Gideon v. Wainwright
and
Strickland v. Washington

Kong-Pin Chen
Gideon v. Wainwright and Strickland v. Washington

- Two cases regarding mandatory attorney representation for indigent defendants.
- The former is about the right of representation, the latter about the right to its effectiveness.
Gideon v. Wainwright: Story

- 1961/6/3 in Florida, someone broke into a poolroom in late night.
- He broke the door, smashed a cigarette machine and a record player, and stole money from a cash register.
- Witness reported having seen Clarence Gideon in poolroom about 5:30 am, with a wine bottle and cash in pocket.
- Gideon was arrested and charged with petty larceny.
- When Gideon was in Florida State Prison, he appealed to the Supreme Court against Secretary of the Florida Department of Correction, by writing a letter in pencil.
- His reason: He was denied the 6th Amendment of the right to counsel, and as applied to states by 14 Amendment.
Before Gideon v. Wainwright

- A case closely related to US 6th and 14th Amendment.
- Part of the 6th Amendment requires that “In all criminal prosecution, the accused shall enjoy the right...to have the assistance of counsel for his defense.”
- Initially, the amendment was not meant to require the government to pay for attorney’s cost.
- Moreover, it only says what the government cannot do, but not what it must do.
Before Gideon v. Wainwright

- Basically three arguments for this right to attorney representation in US
  
  (i) 6th Amendment guarantees the right to a counsel paid by government.
  
  (ii) Trial without defense counsel violates 14th Amendment’s Due Process Clause.
  
  (iii) Right from 14th Amendment’s Equal Protection Clause.
  
- Historical development in US shows supreme court basically followed the approach of (i).
Before Gideon v. Wainwright

- In 1932, supreme court reversed a conviction of 9 men convicted in Scottsboro, Alabama, on the ground that defendants were denied due process (Powell v. Alabama).
- However, court made it clear that the due process requirement case is special: Only in capital case, or when defendant is incapable of decedent defense (ignorant, feeble mindedness, illiteracy, or this like).
Before Gideon v. Wainwright

- In Johnson v. Zerbst, court held that government must pay for counsel for unaffordable defendant in all federal court.
- In other words, this right does not extend to state courts.
- For example
  
  (i) In Betts v. Brady, court held that it is not a fundamental right for the defendant to an appointed counsel.
  
  (ii) In Illinois, a plaintiff was barred from appeal because he is unable to pay for transcript from trial. Reason basically same as in Betts v. Brady. (But reversed in Griffin v. Illinois.)
Before Gideon v. Wainwright

- These rulings basically allow the state courts the right to selectively apply right to counsel provided by the 6th Amendment.
- Scottsboro approach requires costly case-by-case selection review, and provides no clear guideline for this selection.
For Gideon’s appeal, supreme Court unanimously ruled in his favor.

Gideon v. Wainwright made it clear that right to counsel is a fundamental right for all criminal trials, and is binding in the states.
Gideon v. Wainwright

- Gideon was later retried in Florida, and was acquitted.
- This decision was later further extended to apply to cases during police interrogation (e.g., Miranda v. Arizona).
- One of the effect of this ruling is that many states created the public defender system.
Counsel is provided for defendants unable to hire lawyers. But are the lawyers effective?

Counsels provided by government, free, might be lazy or unqualified.

Strickland v. Washington established the standard in determining whether counsel’s ineffective performance violates 6th amendment.
David Washington, in course of ten days, committed a series of crimes, including three brutal murders, torture, kidnapping and attempted murder.

He pled guilty to all crimes, but stated that he acted under extreme mental stress caused by his inability to support his family.

His counsel, however, did not pursue defense in this regard, calling no character witness, requesting no psychiatric examination.
Washington claimed that counsel rendered ineffective assistance.

After a series of seeking collateral relief and habeas corpus petition and appeals (but by defendant and state Florida, the case came to supreme court).
Supreme court held that in order to claim that counsel is ineffective, two components must satisfy

(i) Defendant must show that counsel’s performance is “deficient,” and errors are “so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by 6th Amendment.”

(ii) Deficiency performance must be so serious as to prejudice the defendant so much to deprive the defendant of a fair trial.
In order to show “deficiency”, defendant must show it falls below an “objective standard of reasonableness.”

Errors made by counsel is not enough to set aside judgement. They must prejudice the defendant’s ability to receive a fair trial.

Based on this test, Court concluded that counsel did not perform deficiently, and Washington suffers no prejudice.

Washington was executed two months after supreme court decision.
Critics about Strickland v. Washington

- It provides no really clear guideline about who are qualified and effective about the “effectiveness” requirement. In David Cole’s critic, “Despite the promise of ‘effectiveness’ set forth in Strickland, in actually as long as the state provide a warm body with a law degree, and a bar admission, little else matter. Real estate lawyers with no criminal experience have been deemed competent to defend serious criminal cases, as have lawyers who fallen asleep or been drunk during trial. Nothing in the Supreme court’s doctrine impels states to provide sufficient resources to defend the indigent competently,...”
Taiwan’s Public Defendant System

- Taiwan also. 刑事訴訟法第 31 條
- Indigent or other defendants as listed in Taiwan’s Criminal Procedure Code 31 should be represented by the court’s public defenders (公設辯護人) or lawyers paid by government (法扶律師).
- One obvious question is whether there exists any difference between cases defended by retained lawyer and that paid by government.
- A very hard question to answer: self-selection problem causes selection bias.
Taiwan’s Public Defendant System

- We, however, we ask a more modest question: what is the difference between cases represented by public defenders and government-contracted legal-aid attorneys?
- This avoids the self-selection problem because the assignment between the two types of attorney is random.