APPENDIX B: SUPREME COURT CASES

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CARROLL v. UNITED STATES, 267 U.S. 132 (1925)

George and John Carroll, and several others, were convicted of transporting alcohol for sale in violation of the federal prohibition law and the 17th Amendment. The contraband liquor had been taken from his vehicle by federal agents acting without a search warrant. Carroll's case was heard before the Supreme Court and his conviction was upheld.

Mr. Chief Justice Taft delivered the opinion of the Court.

> ...On reason and authority the true rule is that if the search and seizure without a warrant are made upon probable cause, that is, upon a belief, reasonably arising out of circumstances known to the seizing officer, that an automobile or other vehicle contains that which by law is subject to seizure and destruction, the search and seizure are valid. The Fourth Amendment is to be construed in the light of what was deemed an unreasonable search and seizure when it was adopted, and in a manner which will conserve public interests as well as the interests and rights of individual citizens.
>
> ...We have made a somewhat extended reference to these statutes to show that the guaranty of freedom from unreasonable searches and seizures by the Fourth Amendment has been construed, practically since the beginning of the government, as recognizing a necessary difference between a search of a store, dwelling house, or other structure in respect of which a proper official warrant readily may be obtained and a search of a ship, motor boat, wagon, or automobile for contraband goods, where it is not practicable to secure a warrant, because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.
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> Having thus established that contraband goods concealed and illegally transported in an automobile or other vehicle may be searched for without a warrant, we come now to consider under what circumstances such search may be made. It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. ...But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official, authorized to search, probable cause for believing that their vehicles are carrying contraband.
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> ...In a case showing probable cause, the government and its officials are given the opportunity which they should have, to make the investigation necessary to trace reasonably suspected goods and to seize them.
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> Such a rule fulfills the guaranty of the Fourth Amendment. In cases where the securing of a warrant is reasonably practicable, it must be used and when properly supported by affidavit and issued after judicial approval protects the seizing officer ... In cases where seizure is impossible except without warrant, the seizing officer acts unlawfully and at his peril unless he can show the court probable cause.
>
> ...The right to search and the validity of the seizure are not dependent on the right to arrest. They are dependent on the reasonable cause the seizing officer has for belief that the contents of the automobile offend against the law.

ESCOBEDO v. ILLINOIS, 378 U.S. 478 (1964)

Danny Escobedo, a 22-year-old of Mexican extraction, was arrested in connection with the fatal shooting of his sister's husband. He had been arrested shortly after the shooting but had made no statement and was released after his attorney had obtained a writ of habeas corpus. On the second occasion of his arrest, he had made several requests to see his attorney, who was in the building. He was not advised of his right to remain silent and, after persistent questioning, made a damaging statement which was admitted at his trial. He was convicted and appealed to the state Supreme Court, which affirmed the conviction. He then petitioned the U.S. Supreme Court, which heard the case, reversed the lower court decision, and remanded the case back to the lower court.

Mr. Justice Goldberg delivered the opinion of the Court.

> The critical question in this case is whether, under the circumstances, the refusal by the police to honor petitioner's request to consult with his lawyer during the course of an interrogation constitutes a denial of "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution as "made obligatory upon the States by the Fourteenth Amendment."
>
> ...Petitioner testified that, during the course of the interrogation, he repeatedly asked to speak to his lawyer, and that the police said that his lawyer "didn't want to see" him. The testimony of the police officers confirmed these accounts in substantial detail.
>
> Notwithstanding repeated requests by each, petitioner and his retained lawyer were afforded no opportunity to consult during the course of the entire interrogation. At one point, as previously noted, petitioner and his attorney came into each other's view for a few moments, but the attorney was quickly ushered away. Petitioner testified "that he heard a detective telling his attorney the latter would not be allowed to talk to [him] until they were done," and that he heard the attorney being refused permission to remain in the adjoining room. A police officer testified that he had told the lawyer that he could not see petitioner until "we were through interrogating" him.
>
> ...The interrogation here was conducted before petitioner was formally indicted. But in the context of this case, that fact should make no difference. When petitioner requested, and was denied, an opportunity to consult with his lawyer, the investigation had ceased to be a general investigation of "an unsolved crime." Petitioner had become the accused, and the purpose of the interrogation was to "get him" to confess his guilt despite his constitutional right not to do so.
>
> ...We hold, therefore, that where, as here, the investigation is no longer a general inquiry into an unsolved crime, but has begun to focus on a particular suspect, the suspect has been taken into police custody, the police carry out a process of interrogation that lends itself to eliciting incriminating statements, the suspect has requested and been denied an opportunity to consult with his lawyer, and the police have not effectively warned him of his absolute constitutional right to remain silent, the accused has been denied "the Assistance of Counsel" in violation of the Sixth Amendment to the Constitution, and that no statement elicited by the police during the interrogation may be used against him in a criminal trial.

FURMAN v. GEORGIA, 408 U.S. 238 (1972)

Three petitioners who had received the death penalty, one of them for murder, and two for rape, petitioned the U.S. Supreme Court on a Writ of Certiorari. Petitioner in No. 69-5003 was convicted of murder in Georgia, Petitioner in No. 69-5030 was convicted of rape in Georgia, and Petitioner No. 69-5031 was convicted of rape in Texas. In each, the determination of whether the penalty should be death or a lighter punishment was left by the State to the discretion of the judge or of the jury. In each of the three cases, the trial was to a jury. All three received the death penalty from their respective juries. The U.S. Supreme Court was asked to answer the question whether the imposition and execution of the death penalty constitutes "cruel and unusual punishment" within the meaning of the Eighth Amendment as applied to the States by the Fourteenth. The Supreme Court, voting 5-4, vacated each judgment.

Mr. Justice Douglas, Mr. Justice Brennan, Mr. Justice Stewart, Mr. Justice White, and Mr. Justice Marshall filed separate opinions in support of the judgments. The Chief Justice, Mr. Justice Blackmun, Mr. Justice Powell, and Mr. Justice Rehnquist have filed separate dissenting opinions (Per Curiam Opinion).

> The Court holds that the imposition and carrying out of the death penalty in these cases constitute cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments. The judgment in each case is therefore reversed insofar as it leaves undisturbed the death penalty imposed, and the cases are remanded for further proceedings.
>
> ...Congressman Bingham, in proposing the Fourteenth Amendment, maintained that "the privileges or immunities of citizens of the United States," as protected by the Fourteenth Amendment, included protection against "cruel and unusual punishments."
>
> [Many] instances of State injustice and oppression have already occurred in the State legislation of this Union, of flagrant violations of the guaranteed privileges of citizens of the United States, for which the national Government furnished and could furnish by law no remedy whatever. Contrary to the express letter of your Constitution, "cruel and unusual punishments" have been inflicted under State laws within this Union upon citizens not only for crimes committed, but for sacred duty done, for which and against which the Government of the United States had provided no remedy, and could provide none.
>
> ...It would seem to be incontestable that the death penalty inflicted on one defendant is "unusual" if it discriminates against him by reason of his race, religion, wealth, social position, or class, or if it is imposed under a procedure that gives room for the play of such prejudices.
>
> There is evidence that the provision of the English Bill of Rights of 1689, from which the language of the Eighth Amendment was taken, was concerned primarily with selective or irregular application of harsh penalties, and that its aim was to forbid arbitrary and discriminatory penalties of a severe nature.

Finally, there is evidence that the imposition of the death sentence and the exercise of dispensing power by the courts and the executive follow discriminatory patterns. The death sentence is disproportionately imposed, and carried out on the poor, the Negro, and the members of unpopular groups.

In re GAULT, 387 U.S. 1 (1967)

On Monday, June 8, 1964, Gerald Gault, a 15-year-old, and his friend, Ronald Lewis, were taken into custody by the Sheriff of Gila County. The arrest was the result of a complaint that he had made a lewd telephone call to a female neighbor and she had recognized his voice. Gault was on probation at the time of the arrest, having been in the company of another boy who had stolen a wallet from a lady's purse. At the time he was picked up, his parents were both at work. No notice was left at the home, nor were any other steps taken to notify them of the situation. They were able to locate him later that evening, Gerald having been placed in a Detention Home.

A hearing was held on June 9 before Judge McGhee, attended by Gerald, his mother, and two Probation Officers. No transcript or recording was made, no memorandum was prepared. The judge interviewed Gerald and a delinquency hearing was set for June 15. At the conclusion of the hearing, the judge committed Gerald to the State Industrial School "for the period of his minority [that is, until 21], unless sooner discharged by due process of the law." The Gault family appealed the case to the Arizona Supreme Court, which upheld the lower court ruling, but with reservations. The U.S. Supreme Court heard the case, reversed the ruling, and remanded the case back to the Arizona court.

Mr. Justice Fortas delivered the opinion of the Court.

> *Kent v. United States*, 383 U.S. 541 (1966), held "that the [waiver] hearing must measure up to the essentials of due process and fair treatment." This view is reiterated, here in connection with a juvenile court adjudication of "delinquency," as a requirement which is part of the Due Process Clause of the Fourteenth Amendment of our Constitution. The holding in this case relates only to the adjudicatory stage of the juvenile process, where commitment to a state institution may follow. When proceedings may result in incarceration in an institution of confinement, "it would be extraordinary if our Constitution did not require the procedural regularity and exercise of care implied in the phrase 'due process.'"
>
> Due process requires, in such proceedings, that adequate written notice be afforded the child and his parents or guardian. Such notice must inform them "of the specific issues that they must meet," and must be given "at the earliest practicable time, and in any event, sufficiently in advance of the hearing to permit preparation." Notice here was neither timely nor adequately specific, nor was there waiver of the right to constitutionally adequate notice.
>
> In such proceedings, the child and his parents must be advised of their right to be represented by counsel and, if they are unable to afford counsel, that counsel will be appointed to represent the child. Mrs. Gault's statement at the habeas corpus hearing that she had known she could employ counsel, is "not 'an intentional relinquishment or abandonment' of a fully known right."
>
> The constitutional privilege against self-incrimination is applicable in such proceedings: an admission by the juvenile may [not] be used against him in the absence of clear and

unequivocal evidence that the admission was made with knowledge that he was not obliged to speak, and would not be penalized for remaining silent.

Furthermore, experience has shown that "admissions and confessions by juveniles require special caution" as to their reliability and voluntariness....

GIDEON v. WAINWRIGHT, 372 U.S. 335 (1963)

Clarence Earl Gideon was charged in a Florida state court with having broken and entered a poolroom with intent to commit a misdemeanor, which is a felony. Gideon requested that the court appoint an attorney to represent him and the court refused, per Florida law. Gideon defended himself in court, was convicted, and was sent to prison for five years. He petitioned the U.S. Supreme Court, who heard the case and reversed the decision of the Florida State Supreme Court, remanding the case back to the lower court. This decision overruled a previous Supreme Court case, Betts v. Brady, in which the Court had stated that the States must decide who would receive appointed counsel.

Mr. Justice Black delivered the opinion of the Court.

> ...Since 1942, when Betts v. Brady, 316 U.S. 455, was decided by a divided Court, the problem of a defendant's federal constitutional right to counsel in a state court has been a continuing source of controversy and litigation in both state and federal courts.
>
> ...The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defense." We have construed this to mean that, in federal courts, counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived. Betts argued that this right is extended to indigent defendants in state courts by the Fourteenth Amendment. In response, the Court stated that, while the Sixth Amendment laid down no rule for the conduct of the States, the question recurs whether the constraint laid by the Amendment upon the national courts expresses a rule so fundamental and essential to a fair trial and so, to due process of law, that it is made obligatory upon the States by the Fourteenth Amendment.
>
> ...While the Court, at the close of its Powell opinion, did, by its language, as this Court frequently does, limit its holding to the particular facts and circumstances of that case, its conclusions about the fundamental nature of the right to counsel are unmistakable. Several years later, in 1936, the Court reemphasized what it had said about the fundamental nature of the right to counsel in this language:
>
> "We concluded that certain fundamental rights, safeguarded by the first eight amendments against federal action, were also safeguarded against state action by the due process of law clause of the Fourteenth Amendment, and among them the fundamental right of the accused to the aid of counsel in a criminal prosecution."
>
> [The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure human rights of life and liberty... The Sixth Amendment stands as a constant admonition that, if the constitutional safeguards it provides be lost, justice will not "still be done."
>
> The right of an indigent defendant in a criminal trial to have the assistance of counsel is a fundamental right essential to a fair trial, and petitioner's trial and conviction without the assistance of counsel violated the Fourteenth Amendment.

JENCKS v. UNITED STATES, 353 U.S. 657 (1957)

On April 28, 1950, Jencks, the President of Amalgamated Bayard District Union, Local 890, International Union of Mine, Mill & Smelter Workers filed an Affidavit with the National Labor Relations Board falsely stating that he was not a member of the Communist Party. Testimony against him was given by two individuals working as undercover agents for the F.B.I. Jencks' attorney requested production of the reports and any other documents relating to the statements of the agents. His motions were denied. The case was filed with the U.S. Supreme Court and the Court heard the case. The Supreme Court held that denial of the motions was erroneous and the conviction was reversed.

Mr. Justice Brennan delivered the opinion of the Court.

> The evidence relied upon by the Government was entirely circumstantial. It consisted of testimony of conduct of the petitioner from early 1946 through October 15, 1949, and of Matusow's testimony concerning alleged conversations between him and the petitioner... Both the trial court and the Court of Appeals erred. We hold that the petitioner was not required to lay a preliminary foundation of inconsistency, because a sufficient foundation was established by the testimony of Matusow and Ford that their reports were of the events and activities related in their testimony.
>
> ...The crucial nature of the testimony of Ford and Matusow to the Government's case is conspicuously apparent. The impeachment of that testimony was singularly important to the petitioner. The value of the reports for impeachment purposes was highlighted by the admissions of both witnesses that they could not remember what reports were oral and what written, and by Matusow's admission, "I don't recall what I put in my reports two or three years ago, written or oral, I don't know what they were."
>
> It is unquestionably true that the protection of vital national interests may militate against public disclosure of documents in the Government's possession. ...But this Court has noticed ...that, in criminal causes "...the Government can invoke its evidentiary privileges only at the price of letting the defendant go free. The rationale of the criminal cases is that, since the Government which prosecutes an accused also has the duty to see that justice is done, it is unconscionable to allow it to undertake prosecution and then invoke its governmental privileges to deprive the accused of anything which might be material to his defense..."
>
> We hold that the criminal action must be dismissed when the Government, on the ground of privilege, elects not to comply with an order to produce, for the accused's inspection and for admission in evidence, relevant statements or reports in its possession of government witnesses touching the subject matter of their testimony at the trial. The burden is the Government's not to be shifted to the trial judge, to decide whether the public prejudice of allowing the crime to go unpunished is greater than that attendant upon the possible disclosure of state secrets and other confidential information in the Government's possession.

KENT v. UNITED STATES, 383 U.S. 541 (1966)

Morris A. Kent, Jr. was first arrested in 1959 when, at the age of 14, he was apprehended as a result of several housebreakings and an attempted purse snatching. On September 2, 1961, an intruder entered the apartment of a woman, stole her wallet, and raped her. Latent prints found at the scene matched the fingerprints of Morris Kent. At about 3:00 p.m. on September 5, Kent was taken into custody. He was taken to the police station and interrogated, at which time he apparently admitted his involvement. Kent's mother hired an attorney, who petitioned the court for several motions. The judge did not rule on the motions, did not hold a hearing, nor did he confer with the parents. The judge entered an order reciting that after "full investigation, I do hereby waive" jurisdiction and transferred the case to the adult courts. Kent was tried in an adult court and convicted on six of eight counts. He was sentenced to serve five to fifteen years on each count. The parents appealed the case and the Supreme Court heard the case. The Supreme Court held that the Juvenile Court order waiving jurisdiction and remitting petitioner for trial in the District Court was invalid.

Mr. Justice Fortas delivered the opinion of the Court.

> Because the State is supposed to proceed in respect of the child as *parens patriae*, and not as adversary, courts have relied on the premise that the proceedings are "civil" in nature, and not criminal, and have asserted that the child cannot complain of the deprivation of important rights available in criminal cases. It has been asserted that he can claim only the fundamental due process right to fair treatment.
>
> ...While there can be no doubt of the original laudable purpose of juvenile courts, studies and critiques in recent years raise serious questions as to whether actual performance measures well enough against theoretical purpose to make tolerable the immunity of the process from the reach of constitutional guaranties applicable to adults. There is much evidence that some juvenile courts, including that of the District of Columbia, lack the personnel, facilities and techniques to perform adequately as representatives of the State in a *parens patriae* capacity, at least with respect to children charged with law violation. There is evidence, in fact, that there may be grounds for concern that the child receives the worst of both worlds: that he gets neither the protections accorded to adults nor the solicitous care and regenerative treatment postulated for children.
>
> This concern, however, does not induce us in this case to accept the invitation to rule that constitutional guaranties which would be applicable to adults charged with the serious offenses for which Kent was tried must be applied in juvenile court proceedings concerned with allegations of law violation. The Juvenile Court Act and the decisions of the United States Court of Appeals for the District of Columbia Circuit provide an adequate basis for decision of this case, and we go no further.

MAPP v. OHIO, 367 U.S. 643 (1961)

On May 23, 1957, three Cleveland police officers arrived at the home of Dollree Mapp looking for a person who was wanted for questioning and was allegedly hiding at her house. Miss Mapp lived on the top floor of a two-family dwelling. The officers demanded entry into the home but, after consulting with her attorney by telephone, she refused to allow them in. Three hours later, more officers arrived and forced entry was made. Miss Mapp demanded to see a search warrant and a paper was shown to her, but she was not allowed to read it. After a commotion, she was arrested and handcuffed. Her portion of the house was searched and then officers moved to the basement and searched. Obscene materials were located in a trunk in the basement and she was charged. At the trial, no search warrant was produced. The prosecution argued that even if the search were made without authority, it was not prevented from using the seized evidence at trial. Mapp was convicted and appealed the case. The Ohio Supreme Court found that her conviction was valid even though the search of the residence was unlawful. The U.S. Supreme Court heard the case and held that all evidence obtained by searches and seizures in violation of the Federal Constitution is inadmissible in a criminal trial in a state court.

Mr. Justice Clark delivered the opinion of the Court.

> ...In the year 1914, in the *Weeks* case, this Court "for the first time" held that, "in a federal prosecution, the Fourth Amendment barred the use of evidence secured through an illegal search and seizure." This Court has ever since required of federal law officers a strict adherence to that command which this Court has held to be a clear, specific, and constitutionally required-even if judicially implied-deterrent safeguard without insistence upon which the Fourth Amendment would have been reduced to "a form of words."
>
> If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the Fourth Amendment declaring his right to be secure against such searches and seizures is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established by years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land.
>
> We have no hesitation in saying that, were a State affirmatively to sanction such police incursion into privacy, it would run counter to the guaranty of the Fourteenth Amendment.
>
> Moreover, our holding that the exclusionary rule is an essential part of both the Fourth and Fourteenth Amendments is not only the logical dictate of prior cases, but it ales very good sense. There is no war between the Constitution and common sense. Presently, a federal prosecutor may make no use of evidence illegally seized, but a State's attorney across the street may, although he supposedly is operating under the enforceable prohibitions of the same Amendment. Thus the State, by admitting evidence unlawfully seized, serves to encourage disobedience to the Federal Constitution which it is bound to uphold.

MIRANDA v. ARIZONA, 384 U.S. 436 (1966)

On March 13, 1963, Ernesto Miranda was arrested at his home and taken in custody to a Phoenix police station. He was identified by a complaining witness and then taken to an interrogation room, where he was questioned by two officers. The officers admitted in court that they did not advise Miranda that he had the right to an attorney. Two hours later, the officers had a written confession signed by Miranda. Miranda was tried and convicted of rape and kidnaping. The case was then appealed to the Arizona Supreme Court, which upheld the conviction. The U.S. Supreme Court agreed to hear the case and overturned the lower court ruling.

Mr. Chief Justice Warren delivered the opinion of the Court.

> ...We deal with the admissibility of statements obtained from an individual who is subjected to custodial police interrogation and the necessity for procedures which assure that the individual is accorded his privilege under the Fifth Amendment to the Constitution not to be compelled to incriminate himself.
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> We dealt with certain phases of this problem recently in *Escobedo v. Illinois.* This case has been the subject of judicial interpretation and spirited legal debate since it was decided two years ago. Both state and federal courts, in assessing its implications, have arrived at varying conclusions. A wealth of scholarly material has been written tracing its ramifications and underpinnings.
>
> We start here, as we did in *Escobedo*, with the premise that our holding is not an innovation in our jurisprudence, but is an application of principles long recognized in other settings. We have undertaken a thorough reexamination of the *Escobedo* decision and the principles it announced, and we reaffirm it.
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> ...Our holding will be spelled out with some specificity in the pages which follow, but, briefly stated, it is this: the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any way. As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Prior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently. The mere fact that he may have answered some questions or volunteered some statements on his own does not deprive him of the right to refrain from answering any further inquiries until he has consulted with an attorney and thereafter consents to be questioned.

POWELL v. ALABAMA, 287 U.S. 45 (1932)

On March 25, 1931, the defendants, together with a number of other African-Americans, were upon a freight train on its way through Alabama. On the same train were seven white boys and the two white girls. A fight took place between the African-Americans and the white boys in the course of which the white boys, with the exception of one, were thrown off the train. A message was sent ahead, reporting the fight and asking that every African-American be gotten off the train. The participants in the fight, and the two girls, were in an open gondola car. Upon arrival at the next stop, the two girls reported that they had been assaulted by the defendants. The defendants were arrested, charged, and convicted in short order. The defendants appealed to the U.S. Supreme Court and the convictions were reversed.

Mr. Justice Sutherland delivered the opinion of the Court.

> In this court, the judgments are assailed upon the grounds that the defendants, and each of them, were denied due process of law and the equal protection of the laws in contravention of the Fourteenth Amendment, specifically as follows: (1) they were not given a fair, impartial and deliberate trial; (2) they were denied the right of counsel, with the accustomed incidents of consultation and opportunity of preparation for trial, and (3) they were tried before juries from which qualified members of their own race were systematically excluded.
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> ...It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his choice. Not only was that not done here, but such designation of counsel as was attempted was either so indefinite or so close upon the trial as to amount to a denial of effective and substantial aid in that regard.
>
> The right of the accused, at least in a capital case, to have the aid of counsel for his defense, which includes the right to have sufficient time to advise with counsel and to prepare a defense, is one of the fundamental rights guaranteed by the due process clause of the Fourteenth Amendment.
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> In a capital case, where the defendant is unable to employ counsel and is incapable of making his own defense adequately because of ignorance, feeble-mindedness, illiteracy or the like, it is the duty of the court, whether requested or not, to assign counsel for him as a necessary requisite of due process of law, and that duty is not discharged by an assignment at such a time and under such circumstances as to preclude the giving of effective aid in the preparation and trial of the case.
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> In a case such as this, the right to have counsel appointed, when necessary, is a logical corollary to the right to be heard by counsel.
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> In such circumstances, the trial court has power, even in the absence of statute, to appoint an attorney for the accused, and the attorney, as an officer of the court, is bound to serve.

However guilty defendants, upon due inquiry, might prove to have been, they were, until convicted, presumed to be innocent. It was the duty of the court having their cases in charge to see that they were denied no necessary incident of a fair trial.

TERRY v. OHIO, 392 U.S. 1 (1968)

Detective McFadden, an officer with Cleveland P.D., was working a plainclothes beat downtown. He observed two strangers on a street corner, and then watched them proceed alternately back and forth along an identical route, pausing to look into the same store window, which they did about 24 times. They were joined by a third person. McFadden felt that the three were "casing" the store in order to commit a robbery. The three again began their suspicious activity. When the three finally ended up together in front of the store, McFadden walked up, identified himself, and asked for their names. When the men "mumbled something" in response to his questions, McFadden grabbed Terry, spun him around, and patted down the outer clothing. He felt what appeared to be a pistol and later recovered it. He also found a gun on Chilton. The three were arrested. Terry and Chilton were convicted and Terry appealed to the Supreme Court.

Mr. Chief Justice Warren delivered the opinion of the court.

> This case presents serious questions concerning the role of the Fourth Amendment in the confrontation on the street between the citizen and the policeman investigating suspicious circumstances.
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> Though the police must, whenever practicable, secure a warrant to make a search and seizure, that procedure cannot be followed where swift action based upon on-the-spot observations of the office on the beat is required. The reasonableness of any particular search and seizure must be assessed in light of the particular circumstances against the standard of whether a man of reasonable caution is warranted in believing that the action taken was appropriate.
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> The officer here was performing a legitimate function of investigating suspicious conduct when he decided to approach Terry and his companions. An officer justified in believing that an individual whose suspicious behavior he is investigating at close range is armed may, to neutralize the threat of physical harm, take necessary measures to determine whether that person is carrying a weapon. A search for weapons in the absence of probable cause to arrest must be strictly circumscribed by the exigencies of the situation.
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> An officer may make an intrusion short of arrest where he has reasonable apprehension of danger before being possessed of information justifying arrest. The officer's protective seizure of petitioner and his companions and the limited search which he made were reasonable, both at their inception and as conducted.
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> The officer's search was confined to what was minimally necessary to determine whether the men were armed, and the intrusion, which was made for the sole purpose of protecting himself and others nearby, was confined to ascertaining the presence of weapons. The revolver seized from petitioner was properly admitted into evidence against him, since the search which led to its seizure was reasonable under the Fourth Amendment.

WEEKS v. UNITED STATES, 232 U.S. 383 (1914)

Weeks was arrested by a police officer, without a warrant, at the Union Station in Kansas City, Missouri, where he was employed by an express company. Other officers went to his house and entered, without a search warrant. Various papers and articles were seized and were later turned over to the U.S. Marshal. The defendant was charged with improper use of the mail and was convicted. He was given a fine and imprisonment was imposed. He appealed on a writ of error and requested the U.S. Supreme Court to review the case. The lower court ruling was reversed and remanded for review and further proceedings.

Mr. Justice Day delivered the opinion of the Court.

> ...Upon the introduction of such papers during the trial, the defendant objected on the ground that the papers had been obtained without a search warrant, and by breaking open his home in violation of the 4th and 5th Amendments to the Constitution of the United States, which objection was overruled by the court. It is apparent that the question presented involves the determination of the duty of the court with reference to the motion made by the defendant for the return of certain letters, ...taken from his room by the United States Marshal, ...visited the room of the defendant for the declared purpose of obtaining additional testimony to support the charge against the accused....
>
> The effect of the Fourth Amendment is to put the courts of the United States and Federal officials, in the exercise of their power and authority, under limitations and restraints as to the exercise of such power and authority, and to forever secure the people, their persons, houses, papers, and effects, against all unreasonable searches and seizures under the guise of the law. This protection reaches all alike, whether accused of crime or not, and the duty of giving to it force and effect is obligatory upon all entrusted under our Federal system with the enforcement of the laws.
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> ...If letters and private documents can thus be seized and held and used in evidence against a citizen accused of an offense, the protection of the 4th Amendment, declaring his right to be secure against such searches and seizures, is of no value, and, so far as those thus placed are concerned, might as well be stricken from the Constitution. The efforts of the courts and their officials to bring the guilty to punishment, praiseworthy as they are, are not to be aided by the sacrifice of those great principles established be years of endeavor and suffering which have resulted in their embodiment in the fundamental law of the land. The United States Marshal could only have invaded the house of the accused when armed with a warrant issued as required by the Constitution, upon sworn information, and describing with reasonable particularity the thing for which the search was to be made. Instead, he acted without sanction of law, doubtless prompted by the desire to bring further proof to the aid of the government, and under color of his office undertook to make a seizure of private papers in direct violation of the constitutional prohibition against such action.
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> We therefore reach the conclusion that the letters in question were taken from the house of the accused by an official of the United States, acting under color of his office, in direct

violation of the constitutional rights of the defendant; that having made a seasonable application for their return, which was heard and passed upon by the court, there was involved in the order refusing the application a denial of the constitutional rights of the accused, and the court should have restored these letters to the accused.

In re WINSHIP, 397 U.S. 358 (1970)

Samuel Winship, a 12-year-old, was accused of breaking into a locker and stealing $112 from a woman's pocketbook. At the adjudicatory hearing, the judge found the juvenile to have been delinquent and Samuel was placed in a training school for an initial period of 18 months, subject to annual extensions of his commitment until his 18th birthday. The judge acknowledged that the proof might not establish guilt beyond a reasonable doubt, but rejected the appellant's contention that such proof was required by the Fourteenth Amendment. The judge relied on a New York Juvenile Court ruling which provides that "any determination at the conclusion of (an adjudicatory) hearing that a (juvenile) did an act or acts must be based on a preponderance of the evidence." The case was appealed to the New York Court of Appeals, which upheld the constitutionality of the law. An appeal was then made to the Supreme Court, which agreed to hear the case. The Court held that the lower court had erred.

Mr. Justice Brennan delivered the opinion of the Court.

> The requirement that guilt of a criminal charge be established by proof beyond a reasonable doubt dates at least from our early years as a Nation. The "demand for a higher degree of persuasion in criminal cases was recurrently expressed from ancient times, (though) its crystallization into the formula 'beyond a reasonable doubt' seems to have occurred as late as 1798. It is now accepted in common law jurisdictions as the measure of persuasion by which the prosecution must convince the trier of all the essential elements of guilt." Although virtually unanimous adherence to the reasonable-doubt standard in common-law jurisdictions may not conclusively establish it as a requirement of due process, such adherence does "reflect a profound judgment about the way in which law should be enforced and judgment administered."
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> ...Use of the reasonable-doubt standard is indispensable to command the respect and confidence of the community in applications of the criminal law. It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper fact finder of his guilt with utmost certainty.
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> *Gault* decided that, although the Fourteenth Amendment does not require that the hearing at this stage conform with all the requirements of a criminal trial, or even of the usual administrative proceeding, the Due Process Clause does require application during the adjudicatory hearing of "the essentials of due process and fair treatment."
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> The requirement of proof beyond a reasonable doubt has this vital role in our criminal procedure for cogent reasons. The accused, during a criminal prosecution, has at stake interests of immense importance, both because of the possibility that he may lose his liberty upon conviction and because of the certainty that he would be stigmatized by the conviction.

...In sum, the constitutional safeguard of proof beyond a reasonable doubt is as much required during the adjudicatory stage of a delinquency proceeding as are those constitutional safeguards applied in *Gault*-notice of charges, right to counsel, the rights of confrontation and examination, and the privilege against self-incrimination.