

Percell: What do you think are the biggest changes you've seen during the time you've been on the bench, or during the time you've been a lawyer, for that matter?

Thompson: Well, the number of women, obviously. I mean, it's very, very, very different, as a lawyer, from the way it was back in the early days when I first became a lawyer. And the number of blacks who are active in the bar. Unbelievable, in comparison. . . .

Percell: What do you see in your future? Do you . . . look forward to retiring at some point and doing something else?

Thompson: I like to do this. . . . As long as my health holds, I would prefer to do this. Now, if my husband had lived, that answer might be different. But, since he is not with me anymore, he's been dead twelve years, and he was a very wonderful, loyal, devoted husband, and I miss him very, very, very much. And since he's gone, I think that would be my answer.



Judge Thompson in 2013

The D.N.J. Federal Public Defender's Office: A Brief History

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Since its inception more than forty years ago, the Federal Public Defender's Office for the District of New Jersey (the "Office") has succeeded despite many unique challenges and limitations. The Office does not have the luxury of choosing its clients, but instead, takes all cases the District Court assigns. For that reason, the success of the Office is not only measured by wins at trial, but also by the fulfillment of its mandate to ensure that all indigent criminal defendants prosecuted in the District of New Jersey have access to high quality legal representation. Unquestionably, the Office's history of success is attributable to the dedicated attorneys, investigators and support staff that work tirelessly to protect their clients.

I. The History Of The Office.

The Office was created in 1973, and can trace its roots back to the landmark case of Gideon v. Wainwright, 372 U.S. 335 (1963). In Gideon, the defendant, Clarence Earl Gideon, was charged with the felony of having broken into a poolroom with intent to commit a misdemeanor. Gideon requested that the Florida state trial court provide him legal counsel because he did not have the means to pay for any attorney. Gideon's request was denied. Despite Gideon's protestation that he was entitled to be represented by counsel, the trial court was unconvinced, and Gideon was left to conduct his own defense. Although Gideon put forth an able effort defending himself at trial, he was found guilty and sentenced to serve five years in prison.

After Gideon's habeas corpus petition was denied by the Florida Supreme Court, the Supreme Court of the United States granted certiorari to hear the simple question: "Should this Court's holding in Betts v. Brady 316 U.S. 455 (1942) be reconsidered?" In Betts, the Supreme Court held that denial of an indigent defendant's request for legal counsel did not, given the totality of the circumstances, necessarily violate the Due Process Clause of the Fourteenth Amendment. As a result of that holding, the Betts court affirmed defendant Smith Betts' conviction for robbery. The Gideon Court answered its own question in the affirmative, overruled Betts, and held that the right to counsel is essential to fair trial and therefore required under the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment. (Notably, counsel

was appointed to represent Gideon before the Supreme Court of the United States.)

The Court's reasoning is instructive, underscoring the significance of a criminal defendant's right to counsel and the vital role of public defenders in the criminal justice system. The Gideon Court observed that:

[R]eason and reflection require us to recognize that in 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 be an obvious truth.

...

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.

...

This noble ideal [of a criminal defendant's right to a fair trial before impartial tribunals] cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

Drawing from the decision of Powell v. Alabama, 287 U.S. 45 (1932), the Gideon Court concluded that even an "intelligent and educated layman...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." Thus, in Gideon, the Supreme Court clearly established the role of the public defender as "fundamental and essential to a fair trial."

To effectuate the directive of the Gideon decision, Congress enacted the Criminal Justice Act of 1964 (the "CJA") which provided the legislative authority for providing legal counsel to indigent defendants. The CJA mandated that every defendant charged with a felony or a misdemeanor (other than petty offenses) must be advised that they are entitled to counsel, and that counsel must be provided to those that seek but cannot afford an attorney. The CJA also established the first system for appointing and compensating lawyers to represent indigent defendants. Additionally, the CJA required that each United States District Court formulate a plan for the provision of counsel to eligible defendants.

Initially, the District of New Jersey elected to create a panel of private attorneys (the "CJA Panel") who were well qualified and experienced in criminal matters, and would be appointed by the trial court, as necessary, to represent indigent defendants. By 1973, however, the CJA Panel with 100 attorneys could not keep up with the mounting caseload, and the District Court responded by creating the Office of the Federal Public Defender of the District of New Jersey.

Roger Lowenstein was selected as the first Federal Public Defender in New Jersey, and headed a small office of four attorneys (including Lowenstein), an investigator, and two clerical staff members in Newark. Despite the inauspicious location of the office in a former funeral home, Lowenstein set very high standards for his office because he felt that "the federal public defender...has to be better than the average attorney in state court because the risk of wrongful prosecution and conviction are greater in federal court... [because] the nature of the offenses is often difficult for the average juror to appreciate or understand." Lowenstein drew upon the experience of the state public defenders by hiring his first attorneys – John F. McMahon, Thomas S. Higgins and John J. Hughes – from the Essex County Public Defender's Office. Lowenstein served one four-year term, and in 1977 John F. McMahon was selected to serve as the Federal

Public Defender for the District of New Jersey.

McMahon is widely credited for shaping the Office into its current form. Under McMahon's watch, from 1977 to 1997, the Office expanded from a small group with an office in a former funeral parlor in Newark, to a staff of forty-two employees in four offices (the Newark, Trenton and Camden vicinages as well as an office in Wilmington, Delaware). Those that worked under McMahon, however, note that his most significant contribution was not the mere expansion of the Office, but the positive environment and collegiality he imparted. Indeed, the Hon. Tonianne Bongiovanni, U.S.M.J. – a former Assistant Federal Public Defender in the Office – credits McMahon with having created a supportive environment in which the staff was tight-knit and like family. Current Federal Public Defender Richard Coughlin describes McMahon as a great teacher who was generous with his time. The collegiality of McMahon's office remains, and is continued by his successor.

II. The Office Today.

In 1997, Richard Coughlin was first selected by the Third Circuit to serve as the Federal Public Defender and was most recently re-appointed for another four year term in July 2013. Coughlin has dedicated his entire career to public service, first as a Deputy Attorney General before becoming an Assistant Federal Public Defender in 1985. Coughlin's dedication to the fair administration of criminal justice is not limited to his career as a public defender; in 2003, he traveled to Iraq as part of a team of judges, prosecutors and defense lawyers to assess the Iraqi judicial system.

In addition to the inherently difficult position of having to take any and all clients assigned by the court, the Office has also recently experienced administrative challenges. Since September 2013, the Office has contracted from twenty-two attorneys to nineteen due to certain budgetary constraints and federal personnel calculations based on caseload and type of cases. Despite these challenges, the Office continues to provide high quality defense counsel in over 1,300 representations a year (as calculated in a weighted formula related to the nature of each case).

Indeed, it is during moments of such adversity that McMahon's legacy and Coughlin's positive outlook buoy the Office. Judge Bongiovanni recalled that Coughlin once told her that he would "rather look for the positive in people than the negative." McMahon's positive outlook and faith in a representational criminal justice system is evident in an Op-Ed he wrote in *The New York Times* after returning from Iraq. After hearing stories of horrific torture, injustice and rampant bribery of the judiciary under Saddam Hussein, Coughlin saw the positive and "quickly found reasons for hope." Coughlin highlighted Iraqis that were dedicated to reestablishing a functional court system and advocated for continued investment to modernize the courts and train judges prosecutors and defense lawyers in order to create "a foundation built on respect for the rule of law and human rights." Indeed, Coughlin's aspirations for Iraq are equally applicable to the role of the Office of the Public Defender in the American system. Public defenders ensure that indigent defendants receive zealous and competent representation, which engenders trust and respect for the rule of law and the criminal justice system.