

5 PROBLEMS

Facing Public Defense on the 40th Anniversary of *Gideon v. Wainwright*

- 1. No counsel at all:** The dirty little secret of the criminal justice system is how many people accused of a crime in this country get no lawyer at all. In one California County in 2002 there were more than 12,000 guilty pleas entered by people who did not have a lawyer. Counties in Georgia have been sued for completely failing to provide counsel to misdemeanor defendants, or delaying so long to appoint counsel that the pretrial wait in jail is longer than the sentence would have been if convicted. Elsewhere, people are pressured into waiving their constitutional right to counsel to get a “deal” available only if they plead guilty immediately. The consequences of such pleas are often life-altering, such as loss of employment or deportation. Very few jurisdictions comply with the U.S. Supreme Court’s latest ruling (*Alabama v. Shelton - 2002*) extending the right to counsel to people receiving probation or a suspended sentence.
- 2. Excessive caseloads:** Public defense caseloads frequently far exceed national standards. For example, national standards limit felony cases to 150 a year per attorney. Yet felony caseloads of 500, 600, 800 or more are common. A *New York Times* investigation found defenders with a total caseload of over 1,600 cases annually. Unmanageable caseloads mean that many defenders simply don’t have time to do the most basic tasks, such as talk to their clients or do investigation. Many individuals get nothing more than a few minutes of their attorney’s time and a hurried guilty plea. The result: miscarriages of justice and convictions of the innocent.
- 3. Lack of Enforceable Standards :** Although individuals in every state are entitled to counsel, the quality of representation varies widely across the country. Some public defense counsel get adequate training; many receive none at all. Some have access to experts and investigators; many do not. Some jurisdictions match lawyers’ qualifications to the complexity of the case; many do not. The number one reason for arbitrary geographic disparities: lack of implementation and enforcement of simple, basic national standards, like the American Bar Association’s *Ten Principles of a Public Defense Delivery System*. The result: whether people are found guilty or not has more to do with the jurisdiction in which they are charged than the facts of their cases.
- 4. Underfunding :** Inadequate funding leads to attorneys who do not have appropriate access to training, legal research, investigators, experts or scientific testing. Most Americans support balanced funding for prosecution and public defense, and national standards require it; but governments commonly spend three times as much on prosecution as on public defense. Rates for assigned counsel (private lawyers appointed when there is no public defender available) are often set at \$25 or \$30 per hour, even though the average cost of running a law office is much higher. Competent counsel requires attorneys with the time, training and tools to do their jobs.
- 5. Lack of Independence:** National standards provide that public defense counsel should be independent from political pressures. They should be subject to judicial oversight only to the same extent as lawyers who are retained by people who have money. Public defense counsel should have the same independence in determining the need for DNA testing, investigators and other resources as attorneys representing people who can pay.