



THE AMERICAN COLLEGE OF TRIAL LAWYERS'
MISSION INCLUDES SUPPORT FOR
PUBLIC INDIGENT DEFENSE

Public Defenders Committee

MISSION STATEMENT OF THE AMERICAN COLLEGE OF TRIAL LAWYERS

The American College of Trial Lawyers is an invitation only fellowship of exceptional trial lawyers of diverse backgrounds from the United States and Canada. The College thoroughly investigates each nominee for admission and selects only those who have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism and collegiality. The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its mission. The College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings.



“In this select circle, we find pleasure and charm in the illustrious company of our contemporaries and take the keenest delight in exalting our friendships.”

—Hon. Emil Gumpert,
Chancellor-Founder, ACTL

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THE AMERICAN COLLEGE OF TRIAL LAWYERS' MISSION INCLUDES SUPPORT FOR PUBLIC INDIGENT DEFENSE

The mission statement of the American College of Trial Lawyers (the College) is as follows:

The American College of Trial Lawyers is an invitation only fellowship of exceptional trial lawyers of diverse backgrounds from the United States and Canada. The College thoroughly investigates each nominee for admission and selects only those who have demonstrated the very highest standards of trial advocacy, ethical conduct, integrity, professionalism and collegiality. The College maintains and seeks to improve the standards of trial practice, professionalism, ethics, and the administration of justice through education and public statements on important legal issues relating to its mission. The College strongly supports the independence of the judiciary, trial by jury, respect for the rule of law, access to justice, and fair and just representation of all parties to legal proceedings.

Ensuring that every criminal defendant is represented by an effective lawyer fits squarely within the mission of the College. As expressed in our mission statement, the “College strongly supports...access to justice, and fair and just representation of all parties to legal proceedings.” Being represented by an effective lawyer is necessary for indigent people accused of crimes to have meaningful access to justice. Fair and just representation for every person accused of a crime requires lawyers who are competent and have enough time and resources to give well informed advice and provide robust advocacy. Without effective, adequately funded counsel, indigent defendants are denied access to justice and fair and just representation. Every client, rich or poor, is entitled to a trained advocate who can defend each client vigorously. Every client is entitled to a lawyer who can assess the prosecution’s evidence, research the relevant law, confer with the client, conduct independent investigation, evaluate legal defenses, file appropriate motions and identify and prepare witnesses for trial. Every client’s lawyer should have a budget available to hire necessary experts in given areas such as forensic, scientific and cultural expertise.

In many cases, in many jurisdictions, indigent defendants do not get counsel who can do those things. Appointed lawyers are just too swamped by the volume of clients to dedicate the time energy and effort needed for each client. In these circumstances, the clients have neither access to justice nor fair nor just representation.

EFFECTIVE PUBLIC INDIGENT DEFENSE SYSTEMS ARE NOT ONLY CONSISTENT WITH THE COLLEGE’S MISSION, THEY ARE NEEDED TO GUARANTEE FUNDAMENTAL CONSTITUTIONAL RIGHTS

In *Gideon v. Wainwright* (1963) 372 U.S. 335 (1963) the United States Supreme Court guaranteed all people accused of crimes the right to a lawyer, holding that the Sixth Amendment right to counsel is afforded to indigent defendants in state courts by operation of the Fourteenth Amendment. The Court made it clear that the right of an indigent defendant to the assistance of

counsel is a fundamental right essential to a fair trial. The responsibility for ensuring that every indigent defendant is represented by counsel rests with the government of each state or local jurisdiction.

In *United States v. Cronin*, 466 U.S. 648, 104 S. Ct. 2039 (1984) the Supreme Court re-affirmed the principle that the right to counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases “are necessities, not luxuries.” Defense counsel is the means through which the other rights of the person on trial are secured. Without counsel, the right to a trial itself would be “of little avail,” as this Court has recognized repeatedly. “Of all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have.” (citations and headnote references omitted)

In *Cronin*, the Court explained that the Sixth Amendment entitles every accused person “a reasonably competent attorney, whose advice is within the range of competence demanded of attorneys in criminal cases and cited other Supreme Court precedents. The Court wrote:

In *Cuyler v. Sullivan*, 446 U.S. 335 (1980), we held that the Constitution guarantees an accused “adequate legal assistance.” *Id.*, at 344. And in *Engle v. Isaac*, 456 U.S. 107 (1982), the Court referred to the criminal defendant’s constitutional guarantee of “a fair trial and a competent attorney.” *Id.*, at 134.

In short, *Gideon* established the right of every indigent defendant to counsel at public expense. *Cronin* made it clear that the right to counsel means the right to a competent, effective lawyer. Notwithstanding the mandates of *Gideon* and *Cronin*, many jurisdictions have failed to allocate the resources needed to provide effective counsel for every indigent defendant. Indigent defense systems throughout the country are woefully underfunded. Consequently, indigent defendants are routinely denied their Constitutional right to effective counsel because their lawyers have too many cases, too many clients, too few resources and too little time. The sad reality is that in underfunded jurisdictions, many indigent defendants have neither access to justice nor fair and just representation.

UNDERFUNDED PUBLIC INDIGENT DEFENSE SYSTEMS IN LOCAL AND STATE JURISDICTIONS DEPRIVE OUR FELLOW CITIZENS OF THEIR CONSTITUTIONAL RIGHTS TO EFFECTIVE COUNSEL

The problems resulting from underfunding indigent defense are often experienced in jurisdictions where the county government is responsible for funding indigent defense. A glaring example of a jurisdiction underfunding its indigent defense system is Luzerne County in central Pennsylvania. On September 28, 2016, in the landmark case of *Kuren v. Luzerne County*, 146 A3d 715, 2016 Pa. LEXIS 2191 (2016) the Pennsylvania Supreme Court acknowledged the problems that chronic underfunding of an indigent defense system can cause and granted indigent defendants the right to seek prospective relief. The Court wrote as follows:

The Public Defender Act, 16 P.S. § 9960.3, requires each Pennsylvania county to maintain a public defender’s office charged with fulfilling *Gideon*’s dictates. These offices are chronically underfunded and understaffed, and are hard-pressed to meet the baseline demands of the Sixth

Amendment, raising the disconcerting question of whether counties are complying with *Gideon*. In this case, the trial court stated that “[t]o describe the state of affairs in the Office of the Public Defender as approaching crisis stage is not an exaggeration.” 146 F3d at 717-718

From these precedents, certain unmistakable and undisputed principles emerge. The right to counsel is fundamental, pervasive, and necessary to protect a defendant’s right to a fair trial. The appointment of an attorney to represent an indigent defendant cannot be relegated to a mere formality. Counsel can be denied either actually or constructively. Those precepts are not controversial, and they provide the necessary backdrop for our decision. 146 A3d at 737

We now hold that there is a cognizable cause of action whereby a class of indigent defendants may seek relief for a widespread, systematic and constructive denial of counsel when alleged deficiencies in funding and resources provided by the county deny indigent defendants their constitutional right to counsel. The consequences of holding otherwise would be untenable, and would be fundamentally irreconcilable with the United States Supreme Court’s pronouncements on the role of the right to counsel in our system of justice. 146 A3d at 743

Luzerne County is just one example of a county failing to meet its Constitutional obligation by chronically underfunding its indigent defense system. The fact is that it’s happening all over the country.

As the Sixth Amendment Center reported in its September 29, 2016 newsletter:

[T]he counties that are often most in need of indigent defense services are the ones that are least likely to be able to pay for it. That is, in many instances, the same indicators of limited revenues – low property values, high unemployment, high poverty rates, limited household incomes, and limited higher education, etc. – are often the exact same indicators of high crime. Higher crime rates and a higher percentage of people qualifying for public counsel will quickly drain a county’s limited resources. Those same counties have a greater need for broader social services, such as unemployment or housing assistance, meaning the amount of money to be dedicated to upholding the Sixth Amendment to the Constitution is further depleted.

[C]ounty policymakers are unlikely to be knowledgeable in the nuances of perpetually changing Sixth Amendment case law. Because the right to counsel is an issue of government tyranny vs. individual liberty, the U. S. Supreme Court has been consistent on the right to counsel, regardless of whether or not the Court has been perceived at any one time as either liberal or conservative. So even though it was the Warren Court that first determined that states were responsible for administering and funding the right to counsel in *Gideon v. Wainwright*, it was the Roberts Court that most recently: a) extended the right to counsel to its earliest point in the adversarial process (*Rothgery v. Gillespie County*); b) required counsel to explain the collateral consequences of guilty pleas, including immigration consequences (*Padilla v.*

Commonwealth of Kentucky); and c) determined that an indigent defense attorney must be constitutionally “effective,” not only at trials, but in plea bargaining as well (*Laffer v. Cooper*, and, *Missouri v. Frye*). Because the Sixth Amendment transcends the traditional divide of partisan politics, it is predicted that the U.S. Supreme Court will continue to require more of both the attorneys defending the accused, and the systems in which those attorneys work. County policymakers simply cannot keep up.

Though it is not believed to be unconstitutional for a state to delegate its constitutional responsibilities to its counties, in doing so the state must guarantee that local governments are not only capable of providing adequate representation, but that they are in fact doing so. Thus, if Pennsylvania cities or counties are unable to provide adequate indigent defense services, the state – as original obligor – remains culpable.

[T]oday, a number of other states still rely on local governments to fund and administer indigent defense services with no state oversight as to whether the right to counsel services are effective – including Arizona, California, Illinois, Indiana (misdemeanors, certain felony courts), Kansas (misdemeanors, delinquencies), Mississippi, Nebraska, Nevada, New Jersey (misdemeanors), New York, Ohio, South Dakota, and Washington.

THE COLLEGE ENCOURAGES STATE AND LOCAL JURISDICTIONS TO ALLOCATE SUFFICIENT FUNDS TO SUPPORT PUBLIC INDIGENT DEFENSE SYSTEMS

The College unequivocally supports the right of every criminal defendant to be represented by competent counsel. The College encourages state and local governments to provide the resources needed for their indigent defense systems to provide every defendant with competent counsel.

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