

I. What is the Right to Counsel?

The right to counsel means that a person charged with a crime has the right to the aid of counsel (an attorney). That right has not always been guaranteed by the states. Today, however, it is binding in both state and federal courts.

The right to counsel in state courts was gradually established by the Supreme Court in a series of cases. For example, in *Powell v. Alabama*, several blacks were charged with and convicted of the rape of two white girls. All were sentenced to death.

The only issue in the case discussed by the Supreme Court of the United States was the right to counsel. Several days after the arrest of the defendants, the trial judge stated that he had appointed all the members of the bar for the purpose of arraigning the defendants and then of course anticipated that the members of the bar would continue to help the defendants if no counsel appeared.² At the trial two lawyers volunteered to help with the defense.

The Supreme Court of the United States ruled that in a capital case (a case in which the death penalty could be imposed), the Sixth and Fourteenth Amendments required that counsel be appointed, not voluntary. The convictions in *Powell* were reversed.

In *Gideon v. Wainwright*,³ the defendant was tried and convicted of breaking and entering a poolroom with intent to commit a misdemeanor. Breaking and entering was a felony (a more serious crime) under Florida law. He asked for an attorney but was told that the judge could appoint counsel only in a capital case. The defendant was tried, convicted, and sentenced to five years in prison.

The defendant then filed a petition for a writ of habeas corpus (see Lesson Six D) in the Supreme Court of the State of Florida. That court denied his claim.

He then took his case to the U.S. Supreme Court. The Court held that, under the Sixth and Fourteenth Amendments, the defendant had a right to an attorney. Today, a person who can be jailed for any length of time has a right to have an attorney. This rule was announced by the Supreme Court in a case called *Argersinger v. Hamlin*.⁴

While there is a constitutional right to counsel, there is also a constitutional right to defend oneself (*Faretta v. California*⁵). As long as a defendant makes a knowing and intelligent waiver of the right to counsel, he has a right to defend himself.

1. 287 U.s. 45 (1932)

2. 287 U.s. at p.49 Note: By appointing all of the members of the bar for arraigning the defendant without specifically designating anyone, the court, in effect, made no one responsible for the defense. If no one specifically came forward to help the defendants, it was anticipated that all members of the bar would help.

3. 372 U.S. 335 (1963)

4. 407 U.s. 25 (1972)

5. 422 U.S. 806 (1975)