

Press Conference: *In Defense of Public Access to Justice*  
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Comments of:

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“...with liberty and justice for all.” Every morning these words resonate in schoolrooms across America. Each day we ask our children to recite the Pledge of Allegiance expecting that the daily affirmation of our national identity will instill in the hearts and minds of future generations the values Americans hold dear. “Justice for all” is the cornerstone of the American social contract and our democratic system.

As Americans, we entrust our government to administer a criminal justice system that delivers on the promise of “justice for all” -- assuring both victims and the accused that resulting verdicts are fair, correct, swift and final. Polling results show this -- 88% of the American public believe that the quality of justice a person receives should not be determined by how much money he has.<sup>1</sup>

In its 1963 *Gideon* decision, the U.S. Supreme Court opined that “justice for all” was impossible in criminal proceedings unless and until poor people were afforded meaning defense representation. Declaring it an “obvious truth” that “lawyers in criminal courts are necessities, not luxuries,” the Court ruled that states must provide attorneys to those unable to afford one. This right to counsel is also enshrined in the Louisiana Constitution. The 1974 Constitution directs the legislature to “provide for a uniform system for securing and compensating qualified counsel for indigents” at “each stage” of criminal proceedings.

We stand here today, thirty years since the ratification of the Louisiana Constitution and more than forty years since the *Gideon* decision to announce that in direct violation of both the state and federal constitutions, and contrary to popular public opinion, Louisiana government has created an indigent defense system that routinely, consistently, and systematically denies any meaningful right to counsel to people of insufficient means. Though there may be justice for some, Louisiana provides no justice for its poorest citizens when faced with a loss of liberty.

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<sup>1</sup> Belden, Russenello & Stewart. *Americans Consider Indigent Defense: Analysis of a National Study of Public Opinion*. January 2002. “Providing competent legal representation is one of our most fundamental rights in the U.S. (88% convincing; 65% very convincing);” Competent counsel means lawyers with the training, experience and tools they need to do the job. A majority of Americans believe that low-income people who are charged with a crime should be represented by attorneys with small enough caseloads to provide the necessary time to prepare a defense for each person they represent (94% think it is important; 57% say it should be guaranteed); that their attorneys should have the same resources per case that prosecutors have (88% support this; 64% support it *strongly*); that they should be provided the resources to hire investigators to check evidence and find witnesses (91% important; 55% guaranteed); and, to obtain DNA and other scientific testing (94% important; 64% guaranteed).

The report, *In Defense of Public Access to Justice*, identifies two primary causes for the overwhelming failure of the indigent defense system to deliver “justice for all”: inadequate funding and a flawed structure that allows for undue political interference of the defense function. Louisiana is the only state in the nation to attempt to fund the majority of its Constitutional obligation to provide indigent defense services through fees assessed on court costs -- primarily on traffic tickets. There is a reason why Louisiana stands alone -- There is *no* direct correlation between the ability of a jurisdiction to garner money through traffic tickets and the resources required to provide adequate defense services to those unable to hire an attorney. In fact, our report concludes just the opposite: In Louisiana, the need for indigent defense funding is in many ways *inversely* correlated with the ability of a Parish to generate revenues.

There is one other state that attempts to fund indigent defense in a somewhat similar manner to Louisiana – Alabama. Yet there, state government supplements indigent defense funding to the extent that money collected through court costs fails to provide for an adequate revenue stream. The State of Alabama now spends over nine times more on ensuring justice for its poor than the state of Louisiana.

The dire funding situation is made even worse when one considers the extent to which undue political interference affects the delivery of justice for all. Under Louisiana law, the District Court judiciary has the power to appoint the members of the local indigent defense boards who in turn make the decisions regarding how services will be provided on a day-to-day basis. National standards expressly call for the removal of judicial oversight from public defender services -- for good reason. Judges have competing interests with the interests of public access to justice – for instance, wanting to keep dockets moving, wanting to appear “tough on crime” for re-election campaigns, and simple favoritism in the assignment of public defender cases to attorneys who may not rock the boat.

*In Defense of Public Access to Justice* methodically exposes how the underfunding and structural flaws affect all judicial districts before detailing how the problems are manifested in one Parish – Avoyelles. At the time of our visit, local indigent defense decisions were being made by three individuals, appointed by the local judiciary, none of whom were attorneys or came from backgrounds in criminal justice. While made up of well-meaning people, the indigent defense board, as appointed by the court, is singularly lacking in anyone with the training, experience, and knowledge to make informed choices about the recruitment, selection, and supervision of contract lawyers. For example, the local board recently hired an attorney with no trial-level experience to handle all juvenile and misdemeanor cases. In doing so, the lives of poor people have become a “practice” forum for the recent law school graduate to learn through the process of “sink or swim.” At-risk juveniles require special attention from public defenders if there is hope to change behavior and prevent escalating behavioral problems that increase the risk that they will eventually be brought into the adult criminal justice system in later years. Because this Parish does not have a sufficient revenue stream for indigent defense, this attorney is paid slightly more than \$19,000 a year for his efforts.

Rather than treating all who come before the criminal courts of Louisiana with the same dignity, the least of our brothers are being afforded “triage” justice – this assembly line dispenses justice only up to the level of the number of traffic violations occurring in a Parish rather than the equal access to justice envisioned in the state and federal

Constitution. To assist busy officials and policy-makers understand the fundamental criteria to be met for a public defense delivery system to deliver effective and efficient, high quality, ethical, conflict-free representation to accused persons who cannot afford to hire an attorney, the American Bar Association promulgated a basic set of 10 principles to be met by each jurisdiction. Louisiana fails 9 and a half of these principles.

Nationally, public defenders not only serve the general population by providing representation services in specific criminal cases, but also by challenging the questionable practices of the other governmental agencies that do not serve the interests of justice. *In Defense of Public Access to Justice* underscores the need for an adequate indigent defense system in relation to Louisiana's correctional practices. In the 1970's the state began housing state prisoners in local jails. The extremely low wages paid to most local jail workers allows the parish jails to realize profits by housing state inmates. In an effort to spur economic development through increased corrections jobs, the Avoyelles Parish Sheriff used the state-sponsored windfall as justification to expand the number of local jail beds. A problem now exists because the Sheriff enforces a work release program in which prison labor is offered to non-profit organizations (churches, hospitals, graveyards) and governmental agencies at costs well below minimum wage. Considering the relatively small size of the Parish and the relatively large numbers of prisoners, the expansion of the prison work force reduces opportunities for people of little or no economic resources who are then led to consider crime as a means of supporting themselves. There should be an adequate indigent defense system looking out for the interest of the public, challenging the premise that the economic fortunes of Avoyelles Parish is tied to keeping the parish jails at maximum capacity.

At the close of 2002, over \$310 million was sitting unspent in Sheriff reserve accounts, or enough money to fully fund indigent defense services at its current low rate for 10 years.

There is an indigent defense crisis in Louisiana. One of our most cherished constitutional rights is being denied. The right to counsel is one of the only checks afforded to those of modest means against an unjust intrusion by the state upon their life and liberty. My comments here should not be construed to mean that there are no qualified public defenders in the state -- There are. Rather, the criminal justice policies enacted by state government will ultimately make even the best and the brightest public attorneys falter.

Without adequate defense services ensuring a fair day in court, the social fabric of our democratic way of life begins to erode. The report concludes that Louisiana fails to meet its federal obligations under *Gideon*. In violation of Louisiana's own Constitution, the indigent defense system is not "uniform" among the parishes, does not "secure qualified counsel," and does not provide counsel to the poor "at each stage of the proceeding."

To show you what "justice for some" means on a day-to-day basis in Louisiana Courts, Mr. Gary Proctor of Alexandria will tell you about the level of representation afforded one person in a very recent case.