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In 1963, the United States Supreme Court deemed the right to attorney for those unable to afford one "fundamental and essential" to fair trials. Nearly 50 years later, public defense services in America are plagued by deep-rooted, chronic problems that our nation's top law enforcement official, U.S. Attorney General Eric Holder, has called "morally untenable" and "economically unsustainable." The American Bar Association (ABA) defines the ability of states to guarantee a poor defendant constitutionally-adequate legal representation as being in a "perpetual state of crisis." And, since upwards of 85% of all people charged with state crimes with potential jail time qualify for a public lawyer, state and local governments daily jeopardize the ability of our courts to produce verdicts that are fair, correct, swift and final. "We are left to wonder," Attorney General Holder recently stated, "if justice is truly being done."

People in need of public defender services oftentimes are undereducated, inarticulate, mentally ill, developmentally delayed, under-aged, and/or suffering from substance abuse. They need, as the U.S. Supreme Court reminds us, "the guiding hand of counsel" at "every stage of the proceeding" against them. Instead, defendants in most states count themselves among one of several hundred vying for the attention of a single lawyer who lacks the time and resources to adequately advocate on their behalf. State governments neglect to provide any type of meaningful supervision to hold these public defense lawyers accountable and refuse to make available on-going training to keep attorneys abreast of ever-evolving criminal justice sciences. And, far too often, public attorneys are beholden to judges presiding in a case for their paycheck creating a direct conflict between a lawyer's ethical duty to advocate solely on behalf of his client and his personal financial well-being.

People in need of defender services have little ability to redress such constitutional violations. In many states the same overwhelmed, untrained, unqualified and financially-conflicted lawyer who failed to adequately advocate for a client at trial is appointed to also represent that same person on direct appeal (the court procedure to review the fairness of the trial and raise issue with -- among other things -- whether or not the trial lawyer did a good job). Chances are low that such lawyers will raise concerns about the quality of their own lax work or conflicted financial interests. Unfortunately, failure to question the attorney's effectiveness at this juncture precludes it from coming before a court again until what is known as a post-conviction appeal – a court procedure in which a defendant no longer has a constitutional right to the assistance of counsel.

To be clear, it is the position of NLADA that *Gideon v. Wainwright* unequivocally places the responsibility for indigent defense services with the states – not the counties. In far too many states, counties are placed in the unenviable position of having to handle this state obligation without any financial supports from state government. My experiences in states such as Idaho, Nevada, Pennsylvania, New York and Michigan has taught me that counties with the bleakest economic outlooks are far too often the ones that have the greatest need for public defense services. That is, the downturn in local economies result

in depressed property values, high unemployment, lower than expected tax revenues and increased crime. Just when counties most need public defense services, they are least able to afford them. Counties simply can't keep up.

If the most recent mid-term elections have taught us anything it is that the answer to these chronic problems cannot be to simply throw money at them. Prudent use of taxpayer dollars requires that we all work together to get state policy-makers to reduce the need for public defense attorneys in the first place by removing non-violent, low level felonies and misdemeanors from the formal justice system through diversion, mediation and/or reclassification of crimes to non-jailable infractions where it is safe, reasonable and prudent to do so. It is only through reducing our dependence on public defense that we will ever be able to get states to relieve counties of this financial burden once and for all.

Let me give you a couple of examples. Sadly, it is an unfortunate fact that in all-too-many instances our brave men and women of the armed forces return from war zones unable to cope with realities of everyday life. Sometimes, these veterans act out in ways we wished they did not. Rather than incarcerate them at exorbitant tax-payer expense and give them a criminal record for life, don't we owe them the chance to use the arrest as a way to get them needed services instead? By diverting such cases out of the formal criminal justice system and into what are being called "Veterans Courts" we get these people the help they need and deserve at a much lower cost and without the collateral consequences of a criminal record that can prevent them from re-entering society in productive ways. And, if the threat of incarceration is taken of the table, the high cost of public defense never comes into play.

Another example is to take a serious look at crimes in which we are actually simply trying to get people to pay their debts – like the crime of "driving with a suspended license." Speaking broadly, what generally happens in the cases is that a person gets a traffic ticket and then gets their license revoked when they fail to pay the ticket. Oftentimes unaware of the revocation or, more likely, simply needing a car to get to minimum wage job people continue to drive on suspended licenses because of the great expanses and lack of public transportation in much of rural America. The next time they are pulled over, they are arrested.

At this point, we are simply criminalizing the failure to pay a fine and now bring in all the associated costs of the formal criminal justice system – including the cost of public defenders because of the threat of jail time. I understand the need to hold people accountable, but the current economy forces us to question whether it is fiscally prudent to jail a person pre-trial at perhaps $115/per day -- perhaps for a significant period because a publicly-paid lawyer does not have the time to get to their case -- then bring in the cost of the entire criminal justice system because we really, really, really want to collect that original $100 fine. In places like King County Washington, they have simply decriminalized driving with suspended licenses and use the arrest to get people set up on payment plans or into community service while getting their license reinstated. Better to keep people contributing to the tax base instead of being held at tax-payer expense.

I have had the pleasure and privilege of traveling through this great county to places such as Franklin County, NY, Venango County, PA, Jackson County, MI, Nye County, NV and countless other places where I see dedicated county officials struggling to balance the many demands on county government while also trying to uphold the state obligations to provide constitutionally-adequate counsel. Counties know that they are vunerable to lawsuits from people like the ACLU, liable to large settlements resulting from wrongful conviction simply because the public defender did not have the time to do anything beyond

passing along the current plea deal, but still do not have the economic resources to do it right. It is very disheartening for me to see county associations in places like Nevada and Idaho fighting hard for change and who would gladly give up the responsibility for the right to counsel but cannot get states to care. So where do we go from here?

Counties need to lead the charge to move away from the "tough on crime" attitudes of the past and toward a platform of being "smart on crime." Current economic conditions warrant that we distinguish between those we are afraid of and those we are just mad. It is one thing for Lynn or I to argue these points, but at the end of the day state legislators are more likely to listen to local government then Northeastern carpetbaggers. Counties must be at the forefront of this new wave by educating state leaders, the press and the general populace that chronic right to counsel systemic deficiencies waste tax payer dollars while putting public safety at risk.

Here are six brief examples of what I mean:

1. Poor defendants fill local jails at public expense waiting for their day in court simply because no defense lawyers are not present at bail-hearings or the public lawyers have so little time as to make no credible case for a defendant's release back into a community. It is no wonder that judges err on the side of caution and remand them to jail pre-trial. The inability of public defense attorneys to meet clients and prepare cases also can result in inordinately long jail stays at additional tax payer cost.

2. Children who come in contact with delinquency courts too often have been neglected by the full range of support structures that normally channel children in appropriate constructive directions. When they are brought to court and given a public defender who has no resources and too little time to do anything beyond disposing cases as quickly as possible, the message of neglect and worthlessness continues, and the risk that the juvenile will commit more — and worse crimes - increases.

3. Significant appellate resources in at least one state – Michigan – have been spent to uncover a raft of sentencing errors that should have been detected by trial counsel. These errors resulted in poor people serving longer prison terms than required costing millions. In states with prison overcrowding situations, sentencing errors can lead to dangerous people being released to make room for incoming less violent offenders.

4. The collapse of justice breeds distrust of the criminal justice process, especially amongst those communities disproportionately represented in the system. The loss of faith has many collateral consequences including reluctance of community members to show up for jury duty, and, more critically, a disinclination to cooperate with police in solving crime.

5. The constitutional failure to give defendants adequate representation is most glaringly obvious in our country's lower courts where misdemeanor cases are heard. It is a common occurrence for such courts to attempt to save money and expedite the processing of cases by pressuring the accused to forego his right to legal representation without adequately informing him of the consequences of doing so (such as potential loss of public housing, deportation, inability to serve in the armed forces, and/or ineligibility for student loans). Though these cases may have shorter jail times, even a week in jail may lead to family break-up (which could feed the

dependency courts – which as most of you probably know is the most rapidly expanding part of the justice system with all of its inherent costs).

6. When an innocent person is sent to prison as a result of public defenders not having the time, tools and training to effectively advocate for their clients, the true perpetrator of the crime remains free to victimize others and put public safety in jeopardy.

So I ask you, to please take the lead on this issue. The National Legal Aid & Defender Association stands ready to assist The National Association of Counties or state association of counties in this endeavor. Thank you and remember the words of *Gideon v. Wainwright*: "the right to one accused of crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours."