

CRIMINAL JUSTICE REFORM:

Addressing Deficiencies in Idaho's Public Defense System



By delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight, Idaho has sewn a patchwork quilt of underfunded, inconsistent systems that vary greatly in defining who qualifies for services...None of the public defender systems evaluated are constitutionally adequate.

-2010 National Legal Aid and Defenders Association Idaho Report

ACLU of Idaho
PO Box 1897, Boise, ID 83701
(208) 344-9750 | www.acluidaho.org



"From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him."

JUSTICE HUGO L. BLACK
U.S. SUPREME COURT
Gideon v. Wainwright (1963)

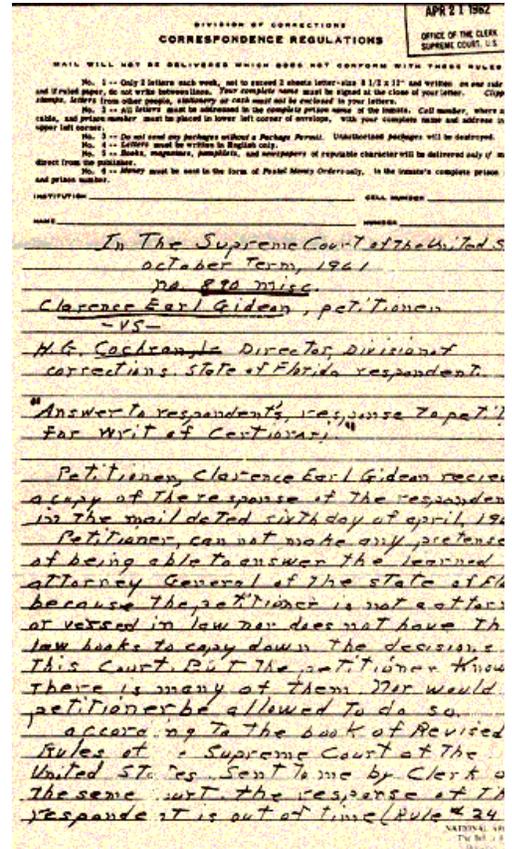
BACKGROUND

Gideon v Wainwright: States responsibility for Indigent Defense

In June 1961, a burglary occurred at the Bay Harbor Pool Room in Panama City, FL. Police arrested Clarence Earl Gideon after he was found nearby with a pint of wine and some change in his pockets. Gideon, who could not afford a lawyer, asked a Florida Circuit Court judge to appoint one for him, arguing that the Sixth Amendment entitles everyone to a lawyer. The judge denied his request and Gideon was left to represent himself. Not surprisingly, he was unable to defend himself effectively and was found guilty of breaking and entering and petty larceny. He was sentenced to five years in prison.

While serving his sentence in a Florida state prison, Gideon began studying law, which reaffirmed his belief his rights were violated when the Florida Circuit Court refused his request for counsel. From his prison cell, he handwrote a petition asking the U.S. Supreme Court to hear his case and it agreed. The Court, in *Gideon v Wainwright*, unanimously ruled in Gideon's favor, stating "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."

The 1963 decision in *Gideon* established that the Sixth Amendment requires **states** to provide effective representation for criminal defendants who are unable to afford an attorney. As such, it is the **state** that is responsible for the failure of its indigent defense system to deliver competent representation.



Background – Idaho's Deficient Public Defense System

Under *Gideon*, the state has a constitutional obligation to provide indigent defense. In Idaho, the state has abdicated its constitutional responsibility to the counties, and by extension, to the people of Idaho. Only three (3) counties in Idaho house an office of public defense, thirty-seven (37) counties engage in flat-fee contracting, and four (4) counties rely on an individual appointment system. This abdication has resulted in a constitutionally deficient system across the state that lacks proper independence, oversight, accountability, and parity.

In January 2010, the National Legal Aid and Defender Association (NLADA) released a comprehensive research study on the state of trial-level indigent defense in Idaho. Seven (7) Idaho counties were evaluated and the NLADA found that "[b]y delegating to each county the responsibility to provide counsel at the trial level without any state funding or oversight, Idaho has sewn a patchwork quilt of underfunded, inconsistent systems that vary greatly in defining who qualifies for services and in the level of competency of the services rendered." (NLADA report, pg. 2). The State of Idaho can no longer ignore the public defense crisis in this state, and should immediately take heed to the NLADA's finding that "none of the public defender systems in the sample counties are constitutionally adequate." (NLADA report, pg. 3).

ACLU RECOMMENDATIONS

With the goal of formulating a constitutionally adequate system of public defense, the ACLU believes the following recommendations, based on the American Bar Association's *Ten Principles of a Public Defense Delivery System*, should be included in any systemic reform. Although we are referencing adult indigent defense system, Idaho would be well served in simultaneously attending to the crisis in Juvenile Delinquency Representation outlined in the NLADA report. The NLADA and National Juvenile Detention Center's *Ten Core Principles for Providing Delinquency Representation through Public Defense Delivery Systems* (http://www.njdc.info/pdf/10_Core_Principles_2008.pdf) should be given attention in any proposal.

Independence

ABA Principle One: *The public defense function, including the selection, funding, and payment of defense counsel, is independent.*

- Establishment of an independent statewide oversight board whose members are appointed by diverse authorities. This would ensure no single official, contracting agency or political party has unchecked power over the public defense system.

Establishment of Reasonable Workload Control

ABA Principle Two: *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.*

ABA Principle Five: *Defense counsel's workload is controlled to permit the rendering of quality representation.*

As a matter of definition: caseload equals actual cases whereas workload weights the types of cases and includes non- case related work, such as supervisory and administrative responsibilities for a more accurate reflection.

- Outline of appropriate caseload limits for cases of average complexity.
- Published written policies and procedures that implement a case-weighting system to count cases.
- Mandatory workload reporting for all attorneys.
- Written policies requiring attorneys to refuse new cases and report to their direct supervisor, in writing, if their individual workload has exceeded the maximum set out in workload standards.
- Implementation of alternative counsel coverage plan when maximum workloads are reached.
- State funding and oversight to maintain and assess adequate workload levels.
- Funding is for counties that meet minimum standards through assessment.
- Decriminalize statutes, such as DWP or Driving without Privileges, so they reduce the overall burden on criminal justice system.

Eligibility Screening & Prompt Appointment of Counsel

ABA Principle Three: 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.

- Financial eligibility screening criteria should include both a mathematical formula for identifying income and assets that are categorically eligible, as well as factors to guide discretionary eligibility decisions for unusual or special hardships, including loss of employment due to arrest.
- Eligibility screening should be conducted confidentially by the court to prevent prosecutorial misuse of statements made during the screening process.
- Any public defense office must have enough attorneys available in the hours before and during first appearance calendars to insure that all indigent accused have meaningful access to counsel prior to appearing before the court.
- Based on Idaho statutory and US Supreme Court precedent, counsel in every Idaho county is being assigned too late for 6th Amendment compliance.

Adequate Time & Space for Client Communication

ABA Principle Four: Defense counsel is provided sufficient time and confidential space within which to meet with the client.

- Attorney-client consultations between indigent accused and their appointed attorneys need to take place in a secure meeting place that ensures confidentiality and does not place attorney-client privilege in jeopardy.
- Accused held in detention while awaiting trial must have meaningful opportunities to review paper and electronic files in jail to adequately assist their attorneys.

Competency & Training

ABA Principle Six: Defense counsel's ability, training, and experience match the complexity of the case.

ABA Principle Nine: Defense counsel is provided with and required to attend continuing legal education.

- Development of a uniform applicant evaluation system for use when evaluating candidates for Public Defender. The statewide system should incorporate methods for measuring the management, administrative, litigation, and specialized practice abilities and experience of all applicants.
- A comprehensive orientation and ongoing training should be required for all public defenders.
- Written performance guidelines and a performance-based evaluation for all public defenders.
- Public defenders should be provided adequate resources to attend continuing legal education (CLE) and criminal justice training equal or equivalent to prosecuting attorneys.
- Statewide training program for Public Defenders that has statewide funding for initial and ongoing training.

Vertical Representation

ABA Principle Seven: The same attorney continuously represents the client until completion of the case.

- Written vertical representation policy requiring the same attorney to maintain representation throughout the case, including on direct appeal, and personally appear at every court appearance.
- Procedures for transitioning to new counsel in the event of resignation or termination of an attorney and for emergency circumstances.

Resource Parity

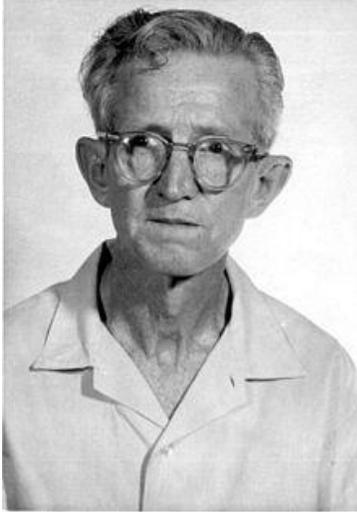
ABA Principle Eight: There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.

- Abolish flat-fee contract systems, which are oriented solely toward cost reduction and erode constitutional mandates.
- Annual review of overall load on the criminal justice system with recommendations on appropriate adjustments to public defense resources to ensure parity with prosecutors. To assess “overall load” the review must consider ALL of the burdens on the criminal justice system that have a bearing on a Public Defenders workload, such as legislative additions to the criminal statutes, arrest and prosecution rates in all categories, Public Defender and conflict/overflow appointments, caseloads of magistrate and district judges, and trends observed by law enforcement.
- Provision of adequate investigative and expert resources from a central source, such as an oversight board.

Accountability & Transparency

ABA Principle Ten: Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.

- Annual data collection and reporting requirements.
- Quality and efficiency evaluation of the public defense system every five years.
- Independent oversight board must evaluate trial level Public Defender system on a regular basis. The oversight Board should be equipped with enforcement mechanisms to be able to rectify constitutionally deficient programs.
- Every five years, after completing the quality and efficiency evaluation, recommendations should be submitted to the independent oversight board with recommendations. The governing authority should make a written statement, on the record, adopting completely, adopting with modifications, or rejecting each recommendation.



Clarence Earl Gideon

Significance of *Gideon v. Wainwright* and the need to reform Idaho's Indigent Defense System

After the US Supreme Court remanded the case for rehearing, about 2000 individuals convicted in Florida alone were freed as a result of the *Gideon* decision. Gideon himself was not freed; instead, he got a new trial. The retrial took place five months after the Supreme Court ruling, this time Gideon had a court appointed attorney. The jury deliberated only an hour before delivering an acquittal. If Gideon had not challenged the government, he would have spent five years in state prison for a crime he never committed. It was only through the aid of a public defender that Gideon was able to effectively defend himself and get justice. Fifty years after *Gideon*,

Idaho's public defense system is in dire need of fixing to ensure it meets Constitutional standards. The State of Idaho can no longer ignore the public defense crisis in this state, and should immediately take heed to the NLADA's finding that "none of the public defender systems in the sample counties are constitutionally adequate."



About the ACLU

The ACLU of Idaho is a non-partisan organization dedicated to the preservation and enhancement of civil liberties and civil rights. We believe that the freedom of press, speech, assembly, and religion, and the rights to due process, equal protection and privacy, are fundamental to a free people.

The ACLU of Idaho strives to advance civil liberties and civil rights by activities that include litigation, education, and lobbying.

The ACLU of Idaho was founded in 1988 and became an affiliate of the national American Civil Liberties Union in 1993. We implement legal, legislative, and public education programs in conjunction with large numbers of volunteers to advance the ACLU's goals of liberty and justice for all. A statewide Board of Directors sets policy, raises funds, and provides legal and fiduciary oversight. The ACLU of Idaho is made up of five full-time employees, and is supported by an expanding base of members and volunteers.