

The right to counsel

Law



The Right to Counsel The right to counsel is considered to integral to an individual's right to undergo a fair trial. Through this right, one can seek the aid of legal counsels or lawyers, who would then represent him in court. It is the defendant that practices this right. As mandated by the Constitution, it is the policy of the United States government to guarantee the protection of individual rights, including those of persons who have been accused and arrested for crimes that they may or they may have not committed. In realizing this, the U. S. government is obligated to provide a legal counsel for the accused if he or she is not in position to acquire the services of a private lawyer. The expenses incurred for the entire proceeding until the case is resolves is shouldered by the government. It was the federal government that took the first concrete steps to enshrine the right to counsel. The most fundamental basis for this is the U. S. Bill of Rights. It took a while before the courts in the different states in the country began concurring and affirming to the said right as interpreted and defined by the U. S. Supreme Court. There were a few states that already granted affirmation to it even during the 1800s. However, most of the states followed suit when the U. S. Supreme Court came out with its decision of Gideon v. Wainwright in 1963. This decision cemented the provision that points out to the strict requirement of defendants being granted the right to counsel. Subsequent rulings by the U. S. Supreme Court also reinforced the right by clarifying the parameters in which law enforcement agents should function in order not to commit violations. In 1966, a landmark ruling by the U. S. Supreme Court, created a tremendous impact on the effort of defining the right to counsel. This was the ruling on the Miranda v. Arizona, 384 U. S. 436, which is now known as the Miranda Doctrine. Through its decision on the Miranda case, “ the <https://assignbuster.com/the-right-to-counsel/>

Supreme Court decided that the state or federal government had to provide an attorney if suspects wanted one but could not afford it” and that “ suspects could waive their rights to speak to police without an attorney, realizing what they said could be used against them later in court” (Burgan, 2007, p. 57). There were other rulings that followed that further bolstered the right to counsel. One clear example is *Brewer v. Williams*, 430 U. S. 387, which was decided in 1977. Referring to the rights stipulated in the 6th and the 14th Amendments, it clarifies that a counsel for the defendant or accused should be around once information is obtained from him either by actual members of law enforcement bodies or by any individual who does so in behalf of the police and any other law enforcement agency. As a concept, the right to counsel was not only developed in the 20th century. History shows that this was first proposed in response to the practice of the English not to provide legal counsels for those accused of serious criminal charges, especially in cases when the death penalty may be employed on the convicts. One of the most prominent of such cases was the prosecution and subsequent conviction of Mary Stuart in the latter part of the 1500s. The founding fathers of the United States, particularly those who contributed to the formulation of the U. S. Constitution saw the great need for protecting the rights of the accused. The Framers saw that a defendant without any counsel could be subjected to an unfair trial. It is through the assistance of an attorney that the prosecution would bear the burden of proving the guilt of the accused. Apparently, what the Framers were trying to avoid is the tendency to have a justice system that is inquisitorial. In view of this, one of the earliest amendments in U. S. Constitution, which was done in 1791, stated that “ in all criminal prosecutions, the accused shall enjoy... the right

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to have the assistance of Counsel for his defense” (Tomkovicz, 2001, p. 11). That early in the history of the judicial system of the country, it was already clear that the Framers were already much concerned with the protection of the rights of the defendants. The evolution or development of the right to counsel clause in the U. S. judicial system has paved the way for a clearer appreciation of its parameter. Such definitions and limitations are the bases for the elements that compose the right to counsel clause. One particular element is that an indigent defendant must be provided with legal counsel who is paid for by the government. It is a fact that the accused may not always have the resources to pay for a private lawyer. This condition should not hinder him from defending himself in court. The most prominent example of this is *Gideon v. Wainwright*. In this case, the U. S. Supreme Court points out “ reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him” (*Gideon v. Wainwright*, 372 U. S. 335). Another important element in the right to counsel is attributed to the attitude of members of law enforcement agencies towards arrested suspects. There can be no better example of this as the case *Miranda v. Arizona*. This stemmed from the fact that the police were able to extract incriminating information from the suspect without the presence of the latter’s legal counsel. The *Miranda* decision, however, reiterated the point that the any information acquired from the suspect without the presence of his attorney may be deemed inadmissible in court. Although the process of realizing the right to counsel is more difficult in post-conviction cases, the U. S. Constitution still guarantees it. The jurisprudence on the matter, however, is few and, particularly

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because many of those convicted are no longer interested to make appeals. Nevertheless, guided by the Constitution, the U. S. Supreme Court had decided to define the limitations and protect the right in *United States v. Tucker* in 1972, in *Douglas v. California* (1963) and *Mempa v. Rhay* (1967) (NLADA, n. d.). These assert that indigent defendants may still have the right to counsel even as they make appeals on their conviction.

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