The Twenty-Fifth Annual
Chester Bedell Memorial Lecture

"THE INDEPENDENCE OF THE AMERICAN LAWYER"

Presented to The Florida Bar
By
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in cooperation with
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Stephen B. Bright is president and senior counsel of the Southern Center for Human Rights and teaches at Yale Law School. He has served as director of the Center from 1982 through 2005, and has been in his present position since the start of 2006. He has taught at Yale since 1993. Before coming to the Center, Mr. Bright was a legal services attorney in Appalachia, and a public defender and director of a law school clinical program in Washington, D.C.

Subjects of his litigation, teach and writing include capital punishment, legal representation for poor people accused of crimes, conditions and practices in prisons and jails, racial discrimination in the criminal justice system, judicial independence, and sentencing. He has tried cases, including capital cases, before juries and argued cases before state and federal appellate courts. He has twice argued and won cases before the United States Supreme Court, *Snyder v. Louisiana*, 552 U.S. 472 (2008), and *Amadeo v. Zant*, 486 U.S. 214 (1988) involving racial discrimination in the composition of the juries.

Mr. Bright has testified on many occasions before committees of both the U.S. Senate and House of Representatives. He has also taught at the law schools at Harvard, Georgetown, Emory and Northeastern. His and the Center's work has been the subject of a documentary film, *Fighting for Life in the Death Belt*, (EM Productions 2005), and two books, Proximity to Death by William McFeely (Norton 1999) and *Finding Life on Death Row* by Kayta Lezin (Northeastern University Press 1999).

He received the American Bar Association's Thurgood Marshall Award in 1998, the American Civil Liberties Union's Roger Baldwin Medal of Liberty in 1991, the National Legal Aid & Defender Association's Kutak-Dodds Prize in 1992, the National Association of Criminal Defense Lawyers' Lifetime Achievement Award in 2008, and honorary degrees from Emory, Northeastern, Louisville universities, the university of Central England, and the John Jay College of Criminal Justice. *The Fulton Daily Law Report*, Georgia's legal newspaper, named Bright "Newsmaker (and Agitator) of the Year in 2003 for his contribution to bringing about creation of a public defender system in Georgia.

THE BEDELL LECTURERS

David Boies	1986
Hon. Parker L. McDonald	1987
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Benjamin R. Civiletti	1989
Brendan V. Sullivan	1990
Julius LeVonne Chambers	1991
Roxanne B. Conlin	1992
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Lord William of Mostyn QC	1995
Ambassador Sol M. Linowitz	1996
Warren B. Lightfoot	1997
Lawrence E. Walsh	1998
Stephen Jones	1999
Hon. Michael L. Bender	2000
Michael E. Tigar	2001
Morris S. Dees, Jr.	2002
Paul Morella	2003
Arthur R. Miller	2004
Talbot (Sandy) D'Alemberte	2005
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Lieutenant Commander Charles D. Swift	2007
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The Chester Bedell Memorial Lecture on "The Independence of the American Lawyer" is an annual event at the Trial Lawyers' Section luncheon meeting at the Convention of The Florida Bar. The Bedell Foundation, which receives tax-deductible contributions for support of the lecture, was created by the Jacksonville Bar Association in 1981 to help preserve the independent bar and to extend that sense of history, duty and destiny that Bedell exemplified in more than 50 years of practice in the courtrooms of Florida

which it is better to be rich and guilty than poor and innocent, then there is no basis for a claim of equal justice under the law. We should be ashamed.

The buck stops with the courts. And the buck stops with the Bar and the legal profession. The Bar must make legal representation of the poor its highest priority. Every member of the legal profession - whether an attorney at a firm, a prosecutor, a public official, a business person or any other kind of lawyer - must take responsibility for legal representation of the poor. Lawyers must be advocates for the right to counsel in the legislature, in the schools, in civil clubs and throughout society. Lawyers must stand up to the demagogues who demean the right to counsel and the Bill of Rights as nothing more than "technicalities." Lawyers must explain that the days of the lynch mob are behind us. Lawyers must explain that every person accused of a crime - no matter how heinous - is entitled to a capable lawyer with the resources needed to defend that person in the adversary system. Every American should be proud of it when it works, and everyone must understand that it will not work unless the legislatures provide the resources necessary for the representation of those accused of crimes who cannot afford a lawyer.

Even in our very materialistic society, life and liberty are the most precious things we have. The great poet Langston Hughes reminds and inspires us of our responsibility:

There is a dream in the land
With its back against the wall.
By muddled names and strange
Sometimes this dream is called.

There are those who claim
This dream for theirs alone
A sin for which we know
They must atone.

Unless shared in common
Like sunlight and like air,
The dream will die for lack
Of substance anywhere.

The dream knows no frontier or tongue,
The dream no class or race.
The dream cannot be kept secure
In any one locked place.

This dream today embattled,
With its back against the wall -
To save the dream for one
It must be saved for ALL[1]

1. Langston Hughes, *Dream of Freedom*, in THE COLLECTED POEMS OF LANGSTON HUGHES 342 (Arnold Rampersad, ed., 1994).

THE INDEPENDENCE OF THE AMERICAN LAWYER
GUEST SPEAKER: STEPHEN B. BRIGHT

Presented June 25, 2010, Boca Raton, Florida

Florida is in crisis with regard to the independence and quality of lawyers for poor people accused of crimes. So I am honored to be asked to give this lecture on the independence of the American lawyer in memory of Chester Bedell, who was a real lawyer's lawyer and who is remembered so fondly here. I am also honored to be in the company of others who have given this lecture in the past, including my friend, Talbot "Sandy" D'Alemberte, with whom I have worked since 1972 in various efforts to achieve justice for all.

I have appreciated the opportunity to hear about the extensive work of the Florida Bar Foundation to bring about equal justice. Jane Curran, the director of the Foundation, was in Washington, DC, when I was there in the 1970s. I remember when she left to take the position of director, and, it is most impressive that today, after all these years, she is still here doing this great work.

Earlier this year, I attended a symposium on indigent defense that United States Attorney General Eric Holder convened in Washington. Judge Stanford Blake of the Eleventh Judicial Circuit and Parker Thomson from the Hogan Lovells law firm in Miami, among others, described the crisis in representation of the poor in Miami. Parker Thomson and his firm are certainly to be commended for their representation of the public defenders in Miami in their efforts to comply with the right to counsel for the poor, guaranteed by both the Florida and United States Constitutions.

The independence lawyers who represent poor people accused of crimes is of tremendous importance to our legal system and our society. If people accused of crimes do not receive capable representation from lawyers who are independent of the judiciary and the executive, the system has no credibility or legitimacy. The same is true if the legislature fails to provide adequate funding for the defense of the accused. Inadequate funding results in crushing caseloads for public defenders and inadequate compensation and resources for private attorneys assigned to defend the poor. When this happens, the accused are simply processed through the system instead of being represented by zealous and independent advocates. It is not an adversary system; it is the pretense of one.

Unfortunately, in many jurisdictions, judges play a major role in how those accused of crimes are defended. Three recent cases demonstrate the need for the independence of defense counsel from the judiciary. The first is described in a remarkable book, *In the Place of Justice: A Story of Punishment and Deliverance* (Knopf 2010), by Wilbert Rideau, who spent 44 years at the Louisiana State Penitentiary, usually called Angola. Rideau was sentenced to death three times. His first conviction was reversed in an important Supreme Court case for failure to grant a change of venue. *Rideau v. Louisiana*, 373 U.S. 723 (1963). But he was sentenced to death a second and third time. He was not executed only because of the Supreme Court's decision in *Furman v. Georgia*, 408 U.S. 238 (1972), which prevented the execution of all of those under death sentence at the time. Rideau was the publisher of the prison's award-winning magazine, *The Angolite*, which was allowed to publish without censorship for many years.

Rideau won a new trial in 2005. As he describes in the book, the first issues at his retrial in Lake Charles, Calcasieu Parish, was whether he would be represented by the two lawyers who had successfully won him a new trial and were thoroughly familiar with his case or, by two lawyers the judge appointed, the local public defender and a New Orleans lawyer who had recently lost a capital case there. The public defender

protested being appointed because he had four capital cases among the 400 felony cases he was defending. There was a long battle over who would represent Rideau, which is described in the book. Eventually the two lawyers who knew his case and had won the new trial represented Rideau at the retrial. For the first time, Rideau was represented by real lawyers who investigated the case and presented a defense. The jury returned a verdict of manslaughter and Rideau, who had served far beyond the maximum sentence for that crime, was released.

Five years later, another man, Jason Manuel Reeves, faced the death penalty before the same judge in the same place, Lake Charles, Calcasieu Parish, Louisiana. Reeves was tried twice. At his first trial he was represented by lawyers from the Capital Defense Project of Southeast Louisiana who specialized in the defense of capital cases. At that trial, the jury was unable to agree on the issue of guilt and a mistrial was declared. One would think that the same lawyers, being thoroughly familiar with the case and specializing in defending death penalty cases, would represent Reeves at his retrial.

However, as often occurs in Louisiana and elsewhere, the government claimed that there was not sufficient funding for the defense. The trial judge could have ordered the State or the Parish to either provide funding for a proper defense or forgo seeking the death penalty. Instead, the judge decided that the local public defender - the same public defender that the same judge tried to foist on Rideau - would represent Reeves. Once again, the public defender protested, arguing that he could not represent Reeves because of his excessive caseload.

This time, the judge prevailed. Reeves, represented by the public defender and another lawyer was, as expected, convicted and dispatched to death row. Although most courts have held that once an attorney-client relationship has been established, defense counsel may not be removed except for the most compelling reasons, *see, e.g., State v. Huskey*, 82 S.W.3d 297, 305 (Tenn. Crim. App. 2002), the Louisiana Supreme Court held that poor defendants have no right to continuity of counsel and upheld the substitution of counsel. *State v. Reeves*, 11 So.3d 1031, 1066 (La. 2009).

Georgia's failure to provide funding for the representation of Jamie Ryan Weis in a capital case prompted the prosecutor to move to remove the experienced capital defense lawyers who had been representing Weis for over a year and replace them with local public defenders. As in *Reeves*, the public defenders protested their appointment, pointing to caseloads - one lawyer had over 400 cases and was not certified to handle a capital case - and the lack of resources to take on a capital case. The trial judge rejected their protests and appointed them. Although Weis eventually obtained reinstatement of his original lawyers, the Georgia Supreme Court upheld their removal and the substitution of the public defenders. *Weis v. State*, 694 S.E.2d 350, 354-58 (Ga. 2010). Finding virtually no support for its position in the decisions of courts throughout the country - or even its own precedents - the Georgia Supreme Court relied on the Louisiana Supreme Court's decision in *State v. Reeves*.

In each of these three cases, the trial judges sought to bring about a certain result through the appointment of counsel. When judges appoint lawyers that are not up to the task of defending the cases, it determines the outcome. Rideau and Weis would not have had an adequate defense and any chance at their trials if they had been represented by the overworked public defenders that the judges tried to impose upon them. Reeves did not have a chance because the judge assigned his case to the public defender's overwhelming caseload. What the trial judges did in these cases is highly

They play on fear and ignorance. The Florida legislature has passed a law that treats public defenders differently than any other members of the legal profession, requiring them to take cases even if they are legally, professionally and ethically required to decline them because they cannot competently represent the clients. That is the legislative solution - force whatever lawyers will take the case to handle more clients that they can competently represent.

Prosecutors have not only tolerated this sad state of affairs, they have exploited it. They take advantage of inadequate representation to obtain convictions and severe sentences. But they have a responsibility not just to obtain convictions, but to see that justice is done. That requires a working adversary system, as attorneys general of 23 states recognized in 1963 in filing an amicus curiae brief in the Supreme Court *in support* of Clarence Gideon's right to a lawyer in *Gideon v. Wainw*right. But today, Florida's prosecutors argue against any relief for the oppressive caseloads that often make it impossible for public defenders to effectively represent their clients.

Without zealous and effective representation for the accused, there is no adversary system. Instead, there is the pretense of one. As a consequence, Joe Sullivan, at age 13, is convicted on flimsy evidence at a one-day trial and sentenced to life imprisonment without any possibility of parole. It is not certain that he was guilty of the crime. DNA exonerations have revealed that the criminal courts are making lots of mistakes. There has been one exoneration after another based on the results of DNA testing. DNA testing even proved that Brenton Butler was innocent in that case in Jacksonville previously mentioned and that the person identified by the now-fired public defenders was the actual culprit. But there is biological evidence subject to DNA testing in only 10 percent of cases. The same number of mistakes are being made in the other 90 percent, but no one ever finds out. Innocent people remain in prison; perpetrators of crimes remain free to commit other crimes. The greatest protection from wrongful conviction is a functioning adversary system with competent representation for the accused.

The integrity and legitimacy of the legal system is at stake. The Bar must respond. For most people in our society what happens in the criminal justice system is out of sight and out of mind. Almost all of the people in the system are poor and the majority are members of racial minorities. But the Bar - the members of the legal profession - have a duty to pay attention. Lawyers are the trustees of the system of justice. Our monopoly on providing legal services is not just a scheme to get rich, although it serves that purpose for many members of the profession. It carries with it responsibility for the entire system - including providing justice for those whose life and liberty is at stake. Bar associations must be about more than networking, socializing, and playing golf. They should focus on important issues like the right to counsel.

There is going to be a reckoning. There is going to come a time to recognize that if we cannot do any better than we are doing now, we must sandblast the words "equal justice under law" off the Supreme Court building. At one time, we could at least say it was an aspiration. Justice Hugo Black once wrote for the Supreme Court, "There can be no equal justice where the kind of trial a [person] gets depends on the amount of money he [or she] has." *Griffin v. Illinois*, 351 U.S. 12, 19 (1956). The Court's decision in *Griffin* - holding that an indigent defendant is entitled to a transcript for appeal - and other cases at that time brought us a little closer to equal justice. At that time, we at least were trying to get there. But if we are no longer trying to get there, but instead are in full retreat; if we are going to accept the criminal system we have today in

So.3d 479 (Fla. 3d DCA 2010). The public defenders prevailed on both cases before trial courts that were familiar with their situations. However, the State, apparently wanting to take advantage of the public defender workloads, appealed both cases to the Third District Court of Appeals, which reversed each case.

Judge Shepard, concurring in the denial of allowing the public defenders to decline third degree felonies until they had reasonable caseloads, said that the case was "nothing more than a political question masquerading as a lawsuit."

The Court passed the buck to the legislature on an issue where, as Attorney General Robert F. Kennedy once observed, the poor person accused of a crime has no lobby. People who have no political power must go to the courts for protection of their constitutional rights, because legislatures often fail to protect the constitutional rights of poor people accused of crimes. As Justice Hugo Black pointed out in a case from Florida, "courts stand against any winds that blow as havens of refuge for those who might otherwise suffer because they are helpless, weak, outnumbered, or because they are non-conforming victims of prejudice and public excitement." *Chambers v. Florida*, 309 U.S. 227, 241 (1940). The poor, the despised must rely on the courts because - unlike legislators, who may base their behavior on popular sentiment and public opinion polls - courts have a responsibility to protect constitutional rights, no matter how popular or unpopular the person asserting those rights may be.

While it is hard to imagine the State's interest in seeking reversal of a judge's decision allowing a public defender to decline taking a single complex case because of his inability to represent both his existing clients and a new one competently, it is apparent how discouraging the reversal must be to the conscientious public defender with 164 clients, as well as to his colleagues. The Court has held that, unlike other lawyers, they can be forced to take more cases than they can competently handle. Surely, some of the best, most conscientious and ethical public defenders will decide that they have no alternative except to resign if they are forced to take on more cases than they can competently and ethically handle. Once good lawyers start leaving a public defender offices because effective representation is no longer possible, it begins a downward spiral, as the office loses its most dedicated and experienced lawyers, its supervisors and mentors. The large caseloads must then be given to newly hired, inexperienced lawyers. It becomes harder to hire and keep good lawyers as the job becomes more and more impossible.

The Court will significantly increase violations of the right to counsel by driving conscientious lawyers out of public defender offices. The criminal justice system is experiencing a disaster no less severe than the gushing of millions of gallons of oil into the Gulf of Mexico because of the BP Deep Water Horizon disaster. Gallons of injustice have been seeping in to the criminal justice system. It has coated and affected every aspect of it from judges to prosecutors to court personnel. It has resulted in a culture that has accepted and tolerated the processing - not the representation, as lawyers understand that word - but the processing of human beings through the system in a charade that has no semblance of justice. Judges, like pelicans covered with oil, react as if they are helpless to do anything about it.

Judges say it is a political question; take it to the legislature. However, most legislators - like most people in our society - do not understand the right to counsel and the importance of those accused of crimes being well represented. The representation of people accused of crimes is an issue constantly exploited by demagogues, who say that society should not waste money defending people who have done terrible things.

improper, but not at all that uncommon in many jurisdictions. The American Bar Association calls for the independence of counsel from the judiciary as the first of its *Ten Principles for Indigent Defense*. These cases illustrate why that principle is so important.

Florida has a rich history with regard to indigent defense. The seminal case on the right to counsel is *Clarence Earl Gideon v. Louie L. Wainwright, Director, [Florida] Division of Corrections*, 372 U.S. 335 (1963). Gideon was arrested for breaking into a pool hall in Panama City. He demanded a lawyer at his trial, but did not get one. He was convicted and sent to prison. He then wrote a petition to the United States Supreme Court in pencil. It is only five pages. The Court granted the petition, appointed Abe Fortas, a prominent lawyer, to argue the case and, in its decision, held that a person facing felony charges is entitled to a defense lawyer. At a new trial, where he was represented by a lawyer, Gideon was acquitted. Anthony Lewis wrote the next day in the *New York Times*, "The difference between the two trials was that this time Mr. Gideon had a lawyer." Lawyers make a difference.

Within days of the *Gideon* decision, Florida's then-governor Farris Bryant recommended to the state's legislature the creation of a public defender system. Within two months, Florida's legislature passed a law creating a public defender office in every judicial circuit in Florida, parallel to the offices of State's Attorney. Florida is to be commended for responding so promptly - unlike some states, such as Georgia and Montana, which did not set up public defender systems until 2005, and other states like Texas and Alabama, which still have no public defender systems to this day.

Florida has had some of the most outstanding public defender offices in the country. Many great lawyers - like Judge Phillip A. Hubbart of the Third District Court of Appeals, attorney Roy Black, former Miami Public Defender Bennett Brummer, one of the leading authorities on indigent defense in the country, and, of course many, other outstanding attorneys - came from this state's public defender offices.

However, the legislature made a major mistake when it provided that the public defenders would be elected. Only one other state, Tennessee, elects its public defenders, as does San Francisco. There have certainly been some outstanding elected public defenders in Florida - Phillip Hubbart and Bennett Brummer in Miami are two of them. But the election of 2008 in the Fourth Circuit, made up of Duval, Nassau, and Clay Counties, demonstrated the danger of such a system to the independence of defense lawyers. A challenger successfully defeated the highly respected, long-time public defender by promising that, if elected, he would not allow public defenders to accuse any police officer of lying. He ran with the support of the Fraternal Order of Police.

This campaign came not long after two veteran public defenders in that office had obtained an acquittal for an innocent young man, Brenton Butler, by showing that the police were lying when they said the young man voluntarily confessed that he committed the crime. The public defenders even found the man who actually committed the murder. That story is told in the excellent, award-winning documentary, *Murder on a Sunday Morning*, directed by Jean-Xavier de Lestrade. It depicts, as well as anything I am aware of, the value of a person being represented by veteran public defenders - in this case Patrick McGuinness and Ann Finnell - in order to prevent the conviction of the innocent. If the crime had happened on the other side of the state line in Georgia, Butler would still be rotting away in some Georgia prison today.

Brenton Butler would probably be convicted if he was wrongfully accused of murder in Jacksonville today. He would not receive the same capable representation

that resulted in his acquittal. Upon winning the election, the new public defender fired the two lawyers who successfully defended Butler, as well as eight other veteran lawyers in the office. As a result of this demagoguery and irresponsibility, if Butler was accused of murder in Jacksonville today, he would probably be on the way to a Florida prison, while the culprit remained at large. The only good thing to come out of the disgraceful campaign for the Fourth Circuit and its success is that no other jurisdiction that cares about the integrity of its criminal justice system is going to use elections as a way of selecting public defenders.

However, the most pervasive problem for public defenders in Florida is the crushing workloads that often make it impossible for them to meet their legal and ethical obligations to their clients. The Florida Legislature provided reasonably adequate funding for public defender offices for some time. But then came mass incarceration. There were about 200,000 people in prisons and jails in the United States in the 1970s. That number had held, relative to the population, pretty steady throughout our history. Then, over the next forty years, the number of people incarcerated increased to 2.3 million. The United States now has the highest incarceration rate of any country in the world. We have become extraordinarily punitive and unforgiving society. It is one of five countries that account for about 90 percent of all executions in the world. The others are China, Saudi Arabia, Iran and Pakistan. Most jurisdiction now frequently impose another form of death in prison - life imprisonment without any possibility of parole. Determinate sentences, mandatory minimum time in prison before release and repeat offender laws, such as "three strikes" provisions, keep more people locked up and under the supervision of the criminal courts.

Florida is one of the most punitive states. Its incarceration rate is 20 percent higher than the national average and the seventh highest among the states. While the prison population declined in 26 states in 2008-09, Florida increased its prison population. Florida has the second largest death row in the nation with almost 400 people under sentence of death at the start of 2010. It sentenced more children to life imprisonment without the possibility of parole than any other state before the Supreme Court struck down that penalty for those under the age of 18 in a Florida case, *Powell v. Florida*, 130 S.Ct. 2011 (2010). The Court pointed out that of 129 children sentenced to life imprisonment without parole, 77 were in Florida. One of those, Joe Sullivan, was just 13 years old when he was sentenced. His trial lasted just one day. He was identified on the basis of his voice. Two older children who were involved were not sentenced as harshly.

Funding for legal representation of the poor has not come anywhere close to keeping up with the immense increase in the number of people arrested and the greater severity of the punishments being inflicted. In Florida, it has even declined. The Florida Constitution was revised in 1988 to provide that all the funding for public defenders would come from the state starting in 2004. Fla. Const. Art. 5, § 14 (c). For Miami and Dade County that meant a loss of 30 lawyers and a budget cut of nine percent.

State legislatures, not surprisingly, have been far more generous in allocating funds to prosecutors and law enforcement than to representation for poor people accused of crimes. What would be a very significant imbalance based on state funding alone is exacerbated by the federal government's awards of millions of dollars to state law enforcement agencies and prosecutors. When a federal grant is made to create a drug task force or increase the personnel in some law enforcement agency, more people

are arrested. Those arrested need lawyers. But, while the federal government provides million to prosecutors, police and even courts, it does not provide funding for the cost of defending those arrested. For example, last year Dade County received $4.3 million in federal grants for prosecution and law enforcement. The Public Defender received $150,000. What is remarkable about that is that the Public Defender received 150,000. Most public defender offices do not receive any federal funding at all.

The result of a massive increase in cases and inadequate funding is overwhelming caseloads for public defenders. The Miami-Dade public defender office has over 40,000 cases for 100 lawyers. That would appear to be a staggering 400 cases per lawyer. But actually because of the administrative responsibilities of some lawyers, it is more like 500 cases per lawyer. One lawyer handled 971 felony cases last year. Some clients plead guilty the same day they meet their lawyer.

Every lawyer has an ethical duty to refuse to take on more work than he or she can competently handle. *See* Fla. Bar Rules 4-1.1 ("A lawyer shall provide competent representation to a client."), 4-1.16 (a) (a lawyer is to decline representation if it will result in a violation of the Rules of Professional Conduct or law). A lawyer is not to take on more work if it means that he or she will no longer be able to represent existing clients competently or provide effective representation to a new client because of workload. *See In re Prosecution*, 561 So.2d 1130, 1135 (Fla. 1990) ("When excessive caseload forces the public defender to choose between the rights of the various indigent criminal defendants he [or she] represents, a conflict of interest is inevitably created.") That is a basic ethical duty. That is part of the independence of a lawyer, and it is part of the most fundamental responsibility lawyers have to clients - to represent them competently.

Chester Bedell was the kind of lawyer who complied with these ethical standards. The lawyers people go to with important matters - lawyers like those in this room - abide by those ethical standards. And yet public defenders - who are responsible for life and liberty - are expected to carry caseloads that are far beyond what is expected of any competent and conscientious attorney working for paying clients.

Remarkably, Florida even has a statute that prohibits public defenders from withdrawing from cases "based solely upon inadequacy of funding or excess workload . . . ." Fla. Stat. § 27.5303(1)(d) (2007). In that statute, the legislature directs the courts to Appendix C of the *Final Report of the Article V Indigent Services Advisory Board* (January 6, 2004) with regard to allowing public defenders to decline representation or withdraw. As the Third District Court of Appeal has pointed out, "[c]onspicuously absent are conflicts arising from underfunding, excessive caseload, or the prospective inability to adequately represent a client." *State v. Public Defender, Eleventh Judicial Circuit*, 12 So.3d 798, 804 (Fla. 3d DCA 2009) (per curiam), *review granted*, 34 So.3d 2 (Fla. 2010). In other words, the inability to adequately represent a client is not a reason *for a public defender* to decline representation in a case. This is a system designed to provide second class justice for poor people accused of crimes.

The Miami public defenders have twice sought relief for excessive caseloads. In one case, they sought broad relief - asking to be allowed to decline representation in third-degree felony cases until they got their caseloads under control so their lawyers could give each client individual representation. *State v. Public Defender, Eleventh Judicial Circuit, supra*. In the other, a single public defender sought to withdraw from a single case because his obligations to 164 clients in pending felony cases prevented him from being able to represent yet another client, one who faced a first-degree felony charge that carried a sentence of life imprisonment as a habitual offender. *State v. Bowens*, 39