

**Statement of Senator Patrick Leahy (D-Vt.),
Ranking Member, Senate Judiciary Committee,
Hearing on “Protecting the Constitutional Right to Counsel for Indigents Charged with
Misdemeanors”
May 13, 2015**

Rarely does a hearing touch core constitutional obligations more directly than what we are discussing today. Our Founders were determined that the government’s power be limited. The Sixth Amendment right to counsel is a cornerstone of that principle. It is a guarantee that before your liberty is taken, before the government can put you in jail, it must prove its case against you in what the Supreme Court has called the “crucible of meaningful adversarial testing.” And that requires a lawyer.

It should shock us that that basic promise – the right to counsel – a promise every school child knows -- is being violated daily all over this country. When coupled with the tremendous expansion of misdemeanor offenses, the result is that people are being jailed -- sometimes for weeks or months -- for petty infractions like burning leaves, driving on a suspended license, or sleeping on a public bench.

This over-criminalization and over-incarceration makes people feel powerless and under attack. It eats away at communities. One of the most disturbing findings in the Department of Justice’s review of Ferguson, Missouri, is that in a city with a population of 21,000 people -- 16,000 people have outstanding *arrest* warrants, most of them for minor parking and traffic violations. Something has gone terribly wrong with our system.

I am grateful that Chairman Grassley has convened this hearing today. The constitutional violations we will hear about deserve our attention and action. I would very much like to work with him to find solutions.

Fifty-two years ago, the Supreme Court issued its landmark decision in *Gideon v. Wainwright*, affirming a fundamental principle of our democratic society, that no person, regardless of economic status, should face prosecution without the assistance of a lawyer. Cases since then have held that this must hold true regardless of whether the crime is a misdemeanor or a felony. When the government seeks to take a person’s liberty – even if only for a day or two - it must also assume the cost of providing an effective defense.

The consequences of misdemeanor charges and convictions can be life altering. Even short jail sentences often mean the loss of a job, and that in turn means car payments cannot be made and rent cannot be paid. The dominos continue to fall and what was once a stable life is upended. Add to that mix payments to a probation company for your monitoring, and the new difficulty in getting a job because of your record, and what was once a simple infraction is now an insurmountable hurdle. Misdemeanor convictions matter. And that is why having a lawyer matters.

Vermont has a strong record of providing counsel to all indigent defendants and I am proud of our Office of the Defender General. Unfortunately, far too many cities, counties and states

around the country still lack adequate systems for providing effective representation. We cannot turn a blind eye to that failure. Our constitution requires more.

I offer one approach to solving this problem in my Gideon's Promise Act. That bill would provide technical assistance to state and local governments to help them meet their Sixth Amendment obligations and it would authorize the Attorney General to seek relief through civil action if systemic failures continue. I am sure there are other ideas we should consider as well.

Americans need and deserve a criminal justice system that keeps us safe, ensures fairness, and fulfills the promise of our Constitution for all people. While it is easy to talk about lofty constitutional principles, the reality is that it will be hard work to implement the kind of change we are talking about today. I stand ready to do this work with Chairman Grassley and the rest of this committee.

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