



Clarence Earl Gideon and his petition

## ***Gideon v. Wainwright*—50th Anniversary**

*I believe that each era finds an improvement in law for the benefit of mankind.*

- Clarence Earl Gideon

A poor drifter named Clarence Earl Gideon changed the course of American jurisprudence. He had been arrested, tried, convicted, and imprisoned for five years for stealing \$50 from a pool hall. He could not afford an attorney, and his request to have one appointed to represent him was denied by the trial court.

While in prison, Gideon penciled a five-page petition to the United States Supreme Court alleging that his conviction without legal counsel denied him his rights as guaranteed in the 6th and 14th Amendments of the United States Constitution.

A half century ago this year, the United States Supreme Court—in *Gideon v. Wainwright*—unanimously ruled in Gideon's favor, holding that in felony cases the accused must be provided an attorney by the state if the defendant is unable to afford one.

In his majority opinion, Justice Hugo Black wrote:

[R]eason and reflection require us to recognize that in our ... system of criminal justice, any person hauled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided.

Gideon was retried, but this time with the benefit of an attorney to defend him. His attorney's cross-examination of the sole witness that had implicated Gideon was effective, and Gideon was found not guilty.

Reflecting on the importance of *Gideon*, former United States Attorney General Robert Kennedy said:

If an obscure Florida convict named Clarence Earl Gideon had not sat down in his prison cell . . . to write a letter to the Supreme Court . . . the vast machinery of American law would have gone on functioning undisturbed. But Gideon did write that letter, the Court did look into his case . . . and the whole course of American legal history has been changed.

### ***Gideon*—A Promise Not Fully Realized**

The impact of *Gideon v. Wainwright* has been significant, but the promise inherent in it has not been fully realized. *Gideon* did not specify how attorneys should be provided or paid, and it did not address what constitutes “effective representation” by counsel. Unfortunately, our nation’s indigent defense track record since *Gideon* has left much to be desired.

Attorney General Eric Holder noted:

Across the country, public defender offices and other indigent defense providers are underfunded and understaffed. Too often, when legal representation is available to the poor, it's rendered less effective by insufficient resources, overwhelming caseloads, and inadequate oversight.

And William Leahy, head of the New York State Office of Indigent Services, said:

Essentially, we have been living a fiction. [We are] proclaiming that the right to counsel is a fundamental constitutional value while enduring decade upon decade of inadequate funding and political neglect.

The demand for the services of public defenders has increased dramatically since *Gideon*. Today, as many as 80% of the accused rely on court-appointed counsel. Fifty years ago, when *Gideon* was decided, that percentage was only 43%, and there are now 2.3 million in prison compared to only 200,000 then. Those numbers—when combined with inadequate funding—have led to caseloads of up to 500 felony cases per year, significantly higher than the ABA guideline of 150 per year.

A system of “meet ‘em and plead ‘em” is too often the norm. In one state, 70% of misdemeanor defendants pled guilty at arraignments that lasted an average of 2.93 minutes, and one-third of them were not represented by counsel.

And caseloads are not the only problem. Public defenders are routinely provided inadequate support services and are typically paid lower annual salaries than their prosecutorial counterparts. Assigned counsel’s per-case compensation is often shockingly low—\$40 per hour in one state.

A recent ABA report, “National Indigent Defense Reform,” noted that indigent defendants often sit in jails for weeks or months waiting to meet with an attorney. One defendant accused of shoplifting spent eleven months in jail waiting for the court to appoint counsel, and another accused of stealing \$200 waited eight months. Often, the report continued, the time defendants spend in jail waiting for counsel to be appointed is longer than the maximum sentence they would receive for their alleged offense.

Reflecting on the state of indigent criminal defense, Senate Judiciary Committee Chairman Patrick Leahy, a former prosecutor, said, “it is better to be rich and guilty than poor and innocent.”

On the 50th anniversary of *Gideon*, let’s resolve to take the necessary steps to realize its promise.

### **CMBA *Gideon* CLE**

Further discussion of *Gideon* and how we might realize its promise is greatly needed. To that end, I asked Federal Public Defender Dennis Terez, CMBA Criminal Law Section Chair Colin Jennings, and Judge Joan Synenberg, a CMBA Trustee, to design a CLE to explore this issue. Not surprisingly, they answered with a resounding “yes” and have put together a great CLE, set for the morning of June 13, 2013 at the CMBA. Please read the CLE brochure on page \_\_\_ of this edition of the Journal. I look forward to seeing you there!