

Gideon v. Wainwright / Right to Counsel: Quality of Representation

Directions:

1. Read the background, constitutional amendments, and precedents.
 2. Complete the **Quality of Representation** (page 3) table based on your own opinions about how effective or ineffective counsel was in each example.
 3. Read about and practice applying the **Strickland Test** (page 4).
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Background

The Supreme Court of the United States has interpreted the constitutional right to counsel in several cases. This right was incorporated against (applied to) the states in 1963 in the case of *Gideon v. Wainwright*. This means that persons accused of crimes in the United States, whether in a federal court or a state court, are guaranteed the right to counsel for their defense in order to ensure that their due process right to a fair trial is ensured.

Constitutional Amendments

- **Sixth Amendment to the U.S. Constitution**
“In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defense.”
- **14th Amendment to the U.S. Constitution**
“...nor shall any State deprive any person of life, liberty, or property, without due process of law....”

Supreme Court Precedents

- *Gideon v. Wainwright* (1963) is the landmark case in which the Supreme Court decided a criminal defendant was entitled to a lawyer to make the trial fair. The 14th Amendment gives U.S. citizens “due process” before “liberty” (freedom) can be taken away by the state. Due process provides the right to a fair trial. Since the government will always have lawyers on its side, the Supreme Court decided that defendants needed lawyers as well to guide them through their case and stand up for them. This case did not give everyone a right to an attorney, only those accused of very serious crimes (felonies). *Argersinger v. Hamlin* changed that.

- ***Argersinger v. Hamlin (1972)*** is an important case about the right to an attorney. In this case the Supreme Court decided that when a person is charged with a crime, the court must give that person an attorney if 1) they don't have enough money to hire one and 2) there is a chance that person could go to jail for any amount of time (for a misdemeanor or a felony). The only way an accused person does not get an attorney is if they made a knowing and intelligent choice to give that right up. Because going to prison is considered a significant punishment, the constitutional guarantee of a fair trial has been interpreted by the Supreme Court to mean that all people who might go to jail shall receive a lawyer.
- ***Scott v. Illinois (1979)*** was decided after *Argersinger v. Hamlin*. In this case the Supreme Court decided courts are not required to provide a free, court-appointed lawyer to an indigent (poor) person charged with a crime if the person is not actually sent to jail. For example, if a crime is punishable by a fine or a term of imprisonment, and the accused person is ordered to pay a fine, the accused did not have the right to an attorney. Paying a fine is not seen as severe as a punishment as going to jail.
- ***Alabama v. Shelton (2002)*** was decided after *Scott v. Illinois*. Here, the Supreme Court decided that indigent (poor) people charged with a crime (misdemeanor or felony) do have a right to a court-appointed (or free) lawyer if there is even a threat of being sent to jail. In this case Lereed Shelton was fined and given a suspended sentence. He would only face jail time if he violated his probation. Shelton asked for an attorney at his trial and it was denied. The Supreme Court decided because a suspended prison sentence may result in imprisonment (going to jail), indigent defendants must be given their constitutional right to counsel to ensure a fair trial.

Quality of Representation

Does the type of representation that a defendant receives affect whether the defendant's right to a fair trial is upheld? For each of the following examples, indicate with an **E** if you think the example indicates **effective** (capable or competent) representation by counsel or with an **I** if you think it indicates **ineffective** (inadequate or of poor quality) representation by counsel. This should reflect your opinion. You will learn more about the precedents and revisit this section later in this lesson.

Effective (E) or Ineffective (I)	Example
	The defendant's attorney does not question the prosecution's witnesses.
	The defendant's attorney does not investigate the alibis of other suspects.
	The defendant's attorney orders DNA analysis of evidence.
	The defendant's attorney meets the defendant before trial and gets information to discover any witnesses and evidence.
	The defendant's attorney does not inform the defendant of the consequences of accepting a plea deal.
	The defendant's attorney orders a psychiatric evaluation of the defendant.
	The defendant's attorney misses a court hearing.
	The defendant's attorney pays close attention to the prosecutor's questioning of witnesses and cross-examines them carefully.

The Strickland Test

In 1984, in the case of *Strickland v. Washington*, the Supreme Court ruled on a standard to determine whether a defendant has received effective representation in accordance with the Sixth Amendment right to counsel. David Washington was tried for capital murder for which the death penalty was a possible sentence in the Florida court system. At his sentencing hearing, he claimed that his attorney did not take actions that would have assisted a reduced sentence after he pleaded guilty to several counts of murder. At his sentencing hearing, he was sentenced to death. Ultimately, on appeal, the case was heard in the Supreme Court of the United States.

In their decision, the Supreme Court reaffirmed the principle that a defendant does have a Constitutional right to both effective and competent counsel, and they outlined a “test” or guidance in determining whether this constitutional right had been adequately protected.

This is known as the Strickland Test. In order to prove a claim of ineffective assistance of counsel, these two points must be proven:

1. Counsel’s performance fell below an **objective standard of reasonableness**. As the court stated in their majority opinion, “this requires showing that counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.”
2. Counsel’s performance **prejudiced** the case such that the defendant has been deprived of their right to a fair trial. As the Supreme Court stated in their opinion, “this requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.”

Apply the Strickland Test

Review your earlier responses about effective and ineffective counsel and apply the Strickland Test. Then, answer the following questions:

1. Which of the actions would have passed the Strickland Test independently (and proven ineffective assistance of counsel)?

2. Which combinations of actions that would have passed the Strickland test?

Discuss your choices with a partner and be prepared to share your ideas with your teacher and the class.