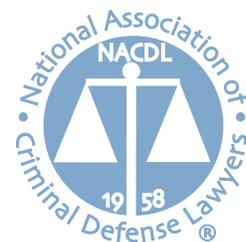


# PUBLIC DEFENSE

# PUBLIC DEFENSE



## NACDL ADDRESSES THE PUBLIC DEFENSE CRISIS, DISPARITY, AND PRETRIAL INJUSTICE



There is nothing ambiguous about the determination of the founders of the American republic to secure the right to counsel. The plain language of the Sixth Amendment to the United States Constitution provides that “in all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.” But now, nearly two and a quarter centuries after the adoption of that core principle in the Bill of Rights, the realization of the right to counsel remains elusive for millions in the United States.

On the occasion of the 50<sup>th</sup> anniversary of the landmark decision in *Gideon v. Wainwright*, which ensured that the right to counsel may not be deprived because of economic status, U.S. Attorney General Eric Holder noted the nation’s failure to fulfill the promise of the Sixth Amendment:

Yet despite half a century of progress, even today in 2013, far too many Americans struggle to gain access to the legal assistance they need. And far too many children and adults routinely enter our juvenile and criminal justice systems with little understanding of the rights to which they’re entitled, the charges against them, or the potential sentences they face. In short, America’s indigent defense systems exist in a state of crisis.

For more than a decade the National Association of Criminal Defense Lawyers (NACDL) has elevated to the top of its agenda reform of the nation’s public defense system and related deficiencies, such as racial and ethnic disparities and the proliferation of collateral consequences, all of which disproportionately impact the poor. Former NACDL president E. G. Morris has observed that the “promise” of *Gideon* has turned out to be more on the order of “someday maybe.” And NACDL’s current president, Barry J. Pollack, has described the challenge of securing adequate representation for those who are poor and often of color as “one of the great civil rights battles of our time.”

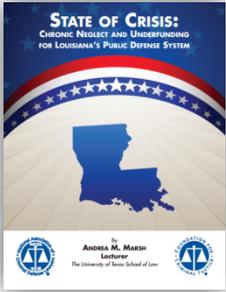
Propelled by this steadfast commitment of its leadership, NACDL has committed unprecedented levels of human capital and financial resources to this struggle. Through scholarship assistance, travel stipends, and the deployment of training teams, NACDL has brought cutting-edge training to thousands of defenders across the nation. And through research, conferences, symposia, and public hearings, NACDL has endeavored to expose the deficiencies in the nation’s public defense system and promote meaningful reform.

This summary of 16 major reports and manuals is the tangible manifestation that NACDL will not rest until the right to counsel is a reality for all. Make no mistake about it. The Nation’s oldest, largest, and most inclusive national criminal defense bar association unequivocally embraces as its foremost objective public defense reform and the goal of achieving a criminal justice system that treats every single human being with dignity, equality, and fairness.



**Norman L. Reimer**

Executive Director,  
NACDL and the Foundation for Criminal Justice



## State of Crisis: Chronic Neglect and Underfunding for Louisiana's Public Defense System

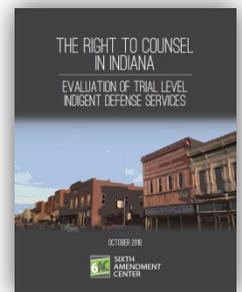
The crisis in public defense in Louisiana has been well-documented by the news media over the past several years. Stories of overloaded public defenders, unrepresented individuals languishing in jail, and mass pleas have shocked the nation's conscience, but the system's shortcomings have long evaded reform. However, much coverage of the public defense crisis in Louisiana, the state with the highest incarceration rate in the nation, has focused its attention on the consequences of the crisis rather than its causes.

Through interviews and review of publicly available documents, NACDL compiled a history of Louisiana's public defense system from 1963 to the present, uncovering some of the structural issues that have led to a system that exists in a constant state of emergency. While acknowledging that representation in Louisiana has improved overall since 2007, the report found several deficiencies including funding disparities, lack of independence, and inadequate quality of representation. Based on these findings, the report presents six recommendations for reform in Louisiana.

Read the report and visit the Louisiana project page at [www.nacdl.org/louisianapublicdefense](http://www.nacdl.org/louisianapublicdefense).

## The Right to Counsel in Indiana: Evaluation of Trial Level Indigent Defense Services

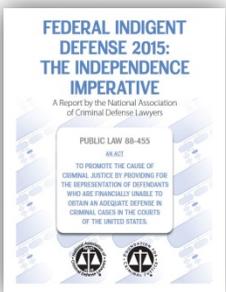
As part of its public defense reform program, NACDL commissioned the Sixth Amendment Center to conduct an independent study of the state of public defense in Indiana and to produce this report – *The Right to Counsel in Indiana: Evaluation of Trial level Indigent Defense Services*. This report and recommendations were prepared primarily to aid in the work of the Indiana Indigent Defense Study Advisory Committee (IDSAC), which is composed of representatives from the Indiana Supreme Court, Legislature, State Bar Association, Public Defender Commission, Public Defender Council, Prosecuting Attorneys Council, Judges Association, and the Indiana Association of Criminal Defense Lawyers.



In Indiana, counties are responsible in the first instance to fund and administer public defense services. This report reveals numerous findings of concern, including that Indiana has no mechanism to ensure that its constitutional obligation to provide effective counsel to the poor is met in a wide variety of contexts. The reports explores public defense in Indiana in great detail and offers several important recommendations to address its deficiencies.

Read the report and visit the Indiana project page at [www.nacdl.org/indianapublicdefense](http://www.nacdl.org/indianapublicdefense).

## Federal Indigent Defense 2015: The Independence Imperative

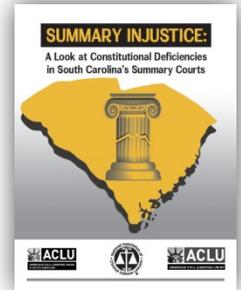


In the wake of the severe cuts to the provision of indigent defense services during sequestration in 2013, NACDL created a Federal Indigent Defense Task Force to examine the federal indigent defense system. The mission included an assessment of the level of independence afforded to the Defender Services Office and consideration of whether reforms are necessary to ensure adherence to the ABA's Ten Principles of a Public Defense Delivery System. After extensive research and more than 130 interviews with key stakeholders, the Task Force identified several significant, persistent deficiencies in the system. This report explores those concerns and offers seven recommendations to assure a robust federal indigent defense system.

Read the report and visit the federal defense project page at [www.nacdl.org/federalindigentdefense2015](http://www.nacdl.org/federalindigentdefense2015).

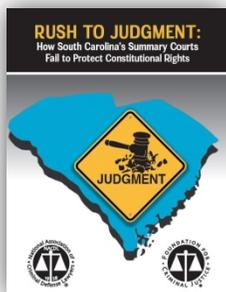
## Summary Injustice: A Look at Constitutional Deficiencies in South Carolina's Summary Courts

When a person is accused of a crime and faces loss of life or liberty as punishment, the U.S. Constitution guarantees that person the right to a lawyer even if he or she cannot afford one. The U.S. Supreme Court affirmed this basic principle more than a half century ago in *Gideon v. Wainwright*, and in subsequent cases that expanded the right to misdemeanor prosecutions. Yet this right is violated every day in South Carolina's magistrate and municipal courts – collectively referred to as summary courts – where scores of people are convicted, sentenced, and sometimes incarcerated, without having been represented by counsel. This report documents the constitutional violations observed by attorneys with NACDL and the ACLU in 27 different summary courts throughout the state during several weeks between December 2014 and July 2015.



This report demonstrates that these courts often fail to inform defendants of the right to counsel, refuse to provide counsel to the poor at all stages of the criminal process, and force defendants who cannot afford to pay fines to instead serve time in essentially a debtor's prison. Concerns about bond setting, ineffective or absent advisement of rights, police prosecutors, and disproportionate impact on the poor are brought to light through the stories of individuals who have been adversely affected by this inadequate system.

## Rush to Judgment: How South Carolina's Summary Courts Fail to Protect Constitutional Rights



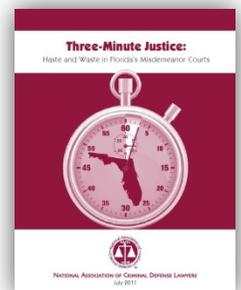
In response to disturbing stories of constitutional violations uncovered by NACDL and ACLU attorneys documented in 2016's *Summary Injustice* report, NACDL undertook additional investigation of South Carolina's summary courts. Law students and legal professionals gathered information about court proceedings in five South Carolina counties over three months in the winter and spring of 2016, the results of which are published in this follow-up report. Each day, the team observed court hearings in various venues, observing individuals charged with everything from shoplifting to driving

offenses to unlawful possession of tobacco and alcohol. In every court studied for this report, the team found egregious, repeated constitutional violations happening daily and in hundreds of cases. In the months of court watching and data collection, researchers documented numerous findings, all of which are set forth in the *Rush to Judgment* report.

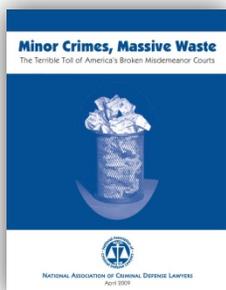
Read both reports and visit the South Carolina project page at [www.nacdl.org/summaryinjustice](http://www.nacdl.org/summaryinjustice).

## Three-Minute Justice: Haste and Waste in Florida's Misdemeanor Courts

Nearly a half million people, or approximately three percent of Florida's adults, pass through the state's misdemeanor courts each year. Most are found guilty. The average court appearance lasts as little as three minutes.



## Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts



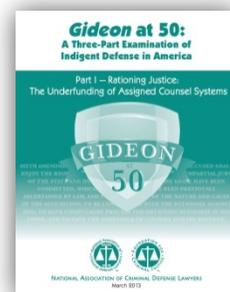
The explosive growth of misdemeanor cases is placing a staggering burden on America's courts. Defenders across the country are forced to carry unethical caseloads that leave too little time for clients to be properly represented. As a result, constitutional obligations are left unmet and taxpayers' money is wasted.

Read both reports at [www.nacdl.org/reports](http://www.nacdl.org/reports).

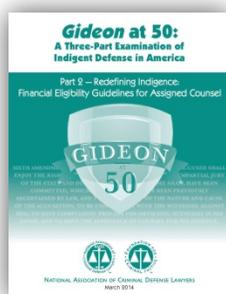
# Gideon at 50: A Three-Part Examination of Public Defense in America

## Part I – Rationing Justice: The Underfunding of Assigned Counsel Systems

This report documents the unreasonably low rates of compensation paid to private attorneys who represent indigent defendants in state courts. The lack of adequate funding restricts the pool of attorneys willing to represent indigent defendants and creates conflicts of interest for attorneys by encouraging them to limit the amount of work they perform on a case for an indigent client. More experienced attorneys refuse to participate in assigned counsel systems that pay hourly rates far below the market rate while younger attorneys, who are often burdened by student loans, never even consider joining the defense bar. Even more troubling is the possibility that low hourly rates will encourage some attorneys to accept more clients than they can effectively represent in order to make ends meet. The result is an inadequate, inexperienced, overworked and inherently conflicted pool of attorneys accepting court appointments in our criminal courts.



## Part II – Redefining Indigence: Financial Eligibility Guidelines for Assigned Counsel

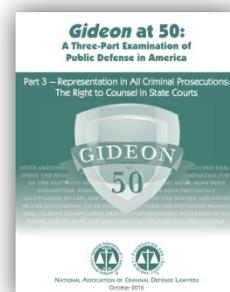


This 50-State Survey of Financial Eligibility Guidelines for Assigned Counsel documents how states decide who is “too poor” to hire a lawyer. The survey looks at how states define “indigency” and whether or not that definition is consistent with ABA standards for providing defense services. It identifies which states rely on the Federal Poverty Guidelines when determining eligibility for assigned counsel, and explains the origin of the Federal Poverty Guidelines and how they cannot accurately predict who is “too poor” to hire a lawyer. The survey then looks at the fees and costs imposed on supposedly indigent defendants who are assigned counsel. These include application fees, payable at

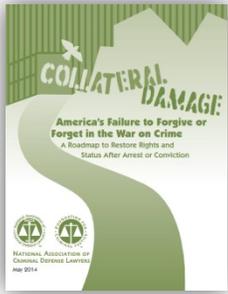
the time a request for counsel is made, and reimbursement fees, payable at the conclusion of the case or over time. The report concludes that in adopting unduly restrictive eligibility criteria and other policies, too many states have been able to ignore the central premise of *Gideon* that “lawyers in criminal courts are luxuries, not necessities.”

## Part III – Representation in All Criminal Prosecutions: The Right to Counsel in State Courts

This survey of the Right to Counsel Standards in the 50 States documents how states decide when a qualifying individual charged with criminal wrongdoing is entitled to receive appointed counsel. Some states only appoint counsel in cases of actual incarceration following conviction, while others mandate appointed counsel based solely on the fact that a defendant has been charged with a crime. Other states fall in between these two standards and appoint counsel when a sentence of incarceration is authorized or likely to be imposed following conviction. The survey also examines how states determine when in the trial process to appoint counsel, and in particular it explains the importance of counsel at first appearance. The report concludes that while a majority of states go beyond the “actual incarceration” standard for appointing counsel under the Sixth Amendment, there is still much work left to be done to ensure that states comply with the right to counsel statutes or court interpretations in place.



Read all three reports and visit the *Gideon at 50* project page at [www.nacdl.org/gideonat50](http://www.nacdl.org/gideonat50).



## **Collateral Damage: America's Failure to Forgive or Forget in the War on Crime – A Roadmap to Restore Rights and Status After Arrest and Conviction**

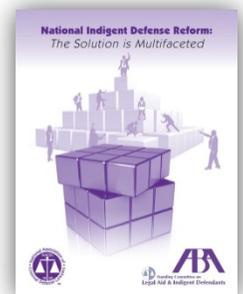
With more than 65 million people in America having some form of a criminal record, the universality and import of the problem this nonpartisan report tackles is tremendous. NACDL's Task Force on the Restoration of Rights and Status After Conviction held hearings all over the country, featuring testimony from more than 150 witnesses from every corner of the criminal justice system, as part of the research leading to this report. Included among the witnesses were those who have faced unfair, irrational, and often

life-altering barriers arising from a brush with the criminal law. Many of their stories are captured in the report. And many more are available in the complete transcripts of the Task Force's hearings. With more than one in four adults in the United States having some form of a criminal record, and more than 2.2 million people currently behind bars in the United States, more than any other nation in the world, the vast impact of the problem of collateral consequences and legal barriers to reentry is undeniable.

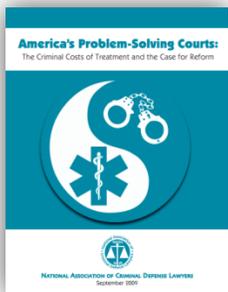
Read the report and visit the Restoration of Rights project page at [www.nacdl.org/restoration/roadmapreport](http://www.nacdl.org/restoration/roadmapreport).

## **National Indigent Defense Reform: The Solution is Multifaceted**

This report summarizes the highlights of the wide-ranging discussion and innovative proposals for reform discussed during a focus group convened in 2012 by NACDL and the American Bar Association Standing Committee on Legal Aid and Indigent Defendants. The report is divided into three broad topics. First, the report discusses front-end reforms such as reclassification and diversion, which help reduce the number of cases entering the system. Next, the report turns to the delivery of services, including the importance of standards and commissions, the central role of the private bar, and development of training. Third, the report considers the need for collaboration and cooperation with others within and outside the criminal justice system in order to achieve significant and sustainable reform.



Read the report at [www.nacdl.org/reports](http://www.nacdl.org/reports).



## **America's Problem-Solving Courts: The Criminal Costs of Treatment and the Case for Reform**

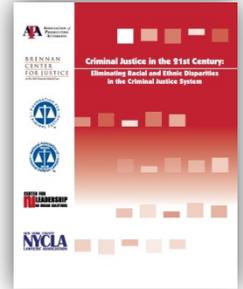
The debate over drug enforcement policy in the United States is almost always framed in stark terms premised on narrow options. Conventional thinking about criminal justice issues – prison, community corrections, probation, or possibly some sort of diversion program for minor offenses and first-time offenders – has not worked, nor has it abated the addiction problem. Drug courts have swept the nation without much debate or input from the criminal defense bar. That input is long overdue.

This report seeks to inform and redefine the debate by considering and challenging the fundamental criminal justice lens through which drug-related issues are evaluated. Because "the definition of the alternatives is the supreme instrument of power," accepting the criminal justice paradigm legitimizes drug courts while ignoring other smart, fair, effective, and economical approaches. The report also summarizes the history and evolution of drug courts, evaluates their operation and effectiveness, makes an overarching recommendation on the treatment of addiction, and offers a number of recommendations to ensure that the procedures and practices in drug court comply with constitutional and ethical norms.

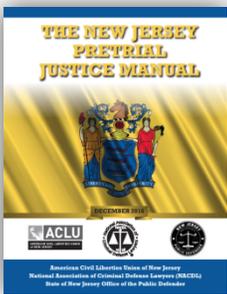
Read the report at [www.nacdl.org/reports](http://www.nacdl.org/reports).

## Criminal Justice in the 21<sup>st</sup> Century: Eliminating Racial and Ethnic Disparities in the Criminal Justice System

This is a critically important and inclusive examination of the profound racial and ethnic disparities in America's criminal justice system, and concrete ways to overcome them. This conference report prepared by Consultant Tanya E. Coke is based upon a multi-day, open and frank discussion among a distinguished group of criminal justice experts – prosecutors, judges, defense attorneys, scholars, community leaders, and formerly incarcerated advocates. This three-day convening was held October 17-19, 2012, at the New York County Lawyers' Association's historic Home of Law and was co-sponsored by the following organizations: the Association of Prosecuting Attorneys, the Brennan Center for Justice at New York University School of Law, the Foundation for Criminal Justice, the National Association of Criminal Defense Lawyers, the Center for NuLeadership on Urban Solutions, and the New York County Lawyers' Association.



Read the report and visit the conference project page at [www.nacdl.org/reports/eliminatedisparity](http://www.nacdl.org/reports/eliminatedisparity).



### The New Jersey Pretrial Justice Manual

The ramifications of pretrial detention are profound – people in pretrial detention often lose their employment, businesses, and housing; suffer disruptions in education; and experience serious damage to family relationships. Obtaining pretrial release, therefore, is an essential part of the promise of Gideon that defense lawyers are committed to provide and this manual is designed to give practitioners the guidance needed to achieve pretrial release for clients.

This defender advocacy manual was created by NACDL in partnership with the American Civil Liberties Union of New Jersey and the New Jersey Office of the Public

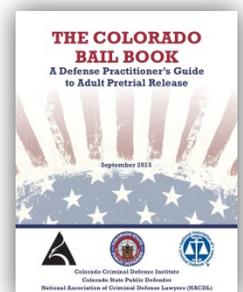
Defender, with grant support from the Bureau of Justice Assistance.

Building on the recommendations of the Joint Committee on Criminal Justice, established and chaired by New Jersey Supreme Court Chief Justice Stuart Rabner, New Jersey adopted groundbreaking pretrial justice and speedy trial legislation scheduled to take effect on January 1, 2017. The changes to the pretrial justice system required a constitutional amendment, approved by New Jersey voters in November 2014, which allows certain defendants to be detained pretrial without bail. As explained in the manual, “the new law will require defenders to familiarize themselves with a totally new scheme in order to ensure that their clients are not unnecessarily detained or subjected to onerous conditions of release.”

### The Colorado Bail Book: A Defense Practitioner's Guide to Adult Pretrial Release

This manual was created by NACDL in partnership with the Office of the Colorado State Public Defender and the Colorado Criminal Defense Institute, with grant support from the Bureau of Justice Assistance.

In 2013, the Colorado legislature overhauled its pretrial release statutes, embracing the use of risk assessments and setting a clear presumption that individuals who have not yet been convicted of the crime for which they are accused should be free pending trial. This manual is designed to give Colorado practitioners the guidance needed to achieve pretrial release for clients. The Colorado Bail Book discusses the use of the validated Colorado Pretrial Assessment Tool (CPAT); outlines the provisions of the new CO bail statutes; highlights relevant case law and applicable state and federal constitutional provisions; and details the steps for appealing adverse bail decisions. The manual gives practical advice on making powerful and effective bail arguments and outlines some of the challenges faced by defenders when arguing bail.



Read the manuals and visit the pretrial release project page at [www.nacdl.org/pretrialrelease](http://www.nacdl.org/pretrialrelease).

**For more information contact:**  
**National Association of Criminal Defense Lawyers®**  
1660 L Street NW, 12th Floor, Washington, DC 20036, Phone 202-872-8600, [www.NACDL.org](http://www.NACDL.org)

