[35] A bank in Las Vegas, Nevada, had been robbed. A deputy sheriff had his attention directed by a bystander to the defendant who was sitting in a station wagon. He told defendant to put his hands where they could be seen and opened the car door. Immediately, defendant stepped out of the car and, without any questioning from the deputy, said: "I am the fellow you are looking for; I heisted the bank. The money and the gun are right here."[36] Defendant pointed into the car and in clear

[34] *Id.* at 478-79 (footnote omitted).
[35] 380 F.2d 368 (9th Cir. 1967).
[36] *Id.* at 370.

view was an open plastic bag containing currency and an automatic pistol. Defendant was arrested, handcuffed, and placed in the patrol car. The court held that, even though the accused had not been warned of his constitutional rights when he told the deputy sheriff that he had robbed the bank, inasmuch as the statements were spontaneous, were made before any questioning and were entirely voluntary, they were admissible.

4. *Refusal to testify.*

In the case of *Spevack v. Klein*,[37] the Supreme Court extended the principle of *Mallory* v. *Hogan*[38] to attorneys. In a judicial inquiry as a part of disciplinary proceedings, the petitioner, a member of the New York Bar, refused to produce demanded financial records or to testify on the grounds that the production of the records and his testimony would tend to incriminate him. The Appellate Division of the New York Supreme Court ordered the petitioner disbarred, holding that the constitutional privilege against self-incrimination was not available to him in the light of the decision in *Cohen v. Hurley*.[39] The Supreme Court reversed. Mr. Justice Douglas said:

> And so the question emerges whether the principle of Mallory v. Hogan is inapplicable because petitioner is a member of the Bar. We conclude that *Cohen* v. *Hurley* should be overruled, that the Self-Incrimination Clause of the Fifth Amendment has been absorbed in the Fourteenth, that it extends its protection to lawyers as well as to other individuals, and that it should not be watered down by imposing the dishonor of disbarment and the deprivation of a livelihood as a price for asserting it.[40]

[37] 385 U.S. 511 (1967).
[38] 378 U.S. 1 (1964).
[39] 366 U.S. 117 (1961).
[40] 385 U.S. at 514 (Opinion of Douglas, J., in which the Chief Justice and Black and Brennan, JJ., concurred. Fortas, J. concurred in the result.)

There is little doubt that the *Spevak* case will cause considerable revision in disciplinary practice of bar associations in the future.

5. *Eavesdropping, wiretapping and informers.*

In some cases self-incrimination may arise from the use by law officers of eavesdroppers or informers. In *Silverman v. United States*[41] an unanimous Court held that listening to incriminating conversations within a house by inserting an electronic device, a so-called "spike mike", into a party wall and making contact with a heating duct, thus converting the entire heating system into a conductor of sound, violated petitioner's protection against unreasonable search and seizure. The incriminating matter thus secured was inadmissible on trial. The prohibition against unlawful search and seizure is the determining factor in many of the eavesdropping and informer cases. A few of these cases are included to round out the discussion of confessions, because the evidence secured by means of eavesdropping, wiretapping, or the use of informers is generally in the nature of an admission against interest which, if it cannot in every case be said to amount technically to a confession, closely approximates one.

In *Clinton v. Virginia,*[42] the defendent had contended in the state courts that it was reversible error to admit evidence obtained by means of a mechanical device stuck in the partition of an adjoining apartment. The spiked device used by the state police was not driven into the wall, but was stuck in it. Virginia's highest court affirmed defendant's conviction on the grounds that the *Silverman* case was factually different, that the eavesdropping was not accomplished through an unauthorized penetration into the premises occupied by the defendant. The Supreme Court reversed. The view of the Court today apparently was summed up by Mr. Justice

[41] 364 U.S. 505 (1961).

[42] 377 U.S. 158 (1964), *rev'g* 204 Va. 275, 130 S.E.2d 437 (1963).

Douglas in his concurring opinion in the *Silverman* case, when he said:

> Our concern should not be with the trivialities of the local law of trespass, as the opinion of the Court indicates. But neither should the command of the Fourth Amendment be limited by nice distinctions turning on the kind of electronic equipment employed. Rather our sole concern should be with whether the privacy of the home was invaded.[43]

In *Goldman v. United States*,[44] federal officers were permitted to use evidence obtained by placing a dictaphone against the wall of a private office. Later cases have dealt with an invasion of the privacy of the home, rather than of a place of business. The constitutional requirements in this area are not entirely free from doubt. In *Silverman* and *Clinton*, the Court refers to protecting the privacy of the home rather than to the technical laws of trespass. Nevertheless, one cannot avoid noticing that some of the members of the Court were concerned that the devices used in fact constituted a trespass against the property. Yet the Court has not said that the sole concern is protecting the privacy of the home.

Where wiretapping is concerned, as in the case of eavesdropping, courts generally apply the prohibition against unlawful searches and seizures. Again, as in the case of eavesdropping, the evidence secured by wiretapping is in the nature of an admission against interest, analogous to a confession. In 1928, the Supreme Court held that messages passing over telephone wires are not within the protection against unreasonable search and seizure.

> The [fourth] Amendment itself shows that the search is to be of material things—the person, the house, his papers or his effects. . . . The evidence was secured by the use of the sense of hearing and that only. There was

[43] 365 U.S. at 513 (concurring opinion).
[44] 316 U.S. 129 (1942).

> no entry of the houses or offices of the defendants. . . .
> The intervening wires are not part of his house or office. . .[45]

It has not been necessary for the Court to re-examine this position. The Court has relied upon the Federal Communications Act [46] to dispose of wiretapping cases that have arisen since 1934. The Act expressly prohibits intercepting a communication and divulging it. In *Benati* v. *United States*,[47] the Supreme Court excluded evidence secured by wiretapping. It said: "[C]onfronted as we are by this clear statute, and resting our decision on its provisions, it is neither necessary nor appropriate to discuss by analogy distinctions suggested to be applicable to the Fourth Amendment. [It] contains an express, absolute prohibition against the divulgence of intercepted communications." The Department of Justice and the Federal Bureau of Investigation have taken the position that the Act does not prohibit wiretapping, but only tapping followed by divulging the information gained.

Berger v. New York[49] is another important eavesdropping case. Pursuant to the provisions of a New York statute,[50] an *ex parte* eavesdropping order was secured from a trial court permitting the installation of a recording device in a described office for a sixty day period. After two weeks, use of the device uncovered a conspiracy involving the issuance of liquor licenses and resulted in the indictment of the defendant as a go-between for the principal conspirators. The statute was held to be unconstitutional since it failed to meet the particularity requirements of the fourth amendment, both as to the specific crime involved and the particular conversations sought. In effect, all the statute required was an assur-

[45] Olmstead v. United States, 277 U.S. 438, 464-65 (1928).
[46] Federal Communications Act of 1934 § 605, 47 U.S.C. § 605 (1964).
[47] 355 U.S. 96 (1957).
[48] *Id.* at 102 (footnote omitted).
[49] 388 U.S. 41 (1967).
[50] N. Y. CODE CRIM. PROC. § 813-a (McKinney Supp 1967).

ance from the applicant that evidence of some crime might result; this was too broad an authorization. Since the Court did not specifically foreclose the possibility that a constitutional eavesdropping statute may be drawn, it will be interesting to see if the New York legislature can remedy the defects in its statute, and if so, the treatment it will be accorded by the Court.

The Court upheld, however, in *Lopez v. United States*,[51] a non-telephonic, electronic eavesdropping. An Internal Revenue agent, instructed by his superiors to "pretend to play along with the scheme," met petitioner in the latter's office. He recorded bribe offers by means of a pocket wire-recorder hidden on his person. A majority of the Court rejected the theory that the agent gained access to petitioner's office by misrepresentation in falsifying his mission, consequently the conversation with him was not illegally seized. The majority reasoned: "[T]he device was not planted by means of an unlawful physical invasion of petitioner's premises under circumstances which would violate the Fourth Amendment. It was carried in and out by an agent who was there with petitioner's assent, and it neither saw nor heard more than the agent himself."[52]

Informers report statements or commitments are in most instances damaging admissions, and if not actually classifiable as confessions closely approximate them. In *Lewis v. United States*,[53] an undercover Federal Narcotics agent had gained access to defendant's home to purchase marihuana. The agent initially contacted defendant by telephone, using a false name and stating that they had a mutual friend. The defendant contended that absent a search warrant, any official instrusion upon the privacy of his home constituted a fourth amendment violation. The Supreme Court affirmed his conviction and quoted with approval the conclusion of

[51] 373 U.S. 427 (1963).
[52] *Id.* at 439.
[53] 385 U.S. 206 (1966).

the government's brief:

> In short, this case involves the issue of no governmental power to intrude upon protected premises; the visitor was invited and willingly admitted by the suspect. It concerns no design on the part of a government agent to observe or hear what was happening in the privacy of a home . . . . [T]he only statements repeated were those that were willingly made to the agent and the only things taken were the packets of marihuana voluntarily transferred to him. The pretense resulted in no breach of privacy; it merely encouraged the suspect to say things which he was willing and anxious to say to anyone who would be interested in purchasing marihuana.[54]

In *Hoffa v. United States*,[55] the Supreme Court approved the use of a compensated government informer. The informer became a member of the party of the defendant during the latter's first criminal trial, and he made frequent reports to federal officials of defendant's conversations and endeavors to bribe members of the jury. The Court held that the informer's presence in the defendant's hotel room did not constitute an unreasonable search and seizure in violation of the fourth amendment, that the defendant had invited the informer to his room, but made the mistake of misplaced confidence. Nor was defendant's fifth amendment right against self incrimination violated since his statements were not coerced, legally or factually. The Court also held without merit the defendant's claim that the sixth amendment was violated. It rejected defendant's arguments that the intrusion of the informer infringed upon his right confidentially to prepare for trial with counsel and that the defendant should have been advised of his right to counsel, since the informer had sufficient information to justify his arrest. The Court also held that there was no violation of the due process clause of the fifth amendment, but that the use of a government informer was a legitimate tool in discovering covert criminal activities.

[54] *Id.* at 212.
[55] 385 U.S. 293 (1966).