

nia,³⁹¹ held that lineups are a critical stage and that in-court identification of defendants based on out-of-court lineups or show-ups without the presence of defendant's counsel is inadmissible. The Sixth Amendment guarantee, said Justice Brennan, was intended to do away with the common-law limitation of assistance of counsel to matters of law, excluding matters of fact. The abolition of the fact-law distinction took on new importance due to the changes in investigation and prosecution since adoption of the Sixth Amendment. "When the Bill of Rights was adopted, there were no organized police forces as we know them today. The accused confronted the prosecutor and the witnesses against him, and the evidence was marshaled, largely at the trial itself. In contrast, today's law enforcement machinery involves critical confrontations of the accused by the prosecution at pretrial proceedings where the results might well settle the accused's fate and reduce the trial itself to a mere formality. In recognition of these realities of modern criminal prosecution, our cases have construed the Sixth Amendment guarantee to apply to 'critical' stages of the proceedings. . . . The plain wording of this guarantee thus encompasses counsel's assistance whenever necessary to assure a meaningful 'defence.'" ³⁹²

"It is central to [the principle of *Powell v. Alabama*] that in addition to counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial."³⁹³ Counsel's presence at a lineup is constitutionally necessary because the lineup stage is filled with numerous possibilities for errors, both inadvertent and intentional, which cannot adequately be discovered and remedied at trial.³⁹⁴ However, because there was less certainty and frequency of possible injustice at this stage, the Court held that the two cases were to be given prospective effect only; more egregious instances, where identification had been based upon lineups conducted in a manner that was unnecessarily suggestive and conducive to irreparable mistaken identification, could be invalidated under the Due Process Clause.³⁹⁵ The *Wade-Gilbert* rule is inapplicable to other methods of obtaining identification and other evidentiary material relating to the defendant, such as blood samples, handwrit-

³⁹¹ 388 U.S. 263 (1967).

³⁹² *United States v. Wade*, 388 U.S. 218, 224–25 (1967).

³⁹³ 388 U.S. at 226 (citations omitted).

³⁹⁴ 388 U.S. at 227–39. Previously, the manner of an extra-judicial identification affected only the weight, not the admissibility, of identification testimony at trial. Justices White, Harlan, and Stewart dissented, denying any objective need for the Court's per se rule and doubting its efficacy in any event. *Id.* at 250.

³⁹⁵ *Stovall v. Denno*, 388 U.S. 293 (1967).