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Forty Years after Landmark Supreme Court Ruling, Right to Counsel Still Denied to People Who Can't Afford an Attorney

Most States Need Serious Reform to Deliver on Ruling and Ensure "Justice for All"

Washington, DC – This Tuesday, March 18, marks the 40th anniversary of the landmark Supreme Court *Gideon v. Wainwright* ruling guaranteeing legal representation to people facing criminal charges who cannot afford an attorney. Many people throughout the country are convicted and imprisoned each year without any legal representation. Often, those who do receive a court-appointed attorney are assigned lawyers who have hundreds of other cases, no expertise in criminal law, or no funds to investigate facts or get DNA testing.

It is not unheard of for a person who cannot afford an attorney to sit in jail for weeks or months before being assigned an attorney, or for a person to not meet or speak with counsel until the day of a court appearance. Further, courts have held that lawyers who are asleep, drunk or under the influence of drugs are still meeting their responsibilities as counsel.

"Every day across our country, men and women stand accused of a crime with no real representation, and therefore no real access to justice," says Kate Jones, director of Indigent Defense at the National Association of Criminal Defense Lawyers (NACDL). "The anniversary of *Gideon* affords an opportunity to assess the system, and demand reform."

Indeed, the U.S. Department of Justice declared in 2000 that public defense in the United States is in a "chronic state of crisis." Around the country there are alarming statistics about the many flaws that continue to plague the criminal justice system.

- Last year, in just one California county, more than 12,000 people pled guilty to misdemeanors without the assistance of counsel.
- In Wisconsin, more than 11,000 people go unrepresented annually because anyone with an annual income of more than \$3,000 is deemed able to afford to pay a lawyer.
- In Bucks County, Pennsylvania, the public defender office handled 4,173 cases in 1980. In 2000, with the same number of attorneys, the office handled an estimated 8,000 cases.

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- In Lake Charles, Louisiana, the public defender office has only two investigators for the 2,550 new felony cases and 4,000 new misdemeanor cases assigned to the office each year.
- Indigent clients in Lake Charles, typically meet their public defender for the first time an average of 281 days – more than nine months – after their arrest.
- In Virginia, a juvenile charged with a felony who cannot afford to pay a lawyer gets an attorney paid for the equivalent of only 90 minutes of work because of per-case fee caps.

“Forty years after the U.S. Supreme Court ruled that a fair trial requires the right to counsel, there are people in courtrooms across the country every day represented by attorneys who do not have the time, training or tools to do their jobs. Every person hauled into court deserves access to competent counsel within 48 hours – no exceptions,” says Jo-Ann Wallace, senior vice president for programs, National Legal Aid & Defenders Association (NLADA).

NLADA, NACDL and other legal groups have identified five of the biggest problems facing public defense:

- **No counsel.** The dirty little secret of the criminal justice system is how many people accused of a crime get no lawyer at all.
- **Excessive caseloads.** Frequently, public defenders' caseloads far exceed national standards, which limit caseloads to 150 felonies per attorney per year. Felony caseloads of three to 10 times this amount are common. Unmanageable caseloads mean that defenders do not have time to do the most basic tasks in mounting a good defense.
- **Lack of enforceable standards.** Even if an accused person gets an attorney, the quality varies widely from jurisdiction to jurisdiction. No standards mean people get attorneys with little or no criminal training, or who have no tools – such as experts or investigators – to support their cases. In many states, lawyers are selected to sign contracts to provide public defense services not because they know what they are doing but because they promise to be cheaper than other bidders.
- **Underfunding.** State governments commonly spend three times as much on prosecution as on public defense, even though national standards dictate that a strong justice system requires balance of resources. Underfunding affects the quality of representation by limiting resources for essentials such as trainings, investigators and experts, and technology.
- **Lack of independence.** In many systems, judges are in charge of the attorney appointment system. One result is that the judge, not the lawyer on the case, decides whether tools such as expert witnesses and DNA testing will be made available to the defense.

“For many people, the right to counsel means nothing more than a hurried conversation with a court-appointed attorney before entering a guilty plea or going to trial. Unfortunately, the courts, legislatures and bar associations in many places have tolerated this,” says Stephen Bright, director, Southern Center for Human Rights.

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The American Bar Association, supported by many other legal organizations, has developed 10 principles that, if adopted, would go a long way toward strengthening the public defense system in America and increasing confidence that the system was adhering to the promise of the *Gideon* ruling. The principles require that:

- The public defense system is independent;
- Both public defenders and the private bar actively participate in the system;
- An attorney is provided promptly to anyone who cannot afford representation;
- Attorneys have confidential access to and sufficient time to meet with their clients;
- Each attorney's workload is controlled to enable them to provide quality representation;
- Attorneys have the necessary ability, training and experience to handle their cases;
- The same attorney represents the client from initial assignment until the case is completed;
- Attorneys have continuing legal education and training;
- Attorneys are regularly supervised according to national and local standards; and
- The workload salaries, and resources of defense counsel are equal to those of prosecutors, and defense counsel is an equal partner in the justice system.

"The Gideon ruling said ALL have a right to counsel regardless of ability to pay. It didn't say some people or rich people. Allowing people to be charged and sent to jail without counsel puts the entire criminal justice system in jeopardy. Even worse, it erodes the public's confidence in the system that is the bedrock of American law," said Texas State Senator Rodney Ellis.

State spokespeople are available for comment. For additional information, visit:

American Bar Association

www.abalegalservices.org/sclaid

www.abanet.org

National Association of Criminal Defense Lawyers

www.nacdl.org/gideon

National Legal Aid & Defender Association

www.nlada.org

Southern Center for Human Rights

www.schr.org/indigentdefense

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