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The Nation

Many Denied Right to Counsel, Group Says

A defense attorneys' panel is launching a committee to address the lack of legal help promised by the 1963 Gideon ruling.

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Four decades after the Supreme Court's landmark decision mandating that poor defendants in criminal cases are entitled to legal representation, a group of prominent American lawyers says the promise of that ruling remains unfulfilled.

"There are still defendants who have not been provided competent counsel -- or they have no real representation at all," the Constitution Project and the National Legal Aid and Defender Assn. said late last month in announcing formation of the National Committee on the Right to Counsel to address the issue.

"Even though state and local governments are responsible for ensuring adequate counsel for defendants who cannot afford to hire their own lawyers, many people ... are nonetheless still convicted and imprisoned each year without any legal representation" or with an inadequate one, the Washington-based group said.

In 1963, the U.S. Supreme Court ruled in the case of Clarence Earl Gideon that the right to counsel in criminal cases was necessary to achieve a fair system of justice.

In his initial trial, Gideon represented himself because he could not afford an attorney. After his conviction was overturned, he was retried and his appointed attorney discovered new witnesses and won an acquittal.

Former Vice President Walter F. Mondale is serving as the newly formed committee's honorary chairman. In 1963, Mondale, then Minnesota's attorney general, organized 22 state attorneys general to file a friend of the court brief in favor of Gideon's right to a lawyer.

Gideon's handwritten petition to the Supreme Court is now on display at the National Constitution Center in Philadelphia.

Many around the country argue today that the promise of Gideon remains unfulfilled, even if an attorney has been appointed. The attorney may be handling hundreds of other cases, have no expertise in criminal law or have no funds to investigate facts or get DNA tests.

Four years ago, the Justice Department declared that public defense in the U.S. is in a "chronic state of crisis."

Rhoda Billings, former chief justice of the North Carolina Supreme Court and one of the three co-chairs of the new committee, said examples of problems abound.

"In some instances across the country, courts have upheld convictions even when the defendants were represented by lawyers who slept through portions of the trial or were drunk or under the influence of drugs," she said. "That level of performance is not what the constitutional right to counsel means."

The other committee co-chairs are Robert Johnson, a former president of the National District Attorneys Assn., and Timothy K. Lewis, who served a decade on the federal appeals court in Philadelphia.

"The balance is tipped too heavily in favor of the government when it comes to prosecution of persons without means who can't afford private counsel," said Lewis. "We really need to take a look at that. Who are we as a people if we not giving adequate and equal representation to those who can't afford a lawyer?"

Lewis also said that although there were many fine public defenders, most of them "carry a staggering caseload."

Among other members of the committee are Susan Herman of the National Center for Victims of Crime; Larry D. Thompson, senior fellow at the Brookings Institution; and Hubert Williams of the Police Foundation.

In the precedent-setting case, Gideon was charged with breaking and entering a poolroom with intent to steal, a felony under Florida law. Having no money, Gideon asked that a lawyer be appointed to represent him. His trial judge denied the request. Gideon conducted his own defense and was convicted. The verdict was upheld by the Florida Supreme Court.

Gideon then submitted a handwritten petition to the U.S. Supreme Court, which granted him a hearing and appointed prominent Washington attorney Abe Fortas, who later served on the high court, to represent him.

The Supreme Court ruled unanimously in Gideon's favor. Writing for the court, Justice Hugo Black said that "Gideon conducted his defense about as well as could be expected from a layman." He noted that 31 years earlier, the high court had ruled that there was right to counsel at every stage of a death penalty case, but in 1942 the Supreme Court said there was not a fundamental right to counsel in other criminal cases.

The high court overturned that decision in the Gideon case, saying it was restoring "constitutional principles established to achieve a fair system of justice."

"Reason and reflection require us to recognize that in our adversary 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 for him," Black wrote. He noted that "governments, both state and federal, quite properly spend vast sums of money" to prosecute crimes and that defendants who had the means hired the best lawyers they could.

Those actions, Black said, "are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries."

Among the problems with the system cited by the National Assn. of Criminal Defense Lawyers in a study last year:

* In Wisconsin, more than 11,000 people go unrepresented annually because anyone with an annual income of more than \$3,000 is deemed able to afford to pay a lawyer.

* In Lake Charles, La., the public defender's office had only two investigators for 2,550 new felony cases and 4,000 new misdemeanor cases assigned to the office each year.

* In Bucks County, Pa., the public defender's office handled 4,173 cases in 1980. Twenty years later, with the same number of attorneys, the office handled an estimated 8,000 cases.

The study said that caseloads of many public defenders throughout the country exceeded American Bar Assn. standards, which limit caseloads to 150 felonies a year per lawyer.

Those heavy workloads mean that "for many people the right to counsel means nothing more than a hurried conversation with a court-appointed attorney before entering a guilty plea or going to trial," said Stephen B. Bright, director of the Atlanta-based Southern Center for Human Rights, who has played a key role in efforts to upgrade indigent representation in Georgia and other states.

In recent years, the center has filed five major lawsuits contending that various Georgia counties had failed to provide proper representation for poor defendants. Last year, after a blue-ribbon commission issued a report saying Georgia was failing to meet its constitutional duty to protect the rights of poor people accused of crimes, the state enacted a law designed to remedy the problems, including the creation of a statewide public defender system. And this month, Gov. Sonny Perdue signed a bill to fund the new system.

Elsewhere, the news is less promising. The Minnesota State Board of Public Defense said recently that one quarter of the state's public defenders would be laid off in August because of a shortage of money. Lawsuits are pending in other states, including Michigan and Montana, about problems with their public defense systems.

On the whole, California is considered to have one of the best systems of indigent defense in the nation. Still, public defenders in rural areas lament funding problems and fear that local governments may decide to scrap existing programs and replace them with lawyers who bid on a contract. Such low-bid systems have been widely criticized by legal experts because studies have shown that to make a profit, the contractor has to spend as little time as possible on a case.

The National Committee on the Right to Counsel plans to do field research and make reports but has not set a timetable for its work yet. The committee's oldest member, Abe Krash, 77, who worked with Fortas on the Gideon case, said the group faced a formidable challenge.

"When you ask yourself who is the constituency for this issue, it's poor people, frequently badly educated, living on the fringes of society with almost no political clout. Our present system is not a true adversary system. Ninety percent of the accused plead guilty, often without adequate investigation of their cases," Krash said.

"There is no question that there has been improvement since 1963, but the great hope of Gideon has not been achieved," Krash said.