2006

The Crisis in Indigent Defense: A National Perspective

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Indigent Defense

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by Mary Sue Backus and Paul Marcus

You have a right to a lawyer. In our system of criminal justice this is a bedrock principle of fairness. The U.S. Supreme Court unequivocally has made it a constitutional obligation of states to provide attorneys to poor criminal defendants. In the landmark case of *Gideon v. Wainwright*,[1] the U.S. Supreme Court unanimously recognized 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." Observing that "lawyers in criminal courts are necessities, not luxuries" the Court concluded that states have a constitutional obligation under the Sixth and Fourteenth Amendments to provide counsel to indigent defendants in felony cases. Subsequent rulings have consistently expanded the right to counsel to almost any case that potentially may result in a loss of liberty.[2]

The Constitution demands fair and adequate legal representation to criminal defendants who cannot otherwise afford it. Television crime dramas have drilled this concept into the lexicon of the public collective consciousness. Yet, this fundamental requirement routinely goes unmet in many state and county courtrooms all across the country. For instance:

- A man charged with jumping a subway turnstile in Atlanta to evade a $1.75 fare sat in jail 54 days before a lawyer was appointed, far longer than the sentence he would have received if convicted;
- A woman in Massachusetts was jailed for over two months without a lawyer and was unable to get a bail review during that time;
- In a case of mistaken identity, a Texas man was charged with a drug offense and spent six weeks in jail before he was assigned a lawyer, and another seven weeks in jail before the case was dismissed when it became obvious that the police had arrested the wrong man;
- A woman in a Washington municipal court stipulated to facts sufficient to convict her, received a suspended jail sentence, a $500 fine, and a conviction on her record, all without ever speaking to an attorney. In the one minute and 47 seconds it took the judge to dispose of her case, the judge never inquired whether she knew she had a right to a lawyer;
- A part time New York county assistant public defender(s heavy caseload precludes him from spending any time on his assigned cases other than in court, so investigation is well beyond his reach;
- In Kentucky, public defender caseloads are so high that attorneys can devote on average less than four hours per case, including serious felonies that go to trial;
- Without training, a young appointed lawyer in Ohio was said to be "oblivious" as to how to investigate a serious felony case and was unaware that he should interview all potential witnesses before trial;
- A Virginia judge denied a public defender(s request for a DNA expert in a seven-year-old murder case where DNA was the only remaining evidence of substance.

It is not news to anyone working in the criminal justice system that poor criminal defendants are often denied adequate representation. In the four decades since Gideon, a plethora of studies and reports has attempted to call attention to the problems plaguing individual indigent defense systems. In an effort to document and address the full scope of the problem from a national perspective, the Constitution Project[3] and the National Legal Aid and Defender Association (NLADA)[4] joined forces in 2004 to create the National Right to Counsel Committee.

The National Right to Counsel Committee

The Committee's members are an extraordinary group of Americans, with experience as judges, prosecutors, law enforcers, policymakers, defenders, victim advocates and scholars.[5] The unique composition of the Committee, with representatives from every relevant participant in the criminal justice system, and the national focus of its work, distinguishes this effort from the assortment of studies and reports that have been produced in the

past. Its mission was to examine, across the country, whether criminal defendants who are unable to hire their own lawyers are receiving adequate legal representation and to utilize the members' diversity of viewpoints and experiences to create consensus recommendations for reform.

Not surprisingly, the Committee's report echoes in part the litany of defects cataloged in those earlier reports of individual state indigent defense systems. What is truly startling, however, is the depth and breadth of the problems documented by the Committee's research. Compelling evidence supports the inescapable conclusion that we face a true constitutional crisis nationally in fulfilling Gideon's mandate to provide lawyers for defendants who cannot afford one on their own. With rare, but notable, exceptions, the states have simply failed to fully meet their constitutional obligation to provide adequate representation to poor criminal defendants, despite the fact that they have had more than 40 years to do so.

Of course, not every state system is deficient. There are pockets of excellence, some encouraging signs of reform and thousands of dedicated professionals who work hard to provide criminal defendants with skilled representation, even under the most challenging of circumstances. Although there are areas where systems are functioning well, the far more common scenario is a system that fails to deliver adequate representation as a result of an array of common problems. The challenges facing indigent defense systems across the country fall into eight general areas: structural independence, financial support, caseloads and compensation, access to counsel, training, evaluation and supervision of defenders, defender resources, and overriding ethical and professional responsibility concerns.

Common challenges

Structural Independence

The very first of the ABA's *Ten Principles of a Public Defense Delivery System*[6] makes clear that the public defense function – including the selection, funding, and payment of defense counsel – should be independent from judicial and political influence. In the same way that the prosecution and retained defense counsel have autonomy, so should public defense attorneys. Too often, however, public defense systems are compromised by a lack of nonpartisan supervision and are tainted by inappropriate judicial oversight. Political influences also undermine the integrity of the system when there is no independent entity advocating for indigent defense needs.

Judicial oversight and discretionary appointments made by judges can result in "cronyism" and the appointment of defense counsel who are more attuned to moving the docket than adequately representing poor clients. Although the vast majority of judges are impartial and seek justice with an even hand, at a minimum judicial oversight creates serious problems of perception. More importantly, where judges make defense appointments, approve attorney pay vouchers and control the defense budget for investigators and experts, the opportunities for abuse are present. Such opportunities may be difficult to resist given the political pressures on elected judges and the realities of crowded criminal court dockets.

Entire statewide systems have been sharply criticized for having a pervasive absence of independence for the defense function from the judiciary [North Dakota], or giving far too much discretion to judges with the appointment of defense counsel [Texas], or not providing distance of indigent defense counsel from judges and politicians [Georgia], or not having independent oversight commissions [Tennessee], or requiring defense services to compete for financial support with other government agencies [Nevada]. Defense counsel cannot be vigorous advocates for their clients where their compensation or continued employment depends upon catering to the predilections of judges or legislators.

Funding

There is an undeniable fiscal challenge to adequately protecting the rights of poor people accused of crimes. Few states appear willing to give the funds necessary to provide lawyers with the tools, time and resources to enable them to offer constitutionally mandated criminal defense for indigent defendants. Only half the states provide 100 percent of their indigent defense funding at the state level. Most of the other states split the cost between the local county governments and the state, with a great deal of variation in the level of funding given by the state treasury and the portion of the funding burden assigned to the county governments. Two states, Utah and Pennsylvania, provide no funding at the state level and leave the responsibility solely to individual counties. There is also great variation in the methods through which the funds are derived. In Louisiana, for instance, public defense revenue is based almost entirely on income from traffic ticket fees. The abdication of funding responsibility by fully half the states and the widely variant approaches to indigent defense funding have produced a myriad of systems that vary greatly in defining who qualifies for services and the competency of the services rendered.

Regardless of what level of government offers the funding for indigent defense, state or local, by virtually every measure in every report analyzing the U.S. criminal justice system, the defense function for poor people is drastically underfinanced. The disparity on funding between defense and prosecution is estimated to be enormous. We currently spend about one hundred billion dollars each year on criminal justice, but only about 2-3 percent of that total goes to indigent defense.[7] The lack of an identifiable constituency to advocate for the rights

of poor defendants invariably relegates this critical element of our criminal justice system to the bottom of most legislators' political agenda and thus adequate funds are not forthcoming.

Of course, many of the problems identified by the Committee have budgetary implications, but overwhelming caseloads and inadequate compensation to defenders are two key areas where insufficient funding is particularly implicated.

Excessive caseloads

Enormous workloads of both public defenders and court appointed attorneys compromise the quality of representation afforded indigent defendants. Regardless of the chosen delivery system – court appointed counsel, public defender offices, contract attorneys, or some combination – overworked defenders struggle to meet the demands of providing appropriate service to an overwhelming number of clients. Defenders routinely are expected to handle caseloads far exceeding national caseload standards.[8] This caseload pressure often results in inadequate preparation, failure to investigate or interview witnesses, insufficient contact with the client, inability to prepare and file necessary motions, and a propensity to utilize the plea bargaining process to avoid trial rather than proceeding in the best interest of the client.

National caseload standards suggest that a single attorney can properly handle 200 juvenile cases a year, yet in Clark County, Nevada, the juvenile caseload is more than seven times that recommended limit, at approximately 1,500 cases per year. Minnesota public defenders must cope with caseloads nearly twice the recommended amount, over 900 cases a year. As noted above, Kentucky caseloads are such that a public defender has less than four hours to devote to each case, even serious felonies that go to trial. Even the most dedicated and able lawyers cannot provide effective representation to their clients where there are simply too many clients and not enough time to serve them adequately. As a result, defendants can often spend weeks or months without meeting their attorneys and defense lawyers sometimes have just minutes to prepare for court hearings or even trials.

Salaries/compensation

Lawyers who represent criminal defendants are entitled to a fair wage that is within the professional standards of their community. Yet, salaried public defenders often receive smaller paychecks than their counterparts in prosecutor offices, despite the fact that they work on the same cases and do similar work. In addition, many states and counties set limits on the hourly rates and total compensation for court appointed counsel. Low public defender salaries and poor hourly compensation for court appointed attorneys significantly erode the level of representation provided to indigent defendants.

Low salaries result in high turnover in public defender offices and difficulty in recruiting and retaining experienced or skilled attorneys. In Missouri, for example, the annual turnover rate for defenders has been more than 20 percent, and includes departures of both entry-level attorneys and more senior level attorneys. This high turnover rate resulted in a backlog of almost 22,000 cases in one year because of the inadequate number of available public defenders.

Like many other states, Iowa reports that it has seen that even recent law school graduates find it difficult to engage in public defense work because frequently they cannot repay their law school student loans and live on the low compensation provided. Massachusetts recently struggled with the repercussions from years of inadequate hourly rates for appointed defense counsel. Because of low pay and high caseloads, attorneys willing to act as appointed counsel there declined steadily from the late 1990s through 2003. This caused even greater caseloads, precipitating a crisis where there were not enough lawyers available to represent defendants. Defense attorneys sued the state for an increase in hourly rates, arguing that the rates were so low that they violated their clients' rights to effective assistance of counsel. The Massachusetts Supreme Judicial Court agreed, ruling in 2004 that some indigent defendants were not receiving their constitutionally guaranteed right to counsel. The court mandated that defendants could only be jailed for seven days without a lawyer and that after 45 days without a lawyer, charges would be dropped.[9]

Inadequate compensation of court appointed attorneys places a premium on high volume and dispensing with cases quickly. It serves as a disincentive for many to invest the time required to provide meaningful and effective representation. Low hourly fees and flat rate compensation encourages lawyers to do what is most profitable for them rather than what is in the best interest of their clients. Virginia provides the starkest example of this with extremely low fees and the only nonwaivable caps in the nation for court appointed counsel work.

Access to counsel

Although constitutionally entitled to legal representation, a surprising number of indigent criminal defendants are denied counsel entirely. Poor defendants are often pressured into pleading guilty, waiving their right to counsel or representing themselves without ever speaking to a lawyer. In addition, stringent eligibility requirements, which can result in coerced self-representation, and the abuse of the plea bargaining system, systematically deprive poor defendants of legal representation. Shockingly, there are still areas of the country that simply fail to provide defense attorneys to certain classes of poor criminal defendants at all.

The subtle, yet effective, pressure on defendants to forgo their right to counsel and plead guilty comes in many forms: mass arraignments, general

explanations of a defendants' rights using videotapes or canned presentations by prosecutors or judges, plea agreements that are good only on the day offered and where a request for counsel results in a return to jail until a lawyer can be appointed and a bail hearing can be calendared. Although explicit threats are rarely made, the undeniable message to many defendants is that they will be punished for exercising the rights guaranteed to them by the Constitution. Riverside, California, provides a particularly disturbing example of this systemic failure. In one branch office of that system, between 40 to 60 percent of cases are disposed of at arraignment without counsel. As an example, in misdemeanor arraignments alone, 14,365 defendants pleaded guilty from October 1, 1998, to September 30, 1999. Of those pleas, 12,350 were made without assistance of counsel.[10]

Training, evaluation, and supervision

Throughout the United States, one finds lack of supervision and failure to evaluate counsel. As a result, it is impossible to ensure that the lawyer's training, experience, and ability appropriately match the complexity of the cases assigned, significantly impairing the quality of representation afforded poor defendants. Failure to establish attorney standards can mean that indigent defense attorneys lack the qualifications to deliver competent criminal defense. The quality of representation suffers, may even be incompetent, when the attorney's qualifications do not match the demands and complexity of the case. We think here of the Montana attorney who was appointed to handle a rape case where the defendant faced a life sentence, despite the fact that the attorney had never handled such a serious case; or the Illinois real estate lawyer who was appointed to represent a capital defendant having never handled a criminal trial on his own.

Ongoing training and supervision are crucial for defense lawyers in order to develop and maintain their skills, particularly in specialized areas, and to be held accountable for the level of representation they provide to clients. Despite the wide recognition of the common sense of providing adequate and ongoing training for defenders, jurisdictions all across the country fail to do so.

Defense Function Resources

There is more to competent representation than merely having an assigned lawyer. As the Supreme Court has recognized, meaningful access to justice includes access to the "raw materials integral to the building of an effective defense."[11] A lack of ancillary resources, critical to effective representation, plagues defender systems nationwide. The assistance of support staff, investigators, paralegals, social workers and independent experts is rarely available to the degree necessary to provide competent representation. The role of support staff is essential both to the quality of representation and the cost-effectiveness of that representation.

For instance, adequate investigation is among the most basic of criminal defense requirements, and often the key to fair representation. All across the country, however, public defenders, appointed counsel and contract attorneys do not have access to appropriate investigative resources. One desperate Pennsylvania public defender admits that he encourages his clients to conduct their own investigations. In some jurisdictions that require court approval to incur fees for investigators or experts, like Virginia, Georgia, Ohio and others, some defenders have simply ceased to ask because judges so rarely approve requests.

In addition to a lack of resources to assist defenders, there is frequently a great disparity of resources between prosecutors and defenders, which undermines the validity and the effectiveness of the adversary system. Without access to the "raw materials" of an effective defense, defenders cannot provide adequate representation to indigent defendants, and criminal trials become fundamentally unfair. Like the prosecution, the defense deserves the appropriate tools to do the job, including technology, facilities, legal research, support staff, paralegals, investigators, and access to forensic services and experts.

Ethics and Professional Responsibility

The challenges facing defenders - overwhelming caseloads, lack of supervision and training, inadequate compensation and resources and political pressure - all raise significant ethical issues for both attorneys and judges. The substandard legal representation that often results from the broad problems plaguing public defense systems not only injures poor defendants, but also forces lawyers to violate their ethical and professional standards. When systemic deficiencies push defenders to compromise their efforts on behalf of clients, those questionable compromises undermine ethical standards and contribute to the denigration of the legal profession and the criminal justice system.

There is growing awareness of the significant gap between the requirements of the ethics rules and the reality of how lawyers actually represent poor criminal defendants. Acknowledging this disparity, two chief public defenders, one in Broward County, Florida and one in St. Louis, have abandoned their standard practice of recommending plea agreements to clients at arraignment or first hearing. Both cited their concern that purporting to represent defendants upon walking into court with no discovery, no time for investigation and no opportunity to counsel the accused fell shy of meeting ethical standards of competent representation. In these jurisdictions, at least, there will be no longer a system of "meet 'em and greet 'em and plead 'em."

Defense attorneys taking shortcuts to cope with crushing caseloads or a lack of resources are not the only individuals within the criminal justice system

who have ethical obligations. Both prosecutors and judges bear some responsibility in maintaining ethical standards as well and their potential role in supporting ethical norms is worthy of exploration.

Charting a Course for Reform

Components of an effective indigent defense system

In the same way that the problems facing indigent defense systems have been relatively well documented, the solutions are not enigmatic. The truth is that criminal justice professionals know how to structure, staff and fund an effective indigent system. States must provide the essentials of a sound indigent defense system: an independent structure within which competent attorneys labor under reasonable working conditions, including realistic caseloads and fair compensation, with the proper tools necessary to deliver competent representation. A key component, of course, is that these essentials are funded at adequate levels. The ABA Ten Principles provide an outstanding template for such a system and the Committee's report will highlight many of those familiar basic recommendations, including:

- The cornerstone to any reform should be the establishment of an independent, nonpartisan authority responsible for the defense function. This state-wide oversight entity provides the mechanism for achieving many of the vital components of an effective system.
- States must establish and enforce standards for attorneys who represent poor criminal defendants, including minimum qualifications, training, and performance requirements.
- States must establish and enforce reasonable workload limits.
- Fair compensation should be paid to all publicly funded defenders.
- States must equip their indigent defense systems with the appropriate tools to enable a defender to deliver competent representation, including staff support such as investigators, paralegals, and secretaries, technology and research capabilities, and access to independent experts and other professional services.

Sparking Action

Those very basic recommendations are neither new nor particularly visionary. The challenge, however, is not in how to structure a constitutionally adequate indigent defense system, but rather, how to compel state officials to act to implement an effective structure. What can be done when states simply choose not to devote the appropriate level of resources or oversight to an indigent defense system? What will it take to generate real reform, to motivate states to take the necessary action to address the deficiencies in their indigent defense systems? Four decades of calls for reform have not sparked significant improvement in many places. Appealing to constitutional sensitivities has not worked in the face of strained state budgets, political pressures, a lack of a constituency to advocate for poor criminal defendants, and the popularity of tough on crime rhetoric that defines so much of the political discourse on criminal justice issues. The states have had 40 years to respond to Gideon's trumpet and many simply have abdicated their constitutional responsibility.

In the face of this frustrating inertia, the Committee is also contemplating an assortment of proposals aimed at motivating states to address the deficiencies in their systems. These ideas spring from careful study of a number of states that have taken major strides in reforming their indigent defense systems - Georgia, Texas, Montana and to a lesser degree, Virginia. In these states, some of the significant factors in generating reform included:

- **Sustained media attention focused on the injustices perpetrated by a state system.** This type of negative attention serves as both a public education campaign and a shaming process. Confronting a steady stream of headlines with compelling stories about how the system failed innocent defendants, the public becomes increasingly more aware of the fallibility of our criminal justice system. This broadens the constituency for reform by helping citizens to understand that the issue is not simply denying "criminals" their constitutional rights. Rather, greater costs to our society are mounting -- distrust of the system, high cost of prison, moral erosion of the legal profession, and the expense of wrongful convictions in imprisoning the wrong person.
- **Strong leadership from political or judicial leaders, local bar associations and other community groups.** In Georgia, the leadership came from the Chief Justice of the state supreme court. In Texas, there was strong action from concerned state legislators, the state bar association and a coalition of interested community groups.
- **Litigation challenges to the constitutional sufficiency of the system.** Although not all litigation challenges have been successful, litigation appears to be a tool that can educate the public and compel state legislatures to add the issue to their political agenda.
- **Individuals in the criminal justice system should take individual and collective action to ensure that their ethical**

and professional obligations are not compromised by the pressures from the systemic failure of the defense function. If defenders, prosecutors and judges all vigilantly guard against violating their own professional codes of ethics, despite the pressures to take shortcuts, then there would be a strong check on the provision of indigent defense services. Individual actions might include: defense attorneys declining to take cases where adding to their caseload threatens their ability to provide competent representation, and, judges refusing to process cases where defense lawyers do not appear to be spending sufficient time in representation.

Conclusion

Given that the vast majority of criminal defendants are indigent, the states' chronic inability or unwillingness to deliver adequate representation to this vulnerable group has enormous implications for the integrity of our criminal justice system. If, as the Supreme Court observed in Gideon, one cannot get a fair trial without a lawyer, then untold numbers of Americans are being tried unfairly. The failure of states to provide proficient indigent defense systems comes at great cost to society. Without effective representation, an innocent person may go to jail while the guilty one remains free, perhaps committing additional crimes – scarce resources are wasted prosecuting and incarcerating the wrongfully convicted, families are torn apart and require additional social services, and the victim's ordeal is prolonged unnecessarily. Unavoidably, the public's faith in the fairness of our criminal justice system is eroded as Americans begin to question whether they would receive a fair day in court if they were accused of a crime and could not hire a lawyer.

We can no longer afford to ignore the denial of constitutional rights to the most vulnerable in our society, nor can we tolerate the resulting erosion of the integrity of the criminal justice system and the legitimacy of criminal convictions.

Endnotes

1. 372 U.S. 335 (1963).
2. After *Gideon* established the right to counsel in felony trials, subsequent cases expanded that right to include: automatic appeals, *Douglas v. California*, 372 U.S. 353 (1963); custodial interrogation, *Miranda v. Arizona*, 384 U.S. 436 (1966) [under the 5th Amendment Priviledge Against Self-Incrimination]; juvenile proceedings resulting in confinement, *In Re Gault*, 387 U.S. 1 (1967); preliminary hearings, *Coleman v. Alabama*, 399 U.S. 1 (1970); misdemeanor trials with actual imprisonment [an after-the-fact determination], *Argersinger v. Hamilton*, 407 U.S. 25 (1972); and misdemeanor trials with a suspended sentence of imprisonment, *Shelton v. Alabama*, 535 U.S. 654 (2002).
3. The Constitution Project is a bipartisan nonprofit organization that studies controversial legal and constitutional issues, creates consensus on needed reforms and then works to promote that consensus through public education to policy makers, the public, and the media. The Project's recent successful initiatives have included sentencing, liberty and security after September 11, 2001, the process for amending the U.S. Constitution, the death penalty, election reform, and the independence of the courts. *See*, http://www.constitutionproject.org for more information.
4. The NLADA is the nation's leading advocate for legal professionals who work with and represent low-income clients and their families and communities. Speaking on behalf of legal aid and defender programs, as well as individual advocates, the association devotes its resources to serving the broad equal justice community. See, http://www.nlada.org for more information.
5. The distinguished Honorary Chairs of the Committee are William Coleman, Secretary of Transportation under President Ford and a longstanding national voice for equal justice, and Walter Mondale, former Vice President of the United States, U.S. Senator from Minnesota, and Minnesota Attorney General. In the latter position, Vice President Mondale organized the extraordinary effort by 22 states, which filed an *amicus curiae* brief in support of Clarence Gideon in *Gideon v. Wainwright*. The three nationally prominent Committee Co-Chairs are Rhoda Billings, a retired Chief Justice of the North Carolina Supreme Court and Professor of Law Emeritus at Wake Forest University; Robert Johnson, the District Attorney for Anoka County, Minnesota and a past President of the National District Attorneys Association; and Timothy Lewis, formerly a judge on the United States Court of Appeals for the Third Circuit and currently of counsel to the law firm of Schnader Harrison Segal and Lewis, LLP. The Committee's other members are:
   - Shawn Marie Armbrust, Esq., who, as a Northwestern University journalism student, helped exonerate death row inmate Anthony Porter, and who is now the Executive Director of the Mid-Atlantic Innocence Project
   - Jay Burnett, a retired Judge, State of Texas who helped spearhead reforms to the Texas indigent defense system
   - Dean Esserman, the Police Chief of Providence, Rhode Island

- Dr. Tony Fabelo, Senior Associate at JFA Associates/ The Institute and previously the Executive Director of the Texas Criminal Justice Policy Council
- Monroe Freedman, Professor of Law at Hofstra University and one of the nation's leading legal ethics scholars
- Susan Herman, a former Executive Director of the National Center for Victims of Crime
- Robert Hirshon, a former American Bar Association President and a partner at Tonkon Torp, LLP
- Bruce Jacob, Professor of Law and Dean Emeritus at Stetson University, who represented Florida in *Gideon v. Wainwright*
- Abe Krash, a partner at *Arnold & Porter LLC* and one of the lawyers who represented Clarence Gideon in *Gideon v. Wainwright*
- Norman Lefstein, Professor of Law and Dean Emeritus at Indiana University School of Law - Indianapolis and one of the country's leading indigent defense experts
- Larry D. Thompson, General Counsel at PepsiCo, Inc., who previously served as Deputy to United States Attorney General Ashcroft and as the United States Attorney for the Northern District of Georgia
- Hubert Williams, the President of the Police Foundation and a former New Jersey Police Director and special advisor to the Los Angeles Police Commission

6. ABA, *The Ten Principles of a Public Defense Delivery System*, 2002, available at http://www.abanet.org/legalservices/downloads/sclaid/10principles.pdf.
7. Robert Kagan, *Adversarial Legalism: The American Way of Law*, 94 (Harvard U. Press, 2001).
8. In 1973, the National Advisory Commission on Criminal Justice Standards and Goals, created by the U.S. Department of Justice, set forth recommendations for limits on public defender caseloads. The Commission determined that a single attorney should not carry more than 150 felony cases a year, or more than 400 misdemeanor cases, or more than 200 juvenile cases, or more than 25 appeals. National Advisory Commission on Criminal Justice Standards and Goals, Task Force on Courts, Chapter 13, The Defense (1973), Standards 13.8, 13.9.
9. *Lavallee v. Justices*, 812 N.E.2d 895 (Mass. 2004).
10. NLADA, *Evaluation Report on Riverside County Public Defender Office* at 16 (2000).
11. *Ake v. Oklahoma*, 470 U.S. 68, 77 (1985).

Author's Note: A greatly expanded version of this essay will be coming out as a law review article later this year. In addition, the Report of the National Committee on the Right to Counsel can be found at http://www.constitutionproject.org.

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