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**RIGHT OF ACCUSED TO BE CONFRONTED WITH
HIS ACCUSERS NOT GUARANTEED BY THE
FOURTEENTH AMENDMENT**

*Stein v. People of the State of New York*¹

In the same case as noted in the preceding casenote, upon objection of the petitioner who did not confess that the admission of the confessions of his co-defendants implicating him in the crime denied him his constitutional right to be confronted with his accusers as guaranteed by the due process provisions of the Fourteenth Amendment, the sharply divided Court,² held: that there was no constitutional right in state criminal proceedings under the Fourteenth Amendment to be confronted with one's accusers and to be allowed to cross examine them.³

Petitioner's basic contention was that there was a federal right of confrontation in state criminal proceedings. The Court met this contention with *West v. Louisiana*,⁴ where in *dicta* the Court had clearly stated that the right of confrontation, granted in Federal criminal proceedings

¹ 346 U. S. 156 (1953). This is a companion casenote to the preceding one and, since arising out of the same case, the facts set out in the previous casenote apply here.

² As pointed out in the prior note, *circa*, footnote 29, this was a 6-3 decision, Justice Jackson for the Court, with Justices Frankfurter, Black, and Douglas in dissent. However, the only dissent to specifically mention the point here involved was that of Justice Black, 197.

³ *Supra*, n. 1, 195.

⁴ 194 U. S. 258 (1904).

by the Sixth Amendment, could not be read into the concept of due process guaranteed in state proceedings by the Fourteenth Amendment.⁵ The decision relied upon by the petitioner, *Snyder v. Massachusetts*,⁶ merely assumed the right of confrontation to have been reinforced by the Fourteenth Amendment.⁷ The hearsay rule, which formed the basis of the right of confrontation was not to be read into the Fourteenth Amendment.⁸

Justice Black in dissenting relied on his opinion in *In re Oliver*⁹ to sustain the position that the Fourteenth Amendment due process included the right of confrontation,¹⁰ and considered *West v. Louisiana* as not controlling.¹¹

From a number of decisions beginning with *Hurtado v. California*,¹² a doctrine of the Court has been formulated that only those rights guaranteed in the first eight amendments to the Constitutions which are fundamental to our basic concepts of politics and justice are to be read into the Fourteenth Amendment as guaranteed in state trials.¹³ Obviously there is no clear line between so fundamental and not so fundamental rights;¹⁴ and the Court has admitted that the circumstances in each situation play a great part in determining whether the right denied was so fundamental.¹⁵ The Court had never before been squarely faced with the constitutionality of a denial of confrontation in a state criminal proceeding but in several statements by way of *dicta* had appeared to weave from one side to the other as to whether it was truly such a fundamental right.¹⁶ Here they met the problem head on and refused to recognize a federal right to confrontation in a state case.

⁵ *Ibid*, 261-263.

⁶ 291 U. S. 97 (1934).

⁷ *Supra*, n. 1, 195, n. 38, quoting from the Snyder case, *ibid*, 107.

⁸ *Ibid*, 196.

⁹ 333 U. S. 257 (1948).

¹⁰ *Supra*, n. 1, 197.

¹¹ *Ibid*, note *.

¹² 110 U. S. 516 (1884).

¹³ See note, 2 Md. L. Rev. 174 (1938), listing the rights so protected.

¹⁴ *Ibid*, 176.

¹⁵ *Betts v. Brady*, 316 U. S. 455, 462 (1942).

¹⁶ In *West v. Louisiana*, *supra*, n. 4, 262-263, Justice Peckham considered confrontation to be not such a fundamental right. Justice Cardozo in *Snyder v. Massachusetts*, *supra*, n. 6, 106, assumed confrontation to be such a fundamental right, but in *Palko v. Connecticut*, 302 U. S. 319, 324, noted, 2 Md. L. Rev. 174 (1938), in lining up the various specific rights granted in the first eight amendments mentioned "the other provisions of the Sixth", as being not fundamental, citing *West v. Louisiana*. Justice Black in *In re Oliver*, *supra*, n. 9, considered the fundamental right to one's day in court to include a right to examine the witnesses against him. See also: 5 WIGMORE ON EVIDENCE (3rd ed., 1940), Sec. 1397; especially n. 1, thereto which lists 44 states whose constitutions grant a right of confrontation and 3 other states whose legislatures have enacted statutes providing such a right. In Maryland, the Declaration of Rights, Art. XXI, gives such a right.