# 100 years since founding of the Los Angeles Public Defender's Office

**Alan Gilman**
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This year marks 100 years since the establishment of the Los Angeles County Public Defender's Office. The founding of the nation's first such office occurred nearly half a century before *Gideon v. Wainwright*, the landmark 1963 US Supreme Court case that established the right to counsel for indigent defendants in all criminal cases.

Although the Sixth Amendment of the United States Constitution provides that "In all criminal prosecutions, the accused shall enjoy the assistance of counsel for his defense," this right was without an enforcement mechanism until a century ago. In the period before there were public defenders, most indigent defendants were compelled to represent themselves. In more-serious cases, mostly youthful, inexperienced attorneys were ordered by courts to represent poor defendants pro bono, that is, without pay.

Clara Shortridge Foltz, the first female attorney in California, became the principal advocate for the creation of a public defender. Foltz had seen firsthand as a Los Angeles attorney the inequitable results rendered to indigent defendants who had been unrepresented or inadequately represented. She proposed the idea of a public defender in a speech at the Chicago World's Fair in 1893, entitled "Rights of Persons Accused of Crime—Abuses Now Existing."

Foltz was also a leader in the women's suffrage movement and authored the Women's Vote Amendment for California, which was passed in 1911 and granted women in California the right to vote.

In 1913, with a now greatly expanded voting franchise, Los Angeles voters approved a Foltz-sponsored amendment to the Los Angeles County Charter to establish a public defender's office.

In January 1914, pursuant to this recently enacted charter, the nation's first public defender's office was formed. Walton J. Wood was appointed Public Defender, and his original staff consisted of four deputies and a secretary. (Today, the Los Angeles County Public Defender's Office employs more than 700 attorneys.)

Public defender offices were soon established in other California cities, and by 1921, the California state legislature expanded the public defender system to encompass all state courts.

In the ensuing years, a number of public defender offices were established throughout the country, particularly in larger cities. In substantial parts of the country, however, indigent defendants still continued to be unrepresented.

The issue of the right to counsel, and the often appalling legal consequences for unrepresented defendants, ultimately reached the US Supreme Court in 1932 in the famous Scottsboro Boys case ( *Powell v. Alabama*). That case involved the convictions of nine black youth who were sentenced to death for the alleged rape of two white women. The Court in Powell reversed these convictions for the failure of the trial judge to appoint counsel. This Supreme Court decision, however, was limited only to defendants in state cases who were charged with capital crimes.

A decade later, in *Betts v. Brady* (1942), the Supreme Court narrowed its ruling in Powell by holding that the Sixth Amendment did not mandate the appointment of counsel for indigent defendants in all cases, but only required it in special situations such as those involving a defendant who was illiterate or of low intelligence, or when a case was particularly complex.

The period following the end of World War II, however, produced an enormous wave of labor and social struggles, culminating in the massive civil rights movement. It was in this atmosphere, in 1963, that the

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US Supreme Court was compelled in *Gideon v. Wainwright* to overturn *Betts* and establish that the Sixth Amendment right to counsel was a fundamental right, essential for a fair trial, and thus mandating the appointment of lawyers at public expense for all indigent defendants.

The promise of *Gideon* of equal justice for the poor, however, has never been fulfilled. The public defender system throughout the country has always been woefully underfunded. Excessive caseloads, low salaries and insufficient staff have continued to plague public defender offices.

The problems have become even more acute since the economic collapse of 2008, as budget cuts at every level of government have further impaired and in some cases crippled public defender offices. Courts in many states, including Maryland, Louisiana and Minnesota, have ruled that the system of free legal defense services is so badly underfunded that it is unconstitutional.

An even more blatant attack on the right to counsel has been waged by the Obama administration as part of its general assault on democratic rights. The National Defense Authorization Acts of 2011 and 2012, signed by Barack Obama, provides for the indefinite detention of US citizens, without charge, counsel or trial.

Moreover, Obama became the first president to carry out the execution of US citizens (Anwar Al-Awlaki, Samir Khan, Abdulrahman Al-Awlaki and Jude Kenan Mohammed) without charge, counsel or trial, by ordering their extrajudicial killings in Yemen in 2011.

Attorney General Eric Holder attempted to defend these extrajudicial presidential killings during his address at Northwestern Law School in March 2012 by declaring that " 'due process' and 'judicial process' are not one and the same, particularly when it comes to national security. The Constitution guarantees due process, not judicial process."

This astounding pseudo-legal justification from the government's top legal representative for presidential-ordered assassination reveals how the fundamental right to due process, including the right to counsel, has been abrogated to an unprecedented degree.

The deliberate underfunding of public defender offices, indefinite detentions and extrajudicial presidential killings make it clear that—50 years after *Gideon* and a century since the founding of the nation's first public defender's office—the right to counsel is in many respects more systematically violated today than at any time in modern US history.

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