FREE COUNSEL: A RIGHT, NOT A CHARITY

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INTRODUCTION

"In an adversary system of criminal justice, there is no right more essential than the right to the assistance of counsel."[1]

The proposal of this paper is quite simple: all those charged with a crime, regardless of economic status, should be entitled to free counsel. The presence of counsel is fundamental to the operation of our courts and to the assertion of the defendants' rights. However, current eligibility criteria are so arbitrary and unworkable[2] that determination of the availability of free counsel is either pro forma or, when meaningfully pursued, too costly. Further, the availability of this most important of rights is decided without a skilled advocate arguing for that right. For these and other reasons, eligibility determinations are not worth the time, the cost, and the threat to constitutional rights they pose.

Universal eligibility for free counsel would not only solve the problems of definition,[3] delay, the constitutional questions raised by determination procedures,[4] the lack of participation by counsel in the determination procedure, and perhaps most importantly, cost.[5] It also would simplify court procedures,

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1. Lakeside v. Oregon, 435 U.S. 333, 341 (1978). Even "the interest protected by the right [to a jury trial] . . . is not as fundamental to the guarantee of a fair trial as is the right to counsel." Argersinger v. Hamlin, 407 U.S. 25, 46 (1972) (footnote omitted) (Powell, J., concurring).

2. *See* Note, *The Definition of Indigency: A Modern-Day Legal Jabberwocky?*, 4 ST. MARY'S L. J. 34, 46-47 (1972) [hereinafter cited as *Jabberwocky*].

3. For articles detailing the virtual impossibility of establishing uniform and simple indigency guidelines, see Carter & Hauser, *The Criminal Justice Act of 1964*, 36 F.R.D. 67, 69, 77 (1964); Fortune, *Financial Screening in Criminal Cases—Impractical and Irrelevant*, 1973 WASH. U.L.Q. 821, 831; Note, *Determination of the Right to Counsel*, 5 WILLAMETTE L.J. 663 (1969); Note, *Judicial Problems in Administering Court Appointment of Counsel for Indigents*, 28 WASH. & LEE L. REV. 120 (1971); Note, *Indigency: What Test?*, 33 ARK. L. REV. 544, 545, 547, 549 (1979).

4. A critical problem in current indigency determinations is the clash between a defendant's assertion of her sixth amendment right to free counsel and her fifth amendment right to remain silent. Carol Slatin chronicles cases where information garnered during indigency determination proceedings was used against defendants in criminal prosecutions. *See* Note, *Determining Eligibility for Public Defense: Constitutional Conflicts Posed by California Indigency Proceedings*, 12 U.S.F.L. REV. 717 (1978).

5. For discussions of the gross cost inefficiencies of recoupment proceedings (recovering counsel costs partially or wholly from defendants) and of constitutional implications of such proceedings, see W. P. Curtis, *Recoupment for Public Defender Services: A Viable Revenue Generating Mechanism?* (Sept. 30, 1981) (unpublished manuscript), *cited in* R. Wilson, Report

assure counsel's availability far earlier in the process, and, if the defendants are convicted, allow whatever funds they may have to be applied to restitution, fines, or other public purposes.

"The right to counsel has historically been an evolving concept."[6] We have now reached that time when we must recognize that the "right to counsel" means that free counsel should be available to anyone charged with a crime.

The cost of universal eligibility should be modest. Universal eligibility would not expand the range of proceedings for which counsel is required. While no compiled data exists, most commentators agree that in most metropolitan urban areas, the indigency rate of criminal defendants in felony cases is ninety percent.[7] Therefore, even if all defendants currently retaining paid counsel were to avail themselves of free counsel, the increased expense would be nominal. Furthermore, as a practical matter, even those without any funds make an effort to pool whatever resources they, their family, and their friends might have to retain counsel of their choice. Finally, whatever slight cost increase there might be would be offset: savings would be generated by the simplification and streamlining of the process of obtaining counsel and by de-

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to the National Association of Counties (June 1984) (unpublished report) [hereinafter cited as R. Wilson]; Fortune, *supra* note 3, at 832-33; Goschka, *Recoupment Statutes: Free Defense—for a Price*, 53 J. URB. L. 89 (1975); *see also Case Notes*, 52 J. URB. L. 363 (1974); N. LEFSTEIN, CRIMINAL DEFENSE SERVICES FOR THE POOR: METHODS AND PROGRAMS FOR PROVIDING LEGAL REPRESENTATION AND THE NEED FOR ADEQUATE FINANCING (1982) [hereinafter cited as N. LEFSTEIN]; NATIONAL CENTER FOR STATE COURTS, PROVIDING LEGAL SERVICES TO INDIGENTS IN COLORADO (Dec. 1982), *cited in* R. Wilson, *supra*; NATIONAL LEGAL AID AND DEFENDER ASSOCIATION, GUIDELINES FOR LEGAL DEFENSE SYSTEMS IN THE UNITED STATES (1977); NORTH DAKOTA COUNSEL FOR INDIGENTS COMMISSION, NORTH DAKOTA SUPREME COURT, NORTH DAKOTA JUDICIAL SYSTEM: INDIGENT DEFENSE PROCEDURES AND GUIDELINES (May 1983), *cited in* R. Wilson, *supra*; Note, *What Price Probation? Reimbursement of Costs of Appointed Counsel as a Condition of Probation*, 30 BAYLOR L. REV. 393 (1978); Report to the North Carolina General Assembly on the Indigency Screening Project (May 23, 1984) (unpublished report), *cited in* R. Wilson, *supra*. Some specific examples of the impact of recoupment on total public defender expenditures are: In Ohio, total state costs for providing defense services in 1980 was $12,458,810.00 while recoupment produced only $1,423.00 (approximately .01% of the total budget); in Connecticut, the total budget was over $4 million in 1981 while recovery was slightly over $3,600 (approximately .09% of the budget); New Jersey's total budget was over $16 million while recovery was $242,739 (approximately 1.5% of the total budget in 1981). Because of the small percentages of income recovered, combined with the constitutional and ethical issues, I have serious doubts about the efficacy of recoupment as a revenue raising measure. To complicate matters further, the cost of collection of money recouped frequently exceeds the amount recovered. For example, several states have now begun experimenting with so-called "eligibility screening units" created to verify client eligibility and recover the assessed cost of counsel. In Colorado, which had the forerunner of the screening units, state courts ordered indigent defendants to pay some portion of their attorneys' fees, but the screening unit was only able to collect 35% of its own total budget over a period of four years. This raises serious questions about whether recoupment is a viable means to reduce the costs of indigent defense services, or whether it may actually make them more expensive. R. Wilson, *supra*.

6. *Argersinger*, 407 U.S. at 44 (Burger, C.J., concurring).

7. In my experience, both in Michigan and on national committees that study the issue, this is the commonly accepted figure.

creased jail costs when appointed counsel file bond reduction motions much earlier.[8]

I
ELIGIBILITY IN PRACTICE

The determination of eligibility for free counsel is subject to four powerful pressures, unrelated to ability to pay. These pressures are: 1) judicial fairness, 2) cost, 3) the perception of the right to free counsel as charity, and 4) the pro forma nature of the proceedings.

First, judges believe that they are impartial and that they can adequately protect most defendants' rights. Therefore, in their view, defendants do not really need an appointed or, for that matter, retained attorney. Experienced judges feel routine cases merit routine treatment. Assigned defenders, after all, are often young and inexperienced and will "lawyer" the case to death. Therefore, judges may often make some effort to resolve the case without counsel. This attitude, still rampantly present in rural America in felony cases and universally present in misdemeanor cases, is not new, nor is it a product of current "docket pressure". This "judgey" attitude can be traced back to the 16th and 17th century.

In England, after the Revolution and the merger of Equity and Law Courts in the 1600's, judges began to consider themselves to be impartial arbiters between the accused and the state. By the mid-18th century, judges viewed themselves as disinterested referees rather than as an essential arm of Crown power. The supposedly neutral position of the judge furnished an excuse for denying counsel to defendants charged with felonies; since judges claimed to be impartial and to look with equal suspicion on both sides in criminal actions, defendants did not require the protection of counsel. A further explanation was that a criminal proceeding was so simple that any man could understand it.[9] Denial of counsel sometimes results from such judicial attitudes today but more frequently this prosecution bias of judges is attributable to their being jaded, conservative, or too sensitive to media and public pressure.

The second pressure, costs, not only affects the determination of eligibility, but often determines which lawyer will be appointed, what delivery system

8. In urban courts, sixty percent of all persons charged with misdemeanors are found indigent. This figure may be too low, as misdemeanor courts are notorious for not informing defendants of their right to counsel. Any true cost increases in the provision of counsel to misdemeanants will be from the enforcement of *Argersinger*, which guarantees counsel to most misdemeanants, and not from the universal eligibility proposed in this paper. *See generally* N. LEFSTEIN, *supra* note 5.

9. T. PLUCKNETT, A CONCISE HISTORY OF THE COMMON LAW 385 (3d ed. 1940). Another reason, not openly stated at the time, was the presumption that the defendant, having been indicted as an enemy of the king, was at least half guilty. Therefore, all aids should be furnished to the King, whose security during the 17th century was valued more than the interests of the individual accused. Ironically, in matters of treason and misdemeanors, counsel was fully allowed and provided. *Id.*

will supply the lawyer, and what support services will be available to the lawyer.[10] The marriage of cost consciousness and the judge's self-image of fairness frequently results in judges berating appointed counsel for "needless" and unnecessary work. Their fear of the cost of defense creates pressures to deny counsel, order unwarranted recoupment costs, or appoint attorneys who need work but are not good.

The third factor is the desire of judges to be charitable. Some judges feel sympathy for the defendant because of the hardship that costs of counsel will impose, or because they believe that in some cases a sense of fairness and compassion for an overwhelmed defendant is more appropriate than rigorous adherence to eligibility guidelines in determining whether counsel should be appointed. They feel it is wiser to err in granting rather than denying counsel.

A blend of charity and "laziness", sometimes allied with cynicism, leads to the fourth pressure. Well meaning, lazy, and time-conscious judges alike cannot define "unable to afford counsel" or "indigency". They do not have time to investigate individual cases and they fear reversal is more likely if they deny counsel. They resolve all doubts in favor of the defendant and the determination becomes formalistic.

Studies in England revealed similar patterns of denial of counsel disproportionately to the incidence of poverty. Before a series of reforms in the 1970s and early 1980s, judges were able to consider the merits of the case in determining whether counsel would be provided; counsel was frequently denied. Within courts of the same jurisdiction, counsel assignment rates varied from fifty-two to ninety-seven percent.[11] Such arbitrary variations protect neither the rights of indigent defendants nor the pockets of taxpayers.

Since the most recent reforms removed the criterion of merit, the criteria for and patterns of appointment of counsel in felonies are similar to those in metropolitan areas of the United States. Now, ninety-seven percent of defendants charged with "felonies" receive assigned counsel. In the "misdemeanor" court representation by private counsel is rare.[12] By comparison, in the United States, judges frequently consider the merit of a misdemeanant's case in determining whether to provide free counsel; the rate of counsel assignments to misdemeanor cases is disproportionate to indigency throughout the United States.[13] As a consequence of the serious attention to the abuse of non-access to counsel in England, the cost for assigned defense counsel has risen

10. If the appointing judge views the case as "serious" he may appoint seasoned counsel or even phone attorneys and ask them to accept this difficult case as a favor. Conversely, defendants with "simple" cases may be appointed new lawyers. Requests for other resources such as investigators and experts are routinely denied unless the judge "feels" they are needed. The cost issue frequently determines the type of delivery system the county or state will use in supplying counsel to all defendants. Debates rage over low-bid contract systems, "ad-hoc" assigned counsel systems, and understaffed defender office systems.

11. *See* Hughes, *English Criminal Justice: Is It Better Than Ours?*, 26 ARIZ. L. REV. 507, 546-51 (1984).

12. *See id.* at 546-51.

13. *See supra* note 8; *see generally* N. LEFSTEIN , *supra* note 5. In addition, in the United

from forty-five million pounds in 1977-78 to over one hundred million pounds in 1982. However, the final step to universal eligibility, though not yet taken in England,[14] will be relatively low in cost because those defendants still using private counsel would undoubtedly continue to do so.[15]

II
THE EVOLUTION OF THE RIGHT TO FREE COUNSEL

Historically, two themes have dominated the issue of access to free counsel for those charged with crimes. One is charity; the other is due process.

The Anglo-American history of the "right to counsel" began in the ecclesiastical courts of early England and was truly a charity. Pope Honorius III (1216-1227) decreed that those unable to obtain counsel were to be given free counsel by the court. This lead ultimately to the granting of an array of technical privileges to the benefit of the poor in ecclesiastical courts. However, charitable rights, originally essential to the church's equity jurisdiction, were not formally absorbed into the secular system when, in the 16th century, the co-equal authority of the Church equitable courts and State law courts became secularized into one court.[16] Consequently, the theme of poverty did not play a role in the development of the common law, and in the United States the constitutional right to free counsel did not appear until *Powell v. Alabama*.[17] Ironically, but predictably, the constitutional right to free counsel emerged in this country during the height of the great depression and the New Deal. The great counsel cases decided during the depression of the 1930s and the civil rights movement and war-on-poverty of the 1960s were written in due process terms, but they were made possible by the great human and civil rights causes of the day. In the words of Oliver Wendell Holmes,

> The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, intuitions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow-men, have a good deal more to do than the syllogisms in determining the rules by

States, free counsel is constitutionally mandated only if the defendant faces jail. Scott v. Illinois, 440 U.S. 367 (1979).

14. In addition to the reforms discussed in Hughes, *supra* note 11, in 1984 Parliament extended the right to counsel to all arrestees and provided free legal counsel to arrestees regardless of ability to pay. *See* Police and Criminal Evidence Act 1984, ch. 5, §§ 58-59; Zander, *Suspects' Rights: An Irony*, N.Y. Times, Jan. 27, 1986, at A27, col. 1. It is unclear, from Zander, whether all defendants are eligible for free counsel throughout prosecution, or whether free counsel is available to all only at the arrest stage.

15. Some Scandinavian countries provide every defendant with counsel at state expense regardless of her poverty or wealth, subject to her right to retain counsel privately. *Report of the Conference on Legal Manpower Needs of Criminal Law*, 41 F.R.D. 389, 396 (1967), *cited in* Matthis, *Financial Inability to Obtain an Adequate Defense*, 49 NEB. L. REV. 37, 38 (1969).

16. *Jabberwocky, supra* note 2.

17. 287 U.S. 45 (1932); *see Jabberwocky, supra* note 2, at 35.

which men should be governed.[18]

In *Powell v. Alabama*,[19] the Court first held that a state might sometimes be required to provide free counsel by the due process clause of the fourteenth amendment. Justice Sutherland's oft-quoted language forcefully and eloquently explained the due process importance of the assistance of counsel:

> 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. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.[20]

After *Powell* the "right to counsel" was increasingly considered to be a fundamental due process right. However, in *Betts v. Brady*,[21] the Supreme Court refused to hold that the assistance of counsel was such a fundamental right that the constitution mandated the right to *free* counsel in the state courts for all felony defendants.

The *Betts* decision was shortlived. Two decades later, in *Gideon v. Wainwright*,[22] the Supreme Court clearly laid the foundation for universal eligibility of free counsel in all adversary proceedings where a person is charged with a crime: "lawyers in criminal courts are necessities, not luxuries. 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."[23]

In *Gideon v. Wainwright*, the Court squarely rejected *Betts v. Brady* and held that it was an aberration from the clear line of cases recognizing the right to counsel, not as a luxury, but as a fundamental necessity. Hence, once the sixth amendment right to counsel was found to be essential to fundamental fairness, the court held that the fourteenth amendment right to equal protection mandated that the poor receive free counsel. Following *Gideon*, the con-

18. O. HOLMES JR., THE COMMON LAW I 1 (1881).
19. 287 U.S. 45.
20. *Id.* at 68-69.
21. 316 U.S. 455, 471 (1942).
22. 372 U.S. 335 (1963).
23. *Id.* at 344.

stitutional right to free counsel was recognized in an array of proceedings.[24] Most of the subsequent free counsel cases extended the constitutional right to counsel throughout charging, conviction, sentence, and post-conviction proceedings.[25]

As the right to counsel expanded rapidly, many expressed fears that the right would aggravate excessive costs and an overloaded criminal justice system; these problems did not materialize. In *Argersinger*, while recognizing the evolution of the right to free counsel, Justice Powell expressed concern over the enlargement of the right.

> No one can foresee the consequences of such a drastic enlargement of the constitutional right to free counsel. But even today's decision could have a seriously adverse impact upon the day-to-day functioning of the criminal justice system. We should be slow to fashion a new constitutional rule with consequences of such unknown dimensions, especially since it is supported neither by history nor precedent.[26]

His concern was that either the system would slow down because every defendant would assert her right to a lawyer or that the cost would bankrupt local governments. As is often the case when fundamental human rights have been recognized and enforced, these concerns did not materialize. But seven years later, Justice Rehnquist still expressed reservations about expanding the right to free counsel even while he recognized that the Republic did not fall because the poor now had lawyers: "*Argersinger* has proved reasonably workable, whereas any extension would create confusion and impose unpredictable, but necessarily substantial, costs on 50 quite diverse States."[27]

III
THE NEED FOR UNIVERSAL ELIGIBILITY NOW

Although the costs for defense counsel usually comprise less than one to three percent of a jurisdiction's criminal justice budget, great pressure has been brought to contain these costs. Because these costs are seldom looked at as a percentage of total costs, they are easy targets. Seen as funds for criminals—worse, as funds for indigent criminals—criminal defense systems

24. *See* R. Brandt, *The Right to Counsel: An Overview* (Published Paper pursuant to an LEAA Grant No. J-LEAA-008-79), Abt Associates, Cambridge, Mass. (1980). Brandt details the right to counsel before, during, and after trial: the right has been granted in sentencing, appeal, collateral attack, probation and parole revocation proceedings, juvenile delinquency proceedings, mental commitment cases, deportation proceedings, extradition, prison disciplinary proceedings, military courts and other non-criminal actions such as paternity and child custody cases.

25. It should be noted that a few states, either by statute, common law, or state constitutions, already had a broad right to free counsel. *See* Comment, *Right to Counsel: The Impact of Gideon v. Wainwright in the Fifty States*, 3 CREIGHTON L. REV. 103, 104-06, 133 (1970).

26. *Argersinger*, 407 U.S. at 52 (Powell, J., concurring).

27. Scott v. Illinois, 440 U.S. 367, 373 (1979).

lack an organized constituency and, hence, are usually low priority or neglected areas. Further, since many people, including legislators, view charity as the driving force behind the right to counsel, defense funds have suffered the general backlash that currently plague all "poor" people's programs. Funding cutbacks have resulted in tightened standards for eligibility, overassigned public defenders, defendants forced to repay counsel costs, and the creation of high volume and woefully inadequate contract systems. Overall, this pressure has led to disparagement of the use of the right to counsel generally and, in particular, has undermined support for free counsel for the poor. For example, in *Evitts v. Lucey*,[28] Justice Rehnquist in his dissent reasoned that the sixth amendment protects the right to counsel only during "criminal prosecution" (which he interprets to mean from indictment through trial only) and that states may structure appeals any way they desire, which leads to the interpretation that counsel need not be allowed, whether retained or appointed.[29] Thus, in order to protect states against the costs of free counsel on appeal, Justice Rehnquist was prepared to deny the right of counsel to all defendants on appeal. If we hope to uphold the fundamental importance of the right to counsel, then we *must* remove any hint that free counsel is tied to charity or is the province of the functionally poor.

Moreover, as Justice Powell recognized in *Argersinger*, the right to free counsel cases have an anomalous impact on working and middle class Americans.

> Indeed, one of the effects of this ruling will be to favor defendants classified as indigents over those not so classified, yet who are in low-income groups. . . . The line between indigency and assumed capacity to pay for counsel is necessarily somewhat arbitrary, drawn differently from State to State and often resulting in serious inequities to accused persons. The Court's new rule will accent the disadvantage of being barely self-sufficient economically.[30]

Universal access to free counsel would protect the rights of the near poor, as well as remove the stigma of charity.

The evolution of the sixth amendment from the right to counsel, to the right to free counsel for some, to the right to free paid counsel, and finally to the right to reasonably competent free paid counsel, has brought us now to the time, just as a similar evolution did in segregated education, to recognize free counsel for all in criminal cases as a fundamental necessity. Access to free counsel should not depend on a judge's or a bureaucrat's determination of

28. 105 S. Ct. 830 (1985) (Rehnquist, J., dissenting.)

29. *Id.* at 843. For instances where Justices argued against the expansion of the right to free counsel because of concerns over costs, see *supra* text accompanying notes 26-27; *see also* Ross v. Moffitt, 417 U.S. 600, 611, 618 (1974) (states need not provide free counsel for discretionary appeals when they find it fiscally inadvisable.)

30. *Argersinger*, 407 U.S. at 50 (Powell, J., concurring).

eligibility, using unworkable criteria, when the defendant is asserting one of her most fundamental rights—and lacks counsel when so doing.

As the United States Supreme Court said in *Brown v. Board of Education*:[31]

> [W]e cannot turn the clock back to 1868 when the [Fourteenth] Amendment was adopted, or even to 1896 when *Plessy v. Ferguson* was written. We must consider public education in the light of its full development and its present place in American life throughout the Nation. . . . Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance of education to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed forces. It is the very foundation of good citizenship. . . . In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity, where the state has undertaken to provide it, is a right which must be made available to all on equal terms.[32]

So it is with the role defense counsel plays in our criminal justice system. Compare the United States Supreme Court's observation regarding the importance of counsel in criminal cases.

> [I]n our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. 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. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accus-

31. 347 U.S. 483 (1953).

32. *Id.* at 492-93.

ers without a lawyer to assist him.[33]

In the daily lives of our citizens, basic rights, once purchased,—roads, parks, schools, voting, and education—are now deemed so essential that access to them is free and unqualified by wealth or poverty. If we want to reorient the current woeful imbalance of funding within the criminal justice system,[34] then free defense counsel must not remain the province of the poor. Only when the general public believes that they themselves may rely on assigned counsel will they be concerned about the quality and availability of legal assistance. If indeed the presence of defense counsel is essential to the efficiency of our system and fundamental due process, then competent counsel should be universally available to all regardless of their economic class. Such a reorientation of the role of assigned counsel will make free counsel less easy to dismiss as a charity provided in good times but so easily deferred in hard times when essentials come first.[35]

33. 372 U.S. at 344 (footnotes omitted). The Court in *Argersinger* cited this language when it explained that these principles are not limited to felonies. 407 U.S. at 31-33.

34. *See generally* N. LEFSTEIN, *supra* note 5.

35. It has been my experience, in 15 years of budget hearings in Michigan (a state with a boom or bust economy), that there has never been a "good time" for defense funding. Perhaps only nuclear waste sites rank lower in popularity than criminal defense services.