

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LODGED



DEC 19 1975

WILLIAM D. RUND, Clerk
U. S. DISTRICT COURT
E. DISTRICT OF MO.

BILLY JOE TYLER, et al.,)
)
 Plaintiffs,)
)
 UNITED STATES OF AMERICA,)
)
 Plaintiff-Intervenor,)
)
 vs.)
)
 RAYMOND PERCICH, et al.,)
)
 Defendants.)

Cause No. 74-40-C(2)

MEMORANDUM OF AMICUS CURIAE IN SUPPORT OF PLAINTIFF-
INTERVENOR'S MOTION FOR A RESTRAINING ORDER

Facts

On or about December 12, 1975, Plaintiff-Intervenor, the United States of America, filed a Motion for a Restraining Order and injunction on behalf of those pre-trial defendants in cases pending in the Circuit Court of the City of St. Louis seeking to restrain and enjoin their removal from the immediate St. Louis area. As a result of the transfer of these pre-trial defendants outside of the St. Louis area, it is virtually impossible for them to confer with their attorneys on a regular basis or to assist their attorneys in the preparation of defenses to the criminal charges pending against them.

The Bar Association of Metropolitan St. Louis has moved for leave to file this memorandum of law as an amicus curiae.

Argument

"Upon the whole, if the offense be notailable, or the party cannot find bail, he is to be committed to the county gaol by the mittimus of the justice . . . there to abide till delivered by due course of law. . . . But this imprisonment, as has been said, is only for safe custody, and not for punishment: therefore, in this dubious interval between

the commitment and trial, a prisoner ought to be used with the utmost humanity, and neither be loaded with needless fetters, or subjected to other hardships than such as are absolutely requisite for the purposes of confinement only. . . ." 4 W. Blackstone, Commentaries 300.

The above principle which Blackstone enunciated in the late Eighteenth Century is fundamental to American Jurisprudence today: The purpose for incarcerating a person accused of a crime, but not yet convicted, is solely to guarantee his presence at trial. For example, in Hamilton v. Love, 328 F.Supp. 1182 (E.D. Ark. 1971), the Court emphasized that the only legitimate State purpose served by holding an accused defendant in jail prior to trial is to assure his presence at trial.

Moreover, when the accused is incarcerated prior to trial, the conditions of that incarceration must be the least restrictive means of achieving the purpose requiring the detention. Hamilton v. Love, supra. Accused persons incarcerated prior to trial ". . . are not to be subjected to any hardships except those absolutely requisite for the purpose of confinement only, and they retain all the rights of an ordinary citizen except the right to go and come as they please. . . ." Jones v. Wittenberg, 323 F.Supp. 93 (N.D. Ohio 1971). In short, the incarceration of an accused person cannot and will not be allowed to interfere with his constitutional rights.

It is elementary that any person accused of a crime has the constitutional right to assistance of counsel. Sixth Amendment, Constitution of the United States; Article I, Section 18(a), Constitution of Missouri. The right of an accused to counsel, as guaranteed by the Constitutions of the United States and Missouri, includes the right to confer and consult with his

attorney while the accused is in custody, State v. Owens, 391 S.W. 2d 248 (Mo. 1965), and also to assist the attorney in the preparation of his defense, Johnson v. State, 479 S.W.2d 416 (Mo. 1972).

The question then is: Are the constitutional rights to counsel of the pre-trial defendants in this case denied when they are transferred to custody outside of the immediate St. Louis area? The answer clearly is yes.

The pre-trial defendants in this case will be tried in St. Louis. Some of the jails to which the pre-trial defendants are being transferred are in excess of two hundred miles from the City of St. Louis. At this distance, each conference between a defendant and his attorney would require a minimum of one (1) day assuming the attorney left St. Louis in the morning and returned that evening. Given these circumstances, it is highly probable that the nature of a law practice would necessitate delays in conferences between the defendants and their attorneys. If defendants' attorneys were required to make even a nominal appearance before a St. Louis area court, he would of necessity be required to delay seeing the defendant until at least the following day.

As this Court no doubt is aware, the preparation of a criminal case is a highly delicate matter. Witnesses must be interviewed in great depth and facts investigated in minute detail. In any criminal case, these interviews and investigations are likely to raise numerous questions involving trial strategy, evidence, production of certain witnesses, documents, and demonstrative evidence. It is not only conceivable that these questions will require consultations with the accused; it is nothing short of an absolute certainty. Any delay in obtaining

answers to these questions can only adversely affect the trial of the merits. This, then, in effect means that the defendants are being denied the right to counsel.

Sympathy for the plight of the defendants in this case cannot be an excuse or justification for denying the pre-trial defendants their right to counsel. We not only concede, but freely admit, the problems of the Sheriff and the City and recognize the numerous efforts on their part to carry out their duties under the laws of the State of Missouri. But the right of an accused to counsel in a criminal case is the cornerstone of American Jurisprudence. Ex Parte Stone, 225 S.W.2d 155 (Mo. 1953). Inadequate resources can never be an excuse or justification for the State's depriving the Constitutional rights of any accused who has been incarcerated prior to trial. If the State cannot afford to detain persons awaiting trial in accordance with their constitutional rights, then the State cannot be permitted to detain them. Hamilton v. Love, supra.

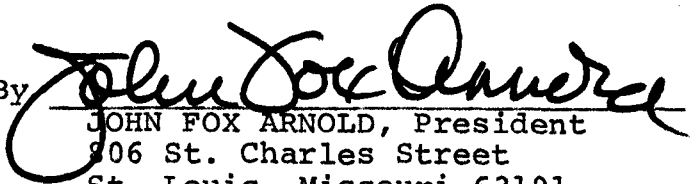
Conclusion

For the foregoing reasons, the defendants in this cause should be ordered to return the pre-trial defendants to the City of St. Louis or to a facility accessible to their attorneys wherein the right to counsel would not be violated.

Respectfully submitted,

THE BAR ASSOCIATION OF
METROPOLITAN ST. LOUIS

By


JOHN FOX ARNOLD, President
806 St. Charles Street
St. Louis, Missouri 63101
421-4134
Amicus Curiae

Certificate of Service

I hereby certify that a copy of the foregoing has been mailed, first class, postage prepaid, to the following attorneys of record, this 19th day of December, 1975:

Thomas J. Guilfoil, Esq.
Guilfoil, Symington & Petzall
818 Olive Street
St. Louis, Missouri 63101

John J. Fitzgibbon, Esq.
Associate City Counselor
314 City Hall
St. Louis, Missouri 63103

A. Robert Belscher, Esq.
Civil Courts Building
Twelfth and Market Streets
St. Louis, Missouri 63101

Stephen A. Winston, Esq.
United States Department of Justice
Washington, D.C. 20530

Donald J. Stohr, Esq.
United States Attorney
1114 Market Street
St. Louis, Missouri 63102

