

that limits its scope but does not exhaust all constitutional rights to representation in adversarial contexts associated with the criminal justice process. The Sixth Amendment requires counsel at the sentencing stage,<sup>406</sup> and the Court has held that, where sentencing was deferred after conviction and the defendant was placed on probation, he must be afforded counsel at a hearing on revocation of probation and imposition of the deferred sentence.<sup>407</sup> Beyond this, however, the Court has eschewed Sixth Amendment analysis, instead delimiting the right to counsel under due process and equal protection principles.<sup>408</sup>

***Noncriminal and Investigatory Proceedings.***—Commitment proceedings that lead to the imposition of essentially criminal punishment are subject to the Due Process Clause and require the assistance of counsel.<sup>409</sup> A state administrative investigation by a fire marshal inquiring into the causes of a fire was held not to be a criminal proceeding and hence, despite the fact that the petitioners had been committed to jail for noncooperation, not the type of hearing at which counsel was requisite.<sup>410</sup> Another decision refused to extend the right to counsel to investigative proceedings antedating a criminal prosecution, and sustained the contempt conviction of private detectives who refused to testify before a judge authorized to conduct a non-prosecutorial, fact-finding inquiry akin to a grand jury proceeding, and who based their refusal on the ground that their counsel were required to remain outside the hearing room.<sup>411</sup>

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<sup>406</sup> *Townsend v. Burke*, 334 U.S. 736 (1948).

<sup>407</sup> *Mempa v. Rhay*, 389 U.S. 128 (1967) (applied retroactively in *McConnell v. Rhay*, 393 U.S. 2 (1968)).

<sup>408</sup> State criminal appeals, applications for collateral relief, and post-sentencing parole or probation determinations are examples of procedures with respect to which the Court has not invoked the Sixth Amendment. Using due process analysis, the Court has found no constitutional right to counsel in prison disciplinary proceedings. *Wolff v. McDonnell*, 418 U.S. 539, 560–70 (1974); *Baxter v. Palmigiano*, 425 U.S. 308, 314–15 (1976). See Fourteenth Amendment, “Rights of Prisoners,” *infra*.

<sup>409</sup> *Specht v. Patterson*, 386 U.S. 605 (1967).

<sup>410</sup> *In re Groban*, 352 U.S. 330 (1957). Four Justices dissented.

<sup>411</sup> *Anonymous v. Baker*, 360 U.S. 287 (1959). Four Justices dissented.