

**State ex rel. Drankovich v. Murphy**  
248 Wis. 433 (1945)

*In this case, the Wisconsin Supreme Court strengthened the right to legal counsel for defendants in criminal matters, determining that trial judges must make these individuals aware of this right and that a lawyer must be provided at public expense, when necessary, even if the defendant does not request counsel. In a 4-2 vote, the Court vacated a judgment and sentence of the Marinette County Circuit Court. Justice Chester A. Fowler wrote the majority opinion and Justice Edward T. Fairchild wrote the dissent. Justice James W. Rector did not participate.*

With this decision, the Court ensured that criminal defendants who are poor, illiterate, unacquainted with legal proceedings and isolated from friends and family will be equal under the law to those with the money and skill to mount a defense. The Court said due process, as provided in the 14<sup>th</sup> Amendment\* to the U.S. Constitution, requires that all defendants in criminal matters be made aware that they have a right to an attorney, and that they will be given one at public expense, if necessary.

In this case, Victor Drankovich, an immigrant from Poland who spoke very little English, pleaded guilty to murdering Stanley Skibinski on December 26, 1934, and was sentenced to life in prison on January 5, 1935. The judge did not specifically inform him of his right to counsel. On the day of his sentence, Drankovich told the judge: “I don’t mean to kill (the victim) that day...I was happy.”

After his sentence, Drankovich filed a petition for a writ of *habeas corpus*, asking the Wisconsin Supreme Court to free him on the grounds that he had been tried and convicted without a lawyer and had not been made aware that he was entitled to legal counsel.

The Court referred the case to Judge S.E. Smalley of the fifth circuit to determine the circumstances under which the guilty plea was entered and sentence imposed. Smalley considered the evidence and took testimony from the murder victim’s wife on Drankovich’s ability to speak and understand English. He found that Drankovich did not “intelligently waive” the right to counsel.

With all the facts before them, the justices of the Supreme Court determined that the trial judge should have refused to accept the guilty plea and instead should have appointed counsel at public expense for Drankovich. The majority wrote: “It is true that the petitioner was by no means feeble-minded, but he was, through ignorance of the law and illiteracy, utterly incapable of making his own defense.”

The dissenting justices argued that Drankovich had been sufficiently advised of his rights, noting that the trial judge initially refused to accept his guilty plea and appointed an interpreter to confer with him. Justice Fairchild wrote: “The evidence satisfies me that he understood not only the nature of the crime he committed but the consequences of his waiver of a trial and of his pleading guilty.”

The Court (with two justices dissenting) vacated the judgment and sentence and ordered that Drankovich be given a new trial.

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\*U.S. Constitution, 14<sup>th</sup> Amendment: “...nor shall any State deprive any person of life, liberty, or property, without due process of law...”