

FOR DISCUSSION

No. 759

MIRANDA v. ARIZONA

65 Term No. 419 Misc.

Cert. to Ariz. Supreme Ct.
Response from Ariz. A.G.

(Opinion not included)

This is another case presenting an Escobedo issue, and may be an excellent case to take for the purpose of resolving the conflict between the various jurisdictions as to the meaning of Escobedo.

Petr. is a 23 year old indigent, convicted of kidnapping and rape and given a 20-30 year sentence. He has but an 8th grade education and a history of mental disturbance.

He was arrested--the circumstances are not disclosed--and taken to a police lineup. It is not stated whether he was identified or not, but there is a hint (at p.5) that he was. Immediately thereafter he was interrogated and confessed. It is conceded that (1) Petr. was not warned of his right to counsel (and not stated whether he was warned of his right to remain silent); (2) an objection was timely made on Escobedo grounds; and (3) Petr. did not request counsel.

The Arizona Supreme Court apparently held that the investigation had not "focused" on Petr.--a view which would clearly be wrong if it is found that Petr. was identified at the lineup, and which is probably wrong anyway. The Court also limited Escobedo to the case where the accused requests counsel.

This is a good case to consider because (1) it presents the issue squarely without doubt as to whether the accused was warned of his right to counsel or not; (2) it will be argued by competent counsel --John P. Frank; (3) there is no possibility of anyone seriously arguing that this Petr. clearly knew of his rights, since he is ill-educated and apparently mentally unstable.

The Attorney General of Arizona agrees that cert. should be granted. He resists--rightly, it would seem--Petr.'s suggestion that summary reversal is in order.

Grant

9/10/65

JBF