

## **Dominguez**

Last week on this podcast, NACDL Executive Director Norman Reimer spoke to us about the critical importance of the constitutional right to counsel as set forth in the 1963 U.S. Supreme Court decision *Gideon v. Wainwright*. Among the points he made, was how although *Gideon* established the right, and other cases have expanded the right to include the right to a lawyer anytime your liberty is at stake, the government and the Court have never figured out ways to fund this essential necessity.

This week, we visit the State of Maryland where the matter of fulfilling that promise is front and center in both the judicial and legislative branches.

Douglas Colbert is a law professor at the Maryland School of Law and a co-Chair of the NACDL Task Force on Pre-Trial Justice. He has also been involved in important litigation concerning the right to counsel in Maryland. In the case of *DeWolfe v. Richmond*, Maryland's highest court issued an important ruling earlier this year. We reached Professor Colbert at his office in Baltimore.

## **Colbert**

For the past 15 years, the Maryland clinic law students have been working towards guaranteeing that every poor person and working person has representation when they first appear before a judicial officer. We began this in 1997 with a resolution before the Maryland State Bar and the American Bar Association. And the litigation was filed in 2006. So, for the past five years, the case has made its way to the court of appeals. And the court's ruling provides a statutory guarantee to legal representation when a person's liberty is first at stake.

## **Dominguez**

In Maryland, that first hearing for arrestees takes place before a district court commissioner. Professor Colbert explains the difference having counsel at such a hearing can make.

## **Colbert**

Lawyers are a necessity at the initial appearance because our data shows that when there is counsel present for people charged with non-violent crimes, two and a half times as many are released on recognizance. And our data also shows that two and a half times as many people have their bail reduced to an affordable level. That's what our information shows. That's why it's so important for NACDL to continue to insist upon representation when people's liberty is first at stake.

### **Dominguez**

In fact, NACDL filed a friend of the court brief in this case supporting the position that there is a statutory and constitutional right to appointed counsel at a defendant's initial bail hearing in Maryland. Also involved in the right to counsel litigation is the head of the Maryland Public Defender office, and a member of NACDL's board of directors, Paul DeWolfe. He spoke to us from his Baltimore office this week.

### **DeWolfe**

The decision in DeWolfe v. Richmond declares a right to counsel under the Maryland public defender statute for indigent defendants appearing at an initial appearance before the district court commissioners in Maryland. Maryland has a unique system of district court commissioners who are quasi-judicial officers. They sit 24 hours a day, 7 days a week, across the state of Maryland. We're told that there are about 180,000 commissioner hearings at which the judicial officer determines probable cause and decides on release or custody in bail situations for all arrestees in Maryland.

### **Dominguez**

While the state's highest court, the Court of Appeals of Maryland, found a right to counsel at this stage of the proceedings, thus far, there has been no commensurate increase in the resources necessary for lawyers who represent the indigent. Indeed, funding and resources for Maryland's public defenders is moving in the opposite direction.

### **DeWolfe**

Over the last four years, we have lost 20% of our work force due to budget cut backs. We have lost approximately \$9 million in funding as a result of budgeting cutbacks. And as our resources have been diminished, our caseloads have been increasing. And so, obviously, a decision from the court of appeals like the Richmond decision, comes at a time when we are already unable to meet the needs of our 200,000 clients at the stages of trial that we currently represent. To handle an additional 180,000 hearings on a 24-hour a day, seven days a week is just impossible.

### **Dominguez**

While Paul DeWolfe points to these glaring resource issues, a constitutional tragedy playing itself out in jurisdictions across the nation, he nonetheless recognizes the critical importance of the right to counsel.

### **DeWolfe**

Well I think our message throughout both the litigation and the legislative process is that the public defender's office supports the right to counsel at all stages. But that the office, in order to provide competent and adequate representation at all stages, needs to be adequately resourced and needs to be provided with the adequate funds in order to implement right to counsel at all stages. And so we have been forcefully supporting the right to counsel, but also just as vigorously working with the legislative process and the governor's office to provide for funding to implement the Richmond decision.

### **Dominguez**

Currently, there are bills under consideration by the legislature that would seek to amend the statute.

NACDL's position is unambiguous in its support for the right to counsel at first appearance. NACDL President Lisa Wayne explains.

### **Wayne**

NACDL, as a result of what is going on around the country with indigent defense and in many states where representation does not occur at the first stage that a defendant is brought into court, we resolved as an association to "urge[s] all states and U.S. territories to adopt such constitutional provisions, laws or regulations necessary to guarantee that every accused person, irrespective of financial capacity to engage counsel, shall be guaranteed counsel at the first appearance before a judicial officer at which liberty is at stake or at which a plea of guilty to any criminal charge may be entered."

### **Dominguez**

And to the extent that a state finds itself unable or unwilling to provide the resources necessary to provide the counsel to which those accused of a crime are entitled, Lisa Wayne points to another route that legislatures can take to address the problem of our overburdened criminal justice system.

### **Wayne**

Not only must we provide adequate resources to lawyers who represent the indigent. But we also need to focus on shrinking the criminal justice system by reclassifying as non-criminal violations many of those offenses that do not implicate public safety.

### **Dominguez**

So while Professor Douglas Colbert and Maryland Public Defender Paul DeWolfe come from different perspectives on the details of how this right to counsel matter might satisfactorily play out in Maryland, these two NACDL leaders are both through their work breathing life into the right to counsel, whether one can afford a lawyer or not.

### **Wayne**

I think that Paul DeWolfe and Doug Colbert are an indication of coming across two very different places. From an academic standpoint to a public defender office, to lawyers who are in the trenches, coming together to really try to solve a problem that is so entrenched in our criminal justice system. For us, as we approach the 50<sup>th</sup> anniversary of the U.S. Supreme Court decision in Gideon, the issue is something that we as a nation must deal with. And having Paul DeWolfe and Doug Colbert with us on that is something that I think is going to resonate across this country.

### **Dominguez**

To learn more about the Maryland right to counsel litigation and legislation, as well as indigent defense issues playing out across the country, please visit [www.nacdl.org/indigentdefense](http://www.nacdl.org/indigentdefense).

Please join us next week for another episode of NACDL's "The Criminal Docket." In Washington, DC, this is Ivan Dominguez. Have a good week.