**POWELL v. STATE OF ALABAMA**

**287 U.S. 45 (1932)**

Argued Oct. 10, 1932.

Decided Nov. 7, 1932.

[Note: The following is an excepted version of the Supreme Court decision in *Powell v. Alabama*, a case decided in 1932. The case, which drew a considerable amount of attention at the time, involved a racial incident in which a group of nine black youths, popularly referred to as the Scottsboro boys, where accused of raping white women. A year after the trial described below, one of the two alleged victims recanted her accusations.]

Mr. Justice SUTHERLAND delivered the opinion of the Court.

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…

There was a severance upon the request of the state, and the defendants were tried in three several groups…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…

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. These questions were properly raised and saved in the courts below.

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.

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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…

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.

April 6, 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…

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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'…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.

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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.

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Second. The Constitution of Alabama (Const. 1901, 6) provides that in all criminal prosecutions the accused shall enjoy the right to have the assistance of counsel; and a state statute (Code 1923, 5567) 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.

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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.

…All that it is necessary now to decide, as we do 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.

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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 must be reversed and the causes remanded for further proceedings not inconsistent with this opinion.

Judgments reversed.

Mr. Justice BULTER, dissenting.

The Court putting aside-they are utterly without merit-all other claims that the constitutional rights of petitioners were infringed, grounds its opinion and judgment upon a single assertion of fact. It is that petitioners 'were denied the right of counsel, with the accustomed incidents of consultation and opportunity of preparation for trial.' If that is true, they were denied due process of law and are entitled to have the judgments against them reversed.

But no such denial is shown by the record.

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If there had been any lack of opportunity for preparation, trial counsel would have applied to the court for postponement. No such application was made. There was no suggestion, at the trial or in the motion for a new trial which they made, that Mr. Roddy or Mr. Moody was denied such opportunity or that they were not in fact fully prepared. The amended motion for new trial, by counsel who succeeded them, contains the first suggestion that defendants were denied counsel or opportunity to prepare for trial. But neither Mr. Roddy nor Mr. Moody has given any support to that claim. Their silence requires a finding that the claim is groundless for if it had any merit they would be bound to support it. And no one has come to suggest any lack of zeal or good faith on their part.

If correct, the ruling that the failure of the trial court to give petitioners time and opportunity to secure counsel was denied of due process is enough, and with this the opinion should end. But the Court goes on to declare 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.' This is an extension of federal authority into a field hitherto occupied exclusively by the several States…

Mr. Justice McREYNOLDS concurs in this opinion.