



EFFECTIVE RIGHT TO COUNSEL

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A decorative white scrollwork border frames the entire page. At the top center, there is a floral crest. Below the title, a horizontal line with a small scrollwork ornament in the center separates the title from the text.

RIGHT TO COUNSEL

❖ **Sixth Amendment (1789-91)** provides, in a criminal case "the accused shall enjoy the right ... to have the assistance of Counsel for his defence."

❖ **Washington Const. Art. I, § 22. (1889)** "In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, ..."

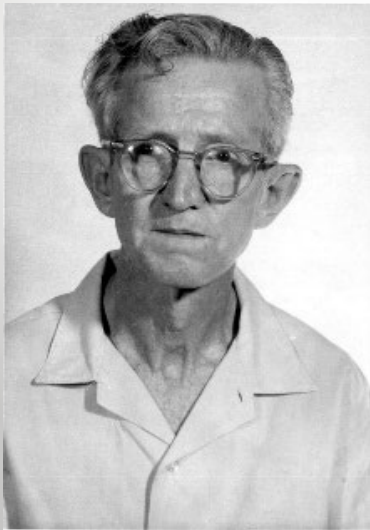
❖ **153** of 194 national Constitutions around the world now include a Right to Counsel.

POWELL V. ALABAMA, (1932)



Courtesy:
Morgan County
Archives

GIDEON V. WAINWRIGHT (1963)



The 6th Amendment right to legal counsel established in federal courts must be guaranteed in state courts. The right is obligatory on the states by the 14th Amendment's due process clause, prohibiting states from depriving "any person of life, liberty, or property, without due process of law."

RIGHT TO EFFECTIVE ASSISTANCE

Cronic

Absence of Counsel

- (1) Complete denial of counsel
- (2) Counsel fails to subject the prosecution's case to meaningful adversarial testing
- (3) When the likelihood any lawyer could provide effective assistance is so small, we presume prejudice

Strickland

Ineffective Assistance

- (1) the attorney's performance was deficient, and
- (2) the defendant was prejudiced by that deficient performance.

CONFLICTS OF INTEREST



WHEN AND WHERE DOES THE RIGHT TO COUNSEL APPLY



Wherever the defendant may lose his
or her personal freedom



**First appearance through first
appellate review**

**STRICKLAND LITIGATION HAS
DEFINED “EFFECTIVE COUNSEL”**



ASSISTANCE OF COUNSEL

The science of constitutionally effective assistance of counsel.



The art of being the advocate of your dreams



REASONABLY COMPETENT COUNSEL

Acquaints herself with the facts



Interviews the witnesses





THOROUGH INVESTIGATION OF LAW

The Charge

- ❖ The charging document
- ❖ The criminal statutes
- ❖ Potential defenses
- ❖ Sentencing ranges

The Evidence

- ❖ Admissibility
- ❖ Burdens of Proof
- ❖ Motions to Suppress
- ❖ Jury Instructions

ADVISE THE CLIENT

Trial



Plead



A decorative white floral border with intricate scrollwork and leaf patterns surrounds the central text. The border is symmetrical and frames the entire page.

EFFECTIVE COUNSEL IN PLEA BARGAINING

- ❖ **The maximum and minimum punishment** the client could receive if convicted following a trial, including potential collateral consequences.
- ❖ **Weigh the strengths of the client's case** in comparison with the weakness or strengths of the prosecution's case.
- ❖ **Consider the judge's sentencing practices.** Public defenders are usually the best source of information because of the number cases in the same court.
- ❖ **Explain to the client your determination,** and if appropriate, **whether a plea bargain should be considered** and the nature of the bargain.
- ❖ **Present the proposal on behalf of the client to the prosecutor.**
- ❖ **Inform the client** of the results of the plea negotiations and the final offer of the prosecution along with your recommendations.

LITIGATE ZEALOUSLY

Pretrial

- ❖ Competency
- ❖ Speedy Trial
- ❖ Knapstad
- ❖ CrR 3.5
- ❖ CrR 3.6
- ❖ Severence

In Limine

- ❖ Competency of Witnesses
- ❖ Foundation (Chain of Custody)
- ❖ Evidentiary Issues
- ❖ Burden of Proof
- ❖ Jury Instructions

JURY

Selection

- ❖ Venire
- ❖ Voir Dire
- ❖ “For Cause” Strikes
- ❖ Peremptory Challenges
- ❖ Sequestration

Instructions



TRIAL

EVIDENCE



ARGUMENT



SENTENCING

Incarceration

1. Ensure the sentence is within the standard range.
 - a. The standard range must be properly calculated based on criminal history – including washout, comparability, and potential multipliers.
 - b. Are multiple counts the same criminal conduct.
2. Enhancements.
3. Exceptional sentences.

Other Consequences

- ❖ Community Custody
(Hibbard)
- ❖ Collateral Consequences
- ❖ No contact orders
- ❖ Firearms

REASONABLY (ZEALOUSLY) LITIGATE

- ❖ Test the State's case- elements of the offense and admissibility of supporting evidence.
- ❖ Make the defendant's case in defense of the charge., including affirmative defenses and admissibility of supporting evidence.
- ❖ Know the Criminal Rules and the Rules of Evidence (and relevant local rules) – and how to use them
- ❖ Sentencing laws are as critical as the elements. Breadth of prosecutorial and judicial discretion, mandatory monetary and collateral consequences.
- ❖ Preserve the Right to Appeal – make the objections and make sure the appeal paperwork gets filed.

PRESERVE THE RIGHT TO APPELLATE REVIEW

Preserve Defendant's Right to Review

- Object and make a record where necessary.
- Track all your objections and make a motion for new trial after an adverse verdict
- Advise the client of rights being waived by entering a guilty plea
- Timely file appeal paperwork with an IFP

Right to Effective Appellate Counsel



DOCUMENT YOUR EFFECTIVE COUNSEL

Chapters

Strategic Decisions and
Judgment Calls



THE PRIVILEGE PROBLEM

- ❖ A claim of ineffective assistance of counsel waives the attorney-client privilege as to communications with the allegedly ineffective lawyer, although *the precise boundaries of the waiver will vary from case to case.*
- ❖ **AMJUR counsels attorneys facing IAC claims to:**
“Cooperate with a prosecutorial agency if asked for a declaration or other statement as to the reasons counsel took certain actions when representing the client, assuming the client has filed an action contending ineffective representation.”

RIGHT TO EFFECTIVE COUNSEL

