

You Have the Right to an Attorney

The phrase, 'you have the right to an attorney,' can be found in the Sixth Amendment of the U.S. Constitution and it initially applied only to proceedings in federal courts.

However, its application was extended to the states in capital (death penalty) cases following the Supreme Court's decision in *Powell v. Alabama* (1932) which held that the Fourteenth Amendment Due Process Clause included at least part of the right to counsel referred to in the Sixth Amendment, making that part of the Bill of Rights binding on the states as well as the federal government. The right was further expanded to include non-death penalty cases by the Court's decision in *Gideon v. Wainwright* (1963).

Clarence Earl

Gideon was charged with a felony but was not given an attorney as Florida only provided free counsel in capital cases at that time. Gideon, representing himself, was convicted. He appealed his conviction unsuccessfully in Florida Supreme Court, but the U.S. Supreme Court unanimously held that, "the framers of the Constitution placed a high value on the right of the accused to have the means to put up a proper defense, and the state as well as federal courts must respect that right."

The Miranda warning extends the provision still further by trying to ensure knowledge of a suspect's right to have an attorney present at interrogations and proceedings involving a specific charge. It is important to note, however, that similar to invoking one's Fifth Amendment right against self-incrimination, a person must assert his or her desire to have legal representation in order to ensure its protection.

Amendment VI

*In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have **the assistance of counsel for his defense.***

Look for modern examples of an attorney representing someone in a criminal court case. As a class, discuss the likely outcome of the case with and without legal representation for the defendant.

*Next installment: **If You Cannot Afford an Attorney...***

Law Day 2016

MIRANDA
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