

# Gideon's Children - Not Just in Criminal Law

By Rick Goralewicz

Almost like a perfect storm of justice, several powerful legal issues flowed together over the past two months. In March, lawyers and bar associations across the country celebrated the 50th Anniversary of SCOTUS' landmark decision in *Gideon* ensuring the right to counsel in criminal cases.

Also in March, the *New York Times* told the story of folks like Walter Bloss, an 89-year-old man evicted from his home of 43 years after a quarrel with his landlord. Mr. Bloss appeared for the eviction hearing *pro se*. Later, through the assistance of a legal services office, he gained a stay of the eviction while his case underwent appellate review. The *Times* observed: "Civil matters — including legal issues like home foreclosure, job loss, spousal abuse and parental custody — were not covered by [*Gideon*]." The article also reported Texas Chief Justice Wallace B. Jefferson's lament that: "Some of our most essential rights — those involving our families, our homes, our livelihoods — are the least protected." In April, the Maryland General Assembly passed a bill (SB262/HB129) to create the Task Force to Study Imple-

“ The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law... He is unfamiliar with the rules of evidence...He lacks both the skill and knowledge adequately to prepare his defense, even though he has a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. ”

*Gideon v. Wainwright*

menting a Civil Right to Counsel. The task force, scheduled to issue its report in October 2014, will do a number of things, including the following:

1) study the current resources available to assist in providing counsel to low-income Marylanders compared to the depth of the unmet need, including the resulting burden on the court system and the stress on other public resources;

2) study whether low-income Marylanders should have the right to counsel at public expense in basic human needs cases, such as those involving shelter, sustenance, safety, health or child custody, including review and analysis of the Maryland Access to Justice Commission's "Implementing a Civil Right to Counsel in Maryland" report and each other previous report by a task force, commission, or workgroup on this issue;

3) study alternatives regarding the currently underserved citizenry of the state and the operation of the court system.

Thus we have, in the space of a few weeks, a celebration of the bright promise of *Gideon*: a recognition of the withholding of that promise for impoverished civil litigants and the affirmative steps of one state to remedy the latter. In fact, since SCOTUS' 1981 opinion in *Lassiter v. Department of Social Services*, the battle for a level playing field in many life-altering civil scenarios must be won, if at all, at the state level through the vehicle of state constitutions and the efforts of local lawyers and judges.



George Hausen, executive director of Legal Aid of North Carolina, phrased the issue this way: "As lawyers, we would be utterly shocked at legislation that explicitly closed access to the courts to all persons below a certain income level. But that which would shock our consciences if done explicitly is precisely what we have allowed to be done silently."

*Pro se* litigants dominate many civil dockets. We would not expect someone who could afford counsel to litigate issues such as the loss of a home or a child without an attorney; poor persons often must. Uniformly, those poor persons with access to counsel — whether through Legal Aid, pro bono volunteers or other charitable advocacy groups — fare better. Lack of access to

basic legal protections for a broad range of citizens lacking assets or the often serendipitous availability of pro bono representation has become the norm. Passive acceptance of this unacceptable standard defies both an underlying ethos of the legal profession and the explicit guarantee of the "open court" provision of the Oklahoma Constitution.

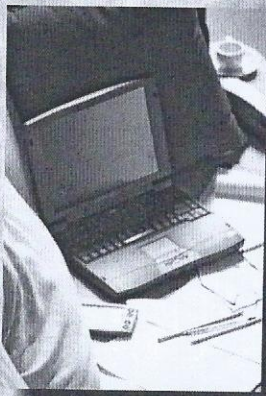
The "Civil Gideon" movement began in earnest a decade ago. Its aim is not to supply an attorney for all civil litigants, but for those with "life-altering" cases in aid of preservation of housing, sustenance and familial relations. Particularly as society and the justice process become evermore complex, we must keep in mind that the observations from *Gideon* at the start of this

article are not exclusive to the criminal arena alone.

Even its most ardent supporters do not tout "Civil Gideon" as a panacea. It stands as one column in a colonnade consisting of committed pro bono; adequately staffed and funded legal service programs; and meaningful *pro se* reform. While the cure may seem elusive, the need — together with the financial, emotional and societal costs — remains palpable. It's time a serious consideration of expanding the civil right to counsel occurs in Oklahoma — not as a magic cure but as one means to an end inextricably tied to the mission of this association.

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