



# Lending Liberty to the Indigent: THE TEMPLATE TO ONE SOLUTION



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Alexi K. is a young man somewhat new to America. He had come from a country that was a former member of the Soviet Union. He is semi-skilled and works hard at odd construction jobs, when he can find them. He barely speaks the language but somehow he gets by.

One night, after a long day's work, Alexi decided to leave his rented room to go to the store. He wanted to buy cigarettes and a soda. He left his room, which contained all his belongings, including his tools and papers, and headed to the store. He cut across an empty lot between his room and the

store. Because there was construction going on nearby, there was a portable toilet set up on the lot, which Alexi decided to use. When he was finished, he opened the door and reemerged into the night. Suddenly, there were bright lights in his eyes. Someone shouted at him, "Freeze! Get down!" Alexi, startled and confused, had one response and it was automatic: run.

Alexi ran into a wooded area. It had rained recently and the ground was wet and muddy. The footing was unsure. As he splashed through the muddy bog he heard his pursuers slip and fall behind him, cursing loudly in anger. Then he, too, slipped in the mud and it was over.

Unfortunately, this young man's odyssey was just beginning. When the police finally caught up with him, they were angry. So angry they beat the 125-pound 19-year-old with their flashlights and then dragged him from the bog and back up to where the chase began.

Once there, one officer pinned him to the ground with a knee to the back. Another officer kicked him and stomped on his head, breaking his cheekbone against the concrete ground and leaving him heavily bruised. They brought him to the detention center, charging him with felony trespass and attempted burglary. The arrest and booking report claimed that a silent alarm had brought them to the scene but upon arrival and inspection nothing was found amiss, though there was a brick near the window of a nearby business and "a chip in the front plate glass window." The officers neglected to secure the brick as evidence, however.



It has been said that the true measure of a justice system is how it treats those on the economic fringe. Certainly, as defense counsel, we would place indigent defendants, like Alexi, among those residing

within that fringe. The problem with taking this measure of our justice system accurately is the social invisibility of the indigent. If the indigent themselves have specific pressures preventing them from being heard, and if their unique legal problems go generally unexamined by society, then unfair practices and procedures can become endemic to them as well as become corrosive to society at large. To prevent this, there must be a way for the indigent to be heard.

Generally, indigent clients present unique challenges for the Public Defender. Indigent individuals are often in close proximity to illegal activity and more visible to law enforcement, so they are at risk of more frequent encounters with the police. Once arrested, their indigent status often places them in a position to be strongly tempted by the plea bargain, that necessary evil used to manage our overburdened courts. This unusually strong temptation occurs because the indigents are most often unable to make bond at first appearance and therefore face detention until their cases resolve. For the innocent, and the unfairly detained, the term plea "bargain" can be perverse, as indigents are placed, ab initio, into an unfavorable, perhaps even a coerced, bargaining position. As a result, one major roadblock in defending these clients can often be simply getting them to trial.

Our criminal justice system, indeed our entire legal system, is based upon the premise of equal justice under the law. The reality of the situation, however, has often turned upon an individual's economic status: those who are economically able often receive a superior result over those less so. In almost every area, we have attempted to ameliorate this gap in treatment, to bring the indigent into rough parity with the economically solvent. One way we attempt to do this is by appointing counsel free of charge, for example. These attempts to provide economic parity are often frustrated at first appearance, however, when bond is set.



*Alexi made his first appearance within 24 hours, as required by law. He sat shackled in the courtroom, his eye blackened, his head swollen, bruised and throbbing. His wrists were severely cut and bruised from the too-tight handcuffs placed there the night before. He stared blankly ahead as the public defender was appointed and made an argument for release pending arraignment, citing the lack of prior crimes and the apparent probable cause issues. The judge refused release and set bond at \$2,000. It may not have seemed like much to some, but to Alexi it may as well have been a million.*



Even though almost every person is theoretically entitled to pre-trial release, local bond schedules, political expediency, strongly held personal beliefs and perhaps simple judicial inertia ensure that most folks with any factor of potential instability in their profile have some form of bond imposed.<sup>1</sup> For those with little or no money, anything other than release on their own recognizance is the functional equivalent of no bond at all. It is at this very early stage of their encounter with the justice system that the options available to many indigent become severely limited.

Consider the typical indigent person accused and in jail with no hope of making bond. This person may maintain his or her innocence outright. In addition, it may appear to counsel that the police have not gathered and preserved sufficient evidence to maintain a conviction, either due to a clear lack of evidence or because any evidence gathered was obtained as the result of an improper initial stop or subsequent search and seizure. In counsel's opinion, there is no way the State should or could obtain a conviction at trial.

But this information is of little comfort or practical use to the indigent accused. If charged with a felony, they face speedy trial dates of up to 175 days hence, and up to 90 days for misdemeanors. If they sit patiently in deten-

tion awaiting trial they may face loss of their property, housing, employment, and, sometimes, even families. It is at this point in which the often cruelly titled plea bargain process becomes the sole remaining viable option for many detained indigent regardless of the quality of the case against them.



Pictures of Alexi are ordered taken by his attorney. The personnel files of the arresting officers are ordered. The files reveal that the officers have a disturbing history of violent encounters with both citizens and suspects, especially when they are teamed together as they were that night. One officer had even threatened an attorney while attending a deposition. They had both, at various times, been ordered to attend anger management, been formally disciplined and been repeatedly reprimanded.

Alexi waits in the detention center. He has no money and, though he has family in the area, he cannot contact them or otherwise raise the money to bond out. His face heals on its own, medical care being severely lacking in the facility. He has headaches and his vision in one eye is blurry. After one week, he receives an offer from the state: plead guilty to the felony trespass and the attempted burglary charge will be dropped. Alexi learns that by doing this he will be subjected to potential deportation. Additionally, his pride prevents him from admitting to even the single charge, since he couldn't see the "no trespass" sign at night and didn't know he was on a construction site. He rejects the offer. He learns that his next court date is two weeks away and realizes that he will lose his room and everything in it if he waits that long. Even if he does wait, there is no promise he will get a bond reduction or other opportunity to regain his liberty any time soon. He is told by his attorney that if he holds out for a trial the state is likely to drop all the charges rather than present these facts to a jury, but waiting that long would represent a hollow victory, not to mention that by that time he will have

