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GARDEN STATE CLE LESSON PLAN

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CONSEQUENCES OF MAGNITUDE THE STORY OF RODRIGUEZ V. ROSENBLATT

Featuring

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Garden State CLE Senior Instructor**

And

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Attorney**

Program description

Untold thousands of people have benefited from the New Jersey Supreme Court's ruling in this landmark 1971 decision. Surprisingly, no defendants and few lawyers know anything about it. Get the scoop with the 1.0 credit.

I. Introduction

- **Fairly “new” law that not only requires that counsel be appointed for municipal court cases, but also that counsel must get paid for their work**
- **1000s of people touched by a system that now provides appointed counsel for petty offenses that are not considered crimes**
- **1000s of people have had the benefit of this proceeding where counsel is appointed and neither the attorneys nor defendants and possibly not judges know what went into the process**
- **The courts themselves dealt with whether this is a constitutional issue or merely in the interest of fairness**
- **Do we appreciate how far we have come over the years?**
- **There was a time when people who were charged with crimes and even serious criminal offenses were not afforded counsel**
- **But now the procedure is pretty well established**

II. The Development of the Federal Standard

A. United State Constitution

- **6th Amendment – appointment of counsel for people charged with criminal offenses**
- **Reality vs. Practical – one thing to have counsel appointed and another issue to have the attorneys paid**
- **Legislature would have to appropriate money for criminals – not politically strong position**

B. Powell v. Alabama, 287 US 45 (1932)

- **US Supreme Court first held that in circumstances with capital litigation and people are not able to represent themselves for whatever reason**
- **If judge determined person could not represent himself, counsel was to be appointed**
- **Not done on basis of due process under the 14th Amendment but to do otherwise would “shock the judicial conscious”**

C. Betts v. Brady, 316 US 455 (1942)

- **First salvo in an attempt to see if 14th amendment would apply to states in a sense for people charged with crimes in the states being entitled to counsel**
- **USSC not ready to provide for that protection**
- **Conservative court and during war time**

- **In interest of federalism, the Court was not willing to impose on the states something that would require them to spend additional money because of respect for individuality of the states – issue of state’s rights**
- **States were allowed to conduct criminal state prosecutions as they wanted**

D. Gideon v. Wainwright, 372 US 335 (1963)

- **Law changed markedly**
- **Some concern amongst the Justices of how the 14th amendment would apply to the states – if ordered that defendants have a right to attorneys to represent them if they were indigent – what are the outside parameters – how serious the charges must be and how would the states pay for this**
- **At this time, many of the states (more than 30) on their own had independently taken step under own state laws/constitutions had found a way for indigent defendants to be represented by attorneys**
- **USSC knew that minority of states would be effected by the Court’s decision**
- **Would the court include petty offenses, as well as traffic tickets? How would this apply?**
- **20 years from Betts and many states already provided counsel for indigents**
- **“the fix was in” – the Justices felt bad about Betts decision and that most states had already come up with procedures for counsel to be appointed and Court was embarrassed by that progress**
- **Gideon filed petition in forma pauperis and USSC appointed the best attorney in DC – this says a great deal about what the Court believed was at issue**
- **Issue of petty offenses?**
- **6th Amendment provides for appointment of counsel in US through 14th Amendment for people charged with crimes**
- **Crimes v. petty offense – authorized level of incarceration – only objective way of telling**
- **offense with potential jail term of 6 months or less and indigent then this is a petty offense and you have no right to appointment of counsel**

- **offense with potential jail term of 6 months or greater and indigent then under 14th Amendment entitled to appointment of counsel**
- **nothing has significantly changed to this day in your right to counsel**
- **do not generally have a right to counsel if indigent charged with petty offense in US – under US Constitution – states can differ based on their own constitutions**
- **under 6th Amendment – no right to appointment of counsel for petty offenses**

III. The Development of New Jersey's law

- **Initially followed Gideon regarding right to counsel for criminal offenses – not petty offenses**
- **Attorneys were working but not being paid when appointed as counsel**
- **Indigents were entitled to counsel but no public defender office – people were getting representation but no standard way for assignment or appointment of counsel**

A. State v. Rush, 46 NJ 399 (1966)

- **Idea was an attempt to come up with mechanism for expenses and out of pocket advances covered by the governmental entity**
- **NJ Supreme Court had a problem because assigned counsel was representing clients out of their own pockets – supporting the criminal justice system – which was not the obligation of the criminal defense bar**
- **Did not order legislature to do something**
- **NJ Supreme Court – entity responsible for taking care of this was the county**
- **County prosecutor was the chief law enforcement officer of the county**
- **The county government was the chief funding agency for criminal cases**
- **Any reimbursement to defense bar would come from the county**
- **This remained in place until the Legislature passed the Public Defender Act (NJSA 2B:24-1, et seq) – provided for professional staffing and payment of attorneys representing**

individuals who were charged with criminal defendants who were indigent

- **How attorneys would be reimbursed for their time and efforts**

B. Rodriguez v. Rosenblatt, 58 NJ 281, 295 (1971)

- **USSC never spoke to the appointment of counsel for petty offenses**
- **NJ had to address what to do with people who are charged with petty offenses and cannot afford counsel**
- **Such an important, landmark decision**
- **Holding of court immediately impacted on lives of any indigent person in municipal court facing serious charges – suddenly entitled to have an attorney to represent him**
- **The court acknowledged that the right to counsel as an indigent person charged with a petty offense was not of constitutional dimension**
- **Argersinger v. Hamlin, 407 US 25 (1972) – pending before USSC at this same time; NJ Supreme Court did not know how Argersinger would be resolved by the Supreme Court; therefore NJ Supreme Court ruled in Rodriguez not a constitutional issue until the USSC rules otherwise**
- **NJ court not sure on how USSC would determine on the constitutionality of the issue**
- **No constitutional right to counsel with petty offenses**
- **Matter of fundamental fairness – individuals charged with petty offenses who are facing “consequences of magnitude” are entitled to appointed counsel**
- **“Consequences of magnitude” means:**
 - **jail term of any length**
 - **license suspension**
 - **money (\$750 or more)**
 - **no matter if divided among fines, restitution, drug penalties**
 - **sum total of money is at issue**
- **Jail term issue:**
 - **Not specific in Rodriguez the length of the jail term, but it has been interpreted by subsequent cases as at least one day**
 - **In re Daniels, 118 NJ 51, 54 (1990) – appeal from a contempt of court where an attorney was given a jail**

term; NJ Supreme Court states that even a jail sentence of 1 day is a consequences of magnitude

- **Having someone appointed and the money part are two separate issues**
- **No constitutional underpinning of this case – Supreme Court was not willing to make this a constitutional issue**

C. The Procedures following Rodriguez

- **At time of Rodriguez case, no formal municipal public defenders at all**
- **After the case, municipalities felt it was in their best interest to form a municipal public defender's office by ordinance – nothing statutorily that supported having a municipal public defender**
- **Courts relied on appointment of counsel when necessary to appoint but no staffed public defender's office**
- **Easier for counsel to be available when public defender's officers were formed**
- **Judges had more latitude to appoint when there was a public defender's office**
- **Relied on appointed counsel with public defender's office being a rare entity in NJ**
- **Argersinger was decided - compromise decision – does not provide for counsel in those cases where there is a consequence of magnitude but talks about jail terms only**
 - **In US – no one can receive a jail term unless**
 - **the person had an attorney to represent him, or**
 - **waived an attorney after a full waiver hearing based on voluntary and knowing waiver**
 - **Only under one of these two circumstances can someone be sentenced to a jail term**
 - **If jail term imposed without one of these two elements being present, then due process violation to sentence person to a jail term**
 - **No jail term for anything in courts in US unless someone is represented by an attorney or waived**
- **NJ Supreme Court just as a matter of simple fairness and procedure that people who are faced with consequence of magnitude must have counsel – but not based on a constitutional guarantee**

- **NJ Supreme Court able to order this as a result of constitutional oversight of criminal justice system – matter of policy**
 - **Many people have benefitted from the Rodriguez decision**
 - **Difference between Argersinger and Rodriguez**
 - **Different standards of appointing counsel – Argersinger says an actual jail term is the trigger, while Rodriguez says just the potential for a consequence of magnitude is enough**
 - **Judges must decide whether there is a possibility of a jail sentence before hearing one piece of evidence in order to decide if the person should be appointed counsel**
 - **Having a public defender’s office makes the decision to appoint counsel easier on the courts**
- D. Madden v. Delran Township, 126 NJ 591 (1992)**
- **Reimbursement of appointed counsel in municipal court?? How appointed? Appointments being fairly distributed??**
 - **People entitled to counsel but legislature has not provided for the public defender services because of things that have happened after the adoption of the PD statute but no additional funding provided by legislature**
 - **DV case with restraining order and defendant violates restraining order with a new offense that is a disorderly persons offense – hybrid offense – family court hears the case – no public defender for these types of situations – counsel appointed from a list**
 - **Termination of parental rights – consequences are so harsh to parent that appointment of counsel will be made for this case**
 - **Trial appeals out of municipal court – right to appeal but appointment of counsel in municipal court does not carry over to the appeal – no public defender funded for this type of case – appointment of private counsel to cover this type of case**
 - **This case brought by an attorney who argued that he wanted to get paid for the work that he did on the case**
 - **“Madden list” developed by NJ Supreme Court requires members of the bar to undertake representations and make sure that assignment of counsel is done on random basis – any**

attorney responsible for accepting these appointments and do the best for the clients

- **Problematic application of this list because lack of experience in a particular area of law**
- **NJ Supreme Court has written simplified directions on how to defend various cases (online) – to help out these appointed counsel from the Madden List**

E. Public Defender Statute and Court Rules

- **Legislature faced with municipalities that passed ordinances to provide for public defender's offices**
- **Legislature required public defenders in every single municipality in the state and the parameters for the operation of those offices**
- **Funding of the office occur so that municipalities don't lose money – fees paid by clients go toward funding**
- **Better procedures to address the appointment of counsel**
- **Court rules provide procedures to appoint counsel whenever there is an indigent who is entitled to counsel – set standards to determine ability to hire counsel – look at income, number of people supporting, etc. – uniformly applied standards**
- **Judges hesitant to deny public defender – but under what circumstances?**

IV. Post Conviction Relief

- **State v. Laurick, 120 NJ 1 (1990) – case is a product of Rodriguez in that it appeared in Laurick, based on Baldasar v. Illinois, 446 US 222 (1980), that it was necessary to exclude convictions for sentence enhancement purposes for times when the defendant was not represented by counsel**
- **Shortly after Laurick – USSC reversed Baldasar in US v. Nichols, 511 US 738 (1994)**
- **Whether you can get post conviction relief in Laurick sense – based on prior uncounseled conviction, didn't waive right to counsel, indigent, or if not indigent then counsel would have changed the outcome – all constitutional underpinnings went away when Nichols was decided**
- **State v. Hrycak, 184 NJ 351 (2005) – notwithstanding Nichols, relief continued for Laurick type cases as a matter of policy; Hrycak court likened policy as being required as part of**

Rodriguez; court said inconsistent with Rodriguez to allow uncounseled conviction to be held against someone for sentencing enhancement

- V. Is there an argument for Rodriguez when jail is an issue in a civil case – such as child support**
- **Pasqua v. Council, 186 NJ 127 (2006) – at trial level, Assignment Judge heard this case; could someone who can be sentenced to jail for a non-criminal matter be sentenced without counsel? Most times when someone does not pay child support it is because they are indigent – so do they have a right to appointed counsel? AJ wrote opinion claiming individuals who have child support issues have a right to counsel if indigent – jail is jail; NJ Supreme Court decided along with AJ that these individuals have a right to counsel as a policy matter**
 - **Pasqua was abrogated by US Supreme Court case Turner v. Rogers, 131 S. Ct. 2507 (2011)**
 - **Unclear whether NJ will continue this policy but question whether constitutional or as a matter of policy**
 - **Question how does appointment of counsel come about for these non-criminal cases? Through Madden list??**
- VI. The Future of Rodriguez**
- **No greater need for appointment of counsel – never more indigent people or unable to take care of financial obligations with the court**
 - **Regressive court fines and penalties – people cannot meet financial obligations**
 - **Given indigency and number of people coming before the court – safety valve created by Rodriguez and buttressed by legislation creating public defender offices is in higher need**
 - **Enormously important landmark decision of Rodriguez is going to be with us for the indefinite future**