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Law Week

## The right to counsel is critical

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This is the second of several articles written by members of the state Judiciary commemorating Law Week in Hawai'i.

The Sixth Amendment to the U.S. Constitution provides that in "all criminal prosecutions, the accused shall ... have the assistance of counsel for his defense." This right applies to federal and state courts and to rich and poor defendants alike.

Counsel for an indigent defendant in federal criminal cases is required when a defendant will be imprisoned upon conviction of a charge. In state criminal cases, counsel is provided if the defendant could serve any time in jail or prison upon conviction of a charge. In our adversary system of criminal justice, a defendant who is too poor to hire an attorney cannot be assured a fair trial unless an attorney has been provided.

The right to counsel may not be deemed fundamental and essential to fair criminal trials in some countries, but it is in ours. Our state and federal constitutions and laws emphasize procedural and substantive safeguards designed to assure fair trials before impartial tribunals so every defendant stands equal before the law.

This ideal cannot be realized if an indigent defendant has to face his accusers without a lawyer to assist him. As Justice Sutherland wrote for the U.S. Supreme Court in *Powell v. Alabama* (1932):

"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 proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. ... Though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

The constitutional right to counsel does not extend to civil cases. However, the state of Hawai'i does provide counsel to indigent parties in child-abuse cases initiated by the state Department of Human Services. To compensate for the absence of government-provided counsel for indigent persons in civil cases, many private organizations provide counsel and legal assistance to such persons.