FOREWORD

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Timing in life is everything and, this year, the timing of the *Drake Law Review-American Judicature Society* special edition, *Access to Justice*, could hardly be better. The legal world has long known that there is a worsening crisis involving the constitutional right to counsel. There are simply too many indigent clients and too few attorneys to serve them in a way that ensures effective assistance of counsel. This year that discouraging story has been shared over and over again with a larger audience, a worldwide audience, which has been reminded both of the 50th anniversary of the Supreme Court's landmark decision in *Gideon v. Wainwright* and of the gulf that now exists between the lofty promise of that ruling and the grim practice of it today in courthouses all over the country.

For millions of Americans, the right to counsel brings with it no meaningful remedy. Public defenders are routinely saddled with more indigent clients than they can reasonably manage at any one time. There is rarely enough financial support for other defense resources like investigators and translators to assist in indigent cases. Plea deals, following cursory reviews by defense attorneys who cannot match the resources of state and local prosecutors, are routinely approved by judges. Meanwhile, the ineffective-assistance-of-counsel standard has been narrowly interpreted by appellate courts so as to affirm felony convictions for cases in which defense attorneys slept through portions of the trial, were drunk or on drugs during court proceedings, or who clearly demonstrated through their courtroom behavior that they had no idea how to represent a criminal defendant.

Of course, the right to counsel is a very broad phrase, encompassing dozens of subthemes that comprise the contours of the right under the Sixth Amendment and our constitutional sources. This special edition of the *Drake Law Review* takes a close look at some of those subthemes, offering timely context and perspective on topics that help round out the grace notes of "Gideon's Trumpet." The text begins with Laura Abel's

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trenchant piece, "Language Access in Federal Courts," which reminds us all that, in the end, due process depends on a person's ability to understand the nature of the judicial proceeding of which he or she is a part. In a country that is becoming more diverse each year, Abel argues, federal judges simply must do more to ensure that men and women navigating the legal system have timely and consistent access to translators.

Next up in the lineup is Marion County, Indiana Superior Court Judge David J. Dreyer with a piece titled "Déjà Vu All Over Again: *Turner v. Rogers* and the Civil Right to Counsel," which focuses on the other side of the *Gideon* coin—the right to counsel in civil cases for millions of people too poor to pay hundreds of dollars per hour in legal fees and costs. Surveying the legal landscape in the wake of the Supreme Court's 2011 decision in *Turner v. Rogers*, the judge bravely argues that the justices' "equivocal treatment of appointed civil counsel is found to be based less on legal logic than on enigmatic practical considerations"[1] such as the significant financial costs of expanding the *Gideon* principal to civil cases. Everyone wants to talk about a civil right to counsel, but few at the highest levels of power and authority want to do anything about it.

John Pollock, of the Public Justice Center, offers a much more optimistic view of the legacy of *Turner.* In his piece titled "The Case Against Case-by-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases," Pollock contends that despite *Turner* and even before it, "state courts have been vigilant for decades in protecting the rights of indigent civil litigants" by employing "a variety of different rationales" to recognize a "categorical right to counsel in various types of civil proceedings."[2] The United States is still "far behind the rest of its world counterparts with respect to access to civil justice," Pollock asserts, but some creative judges have come up with ways to better protect the desperate need of indigent defendants.[3]

Perhaps the most provocative piece in the *Drake Law Review*—and my favorite—is Loyola University Associate Professor Jona Goldschmidt's piece titled "Ensuring Fairness or Just Cluttering up the Colloquy? Toward Recognition of Pro Se Defendants' Right to Be Informed of Available

1. David J. Dreyer, *Déjà Vu All Over Again:* Turner v. Rogers *and the Civil Right to Counsel*, 61 DRAKE L. REV. 639, 641 (2013).

2. John Pollock, *The Case Against Case-by-Case: Courts Identifying Categorical Rights to Counsel in Basic Human Needs Civil Cases*, 61 DRAKE L. REV. 763, 765–66 (2013).

3. *Id*. at 766.

Defenses," which suggests that judges can and should do more to inform pro se defendants of the defenses available to them. Why, he asks, "do we only require judges to advise" such defendants "of the charges against them, the elements thereof, the penalties therefor, and the dangers and disadvantages of proceeding pro se, yet deny them access to information about the legally recognized defenses to the charges against them?"[4] Why indeed. His blunt argument here mirrors those made recently by other legal scholars who have suggested that in the absence of well-funded indigent defense services, trial judges should do more to protect the rights of individuals by more aggressively checking the power of prosecutors.

An Iowa judge, Annette J. Scieszinski, offers a more personal look at the changing face of the criminal justice system. On the court for nearly two decades, she tells us that "the number of cases filed with our courts, excluding simple misdemeanors and traffic violations, has increased 50%. During this same time," she adds, "the Code of Iowa has increased in size by 79%."[5] This is decidedly *not* Clarence Earl Gideon's justice system. But that is where Richard Zorza comes in. In the *Drake Law Review*, he says the time has come to "radically simplify the legal dispute resolution system so it becomes much more accessible and so the costs of accessing and operating the system dramatically decrease."[6]

These articles come at the current crisis from a variety of angles and from quite different actors within our nation's legal communities. Nevertheless, the pieces all have one very important thing in common—they all seek to promote and provoke a continuing legal and political debate over what we should expect and demand when we hear the phrases "right to counsel" or "due process." Here we have experts in the field offering creative approaches that might help ease at least some of the injustices brought about by the nation's quickening trend toward two-tiered justice—one for the rich and one for the poor. Perhaps, before the next *Drake Law Review* is out, some of these theories and arguments will be tested in courts or introduced into state legislatures. And perhaps, over time, some will come to be accepted as sensible solutions for ways in which America can more consistently fulfill her constitutional promises to all.

4. Jona Goldschmidt, *Ensuring Fairness or Just Cluttering Up the Colloquy? Toward Recognition of Pro Se Defendants' Right to Be Informed of Available Defenses*, 61 DRAKE L. REV. 667, 669–70 (2013).

5. Annette J. Scieszinski, *Not on My Watch: One Judge's Mantra to Ensure Access to Justice*, 61 DRAKE L. REV. 817, 819 n.7 (2013).

6. Richard Zorza, *Some First Thoughts on Court Simplification: The Key to Civil Access and Justice Transformation*, 61 DRAKE L. REV. 845, 847 (2013).