

PROJECT 6

Ineffective Assistance of Counsel

What is the right to counsel?

The Sixth Amendment of the U.S. Constitution guarantees that "[i]n all criminal prosecutions, the accused shall enjoy...Assistance of Counsel for his defence." It is because of this amendment that the Court appoints counsel for a defendant if the defendant is unable to afford private counsel.

What if counsel is incompetent?

In 1984, the U. S. Supreme Court, in *Strickland v. Washington*, was confronted with this question. In response, the Court created a two-pronged test to decide whether counsel's performance is so inadequate that it violates a defendant's Sixth Amendment rights.

- Counsel's performance fell below the standard of a reasonable attorney.
- Counsel's performance possibly affected the outcome of the proceeding.

If both prongs are met, then a defendant might have a viable ineffective assistance of counsel (IAC) claim. The first prong is sometimes simple to meet. However, it can be much more challenging to prove that counsel's unreasonable conduct possibly affected the outcome of the proceeding.

What conduct might create an IAC claim?

- Counsel failed to investigate the case appropriately.
- Counsel failed to present appropriate evidence, to prepare witnesses, and to present a viable defense.
- Counsel demonstrated ignorance of the law.
- Counsel had a conflict of interest.