

Bill of Rights

Congress OF THE United States,

begun and held at the City of, New York, on
Wednesday, the fourth of March, one thousand seven hundred and eighty nine.

The Conventions of a number of the States having, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best insure the beneficent ends of its institution:

Resolved, by the SENATE and HOUSE of REPRESENTATIVES of the UNITED STATES of AMERICA in Congress assembled, two thirds of both Houses concurring. That the following Articles be proposed to the Legislatures of the several States, as Amendments to the Constitution of the United States; all, or any of which articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution, viz.

Articles in addition to, and Amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the Original Constitution.

Article the first After the first enumeration required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the number shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which, the number shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

Article the second No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened. [N]

Article the third Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Article the fourth A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Article the fifth No Soldier shall, in time of peace, be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

THE RIGHT TO COUNSEL

A Brief History

By Kimberly Simmons, Executive Director

Idaho State Public Defense Commission

6th Amendment

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; . . .

14th Amendment

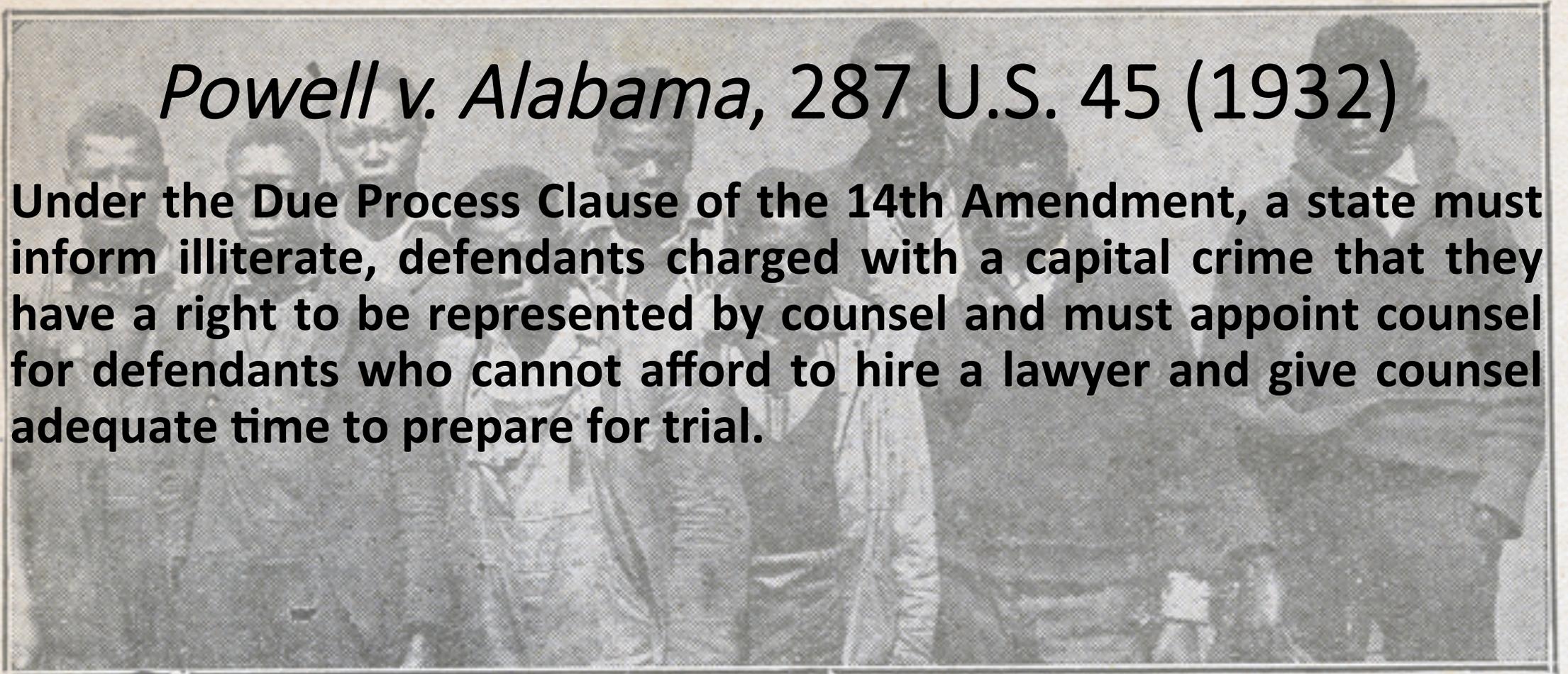
Section 1: No state may abridge the privileges and immunities of any of its citizens, or deny them due process of law or equal protection of the laws.

Section 2: When any state denies the right to vote at any election to any of its male citizens of voting age, its representation in elections for national offices will be reduced in the same proportion.

Continue the Struggle for Release of the Scottsboro Boys!

Powell v. Alabama, 287 U.S. 45 (1932)

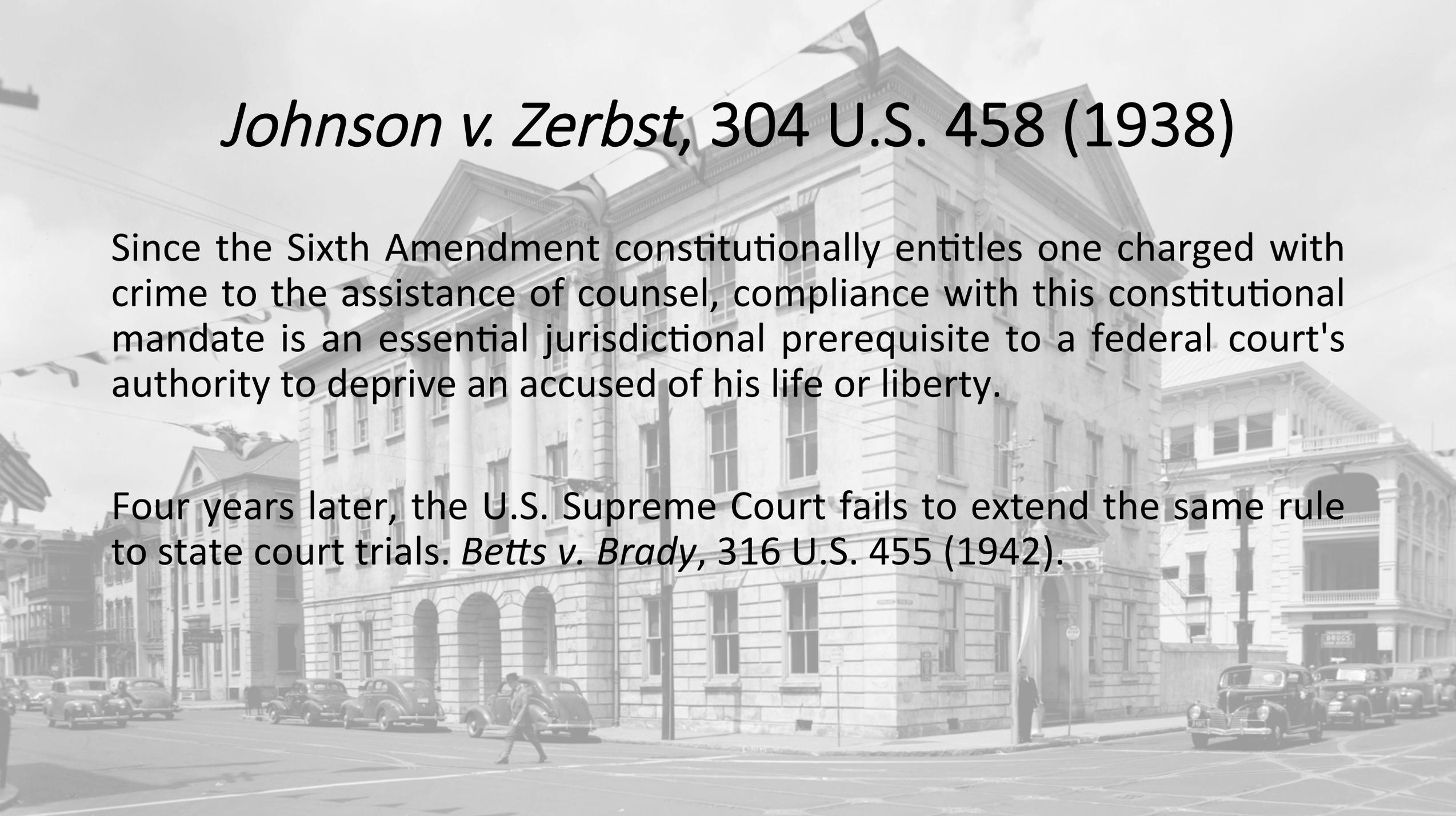
Under the Due Process Clause of the 14th Amendment, a state must inform illiterate, defendants charged with a capital crime that they have a right to be represented by counsel and must appoint counsel for defendants who cannot afford to hire a lawyer and give counsel adequate time to prepare for trial.



Johnson v. Zerbst, 304 U.S. 458 (1938)

Since the Sixth Amendment constitutionally entitles one charged with crime to the assistance of counsel, compliance with this constitutional mandate is an essential jurisdictional prerequisite to a federal court's authority to deprive an accused of his life or liberty.

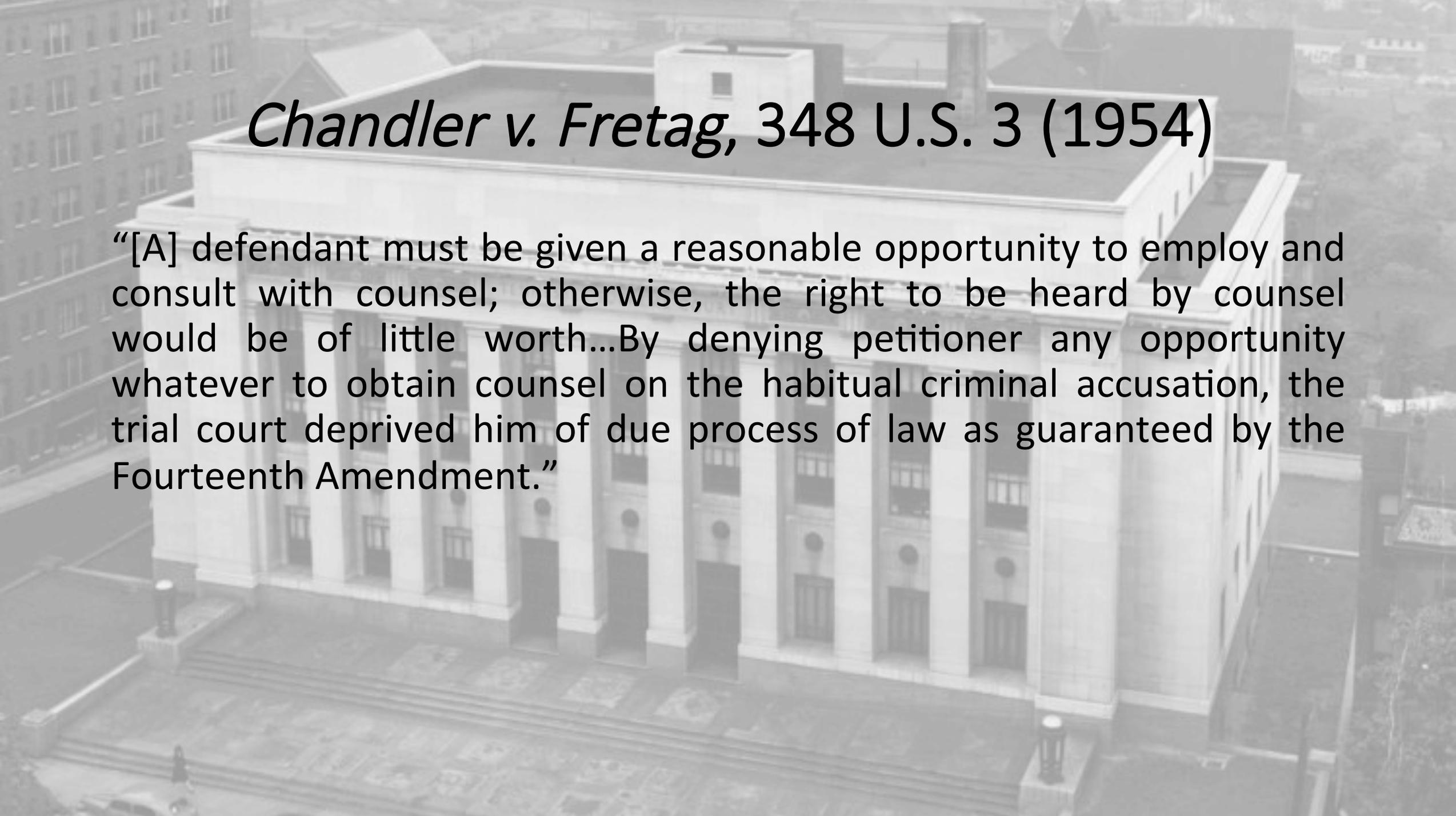
Four years later, the U.S. Supreme Court fails to extend the same rule to state court trials. *Betts v. Brady*, 316 U.S. 455 (1942).



Glasser v. United States, 315 U.S. 60 (1942)

“[T]he "assistance of counsel" guaranteed by the Sixth Amendment contemplates that such assistance be untrammelled and unimpaired by a court order requiring that one lawyer shall simultaneously represent conflicting interests. If the right to the assistance of counsel means less than this, a valued constitutional safeguard is substantially impaired.”

A defense lawyer's conflict of interest arising from a simultaneous representation of co-defendants violates the Assistance of Counsel Clause of the Sixth Amendment



Chandler v. Fretag, 348 U.S. 3 (1954)

“[A] defendant must be given a reasonable opportunity to employ and consult with counsel; otherwise, the right to be heard by counsel would be of little worth...By denying petitioner any opportunity whatever to obtain counsel on the habitual criminal accusation, the trial court deprived him of due process of law as guaranteed by the Fourteenth Amendment.”

Gideon v. Wainwright, 372 U.S. 335 (1963)

The 6th and 14th Amendments guarantee indigent defendants the right to have an attorney appointed, at the government's expense, if they are charged with a serious crime.

DIVISION OF CORRECTIONS
CORRESPONDENCE REGULATIONS

APR 21 1962
OFFICE OF THE CLERK
SUPREME COURT, U.S.

MAIL WILL NOT BE DELIVERED WHICH DOES NOT CONFORM WITH THESE RULES

No. 1 -- Only 2 letters each week, not to exceed 2 sheets letter-size 8 1/2 x 11" and written on one side only and if ruled paper, do not write between lines. Your complete name must be signed at the close of your letter. Clippings, stamps, letters from other people, stationery or cash must not be enclosed in your letters.

No. 2 -- All letters must be addressed in the complete prison name of the inmate. Cell number, where applicable, and prison number must be placed in lower left corner of envelope, with your complete name and address in the upper left corner.

No. 3 -- Do not send any packages without a Package Permit. Unauthorized packages will be destroyed.

No. 4 -- Letters must be written in English only.

No. 5 -- Books, magazines, pamphlets, and newspapers of reputable character will be delivered only if mailed direct from the publisher.

No. 6 -- Money must be sent in the form of Postal Money Orders only. In the inmate's complete prison name and prison number.

INSTITUTION _____ CELL NUMBER _____

NAME _____ NUMBER _____

In The Supreme Court of The United States
October Term, 1961
No. 890 misc.
Clarence Earl Gideon, petitioner
-VS-
H.G. Cochran, Director, Division of
Corrections, State of Florida, respondent.

"Answer to respondent's response to petition
for writ of certiorari."

Petitioner, Clarence Earl Gideon received
a copy of the response of the respondent
in the mail dated sixth day of April, 1962.
Petitioner, can not make any pretense
of being able to answer the learned
attorney General of the State of Florida
because the petitioner is not an attorney
or versed in law nor does not have the
law books to copy down the decisions of
this Court. But the petitioner knows
there is many of them nor would the
petitioner be allowed to do so
according to the book of Revised
Rules of the Supreme Court of the
United States sent to me by Clerk of
the same court. the response of the
respondent is out of time (Rule 24)

NATIONAL ARCHIVES
TM 88-114
Rev. 1-62

... THAT BE OBSERVED WHICH DO NOT CONFORM WITH THESE RULES ...
... 2 letters each week, not to exceed 2 sheets letter size 8 1/2 x 11" and written on one side only ...
... per capita, stationary or mobile must not be enclosed in post letters ...
... must be addressed to the complete prison name of the inmate. Cell number, where applicable ...
... must be placed in lower left corner of envelope, with your complete name and address in the ...
... and any packages without a Package Permit. International packages will be inspected ...
... must be written in English only ...
... the signatures, penmanship, and handwriting of registered characters will be determined only if ...
... of Social Work University. In the inmate's complete prison name ...

The Legacy of Clarence Earl Gideon

“If an obscure Florida convict named Clarence Earl Gideon had not sat down in prison with a pencil and paper to write a letter to the Supreme Court, the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter ... And the whole course of legal history has been changed.”

-U.S. Attorney General Robert F. Kennedy

*Supreme Court of the United States
Washington, D.C.
Petition for a writ
of Certiorari directed
to the Court
of Appeals of Florida
No. 190
OCT. TERM 1961
U.S. Supreme Court
Honorable Earl Warren, Chief
Justice of the United States
Comes now the petitioner, Clarence
Earl Gideon, a citizen of the United States
America, in proper person, and appearing
in his own counsel. Who petitions this
Court for a writ of Certiorari
from the Supreme Court of the State*



Massiah v. United States, 377 U.S. 201 (1964)

Right to Counsel during interrogation

If the sixth amendment is to have any kind of protection or efficacy it has to apply not only to interrogations that occur with officers in the jailhouse, but also to secret interrogations.

Escobedo v. Illinois, 378 U.S. 478 (1964)

Right to Remain Silent

Sixth Amendment right to counsel applies to interrogations of suspects before they have been charged with any particular crime.



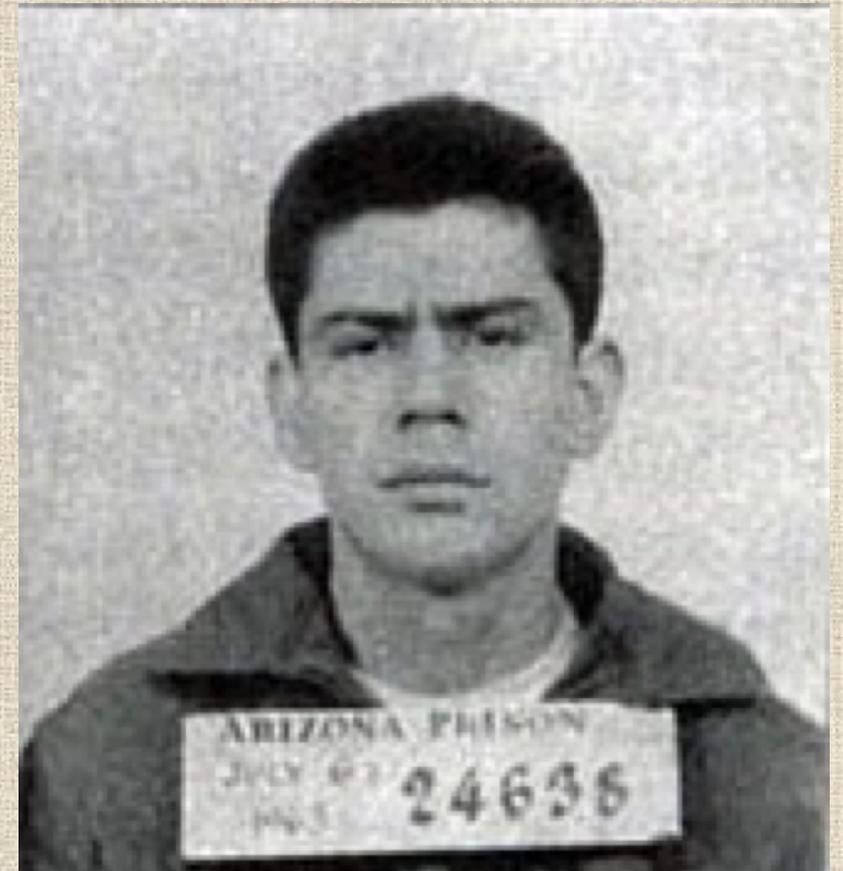
Miranda v. Arizona,
384 U.S. 436 (1966)

MIRANDA WARNING

1. YOU HAVE THE RIGHT TO REMAIN SILENT.
2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW.
3. YOU HAVE THE RIGHT TO TALK TO A LAWYER AND HAVE HIM PRESENT WITH YOU WHILE YOU ARE BEING QUESTIONED.
4. IF YOU CANNOT AFFORD TO HIRE A LAWYER, ONE WILL BE APPOINTED TO REPRESENT YOU BEFORE ANY QUESTIONING IF YOU WISH.
5. YOU CAN DECIDE AT ANY TIME TO EXERCISE THESE RIGHTS AND NOT ANSWER ANY QUESTIONS OR MAKE ANY STATEMENTS.

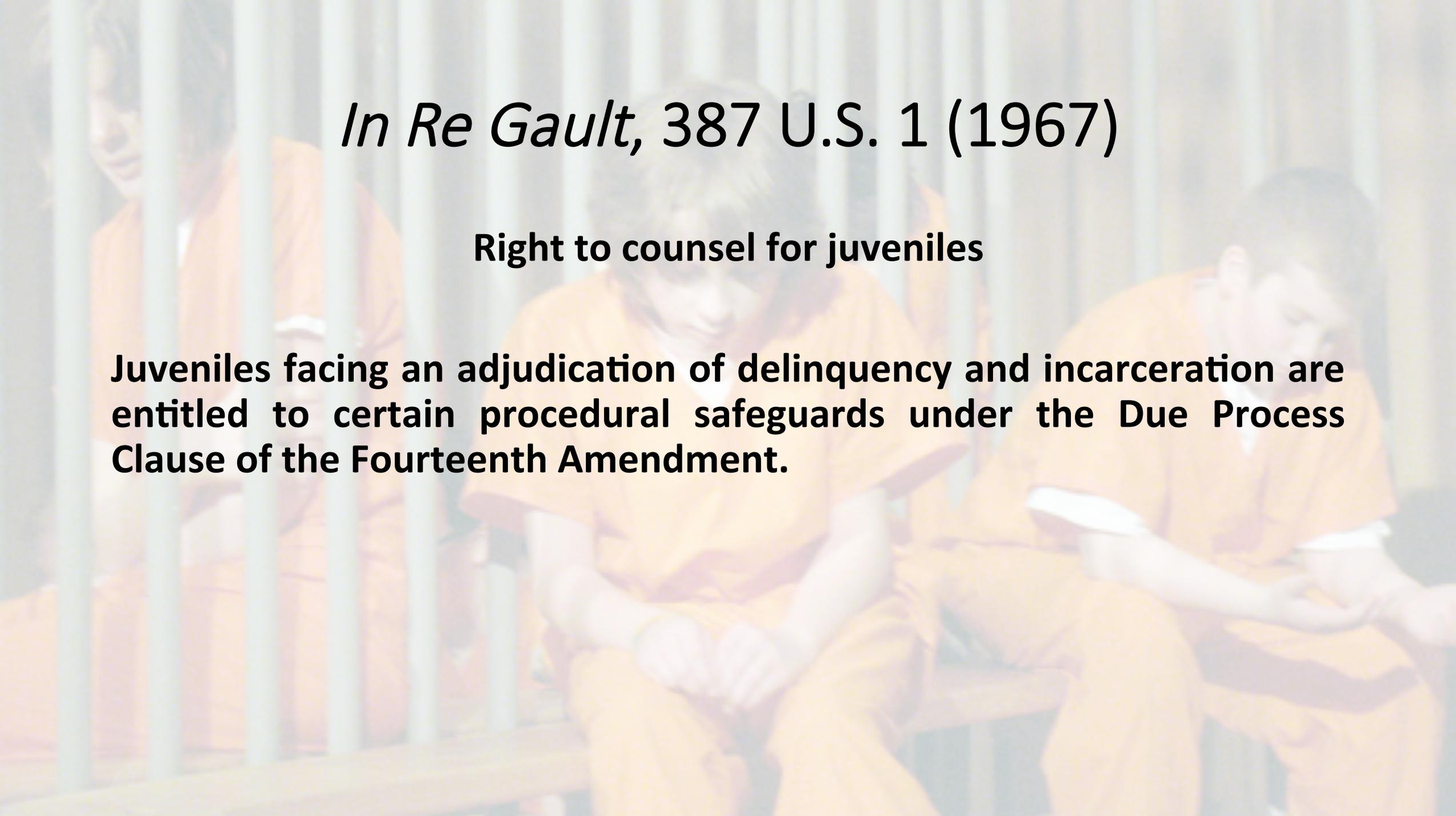
WAIVER

DO YOU UNDERSTAND EACH OF THESE RIGHTS I HAVE EXPLAINED TO YOU?
HAVING THESE RIGHTS IN MIND, DO YOU WISH TO TALK TO US NOW?



Amendment V.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without

The background image shows three juveniles in orange jumpsuits sitting on a wooden bench inside a jail cell. The cell has vertical metal bars. The juveniles are looking down or to the side, and the overall scene is dimly lit, creating a somber atmosphere.

In Re Gault, 387 U.S. 1 (1967)

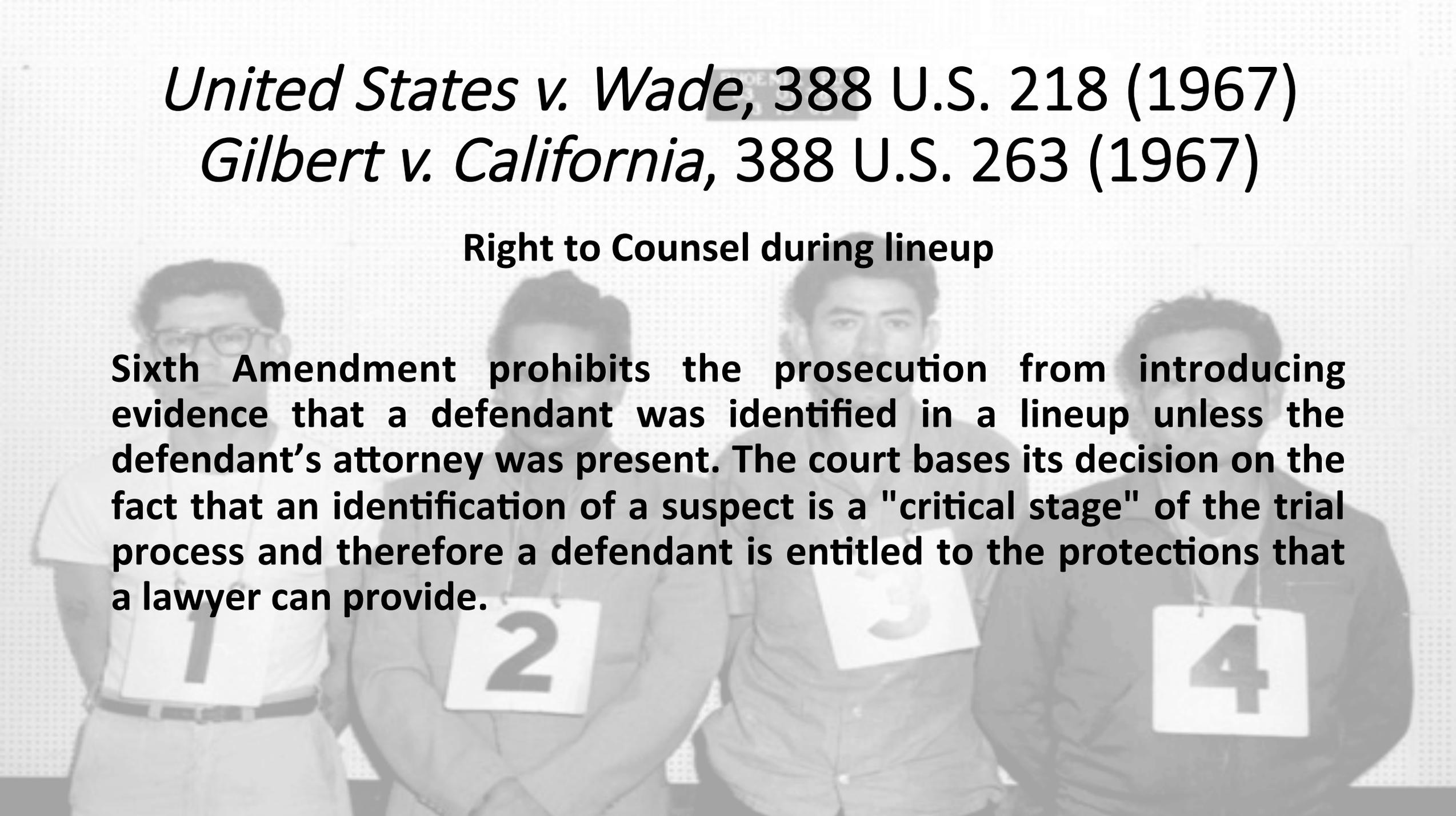
Right to counsel for juveniles

Juveniles facing an adjudication of delinquency and incarceration are entitled to certain procedural safeguards under the Due Process Clause of the Fourteenth Amendment.

United States v. Wade, 388 U.S. 218 (1967)
Gilbert v. California, 388 U.S. 263 (1967)

Right to Counsel during lineup

Sixth Amendment prohibits the prosecution from introducing evidence that a defendant was identified in a lineup unless the defendant's attorney was present. The court bases its decision on the fact that an identification of a suspect is a "critical stage" of the trial process and therefore a defendant is entitled to the protections that a lawyer can provide.



Anders v. California, 386 U.S. 738 (1967)

Defense counsel required to follow through on appeal

The failure to grant this indigent petitioner seeking initial review of his conviction the services of an advocate, as contrasted with an amicus curiae, which would have been available to an appellant with financial means, violated petitioner's rights to fair procedure and equality under the Fourteenth Amendment.

Argersinger v. Hamlin, 407 U.S. 25 (1972)

Right to Counsel: Actual Imprisonment

An accused cannot be subject to actual imprisonment unless provided with counsel, even in misdemeanor cases.



Faretta v. California, 422 U.S. 806 (1975)

Right to Self-Representation

Although the Sixth Amendment requires appointment of counsel for those who cannot afford one, it does not allow a state to force a defendant to accept an attorney if he wishes to represent himself.

Brewer v. Williams, 430 U.S. 387 (1977)

The “Christian burial” case

Sixth Amendment right to counsel applies not only when police formally interrogate suspects but also when they casually speak with the defendant and intentionally discuss topics that they know are likely to provoke the defendant to make incriminating statements.



Scott v. Illinois, 440 U.S. 367 (1978)

Right to Counsel: Actual Imprisonment

- A person may be imprisoned only if given the opportunity to be represented by counsel.
- **Problem:** *What happens when a defendant is placed on probation and subject to jail time if he violates probation?*

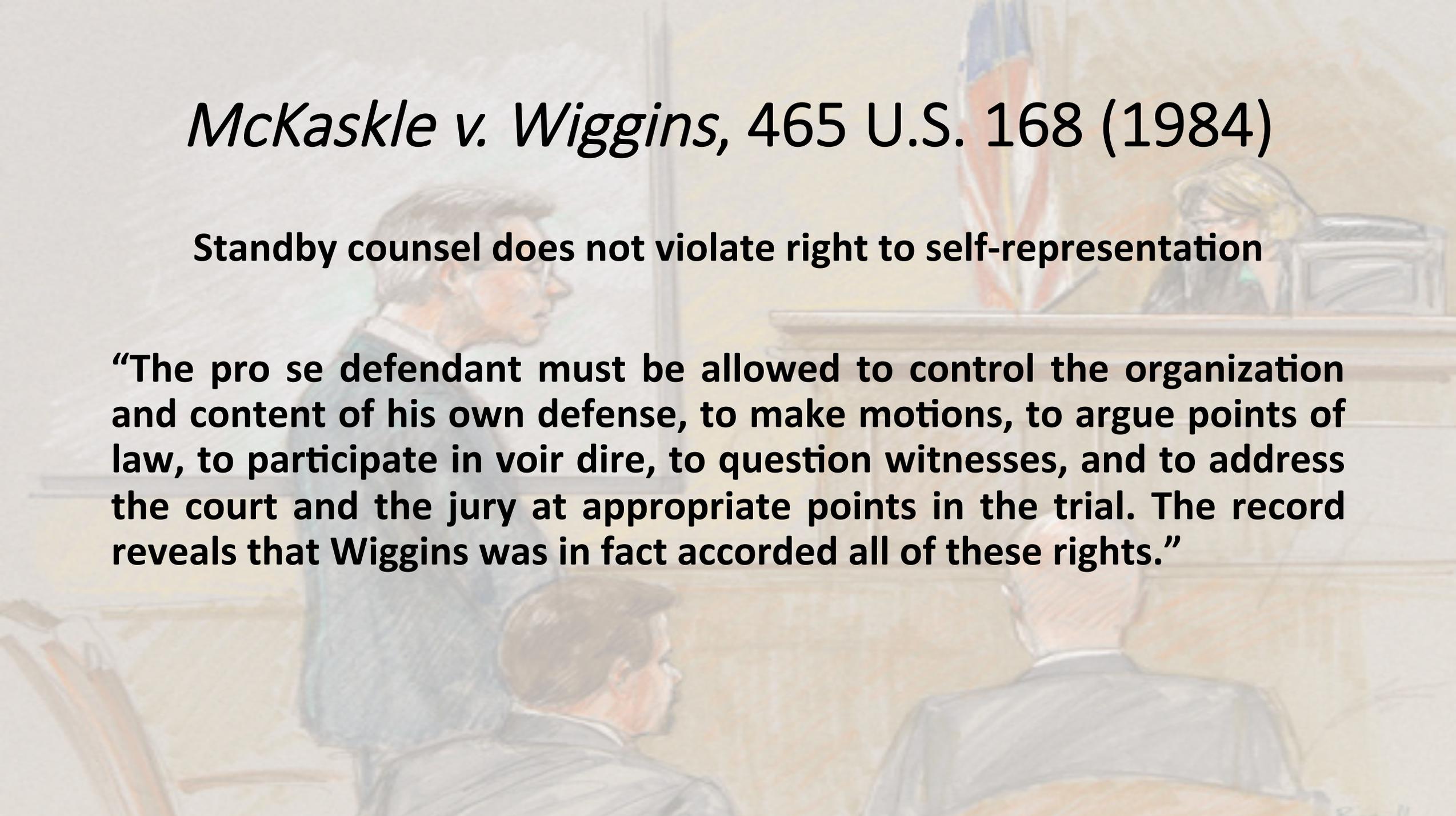
United States v. Henry, 447 U.S. 264 (1980)

It is a violation of the Sixth Amendment when the police create a situation likely to induce the defendant to make incriminating statements without the assistance of counsel.

Edwards v. Arizona, 451 U.S. 477 (1981)

Fifth Amendment Right to Counsel

After a defendant invokes his Fifth Amendment's right to counsel, police may not reinitiate custodial interrogation without counsel present or a knowing and intelligent relinquishment of that right.

A faded, light-colored sketch of a courtroom scene. In the foreground, several people are seated, their backs or profiles to the viewer. In the background, a woman is seated at a desk, and an American flag is visible. The overall tone is muted and artistic.

McKaskle v. Wiggins, 465 U.S. 168 (1984)

Standby counsel does not violate right to self-representation

“The pro se defendant must be allowed to control the organization and content of his own defense, to make motions, to argue points of law, to participate in voir dire, to question witnesses, and to address the court and the jury at appropriate points in the trial. The record reveals that Wiggins was in fact accorded all of these rights.”

Strickland v. Washington, 466 U.S. 668 (1984)

Right to effective assistance of counsel

The fact that "a person who happens to be a lawyer is present at trial alongside the accused... is not enough to satisfy the constitutional command." Counsel must play the role in the adversarial system that allows the system to produce just results.



Effective Assistance of Counsel

Plea Bargains

Hill v. Lockhart, 474 U.S. 52 (1985)

Where a defendant enters a guilty plea upon counsel's advice, the voluntariness of the plea depends on whether the advice was within the range of competence demanded of attorneys in criminal cases.

Appeals

Evitts v. Lucey, 469 U.S. 387 (1985)

A first appeal as of right is not adjudicated in accord with due process of law if the appellant does not have the effective assistance of an attorney.

Michigan v. Jackson, 475 U.S. 625 (1986)

Right to counsel at police interrogation

The Sixth Amendment right to counsel at a post-arraignment interrogation required at least as much protection as the Fifth Amendment right to counsel at any custodial interrogation.

If police initiate an interrogation after a defendant's assertion of his right to counsel at an arraignment or similar proceeding, any waiver of that right for that police-initiated interrogation is invalid.

Alabama v. Shelton, 525 U.S. 654 (2002)

Right to Counsel for any threat to deprivation of liberty

“A suspended sentence is a prison term imposed for the offense of conviction. Once the prison term is triggered, the defendant is incarcerated not for the probation violation, but for the underlying offense.”

Unless counsel is afforded to the defendant at trial, then the judge is prohibited from *ever* imposing any amount of jail time – even as a “hollow threat.”

Wiggins v. Smith, 539 U.S. 510 (2003)

Right to Effective Assistance of Counsel

- American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty cases
- Counsel's decision in defending a client facing the death penalty must be based on a thorough investigation of all possible mitigating factors.

Idaho: Right to Counsel

Revised Statutes

If the defendant appears for arraignment without counsel, he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel, the court must assign counsel to defend him.

Timeline

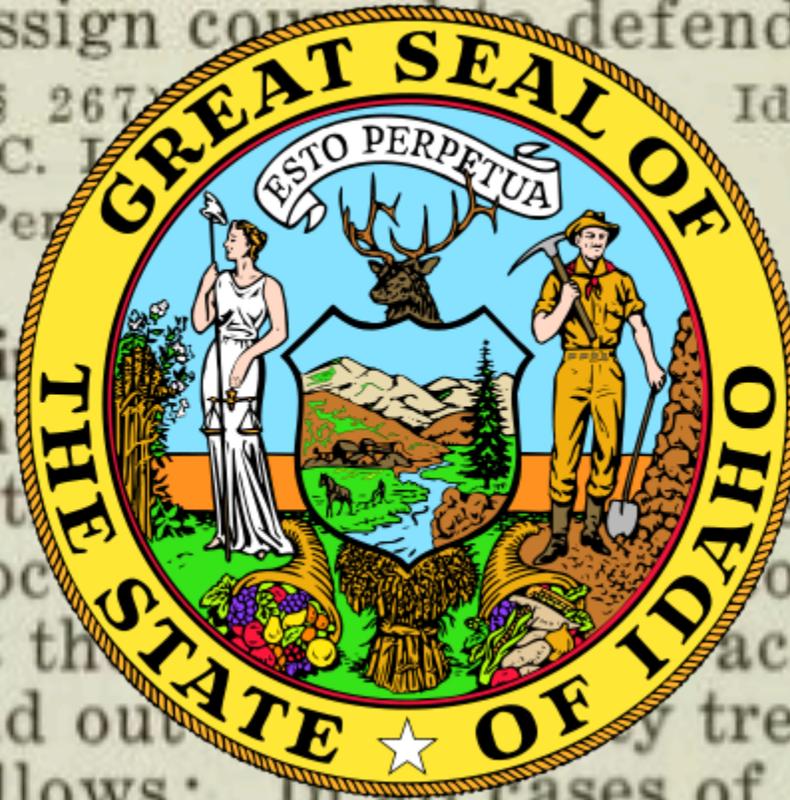
- *State v. Poglianich*, 43 Idaho 409 (1927)
- *Gideon* – Idaho filed an Amicus Brief in support of right to counsel (1967)
- Delegation of authority to counties to provide indigent defense (1967)
- SAPD created (1998)
- PDC created (2014)

§ 8858. [7721] **Right to counsel.** If the defendant appears for arraignment without counsel he must be informed by the court that it is his right to have counsel before being arraigned, and must be asked if he desires the aid of counsel. If he desires and is unable to employ counsel the court must assign counsel to defend him. [R. S. § 7721.]

Hist. (See Cr. Prac. '64, § 267), reen. R. C. § 7721, reen. R. C. ib., reen. C. L. § 987; Kerr's C. ib.

Identical: C. Cr. P. § 10721.

§ 8859. [2086] **Appointing counsel.** Whenever upon the trial of a person indicted, it appears to the court that the accused is poor and unable to procure counsel, the court may appoint counsel to conduct the trial, for which service such counsel must be paid out of the treasury, upon order of the judge of the court, as follows: In all cases of misdemeanor the sum of \$10; in all cases of felony other than murder the sum of \$25, and in cases of murder the sum of \$50. ['97, p. 74, § 6.]



or accused. Whenever upon an information or indictment, it appears to the court that the accused is poor and unable to procure counsel, the court may appoint counsel to conduct the trial, for which service such counsel must be paid out of the treasury, upon order of the judge of the court, as follows: In all cases of misdemeanor the sum of \$10; in all cases of felony other than murder the sum of \$25, and in cases of murder the sum of \$50. ['97, p. 74, § 6.]

Hist. '97, p. 74, § 6, reen. '99, p. 26, § 1, reen. R. C. § 2086, reen. C. L. § 7721a.

Cited: Re Dawson (1911) 20 L. 178, 117 P. 696, 35 L. R. A. (N. S.) 1146.

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