

## A Chronology of the Right to Counsel in the United States

William J. Leahy

Director, New York State Office of Indigent Legal Services

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**1791: The Sixth Amendment to the Constitution of the United States:** “In all criminal prosecutions, the accused shall enjoy the right...to have the Assistance of Counsel for his defence.”

**1932: Powell v. Alabama, 287 U.S. 45 (the “Scottsboro Boys” case):** In a capital case with unfair special circumstances, failure to appoint counsel violates the Sixth Amendment right to counsel and requires new trials for seven young men sentenced to death for rape. “The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel.”

**1938: Johnson v. Zerbst, 304 U.S. 458:** In federal court, an indigent person charged with crime has a right to counsel under the Sixth Amendment.

**1942: Betts v. Brady, 316 U.S. 455:** In state court, absent a showing of unfair special circumstances, failure to assign counsel to a person charged with a felony does not violate Due Process of Law, as it does not “constitute a denial of fundamental fairness, shocking to the universal sense of justice[.]”

**1945-1946: The Nuremberg Trials:** Nazi leaders were given counsel of their choice in this post-World War II clash of the inquisitorial criminal justice process (France, Russia, Germany) with the adversarial process (Great Britain, United States). The story of Attorney Kranzbeuhler’s successful advocacy for Admiral Doenitz; and the importance of Professor Herbert Wechsler’s subsequent criticism about the denial of counsel in the state courts within the United States.

**1963: Gideon v. Wainwright, 372 U.S. 335:** Failure to provide counsel to indigent defendant in state court felony case violates Due Process of Law under the Fourteenth Amendment of the U.S. Constitution, overruling Betts v. Brady. “The right of one charged with crime to counsel may not be deemed fundamental and essential to a fair trial in some countries, but it is in ours.” Gideon is acquitted in a retrial, ably represented by attorney Fred Turner. Also **Douglas v. California, 372 U.S. 353:** counsel must be provided to an indigent defendant for his or her direct appeal after conviction.

**1964:** The Gideon decision is popularized by the book *Gideon’s Trumpet*, by Anthony Lewis; and the movie of the same name, starring Henry Fonda.

**1967: In re Gault, 387 U.S. 1:** Right to counsel extended to juvenile delinquency cases in state courts.

**1972: Argersinger v. Hamlin, 407 U.S. 25:** Right to counsel extended to any crime, including misdemeanors, that carries the possibility of incarceration. Justice Powell, concurring, 407 U.S. at 59, points to “available funding” as an “acute problem” for implementation of this right.

**1979: American Bar Association (ABA),** adopting recommendation of its **Standing Committee on Legal Aid and Indigent Defendants (SCLAID)**, recommends creation of a national **Center for Defense Services** to provide federal funding to help the states comply with the federal constitutional right to counsel. No such Center has ever been established, and no significant federal funding has ever been provided.

**1982: ABA, *Gideon Undone: The Crisis in Indigent Defense Funding*,** available at <http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/indigentdefense/gideonundone.authcheckdam.pdf>

**2000: Scheck, Neufeld and Dwyer, *Actual Innocence*:** best-selling book describing the reality of wrongful convictions of innocent persons in the United States, and identifying the causative flaws. See Chapter 9, *Sleeping Lawyers*; and Appendix I, *A Short List of Reforms to Protect the Innocent*, especially the entry entitled *Bad Defense Lawyers*.

**2002: ABA, *Ten Principles of a Public Defense Delivery System*,** available at [www.indigentdefense.org](http://www.indigentdefense.org)

**2002: Alabama v. Shelton, 535 U.S. 654:** Right to counsel extended to state court cases in which a suspended sentence is imposed, that may “end up in the actual deprivation of a person’s liberty[.]”

**2004: Norman Lefstein, *In Search of Gideon’s Promise: Lessons from England and the Need for Federal Help*,** 55 *Hastings Law Journal* 835, 843: U.S. Supreme Court rulings requiring the assignment of counsel in state courts “constitute an enormous unfunded mandate imposed upon the states.”

**2004: American Bar Association, *Gideon’s Broken Promise: America’s Continuing Quest for Equal Justice*:** searing critique of the quality of public defense and assigned counsel in state and local courts, and lack of financial support for their representation. Available at [www.indigentdefense.org](http://www.indigentdefense.org)

**2005: Halbert v. Michigan, 545 U.S. 605:** the right to counsel extends to appeals after a plea of guilty.

**2006: Commission on the Future of Indigent Defense Services, *Final Report to the Chief Judge of the State of New York*:** “New York’s current fragmented system of county-operated and largely county-financed indigent defense services fails to satisfy the state’s constitutional and statutory obligations to protect the rights of the indigent accused.”

**2006: ABA Ethics Committee, *Formal Opinion 06-441*:** the ethical requirement of competent and diligent representation applies without exception to attorneys who represent indigent criminal defendants, and their supervisors and agency leaders.

**2008: Rothgery v. Texas, 554 U.S. 191:** the right to counsel attaches at arraignment.

**2009: Justice Denied: America's Continuing Neglect of Our Constitutional Right to Counsel:** report of the National Right to Counsel Committee. Available at [www.constitutionproject.org](http://www.constitutionproject.org).

**2009: Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts,** National Association of Criminal Defense Lawyers. Available at [www.nacdl.org/misdemeanor](http://www.nacdl.org/misdemeanor).

**2011: Norman Lefstein, Securing Reasonable Caseloads: Ethics and Law in Public Defense.** Available at [www.indigentdefense.org](http://www.indigentdefense.org). Dedication: "In recognition of the thousands of dedicated public defense lawyers prevented from fully discharging their professional duties because of too many cases and inadequate support."

**2012: Securing Reasonable Caseloads: Executive Summary and Recommendations;** also available at [www.indigentdefense.org](http://www.indigentdefense.org).