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The Assistance of Counsel a Defendant's Right

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The United States Constitution is the basis for all law in United States and the Bill of Rights provides protection for the fundamental freedoms of American citizens. The Sixth Amendment's Assistance of Counsel Clause mandates access to an attorney for all United States citizens. The case of *Gideon v. Wainwright* (1963) ruled that it is mandatory to provide an attorney for any person facing a felony charge who cannot afford one. In *Escobedo v. Illinois* (1964) the Court ruled that a person has a right to an attorney before their trial while in police custody. *Miranda v. Arizona* (1966) replaced *Escobedo* by requiring police to enumerate a defendant's rights before interrogation, which included remaining silent and the ability to request an attorney. *Dickerson v United States* (2000) preserved the protections put forth in *Miranda*. Given the complexities of the law and obstacles in the trial process, the Supreme Court correctly upheld the right for United States citizens to have an attorney for their defense or to be provided one if they cannot afford one.

The Sixth Amendment of the United States Constitution provides many legal protections for the American people, the most critical of which is the right to an attorney. As a part of the Bill of Rights the Sixth Amendment was developed by the Founders to help assuage fears that the central federal government might abuse the rights of its citizens. The Sixth Amendment states "In all criminal prosecution the accused shall enjoy the right…to have the Assistance of

Counsel in his defense."[i] The Founders believed that any citizen has the right to an attorney. The Sixth Amendment is brief but the promise is clear that any citizen facing a serious criminal charge irregardless of circumstances has a right to counsel provided by an attorney.

The decision of *Gideon v. Wainwright* (1963) changed the United States' legal system by mandating that even if a defendant could not afford a lawyer one must be provided for them at the state and federal level for all felony cases. Prior to 1963 the Court did not believe that the Bill of Rights applied to the states. It was not until the twentieth century with a more powerful central government and a change in the interpretation of the Fourteenth Amendment that the Court shifted its stance in the opposite direction.[ii] In 1961 Clarence Earl Gideon was arrested for burglarizing a pool hall. Gideon was fifty-one and had a long list of prior convictions. He had spent his time in jail trying to teach himself the law.[iii] Gideon was brought to court where he asked for, but was denied, an attorney for his defense. Gideon was denied counsel because of the Supreme Court case *Betts v. Brady* (1942) which had similar circumstances to *Gideon*.[iv] The Court ruled that in non-capital cases counsel could only be appointed if the defendant was very young, illiterate, mentally unsound, or if the case was very technical and the absence of counsel would make receiving a fair trial impossible. In addition the Court mandated that if the trial was unfair, because the defendants' interests were not protected, the case could be overturned.[v] When Gideon lost his case and was sentenced to five years in prison he appealed to the United States Supreme Court.[vi]

The United States Supreme Court received Clarence Gideon's writ of certiorari April 21, 1962 on prison stationary.[vii] Gideon was not a well-educated man but in his appeal he made a compelling statement "It makes no difference how old I am or what color I am or what church I

belong too if any. The question is I did not get a fair trial. The question is very simple. I requested the court to appoint me a attorney and the court refused. All countrys try to give there citizens a fair trial and see to it that they have counsel."[viii] The court agreed and ruled in Gideon's favor unanimously signaling its overwhelming support for the Constitution's protection of the right to an attorney. Justice Hugo Black wrote the decision and properly laid out the the intention of the Sixth Amendment's Assistance of Counsel clause to protect defendants. Black acknowledged how difficult it is for the poor and needy to be able to afford the services of an attorney. Additionally he raised the point that state governments spend large sums of money to pay for prosecuting attornies to protect the public's interests in court.[ix] Black stated "that the government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries."[x] The Court believed that because people who can do hire attorneys, people who cannot afford to hire a lawyer have the right to be provided counsel under the protection of the Assistance of Counsel clause.

The *Gideon* decision was a long time coming; when Gideon wrote his petition to the Supreme Court only two states wrote *amicus curia* briefs in support of the state of Florida. Additionally in only five states were there laws that explicitly prevented assignment of counsel.[xi] Twenty-two states wrote briefs supporting Gideon and affirming the need to repeal *Betts v. Brady* (1942).[xii] Certainly a determining factor in the repeal of *Betts* was the the number of lawyers coming into state cases on appeal and finding serious problems in the trials of defendants without a lawyer.[xiii] Some states were reluctant to comply with the ruling of *Gideon* but the decision set minimum standards. This meant that in order to ignore the *Gideon* ruling the states would have

to show a substantial interest in not complying.[xiv] However, the overwhelming mood, supported by *amicus curia* briefs, was that *Betts* was not the correct way of doing things. Indigent defendants or anyone else for that matter could not stand on their own in the United States legal system without being outmatched by the prosecution.

The Court knew the majority of the States wanted to do away with *Betts* and was ready to join them. The feelings of the Justices at the time can be attested to by attorney Bruce Jacob who represented Florida in the case, "Never…had I encountered anything like the zeal and emotion that emerged in the questioning. Anger seemed to characterize my most relentless questioner. A constant rain of hostile questions came from most of the justices."[xv] The Court had shifted realizing the error it had made in *Betts* and determined to fix the mistake by supporting Gideon. Justice Black, joined by Murphy and Douglas, had written a dissenting opinion in *Betts* that argued that the right to counsel was a part of the Due Process Clause. When Black read the details of Gideon's case he believed that *Betts* and *Gideon* were almost indistinguishable. Black was convinced by pre-*Betts* precedents as well as "reason and reflection" that Betts had been denied incorrectly.[xvi] The Court correctly sided with the Constitutional rights of citizens to have an attorney for counsel and protection. The United States legal system is far to complicated for the uninitiated to plan his or her own defense.

The *Gideon* decision changed the nature of the United States legal process. The Court ruled that through the Due Process clause of the Fourteenth Amendment *Gideon* applied to the states as well. This meant that all state governments had to accommodate any person who requested an attorney. This opened the flood gates compelling states to establish a public defenders office. The concern of how to accomplish the difficulties of assigning lawyers upon request

came up during the oral arguments for *Gideon.* However, Abe Fortas representing Gideon countered that it would be simple for anyone seeking an attorney at the court house to be directed to the proper room.[xvii] *Gideon v. Wainwright* began the argument over Sixth Amendment protection of counsel but other cases helped expand the safeguards.

Escobedo v Illinois (1964) extended the right of counsel to all United States citizens during the interrogation process, forcing police to change their tactics. Danny Escobedo was a twenty-two year old immigrant from Mexico with no prior record with the police. In January of 1960 he was arrested in connection with the murder of his brother-in-law and interrogated by the police.[xviii] Escobedo was released later that day by his attorney on a writ of *habeas corpus*. Ten days later Escobedo was again arrested after being implicated in the murder by another defendant. Escobedo was brought to the police station and interrogated.[xix]

Not long after he was arrested Escobedo's lawyer arrived at the police station and asked to see his client but was repeatedly denied because the police were still interrogating Escobedo. Escobedo was interrogated for three hours and asked to see his lawyer multiple times but was continuously denied.[xx] At one point after his attorney had arrived, Escobedo could see his lawyer through an open door across a room. Escobedo's attorney tried to yell to his client but he could not be understood. Instead, he motioned that Escobedo should remain silent.[xxi] After an extended period of questioning Escobedo admitted to having some knowledge of the murder then, after continued questioning, further implicated himself in the crime. An Assistant State Attorney was brought in to record Escobedo's statement; at no time did the State Attorney or anyone else inform Escobedo of his rights.[xxii] The trial court accepted the confession despite Escobedo's lawyer's objections and convicted Escobedo of murder.[xxiii]

The United States Supreme Court voted five to four in favor of Escobedo's Sixth Amendment rights. The court's focus was on whether or not denying Escobedo's request to see his lawyer while the police were conducting their interrogation violated the Assistance of Counsel as extended to the states by the Fourteenth Amendment.[xxiv] The Justice Goldberg wrote the decision and answered the charge with clear language:

> Where, as here, the investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogations that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied 'the Assistance of Counsel' in violation of the Sixth Amendment to the Constitution, as made obligatory upon the states by the Fourteenth Amendment.[xxv]

The Court had ruled that the actions taken by the officers was constitutionally unsound. Escobedo was being detained, both Escobedo and his lawyer had requested to see each other, and Escobedo was being interrogated for a charge of murder. Under these circumstances denying Escobedo's request was wrong and should result in the negation of any confession extracted during the interview.

The outcome of *Escobedo* had far reaching implications that were not immediately clear but would help to pave the way for *Miranda v. Arizona* (1966). The ruling from *Escobedo* created controversy over exactly how it would be implemented and the affects it would have on police work. The initial thought was that the Court had modified the voluntariness test by putting emphasis on the availability of counsel.[xxvi] This potentially meant that a presiding judge in a case would have to put more consideration into whether or not a defendant had legal representation during interrogation to prevent coerced confessions. However, because the Court did not address

the voluntariness doctrine in *Escobedo* the proper interpretation was that the Court was setting a new constitutional doctrine.[xxvii] Constitutional doctrines are rules of constitutional law that help guide courts to make rulings, inform the actions of government workers, and shape the advice and arguments of lawyers.[xxviii] This started the debate over exactly what this new doctrine consisted of. Did the decision mean a person needed to explicitly ask for an attorney, what was the proper application of counsel, what role should counsel play during interrogation, and more. Most importantly *Escobedo* raised the point of a defendant's "absolute constitutional right to remain silent."[xxix] The right to remain silent would be the corner stone for the coming *Miranda* decision but for now was left enigmatic.

The Court defended the expanding Constitutional right to have access to an attorney with its ruling on *Escobedo v. Illinois*. It believed it was strengthening the American system of justice by affording all citizens their rights. The Court tried to protect the public as well as the integrity of the police and their work stating "We have learned the lesson of history, ancient and modern, that a system of criminal law enforcement which comes to depend on the 'confession' will, in the long run, be less reliable and more subject to abuses than a system which depends on extrinsic evidence independently secured through skillful investigation."[xxx] The threat of forced confessions is dangerous to a legal system, such as that of the United States, which is based on civil rights. Therefore abuses must be actively prevented with vigor and punished when carried out. The Justices in the *Escobedo* majority eloquently stated "No system worth preserving should have to fear that if an accused is permitted to consult with a lawyer, he will become aware of, and exercise, these rights."[xxxi] The Court, continuing its confirmation of citizens' rights, planted an important seed with *Escobedo* that would reach maturity under *Miranda*.

Miranda v. Arizona (1966) was an important step forward in the protection of civl rights, making it necessary for police to inform a suspect of his or her right to remain silent while being interrogated and to be able to request representation by an attorney. In March of 1963 a young women was abducted at knife point, driven out to the Arizona desert, raped, and then robbed.[xxxii] The police were able to find Miranda when the victims brother saw a car matching the description in the area where his sister had been attacked. The brother took the the plate number and gave it to the authorities who traced it to Miranda through his girlfriend.[xxxiii] The police set up a line up with Miranda and three other men but the victim was unable to identify the man who had attacked her. Undeterred by outcome of the line up the police went into the interrogation room where Miranda was waiting and lied to him, telling him that the woman had positively identified him.[xxxiv]

Believing that he was going to prison Miranda willingly confessed to the rape, robing a different woman, and attempted robbery of another.[xxxv] Miranda was given a standard form to record his name, age, etc and then below write out his confession and sign with the detectives as witnesses. At the bottom of the document it stated "I have read and understand the foregoing statement and herby swear to its truthfulness."[xxxvi] After this the police brought the victim into see Miranda who positively identified her as the woman he had assaulted. From there Miranda was finally placed under arrest and booked into the jail. This is very significant because before this Miranda could have ended the interrogation and left the police station but because he did not know his rights he stayed.[xxxvii] Miranda was tried in two different cases one for the robbery and the other for kidnapping and rape. In the rape case the compelling evidence against Miranda was his confession and the testimony of the victim and the detectives. Miranda's lawyer tried to ar-

gue that the detectives violated Miranda's constitutional rights when they obtained his confession but to no avail, Miranda was found guilty.[xxxviii]

The United States Supreme Court granted certiorari for *Miranda v Arizona* and ruled in favor of Miranda by changing the way that police must behave when interrogating witnesses. Fourteen briefs were filed for *Miranda* with over seven hundred pages of argument on the constitutional merits of the *Miranda* case.[xxxix] John J. Flynn made the oral arguments for *Miranda* before the court in February of 1966.[xl] Flynn was able to get through the opening of his argument uninterrupted by the court which was unusual. In some instances the Justices immediately begin questioning the attornies in order to explore the issue being argued. It was not until Flynn raised the point that the police were focusing specifically on Miranda and that this created an adversarial situation that the justices began to interrupt. The justices wanted to know if at the point when the investigation by the police began to focus on one subject in particular does this generate an adversarial situation? Is it then at this the point where a person has a right to be guided by counsel of an attorney?[xli] Flynn agreed with the Justices that the adversarial nature of police interrogation was when the Assistance of Counsel clause triggered. It was also at this point that Flynn began to weave the Fifth Amendment protections into his argument. The briefs filed by the petitioners for *Miranda* claimed Sixth Amendment not Fifth but, Flynn argued that it was the Fifth Amendment that set *Miranda* apart from previous cases like *Gideon* and *Escobedo*.[xlii] Flynn asserted "Under the facts and circumstances of Miranda…that when the adversary process comes into being that the police, at the very least, had an obligation to extend to this man…his clear Fifth Amendment right, to afford to him his right of counsel".[xliii] Justice Stewart in response to Flynn's assertion stated that a person being interviewed "can't be advised of his rights unless

somebody knows what the rights are". To which Flynn responded succinctly "And the only person that can adequately advise Ernesto Miranda is a lawyer."[xliv] From here Flynn and the justices examined whether or not Miranda had been coerced into confessing what he had done. With Flynn leading the discussion, the Court came to the conclusion that there was no coercion in the *Miranda* case. Instead, critically Miranda had been induced or lead into incriminating himself with promises of freedom from the police.[xlv]

The *Miranda* decision was another victory for defendants' rights, providing greater protection through an extension of the Fifth Amendment. The Justices who voted in favor of *Miranda* chose to look to the Fifth Amendment protection against self-incrimination in addition to the Sixth Amendment protections. Chief Justice Warren argued that the current system that police used to interrogate suspects wrongly motivated people to violate their right not to speak unless they were willing to. It was well known that the police used threats of violence and promises of leniency to get what they wanted from suspects.[xlvi] In the decision the Court argued that intense interrogation inside a police station "carries its own badge of intimidation. To be sure, this is not physical intimidation, but it is equally destructive to human dignity".[xlvii] The Court believed that police questioning applied great pressure on suspects to confess whether they were guilty or innocent. This push to confess by police irregardless of innocence, was dangerous and the court ruled in favor of Miranda, enumerating specific protections for suspects which became the *Miranda* rights. The court believed that the new rights granted by *Miranda* gave defendants the "right to remain silent unless he chooses to speak in the unfettered exercise of his own free will."[xlviii] The Court then warned that any interrogation that did not include a lawyer for the defendant and the suspect does confess then the government is obligated to prove that "the defen-

dant knowingly and intelligently waived his right to counsel".[xlix] After *Miranda* every person upon being arrested and interrogated had to be read their rights in order to ensure that they were not taken advantage of. *Miranda* is a special decision because it is so widely known for its popular use in media. But, much more importantly *Miranda* was constructed by the Justices incorporating the Sixth and Fifth Amendments. Defendants had to be informed by their interrogators that they had the right to say nothing and to request an attorney to speak on their behalf for their own protection. The *Miranda* decision strengthened the rights of United States citizens ensuring them the knowledge of their rights and access to counsel.

The case of *Dickerson v. United States* (2000) sustained the ruling of *Miranda v. Arizona* and the protections provided by the decision against self-incrimination and the right of Assistance of Counsel for defendants. Charles T. Dickerson was indicted for bank robbery and firearm charges. While Dickerson was being questioned he made incriminating statements against himself. Dickerson's attorneys successfully argued that the statements Dickerson had made were inadmissible because he had not been properly "Mirandized".[l] The government appealed to the U.S. Court of Appeals for the Fourth Circuit which ruled Dickerson's confession admissible based on Congressional law 18 U.S.C. 3501.[li] The statute was designed by Congress, after *Miranda*, and mandated that any confession given voluntarily will be admissible in federal court.[lii] This was the first time the Department of Justice and Attorney Generals office had tried to use 3501 because they wanted to test the statute and determine if the Supreme Court would allow the law to stand.[liii]

The United States Supreme Court ruled against 18 U.S.C. 3501 and upheld *Miranda* as Constitutionally protected. The decision of the Court was that the *Miranda* ruling properly laid

out the Constitutional protections that are provided by the Fifth, Sixth, and Fourteenth Amendments. The Court stated that Congress could not override *Miranda* saying "We conclude that *Miranda* announced a constitutional rule that Congress may not supersede legislatively. Following the rule of *stare decisis* we decline to overrule *Miranda* ourselves."[liv] The Court believed in *Miranda* it had established a Constitutionally protected measure that it held Congress did not have the legislative right to interfere with.

The *Dickerson* decision defended and upheld the core protections of *Miranda v. Arizona.* The rulings of *Gideon* and *Escobedo* decreed that Assistance of Counsel clause meant that every United States citizen had the right to an attorney during interrogation and the trial process. *Miranda* followed suit but added the additional Fifth Amendment protections allowing a person to remain silent during interrogation; as well as the requirement that police inform the individual of their Constitutional rights. There are cases that followed *Miranda* which limited the ruling's protections, such as *United States v. Calandra* (1974) in which statements that violate *Miranda* can be presented to a grand jury; *New York v. Quarles* (1984), which ruled that statements in violation of *Miranda* are permissible if they were used for public safety reasons; and *United States v. Patane* (2004) which ruled that derivative evidence obtained in violation of *Miranda* are admissible.[lv] The significance of *Dickerson* is that the Court did not, when it had the chance, set a new precedent and totally overrule *Miranda*. *Miranda* and *Dickerson* can be thought of as one continuous river and cases like *Calandra* or *Quarles* are dams and levees to control the flow of the river and make sure it does not over run its banks and cause disasters. *Miranda* has been restrained with some decisions but the Justices viewed it as the best way to provide minimum protection for citizens. However, the debate still continues with ongoing arguments about the best

way to handle *Miranda* and the cases related to it. Some scholars have suggested using technology to aid police in addition to *Miranda* warnings. This could mean recording entire interrogations not just the confessions or having recordings play the *Miranda* warning once a person has been placed into the police car.[lvi] These measures could be helpful because it would serve as further protection to ensure that police are following the law and defendants do not have their rights violated. The Supreme Court upheld the *Miranda* decisions Fifth and Sixth Amendment protections with *Dickerson*.

The United States Constitution "ordained and established" the minimum legal protections of every American in order to ensure their liberty and happiness.[lvii] The United States Supreme Court interpreted the Sixth Amendment Assistance of Counsel clause correctly, given the potential detrimental nature of the legal system, to provide people with the opportunity to retain counsel for their protection. The Court began with the case *Gideon v. Wainwright* (1963), making it mandatory for state and federal courts in felony cases to provide a lawyer to anyone who asked. *Escobedo v Illinois* (1964) required that anyone being interrogated who asked for an attorney be provided one. The following case *Miranda v Arizona* (1966) maintained the right to counsel and ordered police to inform suspects of their Constitutional rights. The Court upheld its ruling from *Miranda* in *Dickerson v United States* (2000) instead of setting a new precedent. The need for intelligent, experienced, and efficacious legal guidance cannot be disputed. Attorneys are carefully trained and learn through experience in order to best protect their clients and give counsel. Imagine a world without *Gideon*, *Escobedo*, and *Miranda* where people would be on their own in a court who's rules they did not know but had tremendous consequences. Ask yourself if you would feel safe living in that world?

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