eral trials the common-law rule that in cases of treason or felony the accused was not allowed to introduce witnesses in his defense.[257] "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law," applicable to states by way of the Fourteenth Amendment, and the right is violated by a state law providing that coparticipants in the same crime could not testify for one another.[258]

The right to present witnesses is not absolute, however; a court may refuse to allow a defense witness to testify when the court finds that defendant's counsel willfully failed to identify the witness in a pretrial discovery request and thereby attempted to gain a tactical advantage.[259]

In *Pennsylvania v. Ritchie*, the Court indicated that requests to compel the government to reveal the identity of witnesses or produce exculpatory evidence should be evaluated under due process rather than compulsory process analysis, adding that "compulsory process provides no *greater* protections in this area than due process."[260]

ASSISTANCE OF COUNSEL

Absolute Right to Counsel at Trial

Historical Practice.—The records of neither the Congress that proposed what became the Sixth Amendment nor the state ratifying conventions elucidate the language on assistance of counsel. The development of the common-law principle in England had denied to anyone charged with a felony the right to retain counsel, while the right was afforded in misdemeanor cases. This rule was ameliorated in practice, however, by the judicial practice of allowing counsel to argue points of law and then generously interpreting the limits of "legal questions." Colonial and early state practice varied, ranging

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[257] 3 J. Story, Commentaries on the Constitution of the United States 1786 (1833). *See* Rosen v. United States, 245 U.S. 467 (1918).

[258] Washington v. Texas, 388 U.S. 14, 19–23 (1967). Texas permitted coparticipants to testify for the prosecution.

[259] Taylor v. Illinois, 484 U.S. 400 (1988).

[260] 480 U.S. 39, 56 (1987) (ordering trial court review of files of child services agency to determine whether they contain evidence material to defense in child abuse prosecution).