

6th Amendment

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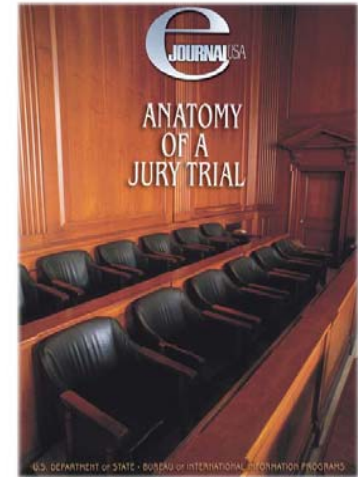
- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district where in the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the 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.

6th Amendment

- Right to Speedy & Public Trial
- Right to a Impartial Jury
- Right to Counsel
- Right to be informed of the charges against you
- Right to question and call witnesses

Jury Trial of Your Peers

- civil or criminal trial in which a jury decides any disputed issues of fact
- Jury process and selection will be discussed later under Court Procedure
- juvenile courts – discuss later (no jury)



Mark Becker Jury Selection

- combination of factors could make finding 12 jurors and four alternates impossible, even with nearly 2% percent of Butler County's population making up the potential pool
- Est. 220 potential jurors

Right to Counsel

Duties of an attorney vary depending on the nature of the charges and the case, **key responsibilities of any criminal defense lawyer include:**

- Advising the defendant of his or her rights and explaining what to expect at different stages of the criminal process;
- Ensuring that the defendant's constitutional rights are not violated through law enforcement conduct, or in court proceedings;
- Negotiating a plea bargain with the government, on the defendant's behalf;
- From arraignment to sentencing: investigating facts and evidence, cross-examining government witnesses, objecting to improper questions and evidence, and presenting any legal defenses

Right to counsel --Purpose?

- Prevents the police from undermining counsel's ability to mount an effective defense
- Once suspect confesses, effective representation is no longer possible

- 6th Amendment right to counsel applies when the police question a suspect under formal charges about a particular offense
- Does not relate to uncharged criminal activity
 - Otherwise investigative work would be delayed and hindered

Texas v. Cobb

- In December 1993, Raymond Cobb brutally murdered and secretly buried Margaret Owings after stabbing her during the course of burglarizing her home. Then, when her 2-year-old daughter Kori Rae awoke, he buried her alive beside her mother. Cobb was questioned by Walker County police and confessed to the burglary, although he denied any involvement in the disappearance of mother and daughter. Cobb was indicted for burglary, for which counsel was appointed to represent him. The police interrogated Cobb on the disappearance of the mother and child, but he maintained his innocence .
- After being released on bail on the burglary charge, with trial delayed indefinitely, Cobb moved to Odessa, Texas, over 500 miles away, to live with his father. Almost two years later, Cobb confessed to his father that he had murdered the mother and child. Cobb's father reported the confession to the Odessa police, who after contacting the Walker County authorities, obtained a warrant and arrested Cobb. After he waived his Miranda rights, Cobb made a statement confessing to the murders. At that time, **the Odessa police were unaware that Cobb had been indicted and had counsel in the burglary case.** Cobb was eventually convicted of murder and sentenced to die.

- Texas Court of Criminal Appeals **overturned Cobb's** conviction on the ground that his confession should have been **suppressed, because it was taken in violation of Cobb's Sixth Amendment right to counsel.**
- The court stated, "Once the right to counsel attaches to [an] offense charged, it also attaches to any other offense that is *very closely related factually* to the offense charged." The **court concluded that the double murder was "factually interwoven" with the burglary and thus that Cobb's right to counsel with respect to questioning about the murders had already attached upon the burglary**

Difference b/w Miranda's counsel and 6th Amend. counsel

- Miranda Rights applies to counsel before formal charges are imposed
- Custodial interrogations
- 6th Amendment applies when police are directly eliciting incriminating information (formal charges applied)

“Fruit of Poisonous Tree”

- Sticky Finger Sam
- Custody, police station-2 days, no food, no sleep
- He confesses, it is put in writing
- None of this can be admissible b/c constitutes of the “fruits of an involuntary confession”
- Courts will invoke the poisonous tree doctrine and suppress the fruits (confession)

Sticky Finger Susie

- Pulls off a huge bank robbery by working a deal w/ Hank
- Hank is a bank teller at the bank and will give Susie the keys to the vault
- They arrested Susie and she named her accomplice Hank
- Hank has a valid objection to the introduction of Susie's statements

6th Amendment

- Evidence of Hank as an accomplice **can not** be used unless the Susie is willing to testify
- Susie will probably invoked her 5th Amendment rights and refuse to testify
- So what can be done?
- Prosecutor will have to strike a deal, grant immunity or something in exchange for Susie testimony

Gideon v. Wainwright 1963

Facts of the Case:

- Gideon was charged in a Florida state court with a felony for breaking and entering. He lacked funds and was unable to hire a lawyer to prepare his defense. When he requested the court to appoint an attorney for him, the court refused, stating that it was only obligated to appoint counsel to indigent defendants in capital cases. Gideon defended himself in the trial; he was convicted by a jury and the court sentenced him to five years in a state prison.

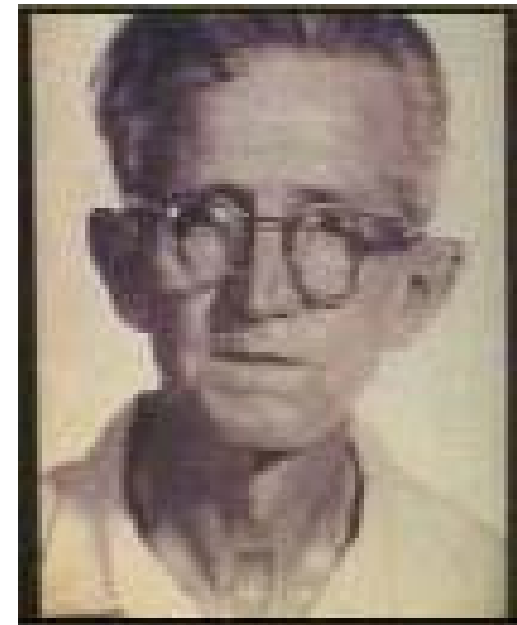
Question:

- Did the state court's failure to appoint counsel for Gideon violate his right to a fair trial and due process of law as protected by the Sixth and Fourteenth Amendments?

Gideon v. Wainwright

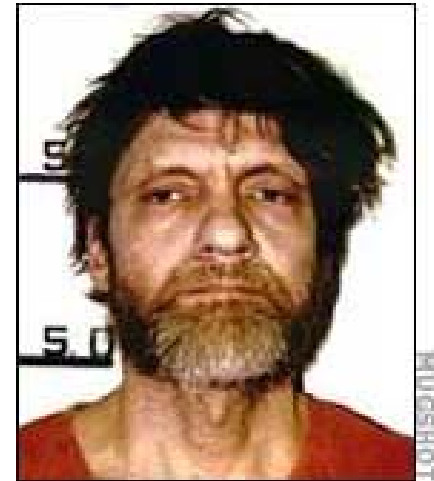
Conclusion:

- In a unanimous opinion, the Court held that Gideon had a right to be represented by a court-appointed attorney and, in doing so, overruled its 1942 decision of *Betts v. Brady*.
- In this case the Court found that the Sixth Amendment's guarantee of counsel was a fundamental right, essential to a fair trial, which should be made applicable to the states through the Due Process Clause of the Fourteenth Amendment.

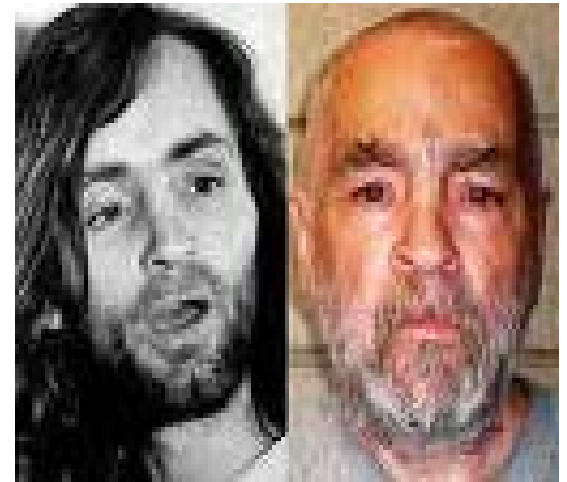


Defendant's waiver of the Sixth Amendment right to counsel must be voluntary, knowing, and intelligent.

- Kaczynski had constructed and mailed lethal bombs that killed three people and injured twenty-three others. Finally, after his brother told police that he recognized the style in the Unabomber's manifesto, printed in the *New York Times*, Kaczynski was arrested in Sacramento, California, in April 1996. By early 1998, Kaczynski was having a difference of opinion with his defense team. They hoped to mount a mental-health defense, because Kaczynski had been diagnosed with schizophrenia, but he was not amenable. After much opposition, he finally agreed, but then changed his mind. Instead, he wanted to represent himself.
- That meant a competency hearing, and while he was considered competent to stand trial, **his request to go pro se was denied**. Because his attorneys had more or less been forced on him, Kaczynski saw no way out of accepting an insanity defense, so he pleaded guilty to 13 of the crimes in exchange for a life sentence with no possibility of parole



- Charles Manson was competent to defend himself. Yet despite Manson's insistence, he ruined his chances. In 1970, he appeared in court with an "X" cut into his forehead, claiming the court had no jurisdiction because he had "Xed myself from your world." Then he attempted to introduce numerous silly motions, such as having Bugliosi incarcerated. Because it was clear he was making a mockery of the proceedings and had also violated the gag order several times, the judge vacated his right to act as his own attorney. Manson reacted by saying that the court itself was on trial.



Right to call and question witnesses

- Courtroom confrontation enhance the reliability of testimony
- Testimony given under oath and on penalty of perjury
- Allows us to observe witness behavior and determine if they are telling the truth
- Cross examination gives the accused the opportunity to challenges a witness's testimony

RIGHT TO QUESTION AND CALL WITNESSES

Right for defendant to get a
subpoena (court order)
requiring a witness to appear
in court to testify

Prosecutors said Drew and two others created a fictitious 16-year-old boy on MySpace and sent flirtatious messages from him to teenage neighbor Megan Meier. The "boy" then dumped Megan in 2006, saying, "The world would be a better place without you." Megan killed herself shortly after in her bedroom.



federal grand jury
has started issuing
subpoenas in the
case of Megan
Meier, the
"Myspace Suicide"
girl.

- American mother on trial in a landmark cyber-bullying case was convicted on Wednesday of three minor offences instead of the main conspiracy charge in a cruel internet hoax that apparently drove a 13-year-old girl to suicide.
- The federal jury could not reach a verdict on the main charge against 49-year-old Lori Drew conspiracy and rejected three other felony counts of accessing computers without authorization to inflict emotional harm.
- **guilty of three misdemeanor offences** of accessing computers without authorization. Each count is punishable by up to a year in prison and a \$US100,000 fine. Drew could have gotten 20 years if convicted of the four original charges.



Coy v. Iowa

Facts of the Case:

- John Coy was tried in an Iowa court for sexually assaulting two 13-year-old girls. When the girls were testifying against Coy, the court placed a large screen in front of him so that the girls would not have to see him. The jury proceeded to convict him. Coy argued that Iowa Code 910A, which provides for the use of a screen in child sexual abuse cases, violated his Sixth Amendment right to confront his accusers face-to-face. He also claimed that the code violated his right to due process, since having a screen placed between him and the girls made him appear guilty before he was properly tried. The trial court dismissed these claims and the Iowa Supreme Court affirmed.

Question:

- Does a defendant have the right to confront his alleged victims "face-to-face" under the Sixth Amendment if they testify against him before a jury?

Conclusion:

- Yes. Justice Antonin Scalia delivered the opinion of a 6-2 court.
- The Sixth Amendment explicitly states that the accused has the right "to be confronted with the witnesses against him." The Court maintained this "confrontation is essential to fairness."
- The screen clearly disrupted this confrontation in a way that could have biased the trial.
- While acknowledging that "face-to-face presence may, unfortunately, upset the truthful rape victim or abused child," the Court insisted that "by the same token it may confound and undo the false accuser, or reveal the child coached by a malevolent adult."

Hearsay

- Dying declarations of a victim that relate to facts surrounding the act that caused his or her dying condition are excepted from the hearsay rule.
- Such declarations are admissible in homicide cases. To be admissible as a dying declaration, the declaration must have been made while the victim was at the end of life (extremity) or under a sense of impending death and without hope of recovery

Hearsay

- *Hearsay testimony* is secondhand evidence; it is not what the witness knows personally, but what someone else told him or her.
- In general, hearsay may not be admitted in evidence, but there are exceptions

Can your spouse testify against you?

- wife or husband may not testify to confidential communications received from the other unless the other gives consent

Speedy Trial

- No set period in which a trial must take place AFTER prosecution has begun
- Supreme Court looks at 4 factors
 1. Length of delay
 2. Reason for delay
 3. Whether the defendant asserted his/her right to speedy trial
 4. Whether delay “tainted” defendant’s case

Barker v. Wingo

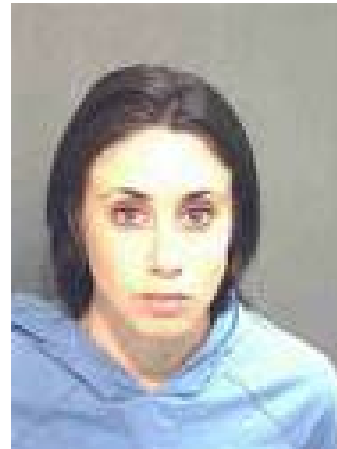
- Willie Barker charged w/ murder and had a trial date set Oct. 1958
- His trial postponed 17 times
- He did not object to first 11 continuances b/c he was out on bail
- Eventually tried and convicted

Most states

- Speedy Act of 1974
- 30 days from arrest to indictment in federal cases
- Trial must occur w/in another 70 days
- Statutes do vary from state to state

Waiver of Speedy Trial

- Casey Anthony, accused of killing her 2-year-old daughter Caylee Marie in the summer of 2008, could have a trial date of May 2, 2011
- Casey Anthony, 23, has been in the Orange County Jail since October 2008. Her lawyer waived her right a speedy trial in December 2008. The state is seeking the death penalty.



Public Trial-WHY??

1. Witnesses more likely to tell the truth when required to testify in front of others
2. Unknown people may hear of the trial and come forward w/ evidence
3. Citizens have opportunity to observe the judicial system and evaluate the “fairness”

Jury

- Impartial jury of the State and district where in the crime shall have been committed
- Grand Jury and Petit Jury (trial jury)
- Will discuss later