THE EXTENSION OF THE SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

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STATEMENT OF OBJECTIVES

• Research argues the Court, in *Strickland v. Washington* as well as *Argersinger v. Hamlin*, was correct in expanding the right to effective assistance of counsel.

• Based on the direction the Court followed in *Argersinger*, regarding indigents and their right to counsel when dealing with the deprivation of liberty, future expansion will likewise be necessary when property interests are at stake.
**Historical Background**

  - Average defendant requires guiding hand of counsel at every step trial.

  - Right to counsel is so vital a fair trial cannot result without it.

  - Right to counsel recognized as right to effective assistance of counsel.
PRE-STRICKLAND

  - Incorporation Doctrine: understanding the 5th and 14th Amendments
  - Distinction between capital & non-capital offenses eliminated.
  - Extent to which Gideon should apply?
  - Counsel required for indigents if jail sentence possible.
  - Justice Powell’s concurrence
    - Issues with the majority opinion
    - Alternative solution

- Exception to Strickland extremely limited to egregious circumstances
  - Presumed ineffective assistance of counsel where
    - Gravity of the charge,
    - Complexity of the case, and
    - Inaccessibility of witnesses
      - Misconduct and prejudice is so likely that the cost of litigating the question would be unjustified.

- 4th criterion?

• Established two pronged test.
  • Each prong must be independently met.
    • Counsel’s performance deficient, i.e., not a reasonably competent attorney.
      • Deficiencies prejudicial so as to deprive defendant of Sixth Amendment right.
    • Result: unfair trial
  • Defense, i.e., reasonable probability that “but for” unprofessional errors, result would have been different.
• Counsel’s performance presumed effective.
  • Burden of proof on accused
POST-STRICKLAND

  • Right to effective assistance of counsel on first appeal

  • Lack of blood evidence
  • Court upholds Strickland Standard

  • Lack of communication by counsel
  • Additional burdens placed on the defendant
CONCLUSIONS

• Finality of *Strickland* Doctrine v. right to effective assistance of counsel
  • *Argersinger*
    • Expanded applicability of 6th Amendment
    • Justice Powell implies right to counsel includes right to effective assistance.
  • *Strickland*
    • Strickland Standard: 2 prongs
      • Balancing act
  • *Cronic*
    • Stripping surrounding circumstances criteria
• Current rule of law and the future
  • Right to liberty v. property