

NCCRC

National Coalition for a
Civil Right to Counsel



Why Are We Talking About the Right to Counsel in Civil Cases on the Anniversary of *Gideon*?

GIDEON AND THE INDIGENT DEFENSE CRISIS

This year, the country celebrates the 50th anniversary of *Gideon v. Wainwright*, which established a right to counsel for felonies brought in state court. *Gideon* is a landmark case, one that forms the backbone of equal access to justice in criminal cases. It also represents the pinnacle of the U.S. Supreme Court's understanding of the inequality and unfairness in the judicial system when only the rich can afford to defend themselves.

At the same time, the states have routinely failed *Gideon's* promise by dramatically underfunding the indigent defense system, leading to massive public defender case-loads, defendants languishing in jail for months without seeing a lawyer, an overuse of plea bargaining, and in the end, representation in name only. Thus, this year is not just one for celebration, but also for outrage.

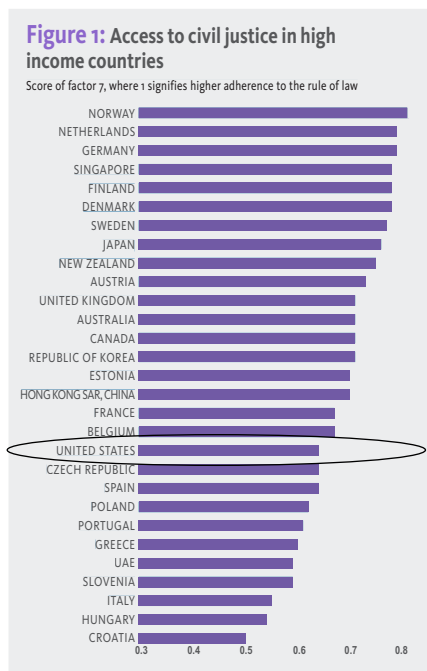


The disaster in implementing *Gideon* is one reason why many supporters of a right to counsel in civil cases prefer the term "civil right to counsel" over "civil *Gideon*." But also, *Gideon*

and later cases ensure a right to counsel for all indigent defendants in criminal cases who face jail time. The right to counsel in civil cases that is being pursued is not so broad: it would only apply to basic human needs cases (shelter, safety, sustenance, health, child custody), and there would likely be a screening process such that full representation is only provided to cases with some merit.

THE CRIMINAL/CIVIL RIGHT TO COUNSEL OVERLAP

What does a right to counsel in civil cases have to do with *Gideon*? For one, *Gideon* represents bedrock principles about fairness and access to justice, and we believe these principles apply just as much to basic human needs civil cases as they do to criminal cases. Why? Because the things that are at stake for civil litigants in basic human needs cases (homelessness, denial of life-sustaining benefits, domestic violence, and so on) are as serious as incarceration. And many parents might choose to serve a jail sentence rather than have their parental rights terminated forever.



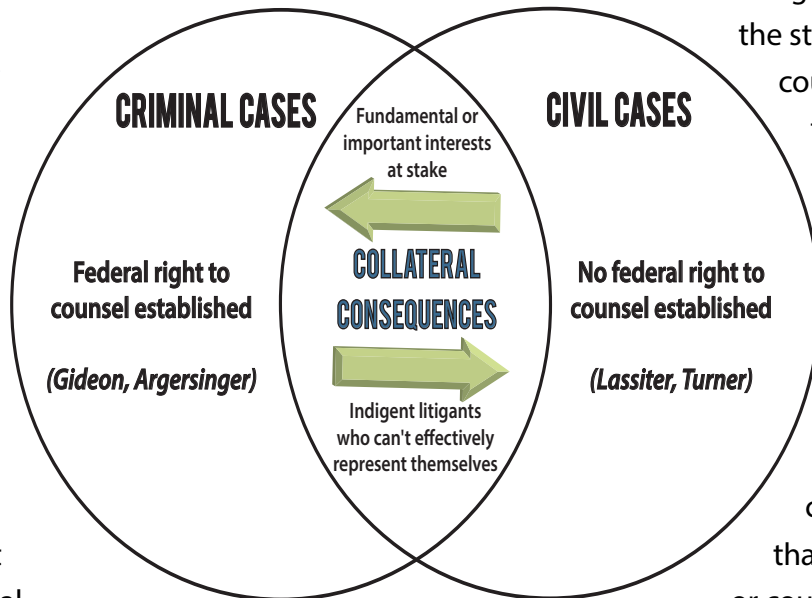
Fairness and access to justice are essential to preserving public faith in the judicial system as well as the basic rule of law, and in that respect, the Rule of Law Index (put out by the World Justice Project) ranks the United States below nearly all comparable countries with respect to access to justice in civil cases.

Civil and criminal cases are also significantly entangled. Oftentimes, civil and criminal legal assistance programs have the same clients, and some indigent defense programs already handle civil matters for their clients. The consequences of each type of case have a tendency to spill over into the other: criminal convictions caused by *Gideon* failures have severe impacts on civil legal needs (such as the ability to secure housing or employment), and civil cases lost due to lack of an attorney can worsen the indigent defense crisis (such as when evicted tenants become homeless and wind up in the criminal justice system). Thus, the failure of the states to fund *Gideon* directly affects the pursuit of a right to counsel in civil cases, and the failure of the states and courts to establish a right to counsel in civil cases only brings us further away from *Gideon's* promise.

CIVIL RIGHT TO COUNSEL AND THE INDIGENT DEFENSE FUNDING CRISIS

Some might say that pursuing a right to counsel

in civil cases is dangerous because we already don't fund criminal cases the way we should. Certainly we need to focus efforts to make the states accountable for the terrible state of the indigent defense system. However, contrary to what may believe, providing counsel in civil cases might save money for



the states, money that could help relieve the *Gideon* mess. For instance, when civil litigants have counsel and prevail in their cases, they avoid consequences that cost the state or county government

money, such as homelessness (shelters, prisons), loss of child custody (foster care), loss of medical benefits (leading to more expensive emergency medical care), and domestic violence (police, emergency medical care). And courts might find they can operate more efficiently when counsel is present; for instance, unrepresented litigants can present a huge time drain for court personnel.

RIGHTS ARE RIGHTS, NOT COMMODITIES

Putting the cost savings arguments aside, when a need rises to a significant level of importance, it should not be subject to the fluctuations of state budgets, regardless of whether the case is called "civil" or "criminal"; these are, after all, basic needs, not commodities. And when discussing basic human needs cases, the focus is on needs that rise to the level of rights in terms of their importance.