

Still striving to fulfill right to counsel

BY BOB FERGUSON
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In 1963, the U.S. Supreme Court decided one of its most important cases — *Gideon v. Wainwright*, guaranteeing the right to an appointed attorney in state felony cases. Now 50 years later, we have yet to fully honor “Gideon’s Promise.”

Clarence Earl Gideon was an unlikely Constitutional champion. He dropped out of school after eighth grade, ran away from home and faced his first arrest at 16. Poorly educated, rarely employed and often homeless, he was arrested and charged with the theft of less than \$100 in 1961. At 51 years old, Gideon went to trial, with no resources to hire a lawyer. He was convicted and sentenced to five years in prison.

But Gideon was also tried in an American courtroom — entitled to the same rights afforded all people in our free country — and he believed the Sixth Amendment guaranteed him the right to legal representation, even though he had no money to pay for it.

In a petition scrawled in pencil on a few pieces of prison stationery, Gideon set in motion what became one of the most

important cases in American law. Washington’s Attorney General, John J. O’Connell, signed a “friend-of-the-court” brief to the U.S. Supreme Court in support of Gideon “to insure that every indigent person accused of any felony in a state court is guaranteed right to counsel.” O’Connell and his colleagues from 21 other states argued that counsel “is indispensable to the idea of justice under law.”

The Supreme Court, in a 9-0 decision, agreed. Gideon received a new trial — this time with a lawyer who helped him receive a “not guilty” verdict in just over one hour.

Washington remains a leader in the provision of public defense services. In 2012, Washington’s Supreme Court passed a rule requiring public defense attorneys to certify that they comply with specific standards for indigent defense. The Washington Defender Association provides outstanding training and assistance programs. Our state Office of Public Defense is a leader in developing pilot programs in misdemeanor courts and in improving representation of parents in child abuse and neglect proceedings.

But as the Washington Supreme Court wrote in 2010, “... we continue our efforts to fulfill Gideon’s promise. While the vast majority of public defenders do sterling

and impressive work, in some times and places, inadequate funding and troublesome limits on indigent counsel have made the promise of effective assistance of counsel more myth than fact, more illusion than substance.”

We can be proud of the enormous progress in Washington since the *Gideon* decision. But we need to re-dedicate ourselves to ensure that strong defender programs are maintained, that all defendants have counsel at all court hearings, that all defenders have the resources and adequate training they need, and that the court-approved standards for indigent defense, particularly caseload limits, are honored in all of our communities.

As Justice Black wrote in *Gideon*, “The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.” As we celebrate the 50th anniversary of *Gideon v. Wainwright*, let’s all recommit ourselves to fulfilling Gideon’s Promise.

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