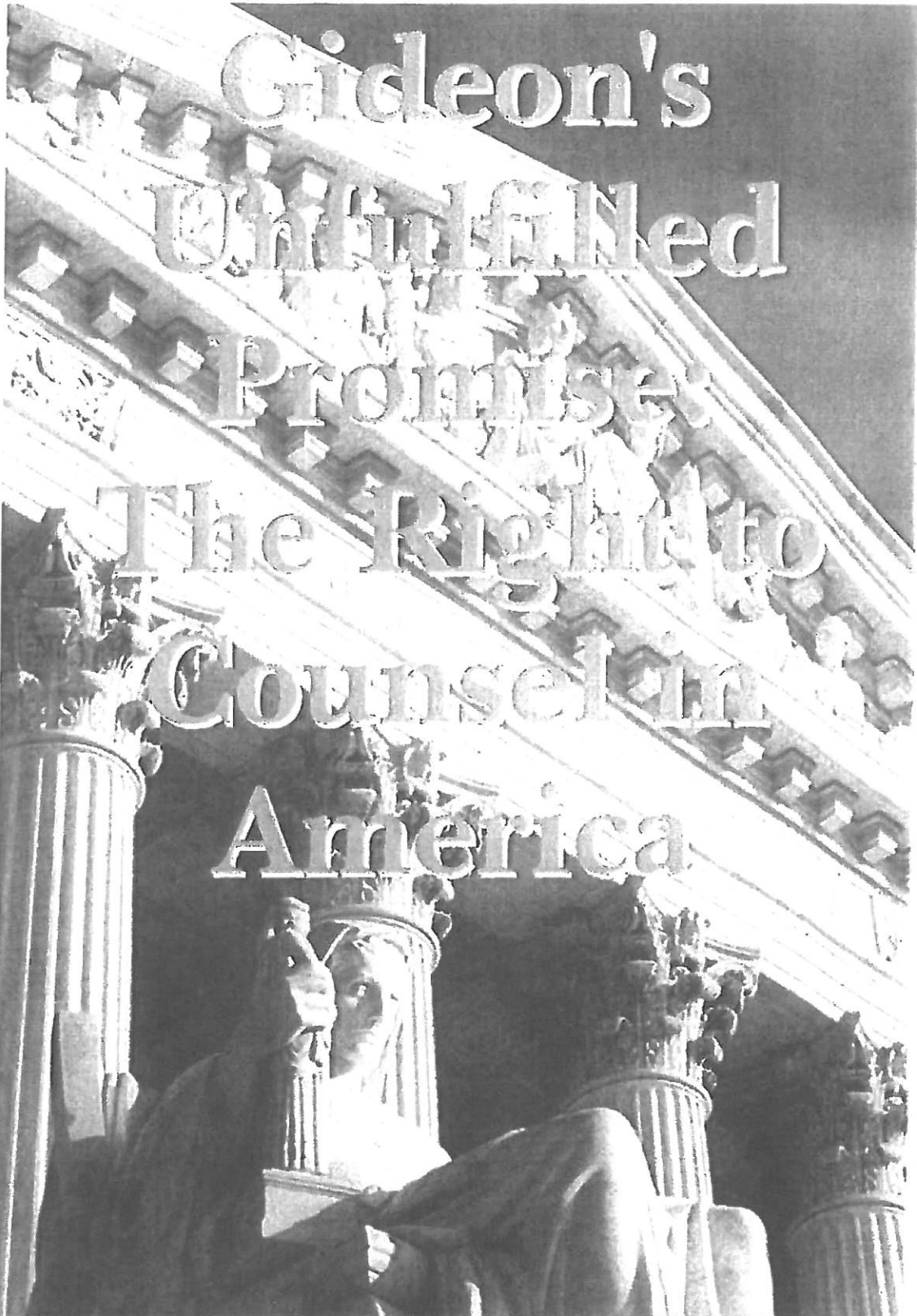


EXHIBIT C




Gideon's
Unfulfilled
Promise:
The Right to
Counsel in
America

COMPILED BY THE NATIONAL LEGAL
AID & DEFENDER ASSOCIATION AND
EQUAL JUSTICE WORKS

**EQUAL
JUSTICE
WORKS.**

Draft — 1-31-08

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The National Legal Aid & Defender Association

The National Legal Aid & Defender Association (NLADA) is the nation's leading advocate for front-line attorneys and other equal justice professionals. Representing individual advocates, offices and programs, NLADA champions effective legal assistance for people who cannot afford counsel, serves as a collective voice for both the civil legal aid and public defender communities throughout the nation, and provides a wide range of services and benefits to its individual and organizational members. For more information, please visit www.nlada.org.

Equal Justice Works

Equal Justice Works is dedicated to creating a just society by mobilizing the next generation of lawyers committed to equal justice.

Equal Justice Works provides leadership to ensure a sustainable pipeline of talented and trained lawyers involved in public service as well a continuum of programs that begin with incoming law school students and extend into later careers in the profession. For more information, please visit www.equaljusticeworks.org.

“The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

- U. S. Supreme Court Justice Hugo Black

Gideon v. Wainwright, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963)

I

As world events unfold daily in far off places like Afghanistan, Iraq and Pakistan, the words of U.S. Supreme Court Justice Hugo Black speak to the core values that distinguish the United States from those countries under the repression of dictatorships, theocracies and despots. We are different. Unlike tyrannies, the Constitution of the United States of America promises those accused of crimes the presumption of innocence and equal access to a fair day in court. These core values define the beliefs we as Americans hold in common – whether we are conservative or liberal, white or black, rich or poor. We entrust our government with the administration of a judicial system that guarantees equal justice before the law - assuring victims, the accused and the general public that resulting verdicts are fair, correct, swift and final.

In the case of *Gideon v. Wainwright*, 372 U.S. 335 (1963), the United States Supreme Court concluded that “reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” Declaring it an “obvious truth” that “lawyers in criminal courts are necessities, not luxuries,” the Court ruled that states must provide counsel to indigent defendants in felony cases. That mandate has been consistently extended to any case that may result in a potential loss of liberty.

Unfortunately, the Court’s “obvious truth” has been obscured or lost at the hands of state governments in the intervening forty-four years. State Supreme Court Chief Justices,¹ State Bar Associations,² and recognized experts,³ have universally decried the failings of the country’s indigent defense systems to secure a meaningful right to counsel. Litigation over the failure to meet *Gideon’s* mandate is mounting.⁴ In 2000, the United States Department of Justice declared that indigent defense was in a chronic state of crisis. In 2004, the American Bar Association (ABA) agreed: “indigent defense in the United States remains in a state of crisis, resulting in a system that lacks fundamental fairness and places poor persons at constant risk of wrongful conviction.”⁵



II

A Brief History of the Right to Counsel in America

The modern day right to counsel movement marks its birth in the early 1930's -- a time when American jurisprudence was just as likely to turn a blind-eye to vigilante justice against people of color, as it was to enforce the Fourteenth Amendment's call for due process and equal protection under the law. Though the Sixth Amendment to the United States Constitution established the right to counsel in federal proceedings,⁶ poor people did not begin to be afforded equal justice in state criminal proceedings until the Court reversed the convictions of eight impoverished African-Americans falsely accused by two young, white women of rape. In *Powell v. Alabama*, the Court lamented the trial judge's attempt to stack the deck against the "Scottsboro Boys" by appointing an elderly attorney who had not tried a case in decades and a real estate attorney to represent the youth one half hour before the trial commenced. In reversing the convictions the Court stated that the right to counsel was an "immutable principle of justice" and that the inadequate representation violated due process in death penalty cases. The opinion's legal rationale has become the foundation for virtually every subsequent right to counsel decision in America, including the Court's landmark ruling in *Gideon v. Wainwright*.

In 1961, Clarence Earl Gideon — a fifty-one-year-old drifter — was arrested and charged with the felony offense of breaking and entering the pool hall with the intent to commit a misdemeanor after someone broke into a Panama City, Florida pool hall and stole alcohol and some change. When the trial commenced on August 4th of that year, Gideon asked the court to appoint him an attorney. The trial judge summarily denied the request. The jury convicted Gideon of larceny and he was sentenced to five years in prison. With the aid of the prison library, Gideon drafted a five-page petition to the U.S. Supreme Court. The unanimous opinion of the Court in the watershed case held that the right to counsel was "fundamental" and "essential" for a fair trial. Clarence Earl Gideon's case was sent back to Florida for a new trial, this time, with the "guiding hand of counsel." Within one hour the jury found that Gideon was not guilty.

One of the critical but often overlooked aspects of

Landmark Supreme Court Rulings

1932: *Powell v. Alabama*

+ The historic case of the Scottsboro Boys established a right to counsel in death penalty cases.

1963: *Gideon v. Wainwright*

+ Extending the right to counsel to all felonies, the court for the first time established that this crucial Constitutional responsibility rested with state governments.

1963: *Douglas v. California*

+ Extended the right to counsel for direct appeals.

1966: *Miranda v. Arizona*

+ Extended the right to counsel for custodial interrogation.

1967: *In Re Gault*

+ Established the right to counsel for juveniles in proceedings resulting in confinement

1970: *Coleman v. Alabama*

+ Extended the right to counsel for critical stages of preliminary hearings.

1972: *Argersinger v. Hamlin*

+ Extended the right to counsel for misdemeanors involving possible imprisonment

2002: *Shelton v. Alabama*

+ Extended the right to counsel for misdemeanors involving a suspended sentence.

2005: *Halbert v. Michigan*

+ Further extends the right to counsel in appeals for those who plead guilty at the trial-level in order to challenge their sentencing.

Gideon is that the Sixth Amendment's guarantee of counsel was made obligatory upon the states by the Fourteenth Amendment — not upon county or local governments.⁷ Beyond that pronouncement, however, the decision lacked guidance regarding how to comply with its edict. Thus, the United States Department of Justice and other entities began work to fill the knowledge vacuum through the development of standards and other research.

Despite *Gideon's* significance as legal precedence, very little activity to create state-funded, state-administered public defense systems occurred until almost ten years later, when *Argersinger v. Hamlin* extended the right to counsel to misdemeanors -- the vast majority of

state court cases. Though *Argersinger* heightened statewide reform activity through the early 80's, the majority of states still continued to pass on their responsibility to their cities and counties as unfunded mandates.⁸

Thirty-years later the Rehnquist Court extended the scope of the right to counsel to all misdemeanor cases even if the threat of imprisonment is not immediate.⁹ An accused person has a right to counsel at trial, the Court held, even if he is ultimately sentenced to a totally suspended period of incarceration, with the defendant's continued freedom conditioned upon meeting one or more probationary requirement.¹⁰ Other United States Supreme Court cases find that the right to counsel attaches at all meaningful points in criminal proceedings, including custodial interrogations¹¹ and critical stages of preliminary hearings.¹² And, most recently, the Roberts Court found that indigent defendants who plead guilty at the trial-level do not give up their right to counsel on appeal to challenge their sentencing.¹³

For more than 75 years, the United States Supreme Court has been unequivocal on the importance of the right to counsel. Though state laws will vary, a defendant's right to counsel must be uninhibited and absolute or justice cannot prevail.

III

Taking *Gideon's* Pulse: The Current State of the Right to Counsel

Without a doubt, progress toward the realization of effective representation has been made in the 45 years since the right to counsel was enshrined in *Gideon*. While only two states had public defense systems before *Gideon*, 30 jurisdictions¹⁴ currently have indigent defense systems funded and administered at the state level. Progress, however, should not overshadow the fact that even where states oversee and fund public defense services, the failure of most to enact measurable standards of competency and to monitor compliance has produced justice systems in which results are dictated by a person's income level and the jurisdiction in which the crime is alleged to have been committed, rather than the factual merits of the case.

The lack of uniformity in the funding and administration of indigent defense systems makes it difficult, at best, to make unassailable, state-by-state comparisons. Nonetheless, certain conclusions can be drawn regarding the overall health of systems within particular states by analyzing (1) the degree and sufficiency of state funding, and (2) compliance with nationally recognized standards for the delivery of indigent defense services, as set forth in the American Bar Association's *Ten Principles of a Public Defense System*.

The rationale for using "state funding" as an assessment criterion goes beyond *Gideon's* mandate. State funding is more stable than county funding, which generally is derived through property taxes. When property values are depressed because of factors such as high unemployment or high crime rates, poorer counties find themselves having to dedicate a far greater percentage of their budget toward criminal justice matters than more affluent counties.¹⁵ And, since less affluent counties also tend to have a higher percentage of their population qualifying for indigent defense services, *the counties most in need of indigent defense services are often those that can least afford to pay for it.*¹⁶

Both the United States Supreme Court and the United States Department of Justice have indicated that standards should serve as guideposts in the administration and assessment of indigent defense representation.¹⁷ The American Bar Association's *Ten*

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Principles of a Public Defense System distill the voluminous national standards to their irreducible minimum and represent the most widely accepted and used version of national standards for indigent defense.¹⁸ The ABA *Principles* require, among other things, the institutional independence of the defense function, caseload controls, attorney qualifications, accountability, and continuous representation of clients by the same attorney throughout the life of the case.¹⁹


Relying on this two-pronged framework, each state has been ranked on a scale from one to ten and classified according to four categories:

- **Substantial Compliance with *Gideon's* Promise: Rating of 9 or above**
Although these jurisdictions routinely meet *Gideon's* mandate even jurisdictions in this category have areas that do not completely conform to standards or which would benefit from improvement. Moreover, even the best states often face inappropriate budget battles that impact representation.²⁰
- **Significant Compliance with *Gideon*: Rating of 7 – 8.9**
States in this category generally have some form of statewide structure for oversight and the state pays for more than half of the cost of representation; many could improve substantially if standards were promulgated and enforced and/or if funding was increased.
- **Fail to Comply with *Gideon*: Rating of 3 – 6**
In this category states have taken some significant reform steps but still do not consistently deliver constitutionally-adequate services.
- ***Gideon* Ignored: Rating of 2.9 or below**
The right to counsel is routinely abridged.

The results of this ranking are contained in the matrix on pages six and seven and may be summarized as follows:

Substantial Compliance: 10 States and the District of Columbia: Currently, only 30 states meet *Gideon's* mandate to relieve counties entirely from paying for the right to counsel at the trial level. But of these, only five states — *Massachusetts, Minnesota, Montana, Oregon* and *Wisconsin* — meet all of the ABA Principles and received the highest rating of “10” in each category. Five more states — *Connecticut, Florida, Maryland, Montana* and *New Jersey* — and the *District of Columbia* received ratings of 9 or above. Common traits of each of the eleven systems in this category include: 100 percent state funding at or above the national mean for per capita spending; state wide independent structures through commissions (10) or elected public defenders (1); no reliance on alternative revenue sources; and little or no reliance on the death penalty (10 of 11).

Significant Compliance: 16 States: There are significant variations between the states in this group, including for example, *Iowa* (8.8), which would move up a classification level with the creation of an independent commission overseeing their otherwise well-funded statewide structure, and *Tennessee* (“7.2”), where attorney case-loads are among the highest in the nation (a “0” rating under Principle 5) and where



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continued inadequate funding could make them slip to a lower classification in future years.

Fail to Comply: 13 States: This group includes states like *California* (which provides outstanding and innovative services in many of its urban areas but fails greatly in rural localities), *Kansas* (which has a statewide system for felony representation only, but ignores the plight of poor people facing a loss of liberty for misdemeanor violations), *Georgia* (which took steps toward a statewide system only to have the reforms begin to unravel for a variety of reasons), and *Texas* (which began an incremental reform process that is still in its infancy).

Gideon Ignored: 11 States:

Interestingly, the region of the United States most in crisis is not the Deep South (though *Alabama* and *Mississippi* are among the 12 states in this classification) but the Rust Belt (*Michigan*, *Ohio*, and *Pennsylvania*, with only *Indiana* barely making it to the higher classification at "4.7") and states that are contiguous to the Rust Belt (*New York* and *Illinois*). The remaining states in this category are spread throughout other regions including: New England (*Maine*), Southwest (*Arizona* and *Utah*), Far West (*Idaho*) and Midwest (*South Dakota*).

IV

The Impact of Systemic Deficiencies

Since the overwhelming percentage of criminal cases require publicly-financed lawyers,²¹ the failure to adequately fund and effectively administer public defense delivery systems result in too few lawyers handling too many cases. Under this scenario, courts face backlogs of unresolved cases. The growing backlog means that people waiting for their day in court fill local jails at taxpayers' expense. Failing to do the trial right the first time also means endless appeals on the back end – delaying justice to victims and defendants alike – and increasing criminal justice expenditures. And, when an innocent person is sent to jail as a result of public defenders not having the time, tools and training to effectively advocate for their clients, the true perpetrator of the crime remains free to victimize others and put public safety in jeopardy.

The failings of our nation's right to counsel systems

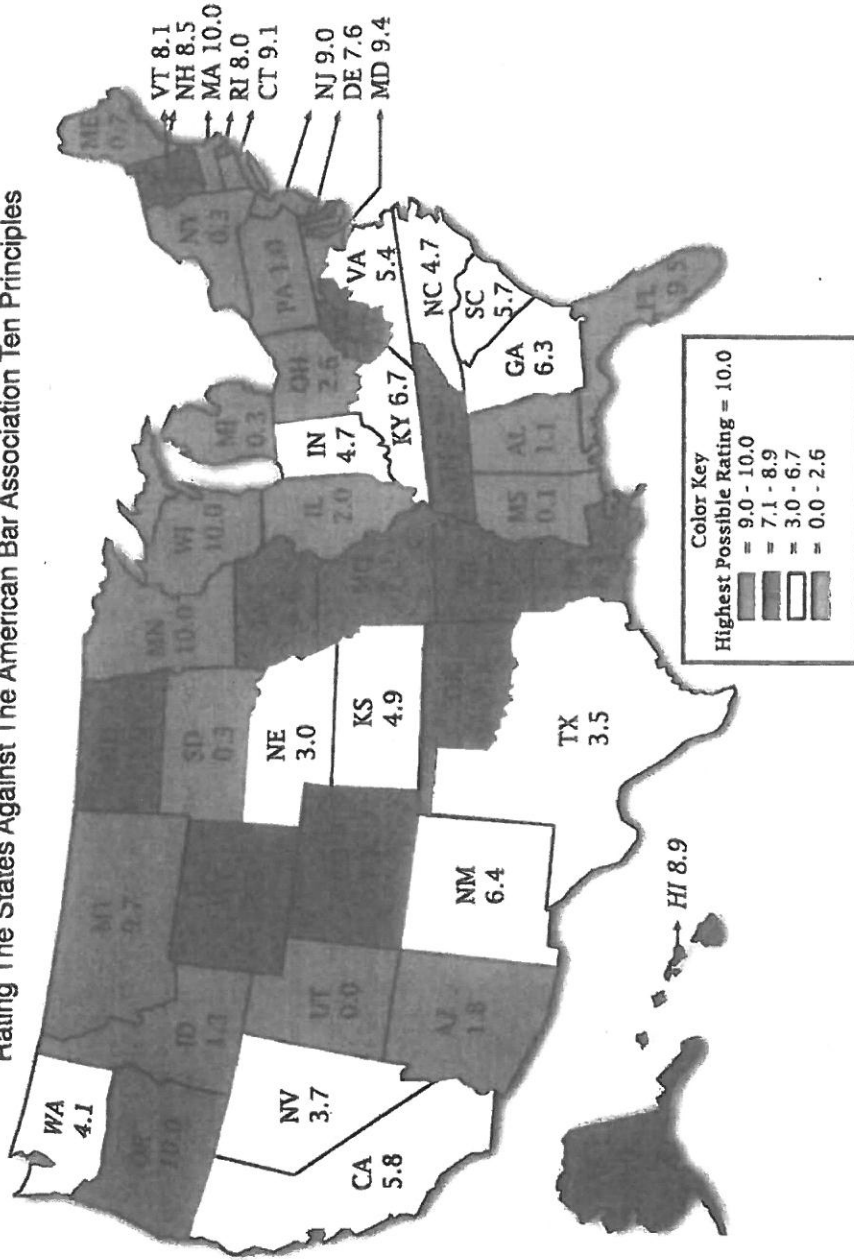
are particularly acute in juvenile courts – where funding is most limited and public defender caseloads most exorbitant. At-risk juveniles, in particular, require special attention from public defenders if there is hope to change behavior and prevent escalating behavioral problems that increase the risk that they will eventually be brought into the adult criminal justice system in later years. These are commonly children who have been neglected by parents and the range of other support structures that normally channel children in appropriate constructive directions.²² When they are brought to court and given a public defender who has no resources and a caseload that dictates that he dispose of cases as quickly as possible, the message of neglect and valuelessness continues, and the risk of not only recidivism, but of escalation of misconduct, increases.



AN OVERVIEW: INDIGENT DEFENSE IN THE U.S.

JANUARY 2008

Rating The States Against The American Bar Association Ten Principles



Color Key

Highest Possible Rating = 10.0

- 9.0 - 10.0
- 7.1 - 8.9
- 3.0 - 6.7
- 0.0 - 2.6

Note: For more about the 10 principles go to: <http://www.abanet.org/legal/services/downloads/eclid/10principles.pdf>

**ABA 10 Principles
Public Defense Delivery System**

#1
The public defense function, including the selection, funding, and payment of defense counsel, is independent.

#2
Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.

#3
Clients are screened for eligibility, and defense counsel is assigned and notified of appointment, as soon as feasible after clients' arrest, detention, or request for counsel.

#4
Defense counsel is provided sufficient time and a confidential space with which to meet with the client.

#5
Defense counsel's workload is controlled to permit the rendering of quality representation.

#6
Defense counsel's ability, training, and experience match the complexity of the case.

#7
The same attorney continuously represents the client until completion of the case.

#8
There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

#9
Defense counsel is provided with and required to attend continuing legal education.

#10
Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

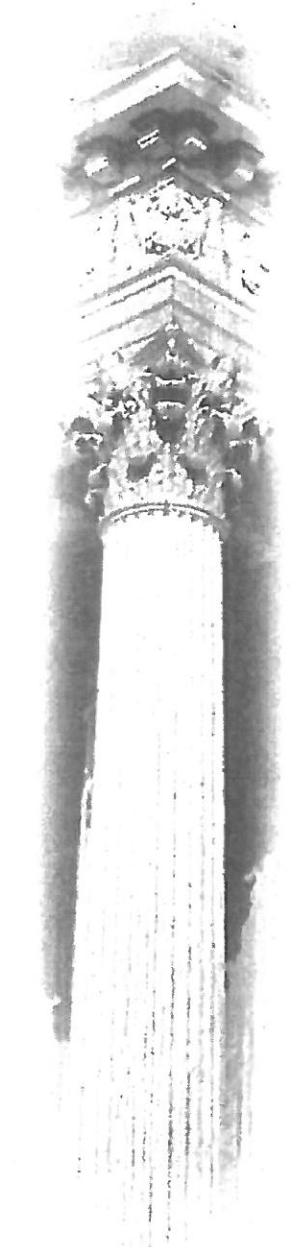
STATE-BY-STATE INDIGENT DEFENSE OVERVIEW

Rank	STATE	STRUCTURE & OVERSIGHT	Combined State & County Defense Spending	Cost Per Capita Median: \$11.63	FUNDING BREAKDOWN			Size of Death Row	Assessment of ABA Ten Principles										Rating					
					Reliance on County Funding?	Alternative Funding Sources	% of Defense Costs Paid by Counties		1	2	3	4	5	6	7	8	9	10						
1	Alabama	State Structure & Commission	\$ 2,027,841.00	\$ 13.5	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10		
2	Alaska	State Structure & Commission	\$ 6,411,000.00	\$ 12.7	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	
3	Arizona	State Structure & Commission	\$ 84,226,000.00	\$ 22.8	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
4	Arkansas	State Structure & Commission	\$ 60,065,031.00	\$ 12.2	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
5	California	State Structure & Commission	\$ 33,766,251.00	\$ 14.5	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
6	Colorado	State Structure & Commission	\$ 23,790,000.00	\$ 12.3	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
7	Connecticut	State Structure & Commission	\$ 79,320,070.00	\$ 12.5	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
8	Delaware	State Structure & Commission	\$ 55,447,201.00	\$ 10.1	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
9	District of Columbia	State Structure & Commission	\$ 101,352,200.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
10	Florida	State Structure & Commission	\$ 1,000,000,000.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
11	Georgia	State Structure & Commission	\$ 1,000,000,000.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
12	Hawaii	State Structure & Commission	\$ 1,000,000,000.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
13	Idaho	State Structure & Commission	\$ 1,000,000,000.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
14	Illinois	State Structure & Commission	\$ 1,000,000,000.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
15	Indiana	State Structure & Commission	\$ 1,000,000,000.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
16	Iowa	State Structure & Commission	\$ 1,000,000,000.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
17	Kansas	State Structure & Commission	\$ 1,000,000,000.00	\$ 11.0	No County Funding	None	0.00%	0%	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10	10
18	Kentucky	State Structure & Commission	\$ 31,498,410.00	\$ 7.4	State Funding - 51%	DUI fees	5.70%	0.16%	8	5	10	10	0	7	7	5	10	7	5	10	7	5	10	7
19	Louisiana	State Structure & Commission	\$ 70,798,000.00	\$ 15.7	No County Funding	None	0.00%	0.38%	2	0	10	6	10	5	7	7	5	10	7	5	10	7	5	10
20	Maine	State Structure & Commission	\$ 94,227,081.00	\$ 10.0	State Funding - 50%	City Filing Fees	52.00%	0.11%	10	5	4	5	5	8	8	5	10	5	5	10	5	10	5	10
21	Maryland	County Based (Appellate Commission only)	\$ 572,877,808.00	\$ 15.7	County Funding - 51%	None	0.90%	0.02%	6	0	3	5	8	5	8	5	5	10	8	5	10	8	5	10
22	Massachusetts	State Structure & Commission	\$ 22,640,113.00	\$ 5.2	State Funding - 50%	None	12.60%	0.05%	6	7	5	5	5	0	5	10	5	10	5	10	5	10	5	10
23	Michigan	State Structure & Commission	\$ 90,129,265.00	\$ 11.7	No County Funding	None	0.00%	0.10%	2	10	10	7	5	7	2	10	0	10	7	2	10	7	5	10
24	Minnesota	State Structure & Commission	\$ 33,432,991.00	\$ 8.4	State Funding - 30%	None	12.40%	0.17%	0	3	5	3	5	3	5	5	5	10	5	5	10	5	10	5

STATE-BY-STATE INDIGENT DEFENSE OVERVIEW

STATE	STRUCTURE & OVERSIGHT	Combined State & County Defense Spending	Cost Per Capita Median: \$11.63	FUNDING BREAKDOWN			Size of Death Row	Assessment of ABA Ten Principles										Rating	
				Reliance on County Funding?	Alternative Funding Sources	% of Defense Costs Paid by Counties		% of Total State Budget	1	2	3	4	5	6	7	8	9		10
1-32 Indiana	County Based, Reimbursed for Meeting Standards	\$ 42,467,000.00	\$ 6.73	County Funding > 50%	None	54.10%	0.08%	3	4	5	5	5	5	5	5	5	5	5	4.7
T-33 N. Carolina	County-Based with State Commission	\$ 85,536,000.00	\$ 9.66	No County Funding	None	0.00%	0.25%	185	5	7	5	5	0	5	5	5	5	5	4.7
35 Washington	County-Based & No Commission	\$ 73,538,270.00	\$ 11.50	County Funding > 50%	None	94.50%	0.02%	9	0	1	5	5	5	5	5	5	5	5	4.1
36 Nevada	County-Based & No Commission	\$ 27,532,286.00	\$ 11.03	County Funding > 50%	None	97.40%	0.01%	80	7	3	0	0	0	5	5	5	5	5	3.7
37 Texas	County Based, Reimbursed for Meeting Standards	\$ 144,663,654.00	\$ 6.15	County Funding > 50%	None	93.40%	0.02%	393	3	1	4	5	2	8	5	3	2	2	3.5
38 Nebraska	County-Based & No Commission	\$ 23,539,687.00	\$ 13.31	County Funding > 50%	None	95.20%	0.01%	9	0	1	0	5	2	5	5	0	5	7	3.0

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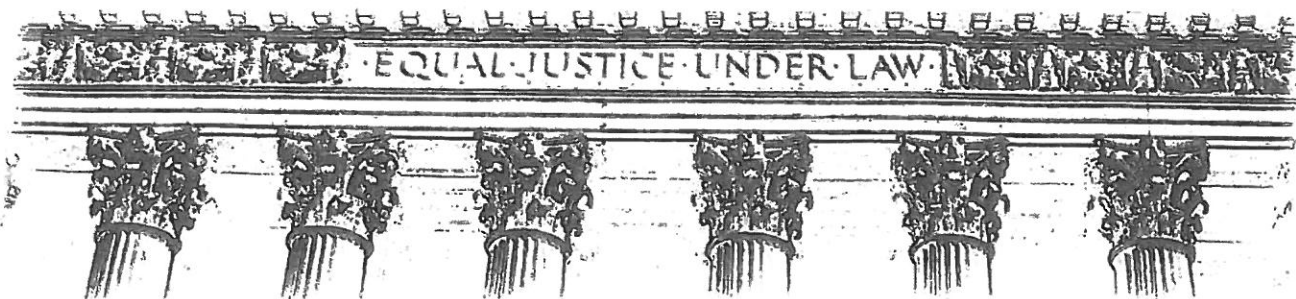
V

Illustrations of Best Practices

As the nationwide matrix suggests, there is a huge variation in the quality of public defense services. While there are systems in which people are convicted regularly without ever talking to a lawyer, there also are programs that provide daily stellar services to clients and the community. Here again,

one of the dividing lines between good and poor quality services is the extent to which systems incorporate quality control standards. Using some of the *Ten Principles* as a baseline, below are a few examples of how programs incorporate standards effectively.

- **Principle 5 - Controlling Public Defender Workload:** The Oregon Public Defender Commission ("OPDC") contracts with private attorneys, consortia of attorneys, and independent 501c3 public defender agencies. OPDC's system for managing workload also allows it to manage the distribution of cases between its various contractors. OPDC contracts require defender offices to "maintain an appropriate and reasonable number of attorneys and support staff to perform its contract obligations." The contract allocates case numbers among different categories of cases according to the number of hours commonly required for each type of case, essentially constitutes a case "weighting" system, i.e., measuring "workload" rather than caseload, and allowing more sophisticated planning for the office's actual work and staffing needs. Offices monitor intake and project compliance with its estimated workload weekly. The court is notified promptly if workloads are exceeded and additional appointments must be declined. If, for example, the office meets its workload level on a Wednesday, the balance of all new assignments for the week goes to the private attorneys.
- **Principle 9 - Providing Effective Training:** The Public Defender Service for the District of Columbia ("PDS") places particular emphasis on the training of its new attorney "class" — newly hired lawyers who all begin their duties with PDS on the first Monday in October (the same day the U.S. Supreme Court Term begins). A dedicated trial attorney Training Director conducts an intensive six-eight week, training program, including agency and justice system orientation, advocacy skills building program, and compliance with ethics rules. The new attorneys have no client or caseload responsibilities while training. Current and former PDS attorneys and staff actively participate in training, which clearly communicates PDS' client-centered culture and expectation of excellence. The novice lawyers are introduced to the people in the criminal justice system with whom they will interact, including, during their mock trial "final exam," many of the judges before whom they will appear.
- **Principles 6 & 10 - Attorney Qualifications & Supervising Performance:** The statewide agency in Massachusetts tasked with oversight of legal representation of indigent persons is the Committee for Public Counsel Services (CPCS).²³ CPCS contracts with 12 local bar advocate programs to monitor and provide supervision to private attorneys who accept cases. Assignment of cases is based solely on scheduled court



days staffed on a rotational basis, to reduce the risk of undue judicial influence in the selection of attorneys. Attorneys accepting cases must first be certified by CPCS to take cases. For example, attorneys seeking assignment to cases at the Superior Court level must be individually approved by the chief counsel of CPCS, whose decision is informed by the recommendation of a Certified Advisory Board composed of eminent private attorneys from each geographical location. Certification is only valid for a term of four to five years, after which all attorneys must be re-evaluated. All newly certified attorneys must participate in a mandatory program of mentoring and supervision overseen by the Bar Advocacy Programs for a minimum of eighteen months.



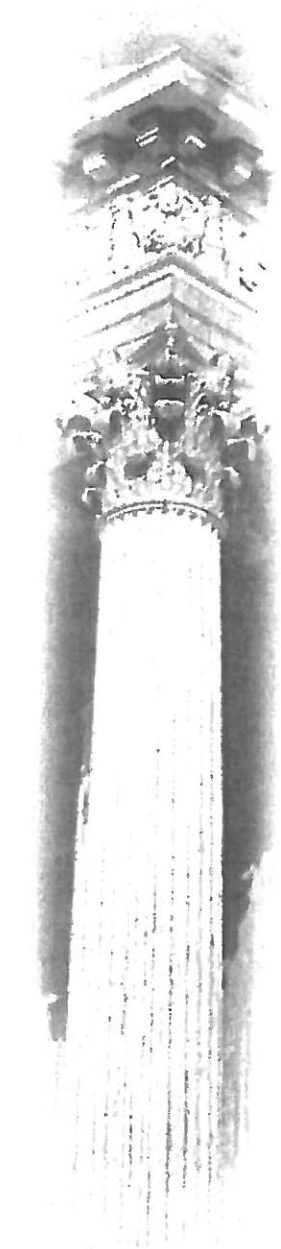
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- **Principle #1 - Independence of the Defense Function:** Prior to the enactment of the Louisiana Public Defender Act of 2007, the District Court judiciary had the power to appoint the members of local indigent defense boards who in turn made the decisions regarding how services were to be provided on a day-to-day basis. In Orleans Parish, this resulted in the local board being chaired for years by a lawyer for the local police association.²⁴ Throughout the state, local judges appointed people with similar conflicts of interests, or people clearly unqualified to make decisions on how services should be delivered, but who were beholden to the judge for their appointment. In short, the various local boards administered the systems in the judges' best interests rather than the clients' best interests. The new statute invests a statewide oversight commission with regulatory authority to set and enforce standards in accordance with the ABA *Ten Principles*. To prevent undue judicial or political interference, the 15-member commission is appointed by diverse authorities, including: the Governor (2 appointments), the Chief Justice (2), the President of the Louisiana Bar Association (2), the Speaker of the House (1), President of the Senate (1), the Deans of the four in-state accredited law schools (1 each), the African-American Bar (1), and associations representing the interest of the juvenile and adult client community (1 each).

VI

Public Defense Innovations

The failure of states to effectively implement *Gideon* also impedes the advancement of client-centered representation. Public defenders have a unique chance to not only address a client's specific criminal charges but to use the trauma of a criminal arrest for positive gain by addressing specific life-issues that may have led to the alleged criminal activity. As opposed to prosecutors, who necessarily have to take an adversarial approach to defendants, public defenders can build on the attorney-client trust relationship to help resolve problems a client may be having with substance abuse issues, public housing issues, immigration issues, or, in the case of children, educational needs that are not being met. By addressing the full array of client issues, public defenders can both reduce justice expenditures and, more importantly, potentially reduce the chances that a client will re-offend. Moreover, as opposed to traditional public defender offices that view their representation as ending with the disposition of a client's criminal charges, client-centered defender offices view their job as being the client's advocate post-disposition as well, greatly facilitating a client's re-entry into society after a sentence has been served.



JUSTICE