

# Clearinghouse REVIEW

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# *A Civil Right to Counsel* Continuing the Discussion

**M**arch 2013 marked the fiftieth anniversary of the iconic U.S. Supreme Court decision in *Gideon v. Wainwright*, 372 U.S. 335 (1963), which found a constitutional right to counsel for anyone charged with a felony and too poor to hire a lawyer. Not only the legal and advocacy communities but also a broad range of mainstream media devoted substantial time to examining *Gideon*'s legacy, whether the ruling has lived up to its promise, and the current state of the indigent defense system.

Some of the commentary also focused on an aspect of the right to counsel that CLEARINGHOUSE REVIEW readers know all too well: the *lack* of any such constitutional right in civil cases, regardless of what clients stand to lose. This discussion continues in the "package" of three pieces of writing that follow. The first, by John Pollock, coordinator of the National Coalition for a Civil Right to Counsel, and Mary Deutsch Schneider, executive director of Legal Services of Northwest Minnesota, looks back at ten years of the national coalition's work. Next, Martin Guggenheim and Susan Jacobs of the Center for Family Representation, in New York City, consider the importance of, and a model for, ensuring counsel for parents at risk of losing their children to state custody. And, third, Earl Johnson Jr., who directed the Office of Economic Opportunity's Legal Services Program at the program's inception and recently retired as an associate justice of the California Court of Appeal, reflects on his nearly fifty years of scholarship and advocacy for a civil right to counsel.—THE EDITORS



*Ten Years In and Picking Up Steam*

# A Retrospective on the National Coalition for a Civil Right to Counsel

By John Pollock and Mary Deutsch Schneider

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**A**s *Gideon v. Wainwright*, the landmark U.S. Supreme Court case that recognized a right to a lawyer for criminal defendants, turns fifty this year, the National Coalition for a Civil Right to Counsel is celebrating its tenth anniversary.<sup>1</sup> These two events are not mutually exclusive: the right to counsel in criminal cases and the movement to establish a right to counsel in civil cases involving basic human needs are intertwined. One need look only at the collateral effects of denial of counsel in each area on the other, the similar level of importance of the interests at stake, and the fact that civil and criminal legal aid providers often have the same clients. Former Vice President Walter Mondale, who, as Minnesota attorney general, authored the *Gideon* Supreme Court amicus brief signed by twenty-two attorneys general in support of the right to criminal counsel, spoke in 2009 on breaking down the wall between criminal and civil cases:

In truth, the criminal/civil distinction is often of wholly theoretical interest when you're about to be deprived of your children, committed to a mental institution, foreclosed from your home, fired from your job, or a vast range of other civil proceedings, many of which are being pressed by the economic crisis that is hitting poor people, and all of us today—that could have life or death consequences, even though they're called just civil.<sup>2</sup>

Examining how the effort to establish a parallel (but not identical) right to counsel in basic human needs civil cases began and has developed is thus fitting in this year of celebrating the achievement of a right to counsel in criminal cases.<sup>3</sup>

Our goal in this article is to show how a project with a long-term outlook got off the ground organically but then carefully rooted itself and expanded over a relatively

<sup>1</sup>*Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>2</sup>Civil Gideon Task Force, Minnesota State Bar Association, Access to Justice: Assessing Implementation of Civil Gideon in Minnesota, at ii (Dec. 2, 2011), <http://bit.ly/10clQ05>; see also Videotape: 50 Years Later: The Legacy of *Gideon v. Wainwright* (U.S. Department of Justice March 15, 2013), <http://1.usa.gov/14fLmJX> (featuring Vice President Mondale speaking in support of a right to counsel in civil cases).

<sup>3</sup>For more on the interconnections between criminal and civil cases, see John Pollock, *Gideon and Civil Right to Counsel: Two Sides of a Coin*, 34 NLADA CORNERSTONE 24 (Jan.–March 2013), <http://bit.ly/121bN2j>.

short time, even during a burgeoning economic crisis.<sup>4</sup> We hope this information will prove useful not just to those who believe in the civil right to counsel but also to anyone building a movement from the ground up.

### Coalition Has an Unexpected Beginning

The Coalition's birth was spontaneous, and strangely unexpected. Two session proposals focusing on civil right to counsel were submitted to the National Legal Aid and Defender Association (NLADA) for its 2003 annual conference, titled "United in the Promise of Justice." One proposal came from Minnesota and was spurred by frustration over funding cuts that reduced the number of legal aid attorneys from 178 to 122.<sup>5</sup> In the legislature, advocates were told that civil legal programs would suffer greater cuts because counsel in civil cases was not constitutionally mandated.

The second proposal came jointly from two advocates on opposite coasts; the two advocates had never met, but both were working on cases to establish a civil right to counsel. Deborah Perluss, director of advocacy and general counsel of the Northwest Justice Project, said:

Deb Gardner and I just kind of learned about each other. She was working on a case in Maryland and I was doing a case in Washington. Because I was in Seattle, where the conference was going to be, I said, 'Why don't we set up a time to maybe have a discussion of the kind of work that we are respectively doing to expand appointment of counsel in the civil

arena?' So we just pulled together the workshop.<sup>6</sup>

Perluss included Raven Lidman, an acclaimed writer on international right-to-counsel issues, and Lisa Brodoff, who was working on Americans with Disabilities Act issues; both were also clinical law professors at Seattle University School of Law. Wilhelm Joseph, executive director of Maryland Legal Aid Bureau, later joined the group.

Although the two proposals' proponents did not know each other, NLADA conference organizers knew of their activities. Alan Houseman, director of the Center for Law and Social Policy, was regularly part of the NLADA conference planning team. As founder and former director of Michigan Legal Services, he had worked on strategic litigation efforts to expand the right to civil counsel in Michigan in the 1970s (efforts that came to a halt after several significant victories when the Michigan Supreme Court composition changed and *Lassiter v. Department of Social Services* was decided).<sup>7</sup> Houseman reviewed both NLADA conference proposals and helped set up sequential civil-right-to-counsel panels. To both panels, Houseman added California Court of Appeal Justice Earl Johnson Jr., the undisputed leader and founder of the civil-right-to-counsel movement; Johnson is the most prolific writer on the topic and his books and articles span four decades.<sup>8</sup>

The first panel featured a theoretical overview of legal bases for the civil right to counsel, including state constitutional and statutory law and international law; panelists also discussed the strategic role for legal services programs and building support within the community. Debra

<sup>4</sup>As to the long-term outlook, forty years is the time that elapsed between the decisions in *Powell v. Alabama*, 287 U.S. 45 (1932) (first right-to-appointed-counsel case, but applying only to capital cases), and *Argersinger v. Hamelin*, 407 U.S. 25 (1972) (extending right to counsel to misdemeanor cases). Advocates hope that a civil right to counsel will be established more expeditiously.

<sup>5</sup>Mary Deutsch Schneider, along with Minnesota Justice Foundation Law Clerk Jasper Schneider, who is now U.S. Department of Agriculture rural development state director for North Dakota, submitted the proposal.

<sup>6</sup>Telephone Interview by Mary Deutsch Schneider with Deborah Perluss (Feb. 26, 2013).

<sup>7</sup>*Lassiter v. Department of Social Services*, 425 U.S. 18 (1981) (no automatic right to counsel in termination-of-parental-rights cases).

<sup>8</sup>California Court of Appeal Justice Earl Johnson Jr. was ill during the conference, but his materials were distributed during the panel sessions. For his personal recollection of the struggle to achieve a civil right to counsel, see *50 Years of Gideon, 47 Years Working Toward a Civil Gideon*, in this issue.

Gardner presented on *Frase v. Barnhart*, a case seeking to establish a right to counsel in the private custody context based on a variety of legal strategies; *Frase* had been argued before the Maryland Court of Appeals in October 2003 but had not yet been decided.<sup>9</sup> Gardner also discussed the “Maryland strategy,” which had started in 2000 by researching Maryland jurisprudence and civil-right-to-counsel cases and articles from other jurisdictions.<sup>10</sup> The second panel focused on what needed to be done in the civil legal aid community to advance civil right to counsel and added thoughts on action items from the first panel’s members.

The panel sessions seemed to hit a nerve, with standing-room-only crowds flowing into the hallway. “My initial impressions were that the timing was just right,” Perluss said. “People were really feeling the frustration of reduced resources for legal aid, and the increasingly absurd scope of injustices happening because of it.”<sup>11</sup> Despite concerns about practicality, consequences of certain models, and impact on funding and fund-raising, the overall spirit was supportive. According to Don Saunders, NLADA vice president, civil legal services,

there were leaders in the defender community on our board then who were strong voices for having an equal civil concept. There was some concern about scope and cost and things like that, but we were able to rally all of NLADA behind the *concept* of a civil right to counsel.<sup>12</sup>

Several suggestions emerged from the panels: expanding awareness among law-

yers and judges; promoting understanding through continued research and writing; creating a website; advocating with the American Bar Association to create a commission on the issue; organizing regional or national conferences; engaging in coalition building; and establishing an e-mail list. At the end of the session, Gardner offered to schedule periodic conference calls, from which the “civil Gideon discussion group” was born.

### The Movement Gets Going

Only a handful of months later, the collaborative was off and running. Fifty participants had signed on to the e-mail list and were sharing news of the efforts in their states, such as work in Maryland to find the “next *Frase*” (via outreach to legal services organizations, law school clinics, private firms, and *pro se* entities) and the California Access to Justice Commission’s establishment of a civil-right-to-counsel subcommittee.<sup>13</sup> The Public Justice Center and the Sargent Shriver National Center on Poverty Law were working on a documents clearinghouse, and the Shriver Center created a website. Associates at the law firm of Wilmer, Cutler & Pickering were researching the viability of civil-right-to-counsel theories in other states, an effort that Dorsey and Whitney and other law firms later joined. Participants explored using CLEARINGHOUSE REVIEW to advocate civil right to counsel and submitted proposals for panels at more conferences. Within a year, activities initiated by participants ranged from litigation to legislation to model state statutes, along with social science research and writing.<sup>14</sup>

The group was now referred to as the “National Civil Gideon Coalition” but

<sup>9</sup>*Frase v. Barnhart*, 840 A.2d 114 (Md. 2003).

<sup>10</sup>For more on the Maryland strategy, see John Nethercut, “This Issue Will Not Go Away”: Continuing to Seek the Right to Counsel in Civil Cases, 38 CLEARINGHOUSE REVIEW 481 (Nov.–Dec. 2004).

<sup>11</sup>Perluss, *supra* note 6.

<sup>12</sup>Telephone Interview by Mary Deutsch Schneider with Don Saunders (Feb. 26, 2013).

<sup>13</sup>The Maryland Court of Appeals issued its decision, fully favorable to the Public Justice Center’s client, approximately a month after the NLADA conference, but declined to reach the civil-right-to-counsel issue by a 4-to-3 vote. In an impassioned concurrence, three judges indicated that they would have found a right to counsel (see *Frase*, 840 A.2d 131).

<sup>14</sup>See, e.g., Paul Marvy & Debra Gardner, *A Civil Right to Counsel for the Poor*, 32 HUMAN RIGHTS 8 (2005); Nethercut, *supra* note 10; Jonathan Smith, *Civil Gideon*, 18, no. 4 MIE JOURNAL 3 (2004); Deborah Perluss, *Washington’s Constitutional Right to Counsel in Civil Cases: Access to Justice v. Fundamental Interest*, 2 SEATTLE JOURNAL FOR SOCIAL JUSTICE 571 (2004); Earl Johnson Jr., *Will Gideon’s Trumpet Sound a New Melody? The Globalization of Constitutional Values and Its Implications for a Right to Equal Justice in Civil Cases*, 2 SEATTLE JOURNAL FOR SOCIAL JUSTICE 201 (2003).

still lacked an official name. In March 2005 it became known as the National Coalition for a Civil Right to Counsel, eschewing the “civil Gideon” terminology.<sup>15</sup> The coalition turned to the creation of a steering committee and subcommittees to guide its work and the development of a mission statement.

The year 2006 was a watershed. The theme of the Twenty-third Annual Edward V. Sparer Symposium at the University of Pennsylvania Law School was “Civil Gideon: Making the Case” and featured American Bar Association (ABA) President Michael Greco as the keynote speaker; Greco called on the nation to engage in a “serious discussion about the civil right to counsel.” The Temple Political and Civil Rights Law Review published papers from the Sparer Symposium, and CLEARINGHOUSE REVIEW devoted its entire July–August issue to the question of the right to counsel in civil cases.<sup>16</sup> Mainstream news media outlets started paying attention: National Public Radio’s *Justice Talking* with Margot Adler recorded a civil-right-to-counsel debate at the Constitution Center, and a Philadelphia-based cable television program, *It’s Your Call with Lynn Doyle*, aired a one-hour live debate on civil right to counsel.<sup>17</sup>

The most significant event of 2006, however, was the ABA’s consideration of a resolution on a civil right to counsel. In the wake of Greco’s speeches emphasizing access to counsel in civil cases, coalition leaders had formed an ABA subcommittee that approached the ABA Standing Committee on Legal Aid and Indigent Defendants about the civil right to counsel. At its November 2005 meeting, the

ABA Presidential Task Force created by Greco proposed a policy resolution on civil right to counsel. Before a packed House of Delegates and visitors in August 2006, the ABA took up Resolution 112A:

RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.<sup>18</sup>

The measure passed unanimously, generating much publicity and discussion and reenergizing the coalition, whose participants began to plan how to incorporate the resolution into various advocacy initiatives.

The next few years saw litigation successes (e.g., a trial court victory in Alaska on the right to counsel in private custody proceedings) and major disappointments (e.g., *King v. King*, in which the Washington Supreme Court rejected the right to counsel in dissolution-related custody proceedings and dismissed many different theories, and *Kelly v. Warpinski*, where the Wisconsin Supreme Court declined to hear a case involving the right to counsel in custody cases), with the coalition filing amicus briefs in all of these cases.<sup>19</sup> In the nonlitigation realm a 2008 conference at Touro Law School entitled “An Obvious Truth: Creating an Action Blueprint for a Civil Right to Counsel in New York State”

<sup>15</sup>Early civil-right-to-counsel efforts were commonly referred to as seeking a “civil Gideon.” The National Coalition for a Civil Right to Counsel now avoids that term for two principal reasons: first, *Gideon*’s unfulfilled promises, inadequate funding, and negative consequences for criminal defendants are all pitfalls that the coalition does not want to repeat; and, second, the civil right to counsel being sought is narrower and more nuanced than the criminal right in that it applies to basic human-needs cases and does not span the full range of civil representation.

<sup>16</sup>Symposium, 2006 Edward V. Sparer Symposium: *Civil Gideon: Creating a Constitutional Right to Counsel in the Civil Context*, 15 TEMPLE POLITICAL AND CIVIL RIGHTS LAW REVIEW (2006); *A Right to a Lawyer? Momentum Grows*, 40 CLEARINGHOUSE REVIEW (July–Aug. 2006).

<sup>17</sup>Justice Talking, Are Lawyers Necessary in All Cases? (National Public Radio July 17, 2006), <http://bit.ly/ZMdO4s>; *It’s Your Call with Lynn Doyle* (CN8 (Philadelphia) television broadcast March 28, 2006).

<sup>18</sup>American Bar Association, Resolution 112A (Aug. 2006), <http://bit.ly/13yGmj9>.

<sup>19</sup>*Gordanier v. Jonsson*, No. 3AN-06-8887 C1 (Alaska Super. Ct. 3d Jud. Dist. Anchorage Aug. 14, 2007) (order), <http://bit.ly/17s6B98>; *Gordanier v. Jonsson*, No. 3AN-06-8887 C1, slip op. at 2 (Alaska Super. Ct. 3d Jud. Dist. Anchorage Jan. 23, 2008); *King v. King*, 174 P.3d 659, 666 (Wash. 2007).

generated lively conversation and a post-conference law review issue dedicated to civil right to counsel.<sup>20</sup> And in the fall of 2008 the Boston Bar Association's Task Force announced a plan for expanding the right to counsel in Massachusetts.<sup>21</sup>

### Dedicated Funding Helps the Coalition Leap Forward

Although the Ford Foundation and the Open Society Institute had funded some of the groups running the Coalition, rapid growth called for resources beyond volunteers. In 2009, thanks to the ABA Section of Litigation's two-year grant (later extended for a third year), the coalition hired John Pollock as a full-time staffer. This move helped the coalition grow by one-third from 2009 to 2013 to 240 participants in thirty-five states, and facilitated the creation of long-term infrastructure, such as a wiki document repository, a new website, and comprehensive research on a variety of subjects.

With this growth came an explosion of activity: involvement in cases involving the right to counsel for parents in termination-of-parental-rights cases (Indiana, Texas, and Michigan), children in termination-of-parental-rights cases (Washington and Texas), parents in abuse or neglect cases (New Hampshire), civil contempt (Georgia), truancy

(Washington, Tennessee), guardianship (Ohio), parents in adoption proceedings (Arkansas), and immigration detainees with mental health issues (federal district court).<sup>22</sup> In the Michigan case, the Coalition filed an amicus brief, but the court denied review; the Coalition also filed an amicus brief in the New Hampshire case. Those amicus briefs argued against the use of the case-by-case approach to appointing counsel (which the U.S. Supreme Court abandoned for criminal cases only twenty years after initially adopting it) and surveyed how courts in other jurisdictions had handled the right to counsel in question.<sup>23</sup>

Developments continued to be a mix of positive and negative. The U.S. Supreme Court's first civil-right-to-counsel decision in thirty years, *Turner v. Rogers*, found no federal constitutional right to counsel in civil contempt proceedings over failure to pay child support in cases where the opponent is neither the state nor represented by counsel.<sup>24</sup> In the wake of that decision the coalition promoted understanding of what the opinion does and does not say and what courts may still do under their state constitutions. Among other activities, coalition staff supplied and prepared speakers for a series of *Turner* debates sponsored by the Federalist Society and the American Constitution Society, and numerous co-

<sup>20</sup>Symposium, *An Obvious Truth: Creating an Action Blueprint for a Civil Right to Counsel in New York State*, 25 TOURO LAW REVIEW 1 (2009).

<sup>21</sup>BOSTON BAR ASSOCIATION TASK FORCE ON EXPANDING THE CIVIL RIGHT TO COUNSEL, GIDEON'S NEW TRUMPET: EXPANDING THE CIVIL RIGHT TO COUNSEL IN MASSACHUSETTS (Sept. 2008), <http://bit.ly/11OOpMU>.

<sup>22</sup>*In re I.B.*, 933 N.E.2d 1264 (Ind. 2010) (right to counsel in termination-of-parental-rights cases extends to appeal); *In re J.C.*, 250 S.W.3d 486 (Tex. Ct. App. 2008) (addressing only statutory arguments), review denied, No. 08-0351 (Tex. 2009), cert. denied, 130 S. Ct. 1281 (2010); *In re S.G.E.*, No. 12-0542 (Tex. filed Nov. 9, 2012) (awaiting decision on whether to review questions of equal protection right to counsel for parent, failure of trial court to apply *Lassiter* analysis, and trial court's abuse of statutory discretion in not appointing counsel for child); *In re McBride*, 2008 WL 2751233 (Mich. Ct. App. 2008) (applying harmless error test to denial of appointed counsel), review denied, 766 N.W.2d 857 (Mich. 2009); *In re Dependency of M.S.R.*, 271 P.3d 234 (Wash. 2012) (no automatic right to counsel for children in termination-of-parental-rights cases); *In re C.M.*, 48 A.3d 942 (N.H. 2012) (2-to-1 plurality decision finding no automatic right to counsel in abuse or neglect proceedings); *Deal v. Miller*, 739 S.E.2d 487 (Ga. Ct. App. 2013) (right to counsel in contempt cases; appellate court reversed class certification, and plaintiffs are seeking reconsideration); *Bellevue School District v. E.S.*, 257 P.3d 570, 577 (Wash. 2011) (reversing court of appeals finding of right to counsel in truancy cases); *In re B.R.*, No. E2013-00714-COA-R3-JV (Tenn. Ct. App. March 7, 2013) (ongoing litigation regarding right to counsel for children subjected to valid court order to attend school); *Ohio ex rel. McQueen*, No. 2013-Ohio-65, slip op. (Ohio Jan. 16, 2013) (statutory right to counsel in guardianship establishment proceedings extends to review proceedings); *Lucas v. Jones*, 2012 Ark. 365 (Ark. 2012) (parent failed to raise right to counsel adequately at trial, even though she moved for continuance asserting that she had been advised to request appointment of counsel); *Franco-Gonzalez v. Holder*, No. CV10-02211 (C.D. Cal. April 23, 2013) (right to counsel found for two named plaintiffs under federal Rehabilitation Act, but court has not yet ruled on class statutory or constitutional claims).

<sup>23</sup>*In re McBride*, 2008 WL 2751233; and *In re C.M.*, 48 A.3d 942.

<sup>24</sup>*Turner v. Rogers*, 131 S. Ct. 2507 (2011).

## Late-Breaking Development

In *Franco-Gonzalez v. Holder* the federal district court for California's central district considered whether detainees with mental impairments are entitled to counsel in immigration removal proceedings. After granting class action status, the court ordered the government not to continue any removal hearings on members of the class (all disabled detainees in California, Arizona, and Washington) without first appointing a "qualified representative" under the Rehabilitation Act. The court found that such an accommodation was not an undue financial burden partly because the government had been able to find pro bono counsel for some of the class members and partly because the court's requirement of a "qualified representative" was flexible enough to allow the use of law students and other "accredited representatives." The court rejected the argument that provision of qualified representatives conferred a benefit not available to other detainees; the court held that it simply allowed detainees with mental impairments to participate as fully in the proceedings as nondisabled detainees—similar to providing translators. In light of its ruling under the Rehabilitation Act the court found unnecessary any ruling on the federal due process clause claim.

Notably, the U.S. Senate has proposed legislation that would extend a right to counsel in removal cases for unaccompanied minors, immigrants with mental disabilities, and those who are "particularly vulnerable when compared to other aliens in removal proceedings." And in April the U.S. Justice Department's Executive Office of Immigration Review issued a new policy requiring screening of immigration detainees for "serious mental disorders or conditions" and making "qualified representatives" available to detainees "deemed mentally incompetent to represent themselves ..." (Press Release, U.S. Department of Justice, Department of Justice and the Department of Homeland Security Announce Safeguards for Unrepresented Immigration Detainees with Serious Mental Disorders or Conditions (April 22, 2013), <http://1.usa.gov/Zn9xyE>). The new policy essentially expands the district court's ruling to apply nationwide.

alition staff and participants contributed to an online *Turner* symposium.<sup>25</sup>

Besides its litigation work, the coalition has continued to take a multifaceted approach. Staff and participants contributed to right-to-counsel language in the Dignity in Schools Campaign's Model Code for Education, the ABA's Model Access Act and Basic Principles (which help guide jurisdictions implementing new civil rights to counsel), the ABA Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (an effort driven by the ABA Section of Litigation's Children's Right to Counsel Committee), the World Justice Project's Rule of Law Index (which ranks the United States near the

bottom in access to civil justice), and the National Law Center for Homelessness and Poverty's 2011 Human Right to Housing report.<sup>26</sup> Led by Legal Action of Wisconsin's Executive Director John Ebbott, advocates petitioned the Wisconsin Supreme Court in 2011 to create rules for a civil right to counsel, with supporting written and in-person testimony from coalition staff and participants.<sup>27</sup>

This level of activity required extensive research to support it. Thanks to its new staff resources and tremendous pro bono contributions, the coalition produced research memos on the existing and prospective rights to counsel in each state. These memos will form the basis of a manual for judges that the ABA will dis-

<sup>25</sup>John Pollock, *Turner v. Rogers: Why the Supreme Court Is a Day Late and a Dollar Short*, CONCURRING OPINIONS (June 22, 2011), <http://bit.ly/15X7ZxO>.

<sup>26</sup>Dignity in Schools Campaign, A Model Code on Education and Dignity (Aug. 2012), <http://bit.ly/Zzx4yq>; American Bar Association, Resolution 104 (Model Access Act) (Aug. 2010), <http://bit.ly/16j1gjX>; American Bar Association, Resolution 105 (Basic Principles of a Right to Counsel in Civil Legal Proceedings) (Aug. 2010), <http://bit.ly/1014tBP>; American Bar Association, Model Act Governing the Representation of Children in Abuse, Neglect, and Dependency Proceedings (Aug. 2011), <http://bit.ly/Yewfvf>; World Justice Project, The Rule of Law Index (2012–2013), <http://bit.ly/YgFSdj>; NATIONAL LAW CENTER ON HOMELESSNESS AND POVERTY, "SIMPLY UNACCEPTABLE": HOMELESSNESS AND THE HUMAN RIGHT TO HOUSING IN THE UNITED STATES (2011), <http://bit.ly/14x3SwC>.

<sup>27</sup>John F. Ebbott, *Petition to Establish a Right to Counsel in Civil Cases*, WISCONSIN COURT SYSTEM (Sept. 30, 2010), <http://bit.ly/11ONwP5>; Debra Gardner & John Pollock, National Coalition for a Civil Right to Counsel, Comments on Proposed Petition 10-08 (Sept. 2, 2011), <http://bit.ly/10jMmGI>; Videotape: Wisconsin Supreme Court Rules Hearing (WisconsinEye Public Affairs Network Oct. 4, 2011), <http://bit.ly/YgGTIH> (video part 3 of 4, starting at five-minute mark) (John Pollock's oral testimony on Petition 10-08 before Wisconsin Supreme Court).

tribute in late 2013 or early 2014. Coalition staff also developed a comprehensive bibliography detailing every law review article, study, report, news story, and other public resource on civil right to counsel.<sup>28</sup> Across the country coalition participants initiated pilot research projects to measure the impact of counsel in civil cases, including pilots enacted by the California Legislature (through the advocacy of many Coalition participants and partners) that will spend roughly \$10 million a year for six years.<sup>29</sup> In support of these efforts, coalition staff helped Washington Appleseed produce a manual for those thinking of starting civil-right-to-counsel pilot projects and organized a full-day conference, attended by nearly forty people, on the pilot projects in California, Boston, Iowa, New York, and Wisconsin.<sup>30</sup>

The coalition endeavored to raise awareness about the right to counsel. For the

ABA Section of Litigation, Pollock recorded a video that details the history of the civil-right-to-counsel movement and the current activities nationally.<sup>31</sup> With the Brennan Center for Justice, the coalition coproduced a series of videos that feature interviews with homeowners, judges, and others about the importance of counsel in foreclosure cases.<sup>32</sup> The coalition also distributed a memo answering common concerns about the expansion of the civil right to counsel.<sup>33</sup> Coalition participants and staff authored numerous law review articles about the right to counsel generally or application of the right on specific issues.<sup>34</sup> Among the specific topics that these articles discussed were foreclosure and eviction, disability, pilot projects and research, and the relationship between civil right to counsel and antipoverty advocacy.<sup>35</sup> And in 2011 the coalition organized its

<sup>28</sup>National Coalition for a Civil Right to Counsel, Civil Right to Counsel Bibliography (Dec. 17, 2012), <http://bit.ly/14pICsn>.

<sup>29</sup>CAL. GOV'T CODE § 68651 (previously Assembly Bill 590) (West 2013), <http://bit.ly/16Zq7uj>. To learn how these pilots were achieved, see Kevin G. Baker & Julia R. Wilson, *Stepping Across the Threshold: Assembly Bill 590 Boosts Legislative Strategies for Expanding Access to Civil Counsel*, 43 CLEARINGHOUSE REVIEW 550 (March–April 2010).

<sup>30</sup>Washington Appleseed, *Developing Civil Right to Counsel Pilot Projects: A Resource for Designing and Implementing Effective Programs* (2012), <http://bit.ly/10SfBBZ>.

<sup>31</sup>Videotape: *Expanding the Civil Right to Counsel: A Key Access to Justice Issue* (ABA Section of Litigation n.d.), <http://bit.ly/YG5cfj>.

<sup>32</sup>Brennan Center for Justice, *Fighting Foreclosure: Why Legal Assistance Matters* (Oct. 11, 2011), <http://bit.ly/ZzFplq>; Public Justice Center, *Civil Right to Counsel* (2011), <http://bit.ly/10fleWk>.

<sup>33</sup>David Udell & Laura Abel, National Coalition for a Civil Right to Counsel, *Information for Civil Justice Systems about Civil Right to Counsel Initiatives* (June 9, 2009), <http://bit.ly/YfAn7D>.

<sup>34</sup>On the right generally see, e.g., Debra Gardner, *The Overdue Right to Counsel in Civil Cases: Focus on Custody*, ABA SECTION OF LITIGATION COMMITTEE ON FAMILY LAW, FAMILY LAW ANNUAL REVIEW (2009); Debra Gardner, *Pursuing a Right to Counsel in Civil Cases: Introduction and Overview*, 40 CLEARINGHOUSE REVIEW 167 (July–Aug. 2006); Paul Marvy & Debra Gardner, *A Civil Right to Counsel for the Poor*, 32, no. 3 ABA HUMAN RIGHTS 8–9 (2005), <http://bit.ly/11eUvP1>; John Pollock, *The Great Divide—Gideon and Civil Cases*, 14, no. 3 YOUNG LAWYER 1 (Jan. 2010), <http://bit.ly/Z12k4l>; John Pollock, *Walking Before Running: Implementation of a Right to Counsel in Civil Cases*, 14, no. 2 MIE JOURNAL 6 (2010), <http://bit.ly/16QofTO>; John Pollock, *Where We've Been, Where We're Going: A Look at the Status of the Civil Right to Counsel, and Current Efforts*, MIE JOURNAL SPECIAL FEATURE, Summer 2012, at 29, <http://bit.ly/10PcOYA>; John Pollock & Michael S. Greco, *It's Not Triage if the Patient Bleeds Out*, 161 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 40 (2012), <http://bit.ly/Xn9UNQ>; Clare Pastore, *Life After Lassiter: An Overview of State-Court Right-to-Counsel Decisions*, 40 CLEARINGHOUSE REVIEW 186 (July–Aug. 2006), <http://bit.ly/17abJ2z>; Earl Johnson Jr., *Equal Access to Justice: Comparing Access to Justice in the United States and Other Industrial Democracies*, 24 FORDHAM INTERNATIONAL LAW JOURNAL 583 (2000), <http://bit.ly/10k6uct>.

<sup>35</sup>On foreclosure and eviction see, e.g., John Pollock, *Lassiter Notwithstanding: The Right to Counsel in Foreclosure Actions*, 43 CLEARINGHOUSE REVIEW 448 (Jan.–Feb. 2010); John Pollock, *Going Public: The State-Action Requirement of Due Process in Foreclosure Litigation*, *id.* 458; Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARVARD CIVIL RIGHTS—CIVIL LIBERTIES LAW REVIEW 557 (1988). On disability see, e.g., Lisa Brodoff et al. *Access to Justice—A Call for Civil Gideon: The ADA: One Avenue to Appointed Counsel Before a Full Civil Gideon*, 2 SEATTLE JOURNAL FOR SOCIAL JUSTICE 609 (2004). On pilot projects and research see John Pollock, *Studying the Studies: An Analysis of Three Recent Studies Comparing Full Representation to "Limited Assistance" in Eviction Cases*, 42 NATIONAL HOUSING LAW BULLETIN 72 (March 2012); Laura K. Abel & Susan Vignola, *Economic and Other Benefits Associated with the Provision of Civil Legal Aid*, 9 SEATTLE JOURNAL FOR SOCIAL JUSTICE 139 (Fall–Winter 2010) <http://bit.ly/128wnzX>; Steven Eppler-Epstein, *The Fight for Legal Aid Funding and Right to Counsel Advocacy: An Incremental Approach and an Overarching Message*, 26, no. 2 MIE JOURNAL 41 (2012); Baker & Wilson, *supra* note 29. On civil right to counsel and antipoverty advocacy see, e.g., Debra Gardner & John Pollock, *Civil Right to Counsel's Relationship to Antipoverty Advocacy: Further Reflections*, 45 CLEARINGHOUSE REVIEW 150 (July–Aug. 2011) (in response to Gary F. Smith, *Poverty Warriors: A Historical Perspective on the Mission of Legal Services*, 45 CLEARINGHOUSE REVIEW 34 (May–June 2011)).

first full-day conference on civil right to counsel. More than sixty people attended the conference, and the pilots conference discussed above followed in 2012.



In the coalition's ten years, participants and partners can point to nationwide achievements accomplished through varied initiatives. Ahead the goal for the coalition is to be proactive, helping advocates find openings to expand the right to counsel based on their particular state's jurisprudence, political atmosphere, and other factors.

Coalition participants understand the importance of a long-term view. The right to

counsel in criminal cases was not built in a day but rather over forty years (and counting), and suffered setbacks such as *Betts v. Brady*, which said, some twenty years before *Gideon*, that the right to counsel in state felony cases was on a case-by-case basis.<sup>36</sup> Because of the extensive, coordinated work by the national coalition and its many advocates across the nation, however, there is hope that a civil right to counsel might be implemented more expeditiously. Just as the coalition was born at an NLADA conference celebrating *Gideon*, we hope that an NLADA conference in the not too distant future will celebrate the coexistence of the right to counsel in both criminal and civil cases.

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<sup>36</sup>*Betts v. Brady*, 316 U.S. 455 (1942).



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