

gain confessions. To remedy this problem, the Court adopted the now familiar *Miranda* rights, which require officials to remind suspects of their Fifth Amendment rights. In the 1966 case of *Miranda v. Arizona*, the Court ruled that “prior to any questioning, the person must be warned that he has a right to remain silent, that any statements he does make may be used against him, and that he has a right to the presence of an attorney, either retained or appointed.” The warning of silence allows the suspect to make an intelligent constitutional choice concerning self-incrimination. The presence of an attorney guarantees that the right is protected under the intense pressure of a police interrogation. The Court will deny the admissibility of a confession if the police failed to notify the suspect of his or her *Miranda* rights. In 2000, the Court reaffirmed its support of the *Miranda* ruling by declaring unconstitutional a congressional statute mandating a return to a lesser confession standard.⁹⁷

Miranda rights The warning police must administer to suspects so that the latter will be aware of their right not to incriminate themselves. The rights include the right to remain silent, the right to know statements will be used against them, and the right to have an attorney for the interrogation.

The Sixth Amendment: Right to Counsel

The Sixth Amendment guarantees the accused the right to counsel. At the time the Constitution was written, there were very few attorneys in the United States—most defendants handled their own cases—and criminal law was relatively uncomplicated. As American society became more complex, so did the laws needed to regulate and punish criminal behavior. By the twentieth century, criminal defendants increasingly began to hire attorneys to represent them. Because of the great complexity of modern criminal law, many observers now consider the right to counsel the most important of the rights possessed by the accused. Good legal advice is invaluable at every stage of the criminal justice process; it is no accident that the right to have an attorney is a key element of the *Miranda* warnings.

Although accused criminals had the right to an attorney, nearly 75 percent of them could not afford one. This put most defendants at a significant disadvantage when confronting a government prosecutor. The Supreme Court challenged the constitutionality of this situation under certain circumstances in *Powell v. Alabama* (1932). The year before, police in Alabama arrested nine African American youths, known as “the Scottsboro boys,” for allegedly raping two white girls. The jury convicted eight of the nine suspects and sentenced them to death. Upon appeal, the Court ruled that in unusual situations such as these—the defendants were young and uneducated, they were facing the death penalty, and their fate was subject to intense public pressure—the accused were entitled to counsel at the government’s expense.⁹⁸

In 1963, the Court expanded the right to counsel for indigent defendants facing felony charges in response to the efforts of Clarence Gideon.⁹⁹ Tried and convicted in Florida without the aid of an attorney for the felony crime of breaking and entering, Gideon became a “jailhouse lawyer” by reading law books and filing legal briefs. After many attempts by Gideon, the Supreme Court agreed to hear his case in 1962, and voted that poor defendants did have the right to an attorney when confronting felony charges. Nine years later, the Court expanded its policy by ruling that indigent defendants facing even one day in jail are entitled to legal representation. Such cases may involve complex legal issues, and a guilty verdict leaves the defendant with the stigma of a criminal conviction.¹⁰⁰ Supplying attorneys for all cases can be an expensive proposition for state governments, however. Recognizing this fact, the Court ruled that the state need not supply counsel unless the defendant faces the possibility of jail time if convicted.¹⁰¹ In a recent case, however, the Court struck down a lower court ruling against a defendant without counsel who received a suspended sentence and two years’ probation. The justices concluded that the state should have provided the defendant with counsel because he faced a possible deprivation of his freedom.¹⁰²

Did You Know?

In many jurisdictions, a person arrested on a minor offense can be subjected to humiliating strip searches and invasive body cavity examinations. In 2012, the Supreme Court heard cases involving litigants who were so searched after being arrested for driving with a noisy muffler, failure to use a turn signal, and riding a bicycle without a bell. In a 5 to 4 decision, the Supreme Court held that jail strip searches do not require reasonable suspicion if the arrestee is being admitted to the general jail population.