

Excerpt from:
**2005 State of the Judiciary Address
to the Louisiana Joint Session of the House and Senate
Louisiana Legislature**

Pascal F. Calogero, Jr.
Chief Justice, Supreme Court of Louisiana
Tuesday, May 3, 2005,
2:00 P.M. House Chamber

Indigent Defense:

This session, you will also be asked to consider legislation affecting our system of funding legal services for citizens charged with a crime but unable to pay for their own lawyers and legal defense. In fact, hearings have already begun on proposed legislation. Today, I ask you for your continued assistance in reinforcing and actualizing one of the most important rights provided to citizens by our federal and state constitutions – the right to counsel.

Over forty years ago, in the landmark case of *Gideon v. Wainwright*, the United States Supreme Court stated: “*The right of one charged with crime, to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.*” In this case, the Court ruled that the right to counsel for those unable to afford one is a fundamental part of due process in America. The Court held that the U.S. Constitution guarantees that no person shall be denied his life or liberty, without the guiding hand of effective counsel at every stage of criminal proceedings, simply because he is too poor to hire a competent lawyer. Soon after the *Gideon* decision, the Louisiana Constitutional Convention of 1974 enshrined the right to counsel in Article 1, section 13, making this right to counsel a state constitutional right, as well as federal. The right to counsel that was solidified in *Gideon* in part evolved out of the law’s understanding that wrongful convictions destroy trust in the system; and the law is best served when we get the process right from the start.

Our federal and state constitutions provide that people without financial means should not be put in jail without due process of law. In this case, due process means the affording of effective assistance of counsel. It falls upon you as Legislators to speak for the State in fulfilling these constitutional obligations. It is never a popular political position to spend money on what some people see as a “social program for criminals.” Viewed in a different light, however, our state and federal constitutions impose a constraint on the manner in which the State can deny a person his freedom. I will not comment on this bifurcated perception, but will tell you that the Louisiana Supreme Court is charged with administering a judicial system that comports with these constitutional provisions. So when we are asked to review the propriety of a criminal prosecution where the defendant does not have the financial means to afford counsel, and this constitutional right has been abridged, we cannot dodge the responsibility of enforcing the constitution.

We were faced with this issue in the early 1990s, and as a result, following the principles enunciated in *Gideon v. Wainwright*, we handed down the cases of *State v. Peart* and *State v. Wigley*, in which we determined that indigents were receiving assistance of counsel not sufficiently effective to meet constitutional standards. In an attempt to resolve this problem, with the cooperation of all three branches of government, in 1994, the Supreme Court established by rule a temporary statewide Louisiana Indigent Defense Board. Initial legislative funding for this Board was \$7.5 million. As planned, in 1998, the Supreme Court relinquished jurisdiction over the Board, at which time it was transferred to the Executive Branch, with the creation of the Louisiana Indigent Defense Assistance Board (LIDAB).

Despite inflation and increases in the volume of criminal cases, and some minor monetary increases over time, the monies allocated to indigent defense remained static over the years. Against this background, our Court was faced with the recent cases of *State v. Citizen* and *State v. Tonguis*, two consolidated capital cases. In an opinion authored by Justice Jeffrey Victory, he concluded for the Court that the present indigent defense system is terribly flawed. While it is not within the purview of the Court to direct how much money should be appropriated by you on indigent defense, providing adequate funding is clearly a legislative responsibility. In this opinion, we recognized that until you, the legislature, take remedial action, we must address the immediate problems of defendants in forthcoming capital prosecutions securing constitutionally adequate counsel, in a constitutionally and statutorily required timely manner. And therefore, we decreed that unless adequate funds are available in a manner authorized by law, upon motion of the defendants the trial judge may halt the prosecution in these cases until adequate funds become available to provide for these indigent defendants' constitutionally protected right to counsel.

This recent opinion does not unfairly put the courts in the position of siding with the defense. The cases simply recognized the fact that the courts, as guardians of a fair and equitable process, must not let the state take a person's liberty without due process.

We have together taken steps in the past to make the right to counsel real and meaningful in Louisiana. Unfortunately, these efforts have not proven to be adequate. Much more needs to be done. The need for further action has been well articulated by the Task Force on Indigent Defense Services that you, the Louisiana Legislature, created one year ago, and which is chaired by Senator Lydia Jackson.

I understand that the Task Force has submitted two bills for your consideration, and that hearings on these bills are underway. I also am aware that there are differences of opinion on these bills. People may differ in their view of how to fix the system, and how the LIDAB Board should be structured. I respect such differences. However, I would caution that such differences of opinion should not be allowed to thwart this unique – and necessary – opportunity to fix our ailing indigent defense system – a system that represents eight out of ten defendants in this state – and to put the State on the correct path to complying reasonably with its constitutional duty.

I am also here to ask you and the Task Force to explore ways to reduce the need for indigent defense and, therefore, to reduce its costs, while still protecting the public. This can be done, in my opinion, in several ways, such as developing more strategies for diverting cases from the formal system, through early intervention juvenile diversion programs, or through adult diversionary strategies as the expanded use of drug courts, and other forms of adult diversion. Further, strategies should be explored to reduce the number of re-trials made necessary by faulty police line-up and photo spread procedures, inappropriate or out-moded interrogation procedures, unaccredited and under-funded forensic laboratories, and other sources of wrongful conviction. As an aside, the advent of DNA testing as a reliable forensic tool has produced over the past few years in this country the release of upwards of 200 persons convicted of serious crimes.

Several years ago, I appeared before you and urged a call to action to address the deplorable state of our juvenile justice system. You responded, quickly and effectively, and our state is on its way to real juvenile justice reform. I ask you to do the same with indigent defense. We owe it to our citizens, especially to the victims of crime, to do what we can to insure that convictions are obtained that will survive the appellate process and constitutional challenge.

As a Supreme Court Justice, I must be an advocate of compliance with the mandates of our state and federal constitutions, and therefore, I admonish you, simply, to do the right thing. Provide for a workable and adequately funded indigent defense system, so that another victim does not have to go through the agony of an overturned conviction and repeat of grueling trial testimony, or so that an innocent person is spared the ordeal of an unjust conviction and punishment. This is just one of your many challenges, as well as your responsibility. Let us show the people that our State is more than up to that challenge.