

# ANCHORAGE POLICE DEPARTMENT



## BUREAU BULLETIN



LEGAL BULLETIN NO. 2

October 12, 1977

### RIGHT TO COUNSEL AT LINEUP

Reference: Clifton E. BLUE  
v.  
State of Alaska

- Alaska Supreme Court  
File No. 2677  
558 P2d 686  
Opinion No. 1360  
January 17, 1977

### FACTS:

One evening a bar in Fairbanks was robbed by two armed men. Within several hours the police had developed suspects and located them at another bar. A witness to the robbery was contacted and requested to come to the bar to see if she could identify the robbers. A lineup of eight men, including BLUE and his co-defendant were dressed in casual clothing. The witness immediately identified the co-defendant Dennis BENEFIELD, and after having BLUE stand up identified him as the second robber. Both subjects were arrested. Days later, a second lineup was conducted in the District Court at which time the witness identified BENEFIELD but was unable to identify BLUE. At trial, the witness did identify both BLUE and BENEFIELD. BLUE was convicted and raised several legal issues. One of the issues is the lineups and his right to counsel.

### ISSUE:

Was BLUE entitled to an attorney at the pre-indictment lineup several hours after the event?

HELD: No.

### REASONING:

1. The first lineup was conducted about two hours after the robbery and the police were making every effort to conduct the lineup while the memories of the witnesses were still fresh. Providing counsel at that late hour might have postponed the lineup until the following day. Providing counsel under these circumstances is not practical, reasonable, nor mandated by our Constitution. Exigent circumstances existed and the police acted properly.
2. BLUE was entitled to an attorney even though he had not been indicted at the second lineup held days later in District Court. There was ample time to notify

and have counsel present. Requiring presence of counsel does not interfere with legitimate law enforcement under these circumstances.

3. There were exigent circumstances to conduct the first lineup; but, after the arrest, ample opportunity was present to provide BLUE with counsel at subsequent lineups. Once the arrest is made, even though no indictment is returned, a "critical stage" begins and he should be afforded counsel.

NOTES:

When lineups are conducted at the police station, both Defense Attorney and State Attorney should be allowed to make suggestions as to the "fairness" of the lineup. Witnesses should be separated and view the lineup individually. The witnesses should be furnished with a form to mark the number of the person identified; this should be witnessed by both attorneys as well as the officer. If no identification is made, this too should be noted. Several photographs of the lineup should be taken and individual photographs of the participants (each holding respective number) should also be taken. This will enable a judge to determine the fairness of the lineup.