

**“The *Gideon* Decision: Constitutional Mandate or Empty Promise? Does the 50<sup>th</sup> Anniversary of the U.S. Supreme Court Decision Deserve a Celebration?”**

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Introduction

Author: Daniel T. Goyette\*

At its annual convention on June 19, 2013, the Kentucky Bar Association and its Criminal Law Section sponsored a special CLE session entitled “The *Gideon* Decision: Constitutional Mandate or Empty Promise? Does the 50<sup>th</sup> Anniversary of the U.S. Supreme Court Decision Deserve a Celebration?”. The program focused on the landmark case of *Gideon v. Wainwright*,<sup>1</sup> in which the Supreme Court of the United States, on March 18, 1963, unanimously declared the "obvious truth" that "lawyers in criminal court are necessities, not luxuries." The Court's opinion was rendered in response to a handwritten petition submitted by Clarence Earl Gideon after he was convicted in a Florida trial court without a lawyer despite his request for the appointment and assistance of counsel. The U.S. Supreme Court concluded that states have a constitutional obligation under the Sixth and Fourteenth Amendments to provide counsel to indigent defendants in felony cases. Subsequently, that right was extended to any case that may result in a potential loss of liberty.<sup>2</sup>

While it is no exaggeration to characterize the anniversary of the *Gideon* decision as one of the most profound in our jurisprudential history, the Court's declaration about the fundamental, essential nature of the constitutional right to counsel has had a hollow ring in the 50 years since the *Gideon* decision. There are people in courtrooms across the country every day that go unrepresented or are defended by attorneys who do not have the time or resources to do their jobs. The U.S. Department of Justice has itself declared that public defense in the United States is in a "chronic state of crisis." This has put the entire criminal justice system in jeopardy; even worse, it has eroded the public's confidence in the system that is the bedrock of American democracy.

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\*Chief Public Defender for Louisville and Jefferson County Metro, and Executive Director of the Louisville-Jefferson County Public Defender Corporation.

[1] 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed. 2d 799 (1963).

[2] *Gideon* established the right to counsel in all felony trials. In ensuing cases, that right was extended to: direct appeals, *see* *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation, *see* *Miranda v. Arizona*, 384 U.S. 436 (1966); juvenile proceedings that result in confinement, *see* *In Re Gault*, 387 U.S. 1 (1967); preliminary hearings, *see* *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanors in which imprisonment is a possibility, *see* *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and misdemeanors involving suspended sentences, *see* *Shelton v. Alabama*, 535 U.S. 654 (2002).

Shortly before his term as President of the American Bar Association ended, Wm. T. (Bill) Robinson III addressed the Foundation for Criminal Justice at its banquet celebrating the 50th Anniversary of the *Gideon* decision. He made clear that a fair trial requires the right to counsel at every step of the judicial process, and that the ABA fully supports that right. "Without it, can we honestly say that people are receiving the dignity, equality, and basic human rights the Constitution demands and that our people deserve? ... It is our duty, as lawyers, as Officers of the Court, to ensure the basic rights guaranteed by *Gideon* are fulfilled."

One of the objectives of the KBA program was to highlight that duty in the face of the what Attorney General Eric Holder has accurately termed "...our well documented...national difficulty to meet the obligations recognized in *Gideon*," and to issue a call for action, not just by the bench and bar, but by the legislative and executive branches of government, state and federal.

The KBA presentation began with the premiere screening in Kentucky of The Constitution Project's critically acclaimed film, *Defending Gideon*, followed by passionate remarks, both disturbing and inspiring, from Steve Bright, and a spirited discussion among equally passionate, distinguished and opinionated panelists: Amy Bach, Steve Hanlon, Bill Leahy and Prof. Cedric Powell. The articles published here capture the essence of their respective comments and observations on the *Gideon* decision and the true state of indigent defense in this nation. The common thread among the viewpoints they express is genuine concern about equal justice and making the mandate of *Gideon* a reality in our courts every day. Each of them underscores the importance of lawyers in our American system of justice, and the difference that competent representation and effective advocacy makes in the outcome of criminal cases. Needless to say, liberty does not defend itself. Clarence Gideon's case proved that a half century ago. These articles demonstrate that the need for continued dialogue on right-to-counsel issues is important, but that the need for action, more so, lest the *Gideon* decision continue to be considered as nothing other than an empty promise.

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