

also are barred from impermissibly interfering with the relationship between defendant and counsel.³¹⁵

Additionally, the Sixth Amendment's right to effective assistance attaches directly to the fidelity and competence of defense counsel's services, regardless of whether counsel is appointed or privately retained or whether the government in any way brought about the defective representation. "The vital guarantee of the Sixth Amendment would stand for little if the often uninformed decision to retain a particular lawyer could reduce or forfeit the defendant's entitlement to constitutional protection."³¹⁶ To an argument that a state need only appoint for indigent defendants to satisfy Sixth Amendment requirements, the Court responded that "the State's conduct of a criminal trial itself implicates the State in the defendant's conviction," and no state may proceed against a defendant whose counsel, appointed or retained, cannot defend him fully and faithfully.³¹⁷

Fidelity has been at issue in cases of joint representation of co-defendants. In *Glasser v. United States*, the Court found a trial judge erred in appointing one defendant's attorney to also represent a co-defendant in a conspiracy case; the judge knew of potential conflicts of interest in the case, and the original defendant had earlier expressed a desire for sole representation.³¹⁸ Counsel for codefendants in another case made a timely assertion to the trial judge that continuing joint representation could pose a conflict of interest, and the Court found that the trial judge erred in not examining the assertion of potential conflict closely and permitting or appointing separate counsel, absent a finding that the risk of conflict was remote.³¹⁹ Joint representation does not deny effective assistance *per se*, however. Judges are not automatically required to initiate an inquiry into the propriety of multiple representation, being able to assume in the absence of undefined "special circumstances" that no conflict exists. On the other hand, a defendant who objects to joint representation must be given an opportunity to make the

v. Tennessee, 406 U.S. 605 (1972) (alternative holding) (statute requiring defendant to testify prior to any other witness for defense or to forfeit the right to testify denied him due process by depriving him of the tactical advice of counsel on whether to testify and when).

³¹⁵ *United States v. Morrison*, 449 U.S. 361 (1981) (Court assumed that investigators who met with defendant on another matter without knowledge or permission of counsel and who disparaged counsel and suggested she could do better without him, interfered with counsel, but Court held that in absence of showing of adverse consequences to representation, dismissal of indictment was inappropriate remedy).

³¹⁶ *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980).

³¹⁷ *Id.*

³¹⁸ 315 U.S. 60 (1942).

³¹⁹ *Holloway v. Arkansas*, 435 U.S. 475 (1978). Counsel had been appointed by the court.