

I. Introduction

During the second half of the 20th century, the United States Supreme Court increased the financial burden on state public defender systems by requiring that every defendant actually imprisoned – whether for a felony or a misdemeanor – be represented by counsel. In the late 20th century, state lawmakers began viewing imprisonment as a means of punishing, rather than rehabilitating, defendants. State lawmakers sought longer terms of imprisonment for criminals and were less willing to provide funds for indigent defender systems. In Georgia, the high cost of providing counsel for indigent defendants, combined with the “tough on crime” attitude of the Georgia legislature, created a budget crisis for the public defender system. This paper argues that unless the Georgia legislature increases the budget for the Georgia Public Defender Standards Counsel, Georgia must stop representing low-level misdemeanor defendants.

II. The Supreme Court and Indigent Defendants

The number of indigent defendants for whom a state must provide counsel has increased dramatically since 1963. Three factors have contributed to this increase: (1) The Supreme Court’s expansion of the Sixth Amendment right to appointed counsel; (2) an increased number of prosecuted cases; and, (3) increased rates of indigence within the universe of criminal defendants. Erica J. Hashimoto, The Price of Misdemeanor Representation. 49 Wm. & Mary L. Rev. 461 (2007).

A. Landmark Supreme Court Decisions

In Gideon v. Wainwright, 372 U.S. 335 (1963), the United States Supreme Court announced that indigent criminal defendants charged with felonies have a right to

counsel. The Court did not significantly expand this right to counsel until 1974, when it decided Argersinger v. Hamlin, 470 U.S. 25 (1973). In Argersinger, the Supreme Court clarified that an indigent defendant's right to counsel attaches in all cases in which imprisonment is imposed, whether as a result of a felony conviction, a misdemeanor conviction, or a conviction for a petty offense. Id. at 35. Later, in Scott v. Illinois, 440 U.S. 367, 373-74 (1979), the Supreme Court held that the right to counsel does not attach unless the state actually imposes a sentence; a potential sentence of imprisonment does not require appointment of counsel.

Prior to Argersinger, most jurisdictions provided counsel to indigent defendants charged with felonies, but not to indigent defendants charged with misdemeanors. Right to Counsel: The Impact of Gideon v. Wainwright in the Fifty States, 3 Creighton L. Rev. 103, 104-05 (1970). Before the Supreme Court decided Argersinger, states were providing counsel in 690,000 indigent felony cases per year. After Argersinger, states were constitutionally required to appoint counsel in as many as 2.7 million misdemeanor cases per year. Nancy A. Goldberg, Defender Systems of the Future: The New National Standards, 12 Am. Crim. L. Rev. 709, 715 (1975).

The Supreme Court did not again significantly expand an indigent defendant's Sixth Amendment right to counsel until 2002, when the Court decided Alabama v. Shelton, 535 U.S. 654 (2002). In Shelton, the Supreme Court held that an indigent defendant sentenced to a term of probation is entitled to the appointment of counsel before that probation may be revoked. Id. at 658. Under Shelton, if the defendant successfully completes probation, he never serves any period of incarceration.

If, however, the defendant violates probation, the court can revoke probation and impose either the term of imprisonment that explicitly was suspended or, if the court did not specify the suspended term of imprisonment, any term authorized for conviction of the offense. Because every state ties its probation system to a suspended sentence of imprisonment, it follows that practically every indigent defendant convicted of a criminal offense punishable by imprisonment –whether a petty offense, misdemeanor, or a felony- has a right to appointed counsel unless he receives a sentence of only a fine.

Hashimoto, 49 Wm. & Mary L. Rev. at 479. The Court's expansion of an indigent defendant's Sixth Amendment rights over the past 20 years has significantly expanded state government's financial obligations to appoint counsel for misdemeanor defendants.

B. Increased Number of Prosecutions

As the Supreme Court expanded the Sixth Amendment right to counsel, the number of cases prosecuted in state and local courts has increased. Between 1984 and 2000, prosecutions increased from 9.7 million per year to 14.1 million per year. Nat'l Ctr. For State Court Statistics, State Court Processing Statistics, Examining the Work of State Courts, 2001 at 56 (2001). The increase is at least partially due to an increase in the number of narcotics prosecutions. Hashimoto, 49 Wm. & Mary at 481-82. By 1990, drug offenders constituted one-third of all persons convicted of felonies in state courts. Id. Like nearly all states, Georgia authorizes imprisonment for misdemeanor drug possession. Id.

C. Rising Rates of Indigence

The percentage of indigent defendants has increased steadily since the Court decided Gideon in 1963. In 1963, the rate of indigence was approximately 43 percent. Lee Silverstein, Defense of the Poor in Criminal in Criminal Cases in American State Courts: A Field Study and Report, 7-8 (1965). In 1998, 82 percent of felony defendants

had appointed counsel. Caroline Wolf Harlow, Bureau of Justice Statistics, U.S. Dep't of Justice, Bureau of Justice Statistics Special Report: Defense Counsel in Criminal Cases, 1 (2000). The number of misdemeanor defendants who are indigent appears to have also increased over the same period of time. Harlow at 6. In 1996, 56.3 percent of jail inmates charged with or convicted of misdemeanor offenses had court-appointed counsel; a 20 percent increase from 1973. Id.

D. Georgia's Pre-2003 Indigent Defender System

Until 2003, the Georgia Indigent Defense Counsel oversaw the state's indigent defender system. Alison Couch, Legal Defense of Indigents: Create the Georgia Public Defender Standards Council to Set State-Wide Standards for the Legal Representation of Indigent Defendants and Provide Budget Authority to Such Council, 20 Ga. St. U. L. Rev. 105, 107 (2003). Although the GIDC oversaw the distribution of meager state and federal funds and issued recommendations to each of Georgia's 159 counties, the governments of individual counties were largely on their own when it came to funding their public defender programs. Because the state provided little monetary support, Georgia left counties free to handle indigent defense either through (1) a contract system, (2) an appointed attorney system, or (3) a county public defender's office. Because each county was free to choose the method by which it provided for indigent defense, the quality of representation varied widely across the state. Id.

Under the contract system, the county took bids from local attorneys for all of its indigent defense work, and the low bidder was awarded the contract. Id. The contract system was characterized by overwhelming caseloads and small budgets. Id. Attorneys

were allowed to maintain private practices in addition to the contract work, and many contract attorneys encouraged clients to plead guilty regardless of the merits of the case.

Id.

Under the appointed attorney approach, counties paid lawyers flat fees to take appointed cases. Id. Large counties with large operating budgets were able to appoint experienced attorneys to handle most cases. Id. Conversely, small counties with small operating budgets paid only a fraction of fees paid by larger counties. Experienced attorneys avoided these smaller jurisdictions to the detriment of indigent defendants. Id.

Under the county public defender's office approach, counties relied on a public defender's office to handle the indigent defendant's legal representation. Id. Although public defender offices usually offered the best level of legal representation, many smaller counties in Georgia were unable to obtain funding to support a full-time office.

Id.

Georgia's pre-2003 public defender system was incapable of preserving fundamental constitutional rights. National Legal Aid & Defender Association, Gideon's Heroes: Honoring Those Who Do Justice to Gideon's Promise, Mar. 2003. The system "failed to provide even minimally adequate representation to thousands of poor people." Marion Chartoff, The Georgia Indigent Defense Act of 2003, Champion, August 2003. Georgia's indigent defense system was plagued by a lack of funding, little oversight, and a fragmented structure. Id.

III. The Indigent Defense Act of 2003

Georgia completely reformed its indigent defender system in 2003 when the legislature passed The Georgia Indigent Defense Act. The Act abolished the GIDC and established The Georgia Public Defender Standards Counsel. Ga. Code Ann. 17-2-1(c).

The mission of the Georgia Public Defender Standards Council is *to ensure, independently of political considerations or private interests, that each client whose cause has been entrusted to a circuit public defender receives zealous, adequate, effective, timely, and ethical legal representation*, consistent with the guarantees of the Constitution of the State of Georgia, the Constitution of the United States and the mandates of the Georgia Indigent Defense Act of 2003; to provide all such legal services in a cost efficient manner; and to conduct that representation in such a way that the criminal justice system operates effectively to achieve justice.

Id. The Council is comprised of one member from each of Georgia's ten judicial districts, and one circuit defender who has been elected by a majority of the circuit public defenders. Ga. Code Ann. 17-12-3(b)(1)-(3). The Council establishes the requirements for indigent defense in the state of Georgia including caseload limits and staff sized. Ga. Code Ann. 17-12-5.

A. Georgia Circuit Public Defenders

Contrary to the “hodgepodge of uneven, under-funded and overwhelmed county-run programs” that “heighted the risk of innocent people being wrongly convicted” under the old system, the Act created a standardized system of public defenders across Georgia. Bill Rankin, Defender System Gets Early Praise; State Indigent Program Off to Quiet Start, Atlanta J.-Const., Feb 6, 2005, at 1F.

Georgia's indigent defense structure requires that each of the state's forty-nine judicial circuits have a circuit public defender office effective January 1, 2005; all circuit defender systems that did not opt out of the structure as described by the Act are funded

by the state. H.B. 770 (Ga. 2003). State funding covers cases heard in the superior courts and juvenile delinquency cases, but other courts still rely on local government funding. Mary Sue Backus and Paul Marcus, The Right to Counsel in Criminal Cases, A National Crisis, 57 Hastings L.J. 1031, 1109 (2006).

Circuit defender offices now have a minimum staff requirement – which is based upon the number of superior court judges in the circuit – and public defenders are prohibited from engaging in “the private practice of law for profit.” Ga. Code Ann. §§ 17-12-25 to 29 (2005). The Act specifies that state public defenders must be full-time employees, and further specifies the type of additional personnel that may be hired, including investigators and administrative staff.

Although the Georgia Indigent Defense Act was prompted in part by a need to compensate for funding shortfalls in Georgia Public Defender System, the Act specifies that the state will not provide funding for the overhead expenses of the circuit public defenders. Ga. Code Ann § 17-12-34. Furthermore, lower court systems are expected to comply with the same standards as the circuit defenders, but are not financed by the state. Id at 17-12-23(d)

B. Caseloads Requirements

An attorney working for a Georgia Public Defender’s Office will represent up to 500 clients per year.¹ Even for serious felonies, these attorneys will spend an average of 3.8 hours per case and have a strong incentive to encourage clients to settle cases, rather

¹ This number is based on the national average for public defenders. Numbers for the state of Georgia are not available.

than proceed to trial. Amazingly, there is no Constitutional duty for states to implement caseload caps for these attorneys.

Even in the absence of a Constitutional duty, the GPDSC has adopted the National Advisory Commission on Criminal Justice Standards and Goals' recommended caseload caps – 150 felony cases, 400 misdemeanor cases, 200 juvenile cases, 200 mental health cases, or 25 appeals. The GPDSC cautions that the limitation “is not a suggestion or guideline, but is intended to be a maximum limitation on the average annual case loads of each lawyer employed as a public defender.” See Ga. Pub. Defender Standards Council, Standard for Limiting Case Loads and Determining the Size of Legal Staff in Circuit Public defender Offices, http://www.gpdsc.com/cpdsystem-standards-limiting_caseloads.htm (last visited Mar 13, 2008). Although the standard purports to absolutely limit the number of cases an attorney may manage each year, the GPDSC provides no enforcement mechanism for the cap. Thus, many attorneys continue to labor under excessive caseloads.

IV. Attitudes Towards Indigent Defense

In early 2007, The Georgia Public Defender Standards Counsel ran out of funds largely due to the much-publicized, unusually high cost of representation for Brian Nichols. Nichols, who was facing the death penalty, was charged with 54 felony counts in association with a string of four murders that began in an Atlanta courthouse in 2005. Nichols's counsel expended \$1.8 million in court-appointed counsel fees and had yet to complete voir dire. The Council also reported a budget shortfall of \$10 million due to the collection of insufficient funds from fees and fines. Georgia N. Vagenas, National

Developments in 2007, 22 Crim. Just. 58. These problems led state legislators to create a committee to investigate the council and transfer its administration from the judiciary to the executive branch. Furthermore, the legislature appropriated only \$35.4 million of the \$37.4 million requested for the upcoming fiscal year. Id. Facing these budgetary setbacks, the council cut the hourly rate paid to appointed counsel in death penalty cases from \$125 to \$95, eliminated forty-one public defender employees across the state, and dismantled several public defender offices. Id.

Indigent defense in Georgia has always been politically unpopular. Bill Rankin, Public Defender System's Approval Called 'Giant Step,' Atlanta J. Const., Apr. 26, 2003, at 4G (quoting Stephen Bright, Director of the Southern Center for Human Rights). Because of this political unpopularity, the GPDSC has had some difficulty securing an adequate budget for its offices each year. In 2005, Georgia pledged to fund its new system with \$42 million each year. In 2007, despite increasing numbers of indigent defendants and calls for greater funding by attorneys working within the indigent defense system, the Georgia legislature reduced its annual funding to less than \$35 million. The Georgia Capital Defender's Office, which received over \$7 million in 2005, received only \$4.5 million in 2007; less than half of the \$10.5 million it requested. These funding problems have created an exodus among lawyers working within the Georgia Capital Defender's Office, and the budget crisis threatens the solvency of Georgia's public defender system.

The Georgia legislature's attitude toward indigent defense is not unique among lawmakers. The 1990s are generally considered to have marked an epoch in attitudes towards criminal justice. Robert J. Cottrol, Hard Choices and Shifted Burdens: American

Crime and American Justice at the End of the Century: A Review of Malign Neglect: Race, Crime and Punishment in America by Michael Tonry. 65 Geo. Wash. L. Rev. 506, 506 (1997). In the 1990s, there was a renewed public, judicial, and legislative enthusiasm for punishment. Id. Imprisonment increasingly began to be viewed as serving a retributive – rather than rehabilitative – function. Id.

Nationwide, state legislatures have increased the length of prison sentences for violent offenses, and have adopted mandatory sentences such as the “three strikes and you’re out” legislation. Id. Politicians seeking to be viewed as “tough on crime” have even advocated increase use of the death penalty. Id. Politicians once viewed the death penalty as a necessary deterrent to the most vile murders. In the 1990s, however, politicians began extolling the retributive virtues of the death penalty. Id. Indeed, since the Supreme Court decided Greg v. Georgia in 1976, the number of death sentences and executions has increased steadily.² Georgia especially embraced the tough on crime attitude.

Many prosecutors in Georgia seek to impose harsh penalties on defendants because they fear being seen as “soft on crime.” At the same time, Georgia’s legislature fears increasing taxes to fund indigent defense budgets; a taxpayer hardly wants to re-elect a legislator who asks for more money to defend indigent criminals. These attitudes create the impossible situation in which Georgia prosecutors feel pressure to seek harsh

² Between 1977 and 1995, 313 people were executed in the United States. Fifty-six executions took place in 1995, the greatest number of executions in 38 years, as compared to 38 executions carried out in 1993 Bureau of Justice Statistics, U.S. Dep’t of Justice, No. NCJ 162043, Capital Punishment 1995 (1995).

penalties in high-profile – and expensive – cases, while Georgia legislators refuse to increase indigent defense budgets.

The GPDSC's funding problems do not result from profligacy on the part public defenders, but rather from the extensive procedural requirements imposed by the United States Supreme Court. The Supreme Court requires that a state provide counsel to indigent defendants charged with offenses punishable by imprisonment, and the Georgia state legislature has steadily increased the length of sentences since 1963.

V. Misdemeanor Representation

The Brian Nichols case has made national headlines because of its excessive cost, but most cases in Georgia are mundane misdemeanor cases. Because the Georgia legislature will not increase funding to the GPDSC, the only feasible way for Georgia to continue to effectively represent indigent defendants is to represent fewer misdemeanor clients each year.

A. Empirical Data

Empirical data suggest that counsel in misdemeanor cases does not provide significant benefits to their clients. Hashimoto 49 Wm. & Mary L. Rev. at 489-490. As Table I demonstrates, pro se misdemeanor defendants in federal cases are less likely to plead guilty and have a better chance of being acquitted than misdemeanor defendants

appearing with counsel.³ Id. Conversely, pro se defendants in federal felony cases are more likely to be convicted than defendants appearing with counsel. Id.

Table I: Outcome by Type of Counsel

Guilty Plea	Nolo Plea	Dismissal	Jury Trial Convicted	Bench Trial Convicted	Jury Trial Acquittal	Bench Trial Acquittal	
Pro Se	55.1%	6.1%	30.3%	.02%	3.5%	--	5%
Retained Counsel	72.6%	4.0%	16.5%	1.0%	5.0%	.1%	.8%
Public Defender	82.1%	.8%	15.2%	.3%	1.0%	.2%	.4%
CJA ⁴	81.3%	4.9%	12.1%	.5%	1.0%	.1%	.2%

More importantly, as Table II demonstrates, pro se misdemeanor defendants receive lighter sentences than misdemeanor defendants represented by counsel. Id. Table II uses a scale for trial outcomes from zero to six, with zero representing acquittal or dismissal, and six representing a maximum prison sentence. Table II shows that pro se defendants have a statistically significantly lower mean score than any category of misdemeanor defendant. Id.

Table II: Mean Outcome Severity by Type of Counsel

Type of Counsel	Mean Severity Score	Mean Severity Score Excluding Dismissals
Pro Se (27,191 cases)	1.661	2.385
Retained Counsel (4,275 cases)	2.626	3.145
Public Defender (7,389 cases)	3.089	3.641
CJA Counsel (3,788 cases)	3.505	3.989

³ Tables 1-4 are reproduced from Erica J. Hashimoto, *The Price of Misdemeanor Representation*, 49 *Wm. & Mary L. Rev.* 461.

⁴ “CJA” counsel are attorneys appointed by the court pursuant to the Criminal Justice Act.

Defendants charged with serious offenses are more likely to receive long sentences than defendants charged with less-serious offense. Defendants charged with serious offense are also more likely to seek the assistance of counsel than defendants charged with non-serious offenses. These seemingly trivial propositions are one explanation for the results of the data in Table II. To adjust for this effect, Table III uses “a weighted average to estimate the score that defendants in each representation group would have received if they represented the average overall distribution of offenses.” Id at 492. Table III shows that even with the scores are standardized, pro se defendants fare better than represented defendants.

Table III: Standardized Outcome Severity by Type of Counsel

Type of Counsel	Standardized Severity Score	Standardized Severity Score Excluding Dismissals
Pro Se (27,191 cases)	1.819	2.652
Retained Counsel (4,275 cases)	2.524	3.049
Public Defender (7,389 cases)	2.739	3.288
CJA Counsel (3,788 cases)	3.191	3.736

Table IV separates the mean outcome severity scores by the type of offense, and shows that pro se defendants consistently score better than represented defendants in all categories.

Table IV: Mean Outcome Severity by Type of Offense

Type of Counsel	Drug Offenses	Driving Under the Influence	Fraud Offenses	Immigration Offenses	Traffic Offenses

Pro Se	1.875	1.999	2.304	3.590	1.509
Retained Counsel	2.710	2.160	3.163	3.750	2.231
Public Defender	3.272	2.385	3.360	4.298	2.400
CJA Counsel	3.774	3.324	3.883	4.809	2.621

Finally, Table V excludes dismissals from mean outcome severity scores, and shows that pro-se misdemeanor defendants perform better than represented defendants when the outcome severity scores are broken down by type of offense in all categories except for driving under the influence cases.

Table V: Mean Outcome Severity Excluding Dismissals by Type of Offense

Type of Counsel	Drug Offenses	Driving Under the Influence	Fraud Offenses	Immigration Offenses	Traffic Offenses
Pro Se	3.052	2.755	3.081	3.650	2.045
Retained Counsel	3.307	2.748	3.393	4.400	2.751
Public Defender	3.999	2.642	3.630	4.401	2.802
CJA Counsel	4.476	3.679	3.989	5.022	3.242

Ms. Hashimoto’s data strongly suggest that counsel in federal misdemeanor cases do not have a meaningful impact on the outcome of a defendant’s trial or the severity of a defendant’s sentence.

B. What Does This Mean for Georgia?

Argersinger, Scott, and Shelton provide incentives for states to provide counsel for low-level misdemeanors potentially punishable by imprisonment. Although a state is constitutionally required only to provide counsel when a defendant is actually imprisoned, it is sometimes difficult to determine before a trial begins whether a

defendant will become imprisoned. States therefore often provide counsel for indigent defendants even when those defendants end up with a mere monetary fine.

Georgia, like all states, punishes some misdemeanor crimes by relatively short imprisonment terms. Although these cases are individually relatively cheap compared to felony cases they are costly in aggregate. Georgia could save a significant amount of money each year by eliminating the costs associated with providing counsel to indigents charged with misdemeanors.

Currently, an indigent defendant accused of a misdemeanor in Georgia has a right to counsel if: (1) he earns less than 150% of the federal poverty guidelines and (2) is unable to obtain counsel because of the extraordinary cost of the case. Georgia Indigent Defense Counsel, Standards for Determining Indigence, http://www.gpdsc.org/cpdsystem-standards-determining_indigence.htm, (last accessed April 1, 2008). If Georgia eliminated imprisonment sentences for minor offenses, it would no longer be constitutionally required to provide counsel to indigent defendants charged with misdemeanor crimes. These defendants would only face monetary fines, and the Constitution does not require a state to appoint counsel in such circumstances.

Georgia's legislature might balk at the idea of eliminating imprisonment as a potential sentence for certain misdemeanor offenses. Georgia could eliminate this reaction by providing that certain offenses are punishable only by a fine unless the state proves that the defendant is a repeat offender – or proves some other additional aggravating factor – and gives notice to the defendant prior to trial. Hashimoto, at 500.

Only exceptional misdemeanor defendants would receive the benefit of counsel, and non-exceptional minor offenses wouldn't burden the GIDC. Id.

Georgia could also reduce the cost of indigent defense by amending probation statutes so counsel need only be provided in a limited number of circumstances. In Georgia, misdemeanor defendants sentenced to probation have a right to counsel. This is so because Georgia penalizes probation violation with imprisonment. Shelton, 535 U.S. at 654 (2002), teaches that if a defendant is unrepresented in the case that gives rise to the sentence of probation, that sentence is unconstitutional even if the state provides counsel prior to the revocation of probation.

If Georgia amended its probation statute so that probation can be enforced only through contempt proceedings or at hearings in which there is an opportunity to reopen the finding of guilt, the state would no longer be required to provide counsel for trials in which probation was the only penalty. Id. A defendant convicted of a misdemeanor could be sentenced to a term of probation even if not given counsel. If the defendant violates a term or condition of probation, the court could not revoke probation and impose a sentence of imprisonment, but would be required to adjudicate the defendant guilty of contempt for his failure to abide by the terms of his probation.

Alternatively, allowing the defendant to re-open the issue of guilt prior to probation revocation may raise more serious constitutional questions. Id. Under this system, a state seeking to revoke a pro se defendant's probation would have to allow the defendant to reopen the issue of guilt. To revoke probation and imprison the defendant, the state would have to provide counsel to the defendant and hold a second trial. The

Supreme Court at least suggested that such a scheme would not violate the constitution. Shelton, 535 U.S. at 668 n.5.

Finally, the Georgia judiciary system could take steps to encourage prosecutors and judges to meet before a defendant is indicted to determine whether it is necessary to appoint counsel. Hashimoto, Wm. & Mary L. Rev. 502. Most defendants charged with misdemeanor offenses that are punishable by imprisonment do not actually receive imprisonment sentences; instead the state imposes probation or fines. Id. Unfortunately, the touchstone for the right to counsel, imprisonment, does not occur until the end of trial. Therefore, it is difficult to determine at the beginning of a case whether a defendant charged with a misdemeanor will be sentenced to imprisonment. Id. If judges and prosecutors were forced to make a pre-trial determination whether the state would seek imprisonment, the state would know in advance of trial whether it needed to provide counsel for a defendant. Id. There are a number of ways a state could accomplish this.

Georgia could provide that imprisonment is not available as a penalty for certain misdemeanors offenses unless the prosecutor files a notice at the defendant's first appearance. Id. If the prosecutor does not file a notice, the state could not impose imprisonment and the right to counsel would not attach. The Georgia legislature could also provide explicit guidance to judges regarding whether imprisonment should be imposed for a particular offense. Id. This would force judges to make a preliminary determination regarding the likelihood of an imprisonment sentence, and make a decision on appointment of counsel.

Paring back misdemeanor representation to only those cases in which the state will seek imprisonment would save Georgia a significant amount of money each year, and would allow Georgia to redirect valuable resources to complicated cases like Nichols, where the resources are needed the most.

VI. Effect of Reforms on the Impoverished

Paring back misdemeanor representation makes sense from an economic standpoint. However, eliminating the right to counsel for a large group of impoverished defendants would be a bold move for a Georgia, a state with a dubious track record for indigent defense. Low-level indigent misdemeanor defendants are better off without counsel, but eliminating the right to counsel altogether will again put Georgia under the national microscope, a position it sought to avoid when it reformed its indigent defender system in 2003. Furthermore, even if eliminating the right to counsel for low-level indigent misdemeanor defendants reduced the length of imprisonment sentences, eliminating the right to counsel might send a depressing message in to Georgia's indigent defendants.

Deborah M. Weissman describes the opportunity to enforce legal rights as “a public good that confers benefits on all members of society.” Deborah M. Weissman, Law as Largess: Shifting Paradigms of Law for the Poor, 44 Wm. & Mary L. Rev. 737,749 (2002). To deny the poor access to counsel because of economic constraints would represent an egregious failure of due process and a repudiation of democratic principles of civilized society. Id. The benefits of counsel are especially important for the poor who lack the political means to defend their rights. Id. at 750. Weissman suggests

that the judicial system is the primary setting to challenge social conditions that bear oppressively on those without means. Id. Even the United States Supreme Court acknowledges that the poor must be able to present a full range of legal arguments about the contested issues in order to have an informed and independent judiciary. See Legal Servs. Corp. v. Velazquez, 531 U.S. 533, 545 (2001).

Unfortunately, Georgia has limited indigent defense resources, and must choose between providing minimal representation to all indigent defendants and providing a greater level of representation to all defendants. It is clear that eliminating the right to counsel for indigent misdemeanor defendants could potentially solve the GPDSC's budget crisis. It is also clear – if not entirely intuitive – that eliminating the right to counsel for low-level misdemeanor crimes will reduce imprisonment sentences for Georgia's indigent population. The only question is whether eliminating the right to counsel for low-level misdemeanors will have deleterious social consequences on Georgia's indigent population. Unfortunately, Georgia can't answer this question until it actually eliminates representation for misdemeanor defendants.

VII. Conclusion

The Supreme Court has steadily expanded the 6th Amendment right to counsel since 1963. Because of changing attitudes towards criminal justice, elected state officials fear being viewed as “soft on crime.” In Georgia, this attitude has led legislators to refuse to supplement indigent defense budgets, and has led prosecutors to seek harsh penalties for most crimes. By refusing to increase the GPDSC's budget, the Georgia legislature has nearly bankrupted the Georgia public defender system. Georgia's only

solution is to either reduce the number of misdemeanor defendants for which it provides counsel or supplement the GPDSC's budget.

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