THE QUALITY OF INDIGENT DEFENSE ON THE 40TH ANNIVERSARY OF *GIDEON*: THE HAMILTON COUNTY EXPERIENCE

NICOLE J. DE SARIO*

I. INTRODUCTION

Four decades ago, in *Gideon vs. Wainwright*,[1] the United States Supreme Court incorporated the Sixth Amendment right to counsel, conferring upon state and local governments the responsibility to provide defense counsel in criminal prosecutions.[2] The Court reasoned that counsel was essential to due process and necessary for a fair trial.[3] Since then, state and local governments have struggled to comport with the Sixth Amendment. Localities have established public defender offices, utilized court-appointed attorneys, contracted out cases to a public or private entity, or—most often—provided hybrid models of services for indigent defendants.[4] In a piecemeal fashion, state governments may choose to defer to the services provided by county or city governments, making compliance with the Sixth Amendment a local matter. Thus, on the fortieth anniversary of *Gideon*, it is appropriate to analyze the legacy of this case through the lens of local government.

From one locality to the next, indigent defense remains in a state of "permanent crisis."[5] Since *Gideon* was decided in 1963, "a major

---

Copyright © 2003, Nicole J. De Sario.

* J.D. Harvard Law School, 2003; B.A., Hobart & William Smith Colleges, 2000. I would like to thank Hal Arenstein, Gabriel J. Chin, Bill Gallagher, Fred Hoefle, Kate Jones, Margery Koosed, Peter Rosenwald, David Singleton, and David Stebbins for granting me interviews and providing editing suggestions. Additionally, my gratitude goes to Stephen Bright for his guidance in suggesting helpful sources. I give special thanks to my grandmother, Adelaide De Sario, for serving as my guiding light; all of my achievements stem from her. I dedicate this article in memory of my late grandfather, Paul Frank De Sario. Memories of his uncanny intellect inspire me to always strive for more.

1 372 U.S. 335 (1963).

2 *Id*. at 340.

3 *Id*.

4 Cait Clarke, *Problem-Solving Defenders in the Community: Expanding the Conceptual and Institutional Boundaries of Providing Counsel to the Poor*, 14 GEO. J. LEGAL ETHICS 401, 420 (2001).

5 Donald A. Dripps, *Ineffective Assistance of Counsel: The Case for an Ex Ante Parity Standard*, 88 J. CRIM. L. & CRIMINOLOGY 242, 245 (1997).

independent report has been issued at least every five years documenting the severe deficiencies in indigent defense services."[6] The quality of indigent defense is subverted in a vicious cycle of politically unpopular subject matter leading to lack of funding and, consequently, exhausting caseloads.[7] With such systemic problems, even the most talented lawyer would have difficulty zealously representing each client. Harvard Law Professor Charles Ogletree, who once served as a public defender, explained that "the typical public defender is burdened by a dramatic lack of resources, limited training and supervision, an unconscionable caseload, unhealthy working conditions, and unsympathetic police, prosecutors, judges, witnesses, and jurors with whom she must work."[8] The challenges facing indigent defense counsel undermine the viability of a truly adversarial process for their clients. The quality of indigent defense has deeper implications for the fairness of the criminal justice system when considering that 80% of defendants are represented by indigent defenders.[9] In fact, Governor George Ryan recently found the Illinois system to be so unreliable that—after investigators revealed that thirteen prisoners on death row were innocent—he commuted all death sentences in the state to no more than life imprisonment.[10]

Many individuals across the nation are united in their concern for an improved criminal justice system, but the battle for change is taking place on a local level. In addition to lobbying and coalition building, efforts to improve the quality of indigent defense have taken the form of litigation against state or local entities. To date, cases challenging the constitutionality of indigent defense systems have been brought within thirteen states,[11] including a suit filed against Hamilton County, Ohio.[12]

---

[6] *Gideon's Promise Unfulfilled: The Need for Litigated Reform of Indigent Defense*, Note, 113 HARV. L. REV. 2062, 2064 (2000) [hereinafter *Gideon's Promise*] (quoting Dripps, *supra* note 5, at 246-250).

[7] *Id.*

[8] Dripps, *supra* note 5, at 249 (quoting Charles J. Ogletree, Jr., *An Essay on the New Public Defender for the 21st Century*, LAW & CONTEMP. PROBS., Winter 1995, at 81, 85 (footnotes omitted)).

[9] *Gideon's Promise*, *supra* note 6, at 2065.

[10] *See* HUMAN RIGHTS WATCH, ILLINOIS DEATH ROW COMMUTATIONS AND PARDONS COMMENDED, *at* http://www.hrw.org/press/2003/01/us0110.htm; *see also* Emily Kaiser, *Illinois Gov. Commutes All Death Sentences*, WASH. POST, Jan. 11, 2003, at A4.

[11] *See*, *e.g.,* State v. Smith, 681 P.2d 1374 (Ariz. 1984); State v. Peart, 621 So. 2d 780 (La. 1993); State v. Lynch, 796 P.2d 1150 (Okla. 1990); Kennedy v. Carlson, 544 N.W.2d 1 (Minn. 1996); Madden v. Township of Delran, 601 A.2d 211 (N.J. 1992); Complaint, Van Slyke v. Miss., No. 00-0013-GN-D (Miss. Ch. Ct. Forrest County filed Jan. 12, 2000); *see also* Emily Wagster, *Suits Seek Public Defender Funds*, CLARION-LEDGER

(*continued*)

Without change in provisions for indigent defense, attention will soon turn to Hamilton County as this highly traditional region becomes the next stage for national efforts to revive the promise of *Gideon*. When asked about the quality of indigent defense in Hamilton County, experienced lawyers within the community described it as "a joke" and "a disaster."[13] David Stebbins, a criminal defense attorney in Ohio, noted: "The quality of appointed counsel has been an ongoing problem virtually everywhere in Ohio, including Hamilton County."[14] David Singleton, the executive director of the Prison Reform Advocacy Center in Cincinnati agreed: "I hear a lot of horror stories."[15]

This Article will analyze the challenges facing indigent defendants in Hamilton County and will describe contemporary means for improving the quality of indigent defense counsel, starting from the local level. In Part II, I will address the vitality of *Gideon* on its fortieth anniversary in light of subsequent case law. In Part III, I will focus on Hamilton County as a case study of how localities have struggled to comply with *Gideon* in the past four decades. Finally, in Part IV, I will address modes of legal reform for Hamilton County and similarly-situated localities across the country.

II. *GIDEON* ON ITS 40TH ANNIVERSARY

The Sixth Amendment provides: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."[16] For the first century and a half of its enactment,[17] the Sixth Amendment applied exclusively to the federal government. The Supreme Court, in *Betts v. Brady*,[18] explicitly rejected the notion that the right to

---

(Jackson, Miss.), Dec.17, 1999, http://clarionledger.com/news/9912/17/17defend.html; American Civil Liberties Union (ACLU), Doyle v. Allegheny County Salary Board: *Fact Sheet on Settlement Agreement*, *at* http://archive.aciu.org/news/n0513986.html (May 13, 1998); Dana Tofig, *ACLU Drops Public-Defender Suit*, HARTFORD COURANT, July 8, 1999, at A5, 1999 WL 19939387; Luckey v. Harris, 893 F.2d 1341 (11th Cir. 1989); Complaint, White v. Martz, No. CDV-2001-133 (Montana 1st Judicial Dist. Ct. Lewis and Clark County filed Feb. 14, 2002); Tesmer v. Granholm, 307 F.3d 459 (6th Cir. 2002); N.Y. County Lawyers' Ass'n v. State, N.Y.S.2d 376 (Sup. Ct. 2002).

[12] State *ex rel.* Felson v. McHenry, 146 Ohio App. 3d 542 (Ohio Ct. App. 2001).

[13] Interviews with anonymous Cincinnati attorneys (2003).

[14] Telephone Interview with David Stebbins, Criminal Defense Attorney, Cincinnati, Ohio (Jan. 20, 2003).

[15] Telephone Interview with David Singleton, Executive Director, Prison Reform Advocacy Center (Jan. 23, 2003).

[16] U.S. CONST. amend. VI.

[17] The first ten amendments to the Constitution (the Bill of Rights) were ratified in 1791.

[18] 316 U.S. 455 (1942).

counsel is so fundamental and essential to a fair trial that it is made obligatory upon the states through the Due Process Clause.[19] In 1963, *Gideon v. Wainwright*[20] overruled *Betts* and marked the beginning of a new era in indigent defense. The *Gideon* Court was deeply concerned with the defendant's right to a fair trial:

> From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.[21]

The *Gideon* Court considered the rights of a defendant charged with a felony in state court.[22] Seven years later, in *Argersinger v. Hamlin*,[23] the Court explicitly expanded the right to counsel in state courts to defendants charged with misdemeanors.[24]

Dating back before *Gideon*, the Supreme Court historically has recognized that if one had the right to counsel, it implicitly would include the right to effective counsel.[25] Given the fluidity of these two concepts, how the judiciary defines effectiveness has significant implications for the right to counsel. Thus, the legal community took note when, after two decades of ambiguity following *Gideon*, the Supreme Court declared a two-part test for defining effectiveness. In *Strickland v. Washington*,[26] the Court held that counsel will be found ineffective if the appellant can overcome counter-veiling presumptions to show that (i) counsel's conduct fell bellow objective standards of reasonableness and (ii) there is a reasonable probability that the conduct prejudiced the outcome of the trial.[27]

---

[19] *Id*. at 465.

[20] 372 U.S. 335 (1963).

[21] *Id*. at 344.

[22] *Id*. at 335.

[23] 407 U.S. 25 (1972).

[24] *Id*.

[25] Powell v. Alabama, 287 U.S. 45, 71 (1932) (noting that counsel must lend "effective aid in the preparation and trial of the case"); Glasser v. United States, 315 U.S. 60, 70 (1942) (same); McCann v. Richardson, 397 U.S. 759, 771 n.14 (1970) (holding that the right to counsel necessarily entails "the effective assistance of competent counsel").

[26] 466 U.S. 668 (1984).

[27] *Id*. at 687-88.

The *Strickland* decision is often criticized for undermining the significance of the right to counsel espoused in *Gideon*: "[T]he Supreme Court, instead of enforcing *Gideon*, has been a major culprit in this denial of equal justice. It adopted such a low standard for counsel in *Strickland v. Washington* that it makes a mockery of the right to counsel."[28] By looking to prejudice as the benchmark, the *Strickland* standard distances itself from concerns about a fair trial so central in *Gideon*. Except in extreme circumstances where counsel is so inadequate that prejudice can be presumed,[29] the *Strickland* Court implies that a functioning adversarial process is not necessary for the guilty.[30] Even assuming that an accurate outcome is more valuable than a fair process, the *Strickland* Court does not grapple with the notion that evidence of innocence may be suppressed due to a faulted process. "The difficulties of estimating prejudice after the fact are exacerbated by the possibility that evidence of injury to the defendant may be missing from the record precisely because of the incompetence of defense counsel."[31]

Further, with a strict textualist reading, the *Strickland* standard is applied individually and retrospectively. With such an application, it becomes difficult to challenge, ex ante, whole systems of indigent defense that are inadequate. Thus, overburdened systems that may seem repulsive under *Gideon* may not amount to *Strickland* ineffectiveness. As a result, the promise of *Gideon* rests precariously on the success of systemic litigation—expanding beyond a narrow application of *Strickland*.

In successful systemic cases, discussed more thoroughly in Part IV, the courts deal with *Strickland* in two ways. The judiciary may either broadly interpret *Strickland* to hold that prejudice can be presumed collectively and prospectively or hold that *Strickland* is inapplicable to system-wide challenges to indigent defense.[32] Systemic cases are promising because "[a] more sensible way to solve ineffective assistance of counsel problems is to address their causes rather than their symptoms."[33] Turning to the case study, unless there is reform within Hamilton County, legal advocates

---

[28] Stephen B. Bright, *Neither Equal Nor Just: The Rationing and Denial of Legal Services to the Poor When Life and Liberty Are at Stake*, 1997 ANN. SURV. AM. L. 783, 816 (1997).

[29] *Strickland*, 466 U.S. at 692 ("In certain Sixth Amendment contexts, prejudice is presumed.").

[30] *See* Gabriel J. Chin & Richard W. Holmes Jr., *Effective Assistance of Counsel and the Consequences of Guilty Pleas*, 87 CORNELL L. REV. 697, 733 (2002) (analyzing Sixth Amendment obligations of attorneys in the context of guilty pleas).

[31] Dripps, *supra* note 5, at 278 (footnote omitted).

[32] *See infra* Part IV.

[33] Rodger Citron, *(Un)Luckey v. Miller: The Case for a Structural Injunction to Improve Indigent Defense*, 101 YALE L.J. 481, 489 (1991).

may pursue systemic litigation against this locality. After detailing the indigent defenders model within Hamilton County, I will assess the effectiveness of systemic litigation as a mode of reform in Part IV.

III. A CASE STUDY OF HAMILTON COUNTY

With a population of 816,000, Hamilton County is the third largest county in Ohio, nestled in the southeastern corner of the state.[34] The region is known for being highly traditional: "This is Hamilton County, the mantra is we've always done it that way."[35] The county encompasses Cincinnati, a city where 20% of its residents live in poverty.[36] According to the 2001 Census, Cincinnati is comprised of 55% white residents and 43% percent black residents—as compared to the 11% of residents who describe themselves as black statewide.[37] The city has been the site for racial riots—most recently on the week of April 9, 2001.[38] In a city where a significant percentage of its population cannot afford an attorney, and where levels of income is likely to cut across racial lines, a functioning public defender office is of central importance to the community.

The Hamilton County Public Defender Office represents individuals charged with misdemeanors and defers to a panel of private attorneys to represent defendants in felony and capital cases.[39] Every week day, lawyers from the panel of private attorneys pick up the felony cases of

---

[34] U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2001 SUPPLEMENTARY SURVEY, POPULATION & HOUSING PROFILE: HAMILTON COUNTY, OHIO, *available at* http://www.census.gov/acs/www/Products/Profiles/Single/2001/SS01/Narrative/050/NP05000US39061.htm (last visited Oct. 19, 2003).

[35] Telephone Interview with Fred Hoefle, Criminal Defense Attorney, Cincinnati, Ohio (Jan. 22, 2003). Mr. Hoefle handles many direct appeals of indigent, death row inmates.

[36] U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2001 SUPPLEMENTARY SURVEY, POPULATION & HOUSING PROFILE: CINCINNATI CITY, HAMILTON COUNTY PT., OHIO, *available at* http://www.census.gov/acs/www/Products/Profiles/Single/2001/SS01/Narrative/155/NP-00US3915000061.htm (last visited Oct. 19, 2003).

[37] U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2001 SUPPLEMENTARY SURVEY, POPULATION & HOUSING PROFILE: CINCINNATI CITY, OHIO, *available at* http://www.census.gov/acs/www/Products/Profiles/Single/2001/SS01/Narrative/160/NP16000US3915000.htm (last visited Oct. 19, 2003).

[38] ACLU, *Reacting to Cincinnati Riots, ACLU Calls for Calm and Restraint on All Sides, Seeks Dialogue on Racism*, http://www.aclu.org/PolicePractices/PolicePractices.cfm (Apr. 12, 2001).

[39] *See* Hamilton County Public Defender website, *at* http://www.hamilton-co.org/pub_def/default.htm (last visited Oct. 19, 2003) [hereinafter "Public Defender website"].

those persons who have been detained in the past twenty-four hours (or forty-eight hours after a weekend). Five to six lawyers out of the 145[40] on the panel are scheduled to appear at the Justice Center in Cincinnati daily. A representative from the public defender office doles out the cases to the private attorneys based on the comparative levels of experience of the lawyers present on any given day, subject to the subsequent approval of the supervising judge. The assigned judge plays a more active role in selecting attorneys for indigent defendants in capital cases or homicides.[41]

The provisions for indigent defense within Hamilton County face systemic problems. On the one hand, public defenders handling misdemeanors have a heavy caseload. The Hamilton County Public Defender Office reported that it handled 34,644 cases in 2001[42] and currently has a trial staff of fifty-two attorneys.[43] Public defenders struggle to represent such defendants amidst a plethora of cases, but just one investigator.[44] On the other hand, panel attorneys are not subject to centralized oversight or supervision. While the appointed attorneys do not face the overwhelming caseloads given to the public defenders, the quality of the service they provide is of serious concern. An experienced lawyer in Cincinnati recently observed that a young lawyer on the panel was "oblivious" about how to handle a felony case he picked up in Hamilton County.[45] "It was startling to me how little he prepared the case," noted the lawyer.[46] "It's because he's got no training. He's got a trial coming up on a serious felony and he didn't know the basics of investigation, including that he should interview all potential witnesses before trial."[47]

The caliber of lawyering is especially of concern in capital cases—where the defendant's life hangs in the balance. Hamilton County comprises 7% of the state's population,[48] but 24% of the state's death

---

40 *See id.*

41 Telephone Interview with Peter Rosenwald, Criminal Defense Attorney, Cincinnati, Ohio; Panel Attorney (representing indigent defendants in felony cases) (Jan. 24, 2003).

42 OHIO PUBLIC DEFENDER COMMISSION, 2001 ANNUAL REPORT 18 tbl.XI, *available at* http://www.state.oh.us./opd/us/US_AboutUS.htm [hereinafter "2001 ANNUAL REPORT"].

43 Public Defender website, *supra* note 39.

44 Public Defender website, *supra* note 39.

45 Interview with anonymous Cincinnati attorney (2003).

46 *Id.*

47 *Id.*

48 U.S. CENSUS BUREAU, U.S. DEP'T OF COMMERCE, 2001 SUPPLEMENTARY SURVEY, POPULATION & HOUSING PROFILE: HAMILTON COUNTY, OHIO, *available at* http://www.census.gov/acs/www/Products/Profiles/Single/2001/SSO1/Narrative/050/NP05000US39061.htm (Ohio's population is 11.1 million while Hamilton County's is 816,000).

penalty sentences.[49] Hamilton County Prosecutor Mike Allen once explained that there are so many death row inmates from Hamilton County because, "we take life seriously in Hamilton County. Some criticize us, but I wear it as a badge of honor."[50] Others question the reliability of death sentences when the quality of counsel is so poor. Bill Gallagher, who has represented thirteen persons in capital crimes over the past fifteen years, noted that representation for most indigent defendants on death row in the county is "woefully inadequate."[51] Law students at the University of Cincinnati received national attention when they announced in a press conference on January 17, 2003 that more than half of the death row inmates in Ohio and Hamilton County were undeserving of capital punishment according to the recommendations made by the special death penalty reform panel in Illinois.[52] The study of 173 of Ohio's 204 death row inmates concluded that eighty-eight should not be put to death—including twenty-two of forty-one inmates studied in Hamilton County.[53] Concern over death penalty convictions in Hamilton County hearkens back to the need to reform an entire indigent defense system that may be failing the accused. To dissect the Hamilton County system—and others like it nationwide—it is necessary to understand its historical, legal, and political context.

A. *Historical Overview*

Since *Gideon* and *Argersinger* did not specify a model for organizing or funding defense systems, "each state has defined the right to counsel through its own respective constitutional provisions, judicial opinions, and legislation."[54] In Ohio, there was not a statewide indigent defense system before 1976. Instead, courts complied with indigent defendants' right to counsel by appointing attorneys ad hoc, unless otherwise provided by local government. After *Argersinger* expanded the right to counsel to include misdemeanors in 1972, Hamilton County began its own system of contracting out misdemeanors to non-profit entities such as Legal Aid and Model Cities. Peter Rosenwald, who did public defense work for Legal Aid in Cincinnati from 1973 until 1977, explained that the office enjoyed

---

[49] 2001 ANNUAL REPORT, *supra* note 42, at 8.

[50] Sharon Turco, *UC Group Urges Halt to Executions*, CINCINNATI ENQUIRER, Jan. 17, 2003, at B1.

[51] Telephone Interview with Bill Gallagher, former Co-Chair, Death Penalty Committee of the National Association of Criminal Defense Lawyers; Criminal Defense Attorney (for paying and indigent clients), Cincinnati, Ohio (Jan. 20, 2003).

[52] Turco, *supra* note 50.

[53] Turco, *supra* note 50.

[54] Clarke, *supra* note 4, at 419.

political freedom as the subsidiary of a non-profit corporation.[55] Mr. Rosenwald recalled how the office had a manageable caseload, handling primarily misdemeanors and some felony cases at the preliminary hearings. The bulk of felony cases were contracted out to private attorneys.[56] Although the earlier system was known for its effectiveness, politics soon changed this arrangement.

In 1976, the debate between a statewide public defender office and localized control resulted in a compromise—a weak Office of the Ohio Public Defender that would subsidize up to 50% of the costs of the system of indigent defense chosen by each county.[57] For Ohio—and other states that follow a decentralized model, such as Michigan and Montana[58]—the result has been a patchwork system where some counties do not have a public defender office at all and some counties have a local defender office, but with varying degrees of effectiveness. Hamilton County ultimately chose to create a public defender office that handled only misdemeanors, with public defenders directly accountable to local officials.

B. *Legislative Framework*

On January 13, 1976, chapter 12 of the Ohio Revised Code created the Ohio Public Defender Commission (OPDC), comprised of nine members appointed by the Governor and Ohio Supreme Court.[59] The OPDC was empowered to set the standards of conduct for existing county public defender offices.[60] It initiated loose centralized control of indigent defense by setting statewide criteria for determining indigency, reasonable caseloads, and attorney qualifications.[61] The OPDC also was to oversee contracts between the county and appointed lawyers or non-profit organizations.[62] Nevertheless, the OPDC was careful not to usurp local control with its standards. For example, it did not set strict standards for excessive caseloads, but instead noted that indigent defense attorneys should not have so many cases that it "threatens to deny due process of law to clients."[63] In overseeing county public defender offices, the OPDC

---

55 Interview with Peter Rosenwald, *supra* note 41.

56 Interview with Peter Rosenwald, *supra* note 41.

57 OHIO REV. CODE ANN. § 120.33(A)(4) (Anderson 2003).

58 *See generally*, ACLU, *Montana Indigent Defense Fact Sheet*, *at* http://archive.aclu.org/news/2002/mt_indigent_1.pdf (last visited Oct. 18, 2003) [hereinafter ACLU *Fact Sheet*].

59 OHIO REV. CODE ANN. § 120.01 (Anderson 2003).

60 OHIO REV. CODE ANN. § 120.04 (Anderson 2003).

61 *Id*.

62 OHIO REV. CODE ANN. § 120.04 (B)-(C).

63 OHIO ADMIN. CODE § 120-1-07 (2001).

merely required that the offices have funds for experts, specialists, and an investigator, in addition to adequate office facilities.[64] The standards did not discuss caseloads for these employees. As a result, many counties have hired only one investigator for thousands of cases, resulting in arbitrary decisions to investigate. Further, although the OPDC required background experience to handle indigent felony and misdemeanor cases,[65] there has not been a meaningful review of the quality of counsel, nor has there been an active process for removing inadequate attorneys from indigent defense.

The Ohio Public Defender, an appointed position subject to removal by the OPDC,[66] oversees the implementation of the OPDC's standards and the handling of certain indigent cases. Although some counties may contract with the Office of the Ohio Public Defender or seek its advice during trial,[67] the Ohio office is largely removed from trials and primarily handles felony appeals. The Felony Section files unlawful imprisonment claims after the direct appeal. Meanwhile, the Death Penalty Litigation Division accepts a limited number of trials when resources permit, but largely focuses on direct, postconviction, and federal habeaus corpus appeals.[68] Except for capital cases,[69] state or county public defender offices are not required to grant assistance for appeals unless "there is arguable merit to the proceeding."[70] Meanwhile, representation is to begin at the county level after "arrest, detention, service of summons, or indictment."[71]

The Ohio Revised Code provides that county commissioners may call for a public defender commission (a "local commission") that will appoint and oversee a regional public defender.[72] The county commissioners are to appoint three members to the local commission while the presiding judge of the court of common pleas appoints the other two.[73] Pursuant to this provision, on July 26, 1976, Hamilton County created a local public defender commission.[74] According to Ohio state law, the OPDC sets the

---

[64] OHIO ADMIN. CODE § 120-1-06 (Anderson 2003).

[65] OHIO ADMIN. CODE § 120-1-10 (2001).

[66] OHIO REV. CODE ANN. § 120.03(A) (Anderson 2003).

[67] OHIO REV. CODE ANN. § 120.14(F).

[68] *See generally*, 2001 ANNUAL REPORT, *supra* note 42, at 5-6.

[69] OHIO REV. CODE ANN. § 2953.21(I)(1) (providing for post-conviction counsel for indigent capital defendants upon request).

[70] OHIO REV. CODE ANN. § 120.06(B), 120.16(D).

[71] OHIO REV. CODE ANN. § 120.16(B).

[72] OHIO REV. CODE ANN. § 120.14(A)(1).

[73] OHIO REV. CODE ANN. 120.13(A). In Ohio, judges are elected officials. OHIO CONST. art. IV, § 6.

[74] *See* Public Defender website, *supra* note 39.

general operational policy for the office and recommends a budget.[75] This model of indigent defense is more deeply embedded in politics than the prior method of contracting with independent, non-profit organizations.

Several statutory mechanisms make the county public defender office subject to the whims of politics. First, the board of county commissioners is authorized to terminate the local "public defender commission at any time."[76] Second, county commissioners also are given the responsibility of establishing a fee schedule, which could fall below state maximums, in setting local estimates for judges awarding fees to indigent defense counsel.[77] Third, the budget for the county public defender office must be approved by the board of county commissioners.[78] Funding is most vulnerable at a local level. Kate Jones, a staff lawyer for the National Association of Criminal Defense Lawyers (NACDL) in Washington, D.C., observed: "Counties are usually the most strapped for cash. It's difficult for them to come up with money for any big program, let alone something for indigent defense which is going to be pushed to the bottom of the list."[79]

In an effort to centralize the selection of lawyers for capital cases, on July 1, 1995, Ohio became one of the first states to adopt the American Bar Association (ABA) recommendations for the litigation of death penalty cases.[80] As a result, Rule 20 of the Rules of Superintendence for Courts of Ohio set minimum standards for lawyers handling the capital cases of indigent defendants.[81] The rule requires that two attorneys be appointed to each capital case, that each attorney have a certain level of experience in criminal litigation, and that eligible attorneys complete twelve hours of specialized training every two years.[82] While the rule may have had an impact when it was first passed, "since that time, there's developed a large pool of qualified attorneys—at least qualified under the rule—who may or may not be good attorneys."[83] Perhaps due to political pressure, the

---

75 OHIO REV. CODE ANN. § 120.14.

76 OHIO REV. CODE ANN. § 120.13(E).

77 OHIO REV. CODE ANN. § 120.33 (A)(3)-(4) (Anderson 2003).

78 OHIO REV. CODE ANN. § 120.14(C)(1) (Anderson 2003).

79 Telephone Interview with Kate Jones, Staff Attorney, National Association of Criminal Defense Lawyers (Jan. 22, 2003).

80 *See* American Bar Ass'n, Criminal Justice Section, *Report to the House of Delegates: Recommendations*, 40 AM. U.L. REV. 9 (1990); Interview with Kate Jones, *supra* note 79.

81 *See* OHIO REV. CODE ANN. C.P. SUP. R. 20 (Anderson 2003). Although Rule 20 only applies to trial and appellate counsel, it is extended to cover post conviction cases in OHIO REV. CODE § 2953.21(I)(2).

82 OHIO REV. CODE ANN. C.P. SUP. R. 20(II)(A).

83 Interview with David Stebbins, *supra* note 14.

Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases, created by this rule,[84] has not been active in monitoring and removing certifications for capital cases.

C. *The Role of Politics*

While the legal framework provides a context for understanding the system of indigent defense in Hamilton County, the picture is incomplete without a thorough review of the political climate. Especially when appointing counsel in felony cases from the list of panel attorneys, there is a sense of impropriety. "What happens [in Hamilton County] is that whoever's a buddy of the presiding judge, regardless of level of experience or effectiveness . . . that person may pick up many murder cases."[85] As a practice, judges never appoint attorneys outside the county. Many attribute this to the desire to share favors with local attorneys.[86] "Appointments in Hamilton County have gone to those who contribute or those whose relatives contribute to the judges," said Bill Gallagher. "You have to be an old boy, a product of the system here."[87]

Those attorneys that judges appoint may feel pressure to remain on the good side of the judge, making them sensitive to docket concerns. Indigent defense counsel may perceive counter-veiling pressures to lend zealous representation, but not to overly disrupt the course of the trial. Mr. Stebbins noted that some judges may "appoint attorneys who they know will do a fair job of representation but not stir things up too much."[88] Hal Arenstein, a criminal defense attorney in Cincinnati, criticized this practice: "I'm concerned that many people are looked upon as inventory. It's just a question of how many cases you can move and how quickly you can move them."[89]

Lawyers may not want to risk losing future appointments because indigent defense provides reliable income when business is slow. Death penalty litigation, while not comparable to private practice, remains one of the most lucrative forms of indigent defense. In 2001, judges in Hamilton County awarded, on average, a total of $14,036 in fees for two attorneys in a capital case, but only a total of $344 in felony cases—a difference of

---

[84] OHIO REV. CODE ANN. C.P. SUP. R. 20(III)(A).

[85] Interview with David Stebbins, *supra* note 14.

[86] Interview with David Singleton, *supra* note 15; Interview with David Stebbins, *supra* note 14; Telephone Interview with Gabriel J. Chin, Rufus King Professor of Law, University of Cincinnati (Jan. 21, 2003).

[87] Interview with Bill Gallagher, *supra* note 51.

[88] Interview with David Stebbins, *supra* note 14.

[89] Telephone Interview with Hal Arenstein, Criminal Defense Attorney, Cincinnati, Ohio (Jan. 24, 2003).

approximately $32 per hour in death penalty litigation and $29 per hour in felonies.[90] "Judges view the death penalty cases as a reward because they pay more; it's patronage."[91]

While private attorneys are vested in the current system for added financial security, the income is not sufficient to encourage ardent representation. Although the OPDC revised its reimbursement schedule on January 1, 2000, most counties, including Hamilton County, do not authorize payment of fees at these rates. Instead, counties continue to set lower hourly rates for appointed counsel.[92] For example, although the OPDC authorized fees up to $60 an hour for capital cases, an average of $32 per hour was awarded in Hamilton County in 2001.[93] Additionally, attorneys in Hamilton County were awarded average hourly fees of $26 for their appellate work—almost half of the $50 per hour approved statewide for non-capital appeals.[94] The county's payment schedule is extremely low when compared to federal courts, which pay $90 per hour for indigent representation.[95] Inadequate rates of compensation make it difficult to produce quality advocacy, especially when considering that nearly a decade ago "the average Ohio attorney had an hourly overhead of $17.27 to $23.00." [96] Mr. Gallagher explained that in his last capital punishment case, he and his co-counsel lost money to adequately defend their client. "That didn't affect our representation, but I think [for] lawyers who do enough of these cases, it has to."[97]

Recently, three indigent defense lawyers filed suit against the Hamilton County Board of Commissioners, alleging that the inadequate fee schedule (i) precluded the attorneys from complying with their ethical duties to adequately prepare each case and (ii) violated the attorneys' Fifth Amendment rights because their overhead far exceeded the rates of

---

[90] 2001 ANNUAL REPORT, *supra* note 42, at 29.

[91] Interview with David Singleton, *supra* note 15.

[92] S. Adele Shank, *The Death Penalty in Ohio: Fairness, Reliability, and Justice at Risk—A Report on Reforms in Ohio's Use of the Death Penalty Since the 1997 Ohio State Bar Association Recommendations Were Made*, 63 OHIO ST. L.J. 371, 382 (2002).

[93] *Compare* OFFICE OF THE OHIO PUBLIC DEFENDER, STATE MAXIMUM FEE SCHEDULE FOR APPOINTED COUNSEL REIMBURSEMENT, 13-16 (3d ed. 2000), *available at* http://www.state.oh.us/opd/reimb/rm_stnd.pdf, *with* 2001 ANNUAL REPORT, *supra* note 42, at 29.

[94] 2001 ANNUAL REPORT, *supra* note 42, at 29.

[95] *See* New York County Lawyers Ass'n v. State, 745 N.Y.S.2d 376 (2002).

[96] Shank, *supra* note 92, at 382 n. 37.

[97] Interview with Bill Gallagher, *supra* note 51. The case Mr. Gallagher tried was not in Hamilton County.

compensation.[98] The court granted summary judgment in favor of respondents, ruling that the claim was barred by res judicata because the Supreme Court of Ohio rejected an almost identical petition filed by the same parties.[99] The appeals court affirmed this holding in regard to requests for mandamus and injunctive relief, but remanded to the trial court to review declaratory relief—on the narrow grounds that it did not give adequate explanation of fact and law in this area.[100] While the force of this case was weakened on procedural grounds, a new case may have a different outcome.

In addition to low attorneys fees, few funds are being awarded for investigators and trial experts. "Some of the judges are very parsimonious," said Fred Hoefle, a practitioner in Cincinnati who handles indigent cases in Hamilton County as part of his practice.[101] Mr. Hoefle recalled a case in the early 1990s where a judge refused to award funds for an investigator because one of the defense lawyers had been an investigator for the prosecutor's office thirty years ago. While the attorney was attempting to handle a murder trial, "he had better things to do than going through fields to collect samples."[102] Despite the fact that Ohio Revised Code section 2929.024 requires that defense investigators and experts be paid by the state, "[f]ew indigent defendants are allowed the amount of money they request."[103]

The end result of this lack of funding is an adversarial system that does not function properly. Those who suffer the most are the poor, with a disparate impact on minorities; minorities are more likely to be found guilty, receive harsher sentences, and even be sentenced to death.[104] Mr. Stebbins notes that, in his opinion, the poor quality of legal representation combined with the Hamilton County Prosecutor's policy of not plea-bargaining in capital cases has the result of "people [being] on death row who simply shouldn't be there."[105] Mr. Gallagher is currently reviving efforts to create an Ohio innocence project—joining the thirty such projects across the nation that have released 112 inmates who were later

---

[98] State *ex rel*. Felson v. McHenry, No. C-02001, 2002 Ohio App. LEXIS 4860, at *4 (1st Dist. Ct. App. Sept. 13, 2002).

[99] *Id.* at *3.

[100] *Id*. at *9-10.

[101] Interview with Fred Hoefle, *supra* note 35.

[102] Interview with Fred Hoefle, *supra* note 35.

[103] Shank, *supra* note 92, at 380.

[104] *See* Shank, *supra* note 92, at 393.

[105] Interview with David Stebbins, *supra* note 14.

found to be innocent.[106] Nevertheless, to truly alter the fate of indigent defendants, the legal community must scrutinize the system and call for reform on all levels.

IV. IMPROVING THE QUALITY OF INDIGENT DEFENSE

A. *Non-Litigious Modes of Reform*

1. *Research and Coalition Building*

To improve the quality of indigent defense in Hamilton County, and in other localities across the country, the first step is to inform and educate the community. Litigation should not be a starting point because there may be county officials, judges, lawyers, and community members who are concerned with the state of indigent defense and willing to join forces for agreeable reforms. The NACDL explains that there is inadequate data about the state of indigent defense and, due to variances in systems across the country, the gathering of reliable data must begin at a local level.[107] "Until a comprehensive body of knowledge is established and analyzed, reforms in public defense systems will continue to be difficult."[108] In turn, research can be used to facilitate coalition building and lobbying. House Bill 502, introduced before the 125th Ohio General Assembly, would facilitate the production of data by establishing a capital case commission to study the imposition and administration of capital punishment in Ohio.[109]

2. *A More Active Committee on the Appointment of Counsel*

The next step is to make policy changes already provided for by law. In Ohio, Rule 20 establishes a potentially vigorous system of review and removal of lawyers representing indigent defendants charged with capital offenses.[110] Those concerned with the state of criminal justice should advocate for a broad use of these delegated powers; more fervent review could equalize and improve the quality of indigent defense in death penalty cases across the state. Rule 20 establishes a Committee on the Appointment of Counsel for Indigent Defendants in Capital Cases. The Committee is empowered to "[d]evelop criteria and procedures for

---

[106] Sheila McLaughlin, *Wrongfully Convicted Given Hope—Innocence Project Growing in Ohio*, CINCINNATI ENQUIRER, Sept. 20, 2002, at B1, 2002 WL 20837050.

[107] Tony Fabelo, *What Policymakers Need to Know to Improve Public Defense Systems*, Executive Session on Pub. Def., Bulletin #2, 3 (Dec. 2001), *available at* www.nacdl.org.

[108] *Id.* at 1-2.

[109] H.B. 172 (introduced), 125th Gen. Assem., Reg. Sess. (Ohio 2003).

[110] *See generally*, OHIO REV. CODE ANN. C.P. SUP. R. 20.

retention of certification including, but not limited to, mandatory continuing legal education on the defense and appeal of capital cases."[111] The Committee is also authorized to "[e]xpand, reduce, or otherwise modify the list of certified attorneys as appropriate and necessary."[112] These provisions hint that the Committee may enact a more detailed review of attorney performance beyond the present system of judicial review.[113] The ABA standards recommend advanced supervision and periodical evaluation of indigent defense counsel "for quality and efficiency."[114] Such reviews may be overseen by the Committee, which already has the task of compiling the results and status of indigent death penalty cases.[115] Additionally, Bill Gallagher suggests a peer review team, which may be organized by various lawyers' associations, to evaluate the quality of indigent defense.[116]

3. *Institutional Changes—Increased State Control*

Once the options described above have been exhausted, advocates may begin to pursue systemic reform that will improve the quality of indigent defense. The ABA and the NACDL explicitly recommend centralized, statewide control of indigent defense with provisions for both centralized staff and appointed counsel.[117] In Ohio, centralization could positively change existing systems of appointments and funding.

Given the patronage that sometimes ensues with judicial appointments, judges should be removed from this role in lieu of a professional committee, akin to the one described above for death penalty cases. Such a change is essential to reform: "I think they should take politics out of the system," said Gabriel J. Chin, Rufus King Professor of Law at the University of Cincinnati.[118] "It shouldn't be treated as an opportunity for political patronage. Regardless of the presence or absence of good faith with respect to any individual appointment, the system is not structured to lead to high quality, effective representation across the board."[119] Margery

---

[111] OHIO REV. CODE ANN. C.P. SUP. R. 20(IV).

[112] OHIO REV. CODE ANN. C.P. SUP. R. 20(III)(G)(5) (emphasis added).

[113] *See* OHIO REV. CODE ANN. C.P. SUP. R. 20(V).

[114] *See* American Bar Ass'n., *The Ten Principles of a Public Defense Delivery System*, Principle 10 (Feb. 2002), *available at* http://www.abanet.org/legalservices/downloads/sclaid/tenprinciplesbooklet.pdf [hereinafter *Ten Principles*].

[115] *See* OHIO REV. CODE ANN. C.P. SUP. R. 20 (III)(G)(3).

[116] Interview with Bill Gallagher, *supra* note 51.

[117] *Ten Principles*, *supra* note 114, Principle 2; Interview with Kate Jones, *supra* note 79.

[118] Interview with Gabriel J. Chin, *supra* note 86.

[119] Interview with Gabriel J. Chin, *supra* note 86.

Koosed, a criminal law professor at the University of Akron School of Law explained that systems of judicial appointment may even be unconstitutional if they are ripe with the possibility for prejudice and arbitrariness.[120]

Centralized appointments and oversight is especially important for death penalty cases. Mirroring Maryland's Capital Defense Division,[121] the Office of the Ohio Public Defender ought to expand its Death Penalty Division to litigate capital cases statewide or to give detailed supervision to appointed counsel. Currently, there is almost no communication between appointed counsel and specialists in the state office until a case is transferred to the state office for appellate review.[122] By this time, it may be difficult to correct the damage done by inadequate counsel.

To make these changes, it is first necessary to garner political support to reverse the effects of severe budget cuts. In 2001 alone, the Office of the Ohio Public Defender had its budget slashed twice.[123] In addition to lobbying, creative solutions must be advanced to secure funding. Kim Taylor-Thompson, a professor of clinical law at New York University Law School, recommends coalition-building between the public defender and prosecutor offices.[124] A cadre of politicians could then approach the legislature to ask that the budget for the defender's office be set at a fixed percentage of the prosecutor's budget—depending on the number of cases the office handles in comparison to the prosecutor.[125] Such means would ensure the stability of the budget. Once the budget is secured, the state may have more leverage in requiring higher hourly fees for attorneys by funding a greater percentage of county costs. There is a need for Ohio to "create a statewide fee schedule for paying appointed counsel that reflects the economic realities of capital litigation."[126]

---

[120] Telephone Interview with Margery Koosed, Professor, University of Akron School of Law (Jan. 20, 2003).

[121] Jeremy P. White, Comment, *Establishing a Capital Defense Unit in Virginia: A Proposal to Increase the Quality of Representation for Indigent Capital Defendants*, 13 CAP. DEF. J. 323, 333 (2001).

[122] Interview with Fred Hoefle, *supra* note 35.

[123] *See* 2001 ANNUAL REPORT, *supra* note 42 (letter from David H. Bodiker to Governor Taft, the Ohio Supreme Court, and the Ohio General Assembly).

[124] *See* Kim Taylor-Thompson, *Legal Ethics: Effective Assistance: Reconceiving the Role of the Public Defender*, 2 J. INST. STUD. LEG. ETH. 199, 206-208 (1999).

[125] *Id.*

[126] Shank, *supra* note 92, at 381.

B. *Systemic Litigation: Reviving Gideon*

1. *Precedent*

Nationwide, courts have revived the promise of *Gideon* through systemic litigation that does not apply *Strickland*'s two-part test in a mechanical fashion. Should non-litigious efforts fail, there is precedent establishing the viability of litigation as a method of reform. Three earlier cases of far-reaching reform in this area are *State v. Smith*,[127] *State v. Peart*,[128] and *State v. Lynch*.[129] *State v. Peart* was the first case to suggest that presumptions of prejudice for ineffective assistance of counsel claims could be applied prospectively and collectively—although the presumption may be overcome in individual cases. In New Orleans, indigent defenders were so poorly compensated and overwhelmed with cases that the Louisiana Supreme Court held it was unlikely that clients were receiving effective assistance of counsel.[130] "We take reasonable effective assistance of counsel to mean that the lawyer not only possesses adequate skill and knowledge, but also that he has the time and resources to apply his skill and knowledge to the task of defending each of his individual clients."[131] The court cautioned that "Louisiana is not the only state to have faced a crisis in its indigent defense system."[132] As it foreshadowed, systemic cases began to appear all over the country.

The following year, in 1984, the Supreme Court of Arizona, in *State v. Smith*,[133] also established a prospective inference that one county's system for providing indigent defense resulted in ineffective assistance of counsel. In Mohave County, the bidding system for indigent defense operated on a flat fee, despite the type or number of cases.[134] The court found that these conditions created a presumption that the Fifth and Sixth Amendments had been violated.[135]

Most recently, on May 3, 2002, the New York State Supreme Court granted a preliminary injunction which raised the hourly fees for indigent defense lawyers in New York City family and criminal courts to $90 per

---

127 681 P.2d 1374 (Ariz. 1984).

128 621 So. 2d 780 (La. 1993).

129 796 P.2d 1150 (Okla. 1990).

130 *See Peart*, 621 So. 2d 780.

131 *Id.*

132 *Id.* at 790.

133 State v. Smith, 681 P.2d 1374 (Ariz. 1984).

134 *Id.* at 1381.

135 *Id.*

hour—matching the federal rate.[136] In a case brought by the New York County Lawyer's Association on behalf of thousands of children and indigent adults, the court held that there was a great likelihood plaintiffs would prevail in showing that the lower fee schedule resulted in ineffective assistance of counsel and that there would be irreparable harm without immediate relief.[137] Reviving *Gideon*, the court noted that "the claim of ineffectiveness is ultimately concerned with the fairness of the process as a whole rather than its particular impact on the outcome of the case."[138] The court held that the two-prong *Strickland* test was "inappropriate in a civil action that seeks prospective relief."[139]

Other cases are pending across the country—solidifying systemic litigation as a much-trodden path for reform. Similar to the complaint filed in New York, the principal legal groups that represent poor defendants in the Detroit area sued the Chief Judges of the Wayne County Circuit Court on November 12, 2002.[140] In their complaint they allege that low fees are unconstitutional and ask for rates of $90 per hour.[141] Further, in *White v. Martz*,[142] the ACLU filed a class action against the State of Montana and seven counties alleging that the indigent defense services in those counties violate the Sixth and Fourteenth Amendments.[143] To date, Montana does not have any statewide supervision of county programs for indigent defense, and it only funds local programs on an ad hoc basis to the extent the budget permits.[144]

2. *Strategizing Litigation*

After much coalition building and community activism, Hamilton County and similar localities across the nation can use litigation to address the quality of indigent defense. Nevertheless, cases must planned carefully as much of systemic litigation is rejected on procedural grounds.[145] Recall the dismissal of the fee structure case brought in Hamilton County.[146] In

---

[136] New York County Lawyers Ass'n v. State, 745 N.Y.S.2d 376 (2002).

[137] *Id*. at 379.

[138] *Id*. at 384.

[139] *Id*.

[140] Complaint, In re: Wayne County Criminal Defense Bar Association v. The Chief Judges of the Wayne County Circuit Court, No. 122709 (Mich. S. Ct. filed Nov. 12, 2002).

[141] *Id*.

[142] Complaint, White v. Martz, No. CDV-2001-133 (Montana 1st Judicial Dist. Ct. Lewis and Clark County filed Feb. 14, 2002).

[143] *Id*.

[144] ACLU *Fact Sheet*, *supra* note 58.

[145] *See, e.g.*, Kennedy v. Carlson, 544 N.W.2d 1 (Minn. 1996); Eggar v. Livingston, 40 F.3d 312 (9th Cir. 1994).

[146] *Felson*, 2002 Ohio App. LEXIS 4860, at *3; *see* discussion *supra* Part III.

preparing for litigation, attorneys must negotiate four critical decisions. First, plaintiff's counsel must choose to bring suit in either state or federal court. While federal courts may be more politically independent, they present jurisdictional issues such as the *Younger* abstention doctrine and Eleventh Amendment sovereign immunity.[147]

Second, those coordinating the litigation must select appropriate plaintiffs. Given that the Ohio Court of Appeals already rejected a lawyer's standing to assert violations of their clients' constitutional rights,[148] one is cautioned to combine both lawyers or lawyers' associations and clients amidst the plaintiffs. Even with such an alignment, prospects of obtaining injunctive relief are slim because it is difficult to show that former clients will be in real and immediate danger of sustaining direct injury. "[T]he claims would force the court to speculate whether the plaintiffs would again be arrested in the city while still indigent, brought before the City Court, denied the right to counsel, plead guilty, and be convicted."[149] A class action, mirroring the class certified in Montana, may remedy this problem because the group may extend to cover future indigent defendants.

Third, one must decide who to sue in charging systemic violations. Choice of defendant is a decisive decision, for jurisdictional reasons in federal court and for political reasons in state court. In a tactical move, one should consider aligning potential defendants as plaintiffs. It would be a mistake to assume that prosecutors and government officials are not equally concerned with quality defense. Many localities may wish to provide adequate indigent defense but lack the budget to do so. Thus, localities may join in a suit against the state government. "In Mississippi, the counties are the plaintiffs suing the state on an unfunded mandate theory," explained Ms. Jones of the NACDL.[150] "You have the counties and the county commissioners on your side which is a really strong political point."[151]

Finally, in substantively preparing for trial, lawyers must present compelling statistical evidence and studies about the poor state of indigent defense. "You've got to make a really strong factual case that it's a systemic problem and that the systemic problem is rising to the level of constitutional violations across the board," said Ms. Jones.[152] Efforts for

---

[147] Citron, *supra* note 33, at 494-97.

[148] *See Felson*, 2002 Ohio App. LEXIS 4860.

[149] *Eggar*, 40 F.3d at 316.

[150] Interview with Kate Jones, *supra* note 79; Complaint, Van Slyke v. Miss., No. 00-0013-GN-D (Miss. Ch. Ct. Forrest County filed Jan. 12, 2000).

[151] Interview with Kate Jones, *supra* note 79.

[152] Interview with Kate Jones, *supra* note 79.

reform come full circle because litigation ultimately relies on the initial fact-gathering and educational stage. With a strong systemic case, the belief in the fairness of the criminal justice system—embodied in *Gideon*—can be revived.

V. CONCLUSION

The promise of *Gideon* rests precariously in the hands of local government. While models for indigent defense vary across the country, efforts for reform can be consolidated to seek change that sweeps across the country. By examining the legacy of *Gideon* through the lens of local government, such as Hamilton County, similarly-situated localities can share in their successes and failures. Consistently, states and localities are changing their approach to indigent defense based on the recommendations of national organizations, such as the ABA, which inspired the adoption of Rule 20 in Ohio. Further, successful litigation in one area of the country causes similar cases to spring up across the nation. Clearly, the local emphasis placed on enforcing *Gideon* does not preclude uniform approaches to reform.

While Hamilton County is just one locality that struggles to provide quality indigent defense, it is a microcosm of larger, national efforts to revive the legacy of *Gideon*. Successful reforms within Hamilton County would serve as teaching points for similarly-situated localities. The belief that the system can be reformed one locality at a time is essential to a better future. Just as Clarence Earl Gideon envisioned an improved criminal justice system as he handwrote a five-page appeal to the Supreme Court, so too the legal community must imagine a more just system and strive for reform.