

1967

## Resolutions of the National District Attorneys Association

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*Escobedo*, as that case was construed and explained in *Miranda v. Arizona*, 384 U.S. 436 (1966).

The case was tried before the Supreme Court decision in *Miranda*, but after the *Escobedo* decision. The court said that "only the holding in *Escobedo* is controlling," but that in determining whether the evidence here was admissible under that holding "we must follow the interpretation in *Miranda* of the meaning of what the court said in *Escobedo*."

The court then said that *Miranda* explained

"custodial interrogation" to mean questioning when a person "has been taken into custody or otherwise deprived of his freedom in any significant way." The court reasoned from this that "a defendant questioned by an officer with a drawn gun within three feet of him was deprived of his freedom in a significant way." Since the officer would not let the defendant escape, "we are unable to say from these facts that the statement made by defendant was voluntary."

## RESOLUTIONS OF THE NATIONAL DISTRICT ATTORNEYS ASSOCIATION

The National District Attorneys Association, at its Mid-Winter Conference in Los Angeles, on February 14-18, 1967, adopted the following resolutions:

### ELECTRONIC SURVEILLANCE

*Whereas*, great concern is being expressed about the increasing use of electronic surveillance devices, involving both the interception of wire and radio communications and the monitoring of private conversations; and

*Whereas* this Association initially recognizes that privacy of communication is essential if individuals are to think and act creatively and constructively; and

*Whereas*, on the other hand, the controlled usage of such electronic and mechanical devices can be most effective in the prevention and solution of serious crimes and in the protection of individuals who might be victims of crime; and

*Whereas*, such usage is often necessary and the sole means of affording such prevention, detection and protection; and

*Whereas*, some measures are clearly necessary to prevent the indiscriminate use of such electronic devices, especially by those individuals and groups engaged in illegal activities or activities not primarily in the public interest; and

*Whereas*, there presently exists lack of uniformity and resultant confusion in the existing laws dealing with this subject and the interpretation of such laws; and

*Whereas*, a majority of the members of the President's Commission on Law Enforcement and Administration of Justice have recognized this situation and have recommended that legislation be enacted granting carefully circumscribed authority for electronic surveillance to law enforcement officers;

*Now therefore, be it resolved* that the National District Attorneys Association urges the enactment of appropriate federal and state legislation which would grant authority, on application of district attorneys, attorneys general and the Attorney General of the United States, on behalf of law enforcement agencies, and under court control, for electronic surveillance in connection with the prevention and solution of serious criminal offenses, as well as in matters involving state and national security.

*Be It Further Resolved* that such legislation be in form so as to not preclude the right of an individual to preserve a record of his own conversations and transactions; and

*Be It Further Resolved* that effort be made to make such legislation uniform throughout the various jurisdictions, insofar as procedures and controls are concerned and that this be accomplished, if necessary, by the enactment of permissive legislation on the part of the Congress.

### CRIMINAL INTERROGATIONS

*Whereas*, interrogation by law enforcement officials of witnesses and suspects has been regarded as a necessary technique and procedure in the investigation and prosecution of criminal activity, and

*Whereas*, voluntary statements made by such witnesses, and suspects have often supplied the information necessary for the solution of a crime and for bringing to Justice the perpetrators thereof, and

*Whereas*, recent decisions of our highest courts, both Federal and State have placed restrictions upon the manner in which such voluntary statements may be solicited and obtained from persons suspected of crime, and

*Whereas*, the National District Attorney Association is vitally concerned with the effect of such decisions upon proper enforcement of our criminal statutes, and upon the due administration of criminal justice, as well as the impact of such decisions upon the welfare of our National Community, and

*Whereas*, little statistical information exists upon which the Congress of the United States, the legislative bodies of the several states, the courts or the community can form any meaningful opinion as to whether and how such restrictions are detrimental to the welfare of our society,

*Now therefore, be it resolved* by the National District Attorneys Association:

1. That police, prosecutors and other law enforcement agencies be urged to keep and maintain records of the responses obtained to non-coercive interrogation and to requests for voluntary statements by such criminal suspects after being admonished in the manner prescribed by such recent court decisions;
2. That, insofar as they are able, police, prosecutors and other law enforcement agencies be urged to compile statistics as to the responses obtained to non-coercive interrogation and to requests for voluntary statements by such criminal suspects prior to the promulgation of said recent restrictive court decisions; and
3. That a copy of such records and statistics be furnished periodically to the Executive Director of this Association for dissemination and use in conjunction with, and in furtherance of, studies as to the effect of said decisions and for the purpose of remedial action as may be warranted if any, by the Congress, the legislative bodies, courts and community aforesaid.

#### THE EXCLUSIONARY RULE

*Whereas*, ever since the promulgation of the exclusionary rule enunciated in *Mapp vs. Ohio*, federal and state courts have applied said rule broadly without regard to the propriety of the motives or intentions of law enforcement officers in conducting searches and seizures, and

*Whereas*, the broad application of such exclusionary rule has too often worked to the detriment of effective law enforcement and the community; and

*Whereas*, the National District Attorneys Association believes that application of an exclusionary

rule should be measured against the propriety of the motives and intentions of the law enforcement officer conducting such searches and seizures consistent with constitutional standards of reasonableness;

*Now therefore, be it resolved* by the National District Attorneys Association:

That appropriate legislation, both federal and state, be enacted, relaxing the aforesaid broad exclusionary rule and authorizing the admission into evidence in the trial of criminal cases of the fruits, instrumentalities or other evidence of crime obtained under circumstances not patently unlawful and where, in conducting such search and seizure, good faith on the part of the law enforcement official is established.

#### FREE PRESS—FAIR TRIAL

*Whereas*, the dissemination of public information insofar as it concerns law enforcement is of major national importances, and;

*Whereas*, the release of certain information in criminal cases may be prejudicial to persons charged with crimes, and;

*Whereas*, the "Right of the people to know" is of vital import to all communities, and;

*Whereas*, the freedom of the press is a cherished right and corner stone of democracy, and;

*Whereas*, recent court decisions have made the problem of commenting on criminal cases more acute;

*Now therefore, be it resolved* that the National District Attorney; Association requests its President to seek, at such time as he may deem proper, a joint meeting with representatives of major news media in order to promulgate guidelines for the release of information in criminal cases in accordance with constitutional guarantees, statutes, court decisions and in the service of the ends of justice.

#### PROSECUTION'S RIGHT TO APPEAL

*Whereas*, the people as well as the defendant should be entitled to one trial free from reversible error; and

*Whereas*, in many instances errors of law prejudicial to the state's case are committed, resulting in miscarriages of justice;

*Be it resolved* that the National District Attorneys Association urges that in all criminal matters, the state should have a right of appeal and/or review on questions of law equal to that of the defendant.