



50 years later after Gideon, inconsistencies diminish the right to counsel: Joe Frolik

By [Joe Frolik, The Plain Dealer](#)

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Last week marked one of the most important anniversaries in American legal history: On March 18, 1963, a unanimous U.S. Supreme Court ruled that defendants in criminal cases had a constitutional right -- rooted in the Sixth Amendment -- to be represented by an attorney, at the public's expense, if need be.

The ruling, in a case from Florida known as [Gideon v. Wainwright](#), was a high-water mark for the court under Chief Justice Earl Warren. Today, Gideon remains not only the law of the land, but an emblem of America's commitment to justice for all.

And yet many [attorneys and scholars contend](#) that emblem is deeply tarnished.

They [point to a criminal system](#) in which public defenders and appointed defense lawyers are often overworked, underpaid and forced to represent indigent clients with far fewer resources than the prosecutors have.

Then there is the system of civil law, where people can face enormous, life-altering decisions -- eviction, foreclosure, repossession, divorce, child support -- without any right to counsel. Gideon covered only the criminal side of the law, and efforts to establish a civil equivalent have made little headway.

Cleveland's 108-year-old [Legal Aid Society](#), which serves low-income people with civil problems, is considered among the best in the country, and yet it turns away half of those who ask for help. The local bar, with an enviable history of pro bono work, picks up some of the slack, but still many defendants go to court without representation.

Statewide, more than 1.2 million Ohioans live beneath the poverty line. And yet the number of legal aid attorneys available to represent or advise them has fallen by 30 percent since the start of the Great Recession. Ohio Supreme Court Chief Justice Maureen O'Connor is [preparing to launch](#) a task force to look for ways to improve access to the courts on the civil side.

Money is clearly a factor, especially with all governments facing austerity.

But even before the economy buckled, two earlier study groups -- one of them a 1992 effort chaired by then-Ohio Supreme Court Justice Craig Wright -- concluded that Ohio's system for serving indigent criminal clients was inefficient and ineffective.

Finding the will and the resources to change that, even in good economic times, will always be difficult. As the late Robert F. Kennedy, then attorney general of the United States, noted after Gideon, accused criminals don't have much of a lobby.

Kennedy nevertheless helped to create a federal public defender system that [Stephen Bright](#), who teaches at Yale Law School and heads the Southern Center for Human Rights in Atlanta, calls the model for indigent defense. Its attorneys are well-trained, reasonably paid and given strong professional support.

That example is not emulated by many states. Ohio's indigent defense system is a mishmash of full-time public defenders, appointed counsel and contract attorneys who bid for cases. Larger public defender offices, such as Cuyahoga County's, have some investigators and social workers to help prepare cases, but often attorneys for the poor must petition judges for money to hire expert help. In some counties, prosecutors routinely challenge those requests, in effect trying to constrict the defense team before it even gets to court.

"Ohio's not unique across the country," says Timothy Young, director of the [Office of the Ohio Public Defender](#). "Most states have failed to meet the Sixth Amendment and to meet the promise of Gideon."

Clarence Earl Gideon, the man whose name has for 50 years been attached to that promise, was as [unlikely a constitutional law icon](#) as you could imagine.

When the Bay Harbor Poolroom in Panama City, Fla., was robbed of beer, wine, soft drinks and some jukebox money in the wee hours of June 3, 1961, Gideon was 50 years old, an itinerant high school dropout with a drinking problem and a long rap sheet. After an eyewitness told police he'd seen Gideon near the pool hall around the time of the heist, he was arrested and charged with breaking and entering with intent to commit petty larceny. He was convicted on Aug. 4 and sentenced to five years in prison.

But Gideon had been around courtrooms often enough to believe he'd been wronged. The trial transcript quotes him asking for a lawyer: "The United States Supreme Court says I am entitled to be represented by Counsel." Judge Robert McCrary Jr. disagreed. The high court, he ruled, required appointed counsel only in capital cases.

At the state prison in Radford, Gideon spent time in the law library. Then, using pencil and prison stationery, he printed a five-page request to Chief Justice Warren and the Supreme Court to review his case. He mailed it in June 1962.

Gideon's timing could not have been better. The court had been looking for an opening to expand the right to counsel initially proclaimed in the 1932 Scottsboro Boys case. When clerks flagged Gideon's writ, the justices assigned Washington superlawyer (and future Justice) Abe Fortas to argue the indigent appellant's case. A group of 23 state attorneys general, organized by Minnesota's Walter Mondale, the future senator and vice president, filed a supporting brief.

Two months after the case was argued, the high court issued its landmark ruling, overturned Gideon's conviction and ordered a new trial. With an attorney who broke down the story of the state's star witness, Gideon was acquitted.

Anthony Lewis, then covering the Supreme Court for The New York Times, chronicled the case in his [1964 book](#) "Gideon's Trumpet." When it was made into a television movie, Henry Fonda played Clarence Gideon.

But storybook endings about the triumph of justice are the stuff of Hollywood and bestsellers. The gritty reality of the courtroom is not so pretty.

The high court offered no guidance on how counsel was to be provided -- and in a 1984 case, a much-changed court set a low bar on the quality of representation that was acceptable. Much as they did with desegregation, some states resisted or ignored the mandates of Gideon. Some tried to implement a thorough defense system, but allowed it to erode as expenses grew and public concern about crime touched off a wave of laws that filled courtrooms and exploded America's prison population.

Quite frankly, admits Yale's Bright, indigent legal services are seen by many public officials as just another unfunded mandate from Washington.

The golden anniversary of Gideon finds America still struggling to square its ideals with the willingness to pay for them. Georgetown University law professor [Paul Butler writes](#) that when Gideon was decided, 43 percent of criminal defendants were indigent; today more than 80 percent are. Fewer data are available on the civil side, but some states report that on matters such as evictions, more than 95 percent of defendants are without representation.

"I hire the best and the brightest, and if we had a bigger budget, we could hire more people to do this work and do it well," says Colleen Cotter, executive director of Cleveland's Legal Aid Society. "Right now, in too many cases, we have justice for rich people, but we don't have justice for poor people."

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