



The Failure of *Gideon* and the Promise of Public Defense

In a system rife with economic and racial disparities and swollen jail populations, could quality public defense be the answer hiding in plain sight? Sixty years since *Gideon v. Wainwright*, in which the Supreme Court ruled that anyone faced with incarceration is entitled to a lawyer regardless of their ability to pay, there is still much to lament. Roughly four out of five Americans in the criminal legal system qualify for a public defender,¹ but these attorneys are hobbled by staggering caseloads, insufficient resources, and limited training. At a roundtable hosted by the Center for Justice Innovation with support from Arnold Ventures, leaders in public defense identified key areas where attorneys and jurisdictions are—despite their limited resources—testing out new initiatives and working towards meaningful change.

« *Justice for people experiencing poverty is justice for all of us.*

Early Access to Counsel

Early access to a lawyer can give someone accused of a crime a better understanding of their rights, the legal process, and the possible outcomes of their case. Though far from the norm—especially for people experiencing poverty—having an attorney present at a first court appearance may lead

to fairer pretrial outcomes, less incarceration, and increased trust in the justice system. Even earlier access to counsel is taking root in some places, with attorneys meeting clients a day or two before court to begin preparing for their case and, in some cases, advocating for their release from custody.

Public Defense in Rural Areas

People in need of public defense in rural areas face unique obstacles, which garner less attention and funding. Not only are public defenders too few in many rural areas, they are also frequently underpaid, overburdened, and often need to travel long distances to see clients.

Attracting and retaining attorneys in rural areas is a major challenge requiring creativity and innovation. Programs in South Dakota, Utah, and Maine are meeting the challenge through innovative management and incentive strategies. Given the lack of research and evidence base, state and local governments need to rethink how they allocate resources and experiment with promising practices.

40%
counties in the U.S.
have less than one
lawyer per 1,000
residents³

Rethinking How Lawyers Are Assigned

Where attorneys are not assigned through institutional public defense offices, private attorneys are appointed to cases for people who otherwise cannot afford representation. But these arrangements may incentivize attorneys to maximize caseloads and minimize efforts, and leave them with less access to resources and support from teams of colleagues. States like New York have developed robust statewide standards for assigned counsel systems, as well as mentor programs to provide training and guidance to less experienced colleagues.

Holistic Defense

Traditionally, defense attorneys tend to focus exclusively on the legal outcome of a client's case. Holistic defense goes beyond that, providing more comprehensive support and advocacy for clients to address challenges from employment and housing to substance use and past trauma. Though more research into the impacts of holistic defense is needed, these approaches may produce better outcomes for people accused of crimes and reduce unnecessary incarceration. In the only quasi-experimental study in this area to date, the Bronx Defenders' holistic defense model reduced pretrial detention rates by 8.6%, sentences to incarceration by 15.5%, and incarceration length by 9.5 days.²

Adapting the Culture of Public Defense

Ensuring that public defenders have the support and resources they need to be effective advocates is part of the promise of Gideon. That should be the floor, not the rarely glimpsed ceiling, for public defense provision. But reformers, including public defenders, must also do more to uplift the voices of those who have been directly impacted by the legal system. No conversation about change can be complete without being firmly rooted in the experiences of those who know the system's harms most intimately.

« *While much remains to be done, the tireless work of public defenders, advocates, researchers, and—crucially—directly impacted people, is slowly but surely shifting the needle.*

About the Center for Justice Innovation

In partnership with the Bureau of Justice Assistance, the Center has supported jurisdictions around the country in upholding Sixth Amendment protections—constitutional rights for people accused of crime—since 2017. Working with teams of stakeholders, we facilitate an action-oriented strategic planning process that pushes jurisdictions to tackle the most pressing issues they face, ranging from access to counsel to trial delays. The Center is also conducting original research on questions related to public defense, including the role of race, fees for accessing public defenders, and the impact of holistic defense.

Endnotes

- 1 Oppel, Jr., R. & Patel, J. 2019. "One Lawyer, 194 Felony Cases, and No Time." *The New York Times*. Accessed at: <https://www.nytimes.com/interactive/2019/01/31/us/public-defender-case-loads.html>.
- 2 American Bar Association. 2020. *ABA Profile of the Legal Profession*. Chicago, IL: American Bar Association. Accessed at: <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>.
- 3 Anderson, J., Buenaventura, M., & Heaton, P. 2019. "The Effects of Holistic Defense on Criminal Justice Outcomes." *Harvard Law Review* 132(3): 819-893. Accessed at: <https://harvardlawreview.org/print/vol-132/the-effects-of-holistic-defense-on-criminal-justice-outcomes/>.

For More Information

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For the full report:

innovatingjustice.org/publications/failure-gideon-promise-public-defense

For related resources, see:

innovatingjustice.org/sixth-amendment

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