

RIGHT TO COUNSEL: IMPROVING
ACCESS TO JUSTICE IN US INDIGENT
DEFENSE SYSTEMS

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RESEARCH QUESTION

- **Question:** *How are Indigent Defense Systems impacting how Access to Justice is being provided in the United States?*
 - Indigent Defense Systems provide counsel to defendants who cannot afford it.
 - The Right to Counsel is guaranteed to Indigent Defendants in the US in criminal trials.
 - It is important to ensure Access to Justice is provided to any defendant.
 - The right was confirmed in the Supreme Court Case *Gideon v. Wainwright (1963)*.
 - Across the US, indigent defense systems see problems with excessive caseloads, lack of funding, lack of training for counsel, and lack of oversight for counsel.

ANALYTIC FRAMEWORK

Criteria drawn from literature was used in choosing case studies and evaluating Access to Justice. Through these, many of the problems such as funding or excessive caseload identified in the literature, should be addressed.

Criteria for Case Selection (“Gideon at 50” Variables):

Presence of an Independent Commission for Oversight	Standards for Workload	Amount of State Funding (Less than 50% of funding)	Delivery Model Utilized by the State (County Based Systems)
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Criteria for Determining Access to Justice (Everett’s Right to Counsel variables):

Right to Competent Counsel	Right to Accept or Reject Counsel	No Government Interference between Counsel and Defendant	Counsel has sufficient resources
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METHOD: STRUCTURED, FOCUSED COMPARISON

<u>Case Study Selection</u>				
	Independent Commission	Workload Standards	County Based Systems	More than 50% of Funding from Counties
Idaho	Yes	Yes	Yes	Yes
Mississippi	No	No	Yes	Yes
Nevada	Yes	No	Yes	Yes
Pennsylvania	No	No	Yes	Yes
Washington	Yes	Yes	Yes	Yes

METHOD: STRUCTURED, FOCUSED COMPARISON

- Asked the same questions of each case study to determine how Access to Justice was being provided in the state.
 - Is Counsel being provided?
 - Is Counsel competent to represent indigent clients?
 - Do indigent defendants have the right to reject counsel?
 - Are counsel and client able to meet privately with no interference?
 - Are proper resources being provided to Counsel?
- After asking the questions of each case study, the answers were compared to see how Access to Justice was being administered through the Right to Counsel in the states.
- **Thesis:** The presence of an independent commission for oversight is necessary for improving Access to Justice in US Indigent Defense Systems.

FINDINGS

Pennsylvania and Mississippi (No Commission)	Nevada (Newly created Commission)	Idaho and Washington (Commission/Bodies that act like Commission)
<ul style="list-style-type: none"> • Differing requirements for Indigency status and lack of representation at Initial Appearance. • Pennsylvania: <ul style="list-style-type: none"> - Lack of guidelines or trainings. - Procedure for rejection of Counsel. - Spaces not provided for confidential meetings. - Lack of support services and funding across counties. • Mississippi: <ul style="list-style-type: none"> - Advisory standards for assigning attorneys and recent trainings. - There is a right to reject counsel. - Lack of data as to whether there is meeting spaces. - Issues with lack of funding – Support staff not available unless it is a capital case. 	<ul style="list-style-type: none"> • Counsel often not available at initial appearance; some defendants forced to pay reimbursement costs. • No standards for selecting/training attorneys. • Judge required to inform defendants of their right to counsel or defendants must request counsel. • Lack of data as to whether there is meeting spaces. • Support services were utilized only in counties with Public Defender’s Offices. <ul style="list-style-type: none"> - Outside of these counties, resources were reported to not be available. 	<ul style="list-style-type: none"> • Counsel provided at all stages of proceedings. • Both states have standards for selecting attorneys, trainings and experience, and performance oversight. • Idaho: <ul style="list-style-type: none"> - Right to reject counsel. - Grant funds used to remodel spaces for private meetings. - Grant program allowed for additional attorneys and support staff to be hired. • Washington: <ul style="list-style-type: none"> - Washington courts interpreted a defendant must understand rejection of counsel. - Standard requiring private space between counsel/client (not clear who provides this). - Standards for support services and funding/ time resources. - Appropriation of additional funding by the Office of Public Defense.

CONCLUSIONS

- From analysis of the data from case studies, an Independent Commission for oversight is key to improving Access to Justice in indigent defense systems in the United States.
 - Those case studies without, suffered from lack of oversight or standards for evaluating the competence of appointed counsel and lack of resources provided to them.
 - Nevada suffered many of the same problems, but this can be attributed to the recent creation of the commission in June of 2019.
 - Those case studies with, have created standards for evaluating competence of counsel and have shown increased funding being provided to counties for support services.
- The presence of an Independent Commission points to how Access to Justice can be improved throughout the country since even the presence of three states having deficient systems shows Access to Justice to indigent defendants is not properly being provided in the United States.