

Powell v. Alabama

“The prompt disposition of criminal cases is to be commended and encouraged. But, in reaching that result, a defendant ... must not be stripped of his right to have sufficient time to advise with counsel and prepare his defense. To do that is not to proceed promptly in the calm spirit of regulated justice, but to go forward with the haste of the mob.”

The United States Supreme Court
Powell v. Alabama, 287 U.S. 45 (1932)

On March 25, 1931, a fight broke out between a group of poor whites and black youths aboard a freight train bound for Memphis, Tennessee via Huntsville, Alabama. Outnumbered, all but one of the white young men jumped off the train a short distance over the Alabama line where they promptly alerted local law enforcement. Wires were sent to detain the train near the town of Scottsboro, where the nine black youths were arrested. Two white females in their early twenties, fearing punishment for catching a free ride on the train and society’s reprisal for associating with non-white males, told the sheriff they had been raped by the boys. The lone remaining white participant of the fracas became an eyewitness to the “crime.” Twelve days later, the trial of the so-called “Scottsboro Boys” commenced.

One half hour before the trial, the judge appointed a local, elderly attorney – who had not tried a case in decades – to represent the young men. A Chattanooga real estate attorney also volunteered to assist – though he had never tried a criminal case, was not admitted to the Alabama Bar and was completely unfamiliar with Alabama law. Neither attorney was to be paid for their work. Though the defense attorneys did not meet their clients until just before the trial’s opening remarks, they did not move to postpone the trial to allow for a thorough investigation of the facts. They asked to have all nine tried together despite the prejudice such a tactic would cause each individual defendant. The prosecution, understanding this risk better than the defense and fear-

ing reversal on appeal, chose instead to try the defendants in four groups of two or three – as if such random groupings eliminated the ethical conflicts of having the same two unqualified lawyers representing all nine co-defendants.

The four trials lasted a cumulative total of three days. Defense counsel offered little or no cross-examination of the accusers and prosecution experts and failed to even make a closing argument. The youngest of the nine – a 12-year old named Roy White – received life imprisonment in an adult correctional facility without the possibility of parole. The other eight were sentenced to death.

With the assistance of volunteer private counsel, the Scottsboro Boys’ cases were appealed to the United States Supreme Court. In *Powell v. Alabama*, 287 U.S. 45 (1932), the Court reversed the convictions, finding that the inadequate representation had violated the rights of the Scottsboro Boys to due process in violation of the fourteenth amendment to the United States Constitution. The ruling established the right to counsel as an “immutable principle of justice” that inheres “in the very idea of free government which no member of the Union may disregard.” Though the Court’s ruling was limited to death penalty cases, the legal rationale in *Powell* has become the constitutional foundation for virtually every subsequent case extending the scope of the right to counsel in America.

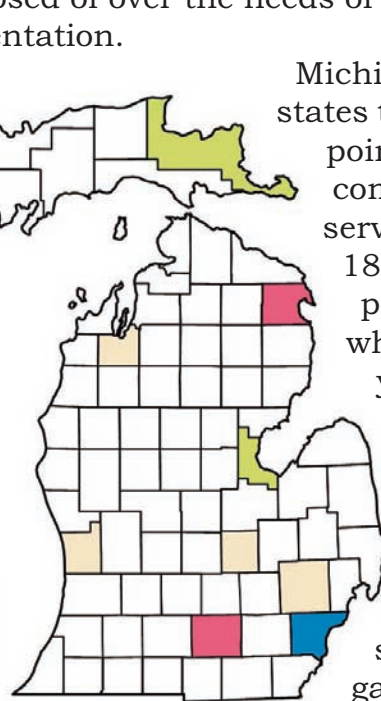
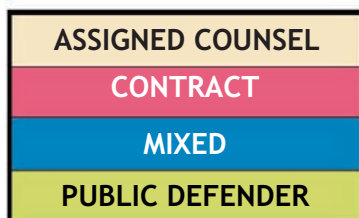
“The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence.”

The United States Supreme Court
Powell v. Alabama, 287 U.S. 45, 68-69 (1932)

Overview

The Sixth Amendment right to assistance of counsel has a historical legacy reaching back to our founding fathers' desire to part with British monarchical control and protect the rights of the individual against the unjust taking of life, liberty, or property by the state. However, the modern day right to counsel movement in America marks its birth with the landmark case of *Powell v. Alabama*.¹ And, though it is easy to write off the injustices suffered by the Scottsboro Boys at the hands of the American justice system as an outdated remnant of our nation's struggles with race in the era preceding the modern Civil Rights Movement, the National Legal Aid & Defender Association (NLADA)² finds that many of the systemic deficiencies identified in the Scottsboro Boys' story permeate the criminal courts of Michigan today: judges hand-picking defense attorneys; lawyers appointed to cases for which they are unqualified; defenders meeting clients on the eve of trial and holding non-confidential discussions in public courtroom corridors; attorneys failing to identify obvious conflicts of interest; failure of defenders to properly prepare for trials or sentencing; attorneys violating their ethical canons to zealously advocate for clients; inadequate compensation for those appointed to defend the accused; and, a lack of sufficient time, training, investigators, experts and resources to properly prepare a case in the face of a state court system that values the speed with which cases are disposed of over the needs of clients for competent representation.

Scope of NLADA Study in Michigan



Michigan was one of the first states to statutorily require the appointment of counsel (and the compensation of counsel for services rendered) as early as 1857, yet that obligation was passed on to its counties where it has remained for 150 years with little or no change.³ Counties are free to establish any form of right to counsel delivery system they so choose, without regard to meeting nationally-recognized standards of justice promulgated by the American Bar Association (ABA) related to caseload controls, attorney training, accountability,

or other quality-assurance standards. In fact, most counties have a multitude of public counsel delivery systems – one for circuit court, one for district court, a third for juvenile representation and, in some cases, a different indigent defense delivery model for each district court and/or each judge. Without uniform oversight, each of these systems has become institutionally Balkanized over time.

As a result, a review of indigent defense services – conducted on behalf of the Michigan Legislature per joint resolution (SCR 39 of 2006) – in a representative sample of counties shows that few Michigan counties have evolved beyond the parameters of the early twentieth century systemic defense delivery model described above in the Scottsboro Boys case.⁴ Indeed, many have devolved (or are in the process of devolving) into low-bid, flat-fee contract systems, as a means of controlling costs, in which an attorney agrees to accept all or a fixed portion of the public defense cases for a pre-determined fee – creating a conflict of interests between a lawyer’s ethical duty to competently defend each and every client and her financial self-interests that require her to invest the least amount of time possible in each case to maximize profit.

NLADA finds that the state of Michigan has abdicated its constitutional obligation to provide for adequate representation of poor people facing a potential loss of liberty in its criminal courts by passing on its financial responsibility to its counties as an unfunded mandate and then failing to provide any administrative oversight of services rendered. The state of Michigan’s denial of its federal obligations has produced a myriad of public defense systems that vary greatly in defining who qualifies for services and the competency of the services rendered. Though the level of services varies from county to county – giving credence to the proposition that the level of justice a poor person receives is dependent entirely on which side of a county line one’s crime is alleged to have been committed instead of the factual merits of the case – NLADA finds that none of the public defender services in the sample counties are constitutionally adequate.

How The Counties Were Chosen

To ensure that a representative sample of counties was chosen to be studied - and to avoid criticism that either the best or worst systems were cherry-picked to skew the results - NLADA requested that an advisory group be convened to choose the sample counties. Created by SCR 39 of 2006-sponsor Senator Alan Cropsey, the advisory group was composed of representatives from the State Court Administrator’s Office, the Prosecuting Attorneys Association of Michigan, the State Bar of Michigan, the State Appellate Defender Office, the Criminal Defense Attorneys of Michigan and trial-level judges. Ten of Michigan counties were studied: Alpena, Bay, Chippewa, Grand Traverse, Jackson, Marquette, Oakland, Ottawa, Shiawassee and Wayne. The advisory group ensured that the county sample reflected geographic, population, economic and defense delivery model diversity.

How to Assess Uniform Quality

The concept of using standards to assess uniform quality is not unique to the field of indigent defense. In fact, the strong pressures of favoritism, partisanship, and/or profits on public officials underscore the need for standards to assure fundamental quality in all facets of government and all components of the justice system. For instance, realizing that standards are necessary to both compare bids equitably and to assure quality products, policy-makers long ago standardized requests for proposals and ceased taking the lowest bid to build a hospital, school, or a bridge and required winning contractors to meet minimum quality standards of safety. Ensuring the rights of the individual against the undue taking of his liberty by the state merits no less consideration.

The use of national standards of justice in this way also reflects the demands of the United States Supreme Court in *Wiggins v. Smith*, 539 US 510 (2003) and *Rompilla v. Beard* 545 US 374 (2005). In *Wiggins*, the Court recognized that national standards, including those promulgated by the American Bar Association (ABA), should serve as guideposts for assessing ineffective assistance of counsel claims. The ABA standards define competency, not only in the sense of the attorney's personal abilities and qualifications, but also in the systemic sense that the attorney practices in an environment that provides her with the time, resources, independence, supervision, and training to effectively carry out her charge to adequately represent her clients. *Rompilla* echoes those sentiments, noting that the ABA standards describe the obligations of defense counsel "in terms no one could misunderstand."^a

The American Bar Association's *Ten Principles of a Public Defense System* present the most widely accepted and used version of

national standards for indigent defense. Adopted in February 2005, the ABA *Ten Principles* distill the existing voluminous ABA standards for indigent defense systems to their most basic elements, which officials and policy-makers can readily review and apply. In the words of the ABA Standing Committee on Legal Aid and Indigent Defendants, the *Ten Principles* "constitute the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney."^b

^a Citation to national public defense standards in court decisions is not limited to capital cases. See, for example: 1) *United States v. Russell*, 221 F.3d 615 (4th Cir. 2000) (Defendant was convicted of prisoner possession of heroin; claimed ineffective assistance of counsel; the court relied, in part on the ABA Standards to assess the defendant's claim); 2) *United States v. Blaylock*, 20 F.3d 1458 (9th Cir. 1993) (Defendant convicted of being a felon in possession of a weapon; filed appeal arguing, in part, ineffective assistance of counsel. Court stated: "In addition, under the Strickland test, a court deciding whether an attorney's performance fell below reasonable professional standards can look to the ABA standards for guidance. *Strickland*, 466 U.S. at 688." And, "[w]hile *Strickland* explicitly states that ABA standards "are only guides," *Strickland*, 466 U.S. at 688, the standards support the conclusion that, accepting Blaylock's allegations as true, defense counsel's conduct fell below reasonable standards. Based on both the ABA standards and the law of the other circuits, we hold that an attorney's failure to communicate the government's plea offer to his client constitutes unreasonable conduct under prevailing professional standards."); 3) *United States v. Loughery*, 908 F.2d 1014 (D.C. Cir. 1990) (Defendant pleaded guilty to conspiracy to violate the Arms Control Export Act. The court followed the standard set forth in *Strickland* and looked to the ABA Standards as a guide for evaluating whether defense counsel was ineffective.)

^b American Bar Association. *Ten Principles of a Public Defense System*. From the introduction at: <http://www.abanet.org/legalservices/downloads/sclaid/indigent-defense/tenprinciplesbooklet.pdf>