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## **When Poverty Is the Worst Crime of All: A Film Review of Gideon's Army (2013)**

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# When Poverty Is the Worst Crime of All: A Film Review of *Gideon's Army* (2013)

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Jessica S. Henry<sup>1</sup>

## Abstract

This review of the Sundance Award-winning documentary film, *Gideon's Army*, examines the disparate impact of the criminal justice system on the poor and, particularly, poor people of color.

## Keywords

courts, criminal justice policy, criminal court, criminal trial, defense, poverty and race, sentences

*Gideon's Army*, Dawn Porter's new and compelling documentary, follows three public defenders who strive for justice in a system where money, or the lack thereof, often determines the quality of representation. The army referenced in the film's title is named for Clarence Earl Gideon, a petty thief who ultimately transformed the American legal system. In 1961, Gideon was arrested for stealing a soda and bit of cash from a Florida pool hall. Unlike in his previous cases, Gideon did not want to plead guilty to the pool hall theft. He asked the court for a lawyer to represent him, but the court denied his request. Undeterred, Gideon represented himself at trial, and lost. In the months and years that followed, Gideon appealed his conviction from the darkness of his prison cell, arguing that he had been denied his constitutional right to counsel. In 1963, the Supreme Court unanimously agreed, declaring in the landmark case of *Gideon v. Wainwright*, that the Constitution requires that people too poor to afford a lawyer be provided with one in criminal cases. In lofty language, the *Gideon* court opined that fair trials "cannot be realized if the poor man charged with crime has

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to face his accusers without a lawyer to assist him” (*Gideon v. Wainwright*, 1963, p. 344). In a companion case decided the same day as *Gideon*, the Court again echoed this sentiment: “There can be no equal justice” where justice “depends on the amount of money [a person] has” (*Douglas v. California*, 1963, p. 355).

When the Court’s ruling in *Gideon* was announced, advocates for the poor and for people of color celebrated. The presence of a lawyer, it was believed, would increase justice for the poor and marginalized. It was, and still is, a hope that has not been fully realized.

Criminal justice policies disparately target poor communities. And poor defendants are almost always represented by public defender offices that are underfunded, understaffed, and under-resourced. Yet, for most of the 12 million people arrested every year, the nation’s 15,000 public defenders are their last, and only, hope. With lawyers overworked and underpaid, and a system that processes criminal cases factory style, plea bargaining, often after stunningly brief meetings with counsel, is the rule of the day; 94% of convictions in state courts and 97% of convictions in federal courts are the result of guilty pleas (*Lafler v. Cooper*, 2012). Not all of these defendants are factually guilty of the crimes charged. Even innocent defendants plead guilty to avoid languishing in prison awaiting trial or to mitigate harsh potential sentences (Innocence Project, 2013). This constant, almost rote, churning of cases led one Minnesota judge to recently comment that its courts were “fast becoming the courts of McJustice,” where “[q]uality is sacrificed for efficiency” (Guntzel, 2010). Given the sheer volume of cases and the ever-decreasing resources provided to indigent defense, the system of providing attorneys to those who cannot afford to pay frequently falls short of quality representation (Bright & Sanneh, 2013; Butler, 2013).

These systemic failures are heavily concentrated in poor communities, and particularly in poor communities of color. The United States has one of the highest per capita imprisonment rates in the world, with 504 people per 100,000 behind bars. In 2010, the incarceration rate among African Americans was an astonishing 3,073 per 100,000. More than two thirds of Black men who do not have college degrees will be incarcerated at some point in their lives, while Black men without a high school degree are more likely to be incarcerated than employed (Western & Pettit, 2010). The data reflect a criminal justice system that continues to disproportionately arrest, prosecute, and punish the poor and, specifically, poor people of color (Butler, 2013).

Ultimately, it is that unremitting presence of poverty and its accompanying injustice that make *Gideon’s Army* resonate. In the film, Travis Williams, Brandy Alexander, and June Hardwick are idealistic lawyers who have chosen the difficult path of providing high-quality legal representation to the poorest and most marginalized defendants in Georgia and Mississippi. With the assistance of the Southern Public Defender Training Center (SPDTC), renamed *Gideon’s Promise*, and its dynamic leader, Jonathan Rapping, these young lawyers receive training, mentoring, and inspiration to remain engaged in this often thankless task. Yet, even with this support system, these lawyers struggle mightily with staggering caseloads, long hours, and salaries that barely allow them to remain above poverty themselves.

*Gideon's Army* does not idealize the world of the public defenders or the work they do. Brandy Alexander, one of the attorneys featured prominently in the film, reveals her personal challenges in dealing with one client who raped his stepdaughter and seemed proud of himself, or another client who threatened to kill her if his case did not have a successful outcome. The film also captures beautifully the sacrifices made by these attorneys in pursuing this line of work. Ms. Alexander is shown at the gas pump, squeezing out a few extra drops, in an effort to stretch every last penny. Mr. Williams is required by his girlfriend to sign a contract about when he will see her, for fear that his workload will otherwise consume his entire life.

*Gideon's Army* also does not shy away from the real culprit of our failing criminal justice system: poverty. In perhaps one of the poignant moments in the film, June Hardwick, a Mississippi public defender, interviews a female client who remained in prison pending resolution of her case because she could not afford bail. As a result of her pretrial detention, this woman lost her house, her job as a mechanic, and her tools—which she could not afford to replace. If the woman had not been poor, she would have been able to post bail. And if she had posted bail, she would not have lost every last thing that she held dear, and everything that would have enabled her to successfully reintegrate into society. For this client, as is so often the case, it is poverty, and not the crime, that determined the impact of her arrest.

The film also touches on the excessive sentences found in our system today, particularly in the South where *Gideon's Army* takes place. According to a report by the Institute for Southern Studies, mandatory minimum sentences and “three strikes” laws have led to a quadrupling of the country’s prison population since 1980; the South represents nearly half of that increase (Evans, 2009). In the film, Ms. Alexander represents a 17-year-old client, Demontes Wright, who is charged with armed robbery. Under Georgia law, if convicted, Mr. Wright faces a minimum 10-year sentence and a maximum term of life imprisonment. As Ms. Alexander struggles mightily to mount a defense, a question lurks silently but significantly in the background: Why is a life sentence even appropriate for a robbery case in which no one was injured and a nominal amount of money taken? This issue of excessive sentences arises again in the context of a case handled by Mr. Williams. Williams is forced to enter a plea on behalf of a first offender whose childhood friend is planning to testify for the prosecution in the case in exchange for his own probationary sentence. The client faces 10 years if he attempts trial, but Williams negotiates a plea that carries with it a 5-year maximum term. As Williams argues for 2 years, and the client asks whether it is too late to get probation, the judge imposes the full 5-year term. It is a heart-wrenching moment. Although the film could perhaps have raised the issue of excessive sentences more explicitly, it certainly leaves the viewer with fodder for discussion.

This year marks *Gideon's* 50th anniversary. Sadly, it appears that the ideals celebrated by the *Gideon* decision remain out of reach for the more than 2.2 million people, most of whom are disparately poor and people of color, warehoused in carceral institutions around the country. *Gideon's Army*, a Sundance Film festival award winning documentary that premiered on HBO this summer, does not explicitly offer a path to improving the legal services offered to the poor. It does, however, provide a

powerful glimpse into the challenge of serving as legal foot soldiers, battling for justice in the courtrooms of the South.

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### Author Biography

**Jessica S. Henry** is an associate professor, with tenure in the Department of Justice Studies. After serving as a public defender for nearly a decade, she joined the Montclair State University faculty in 2005. She teaches a wide range of courses, including criminal law and procedure, death penalty perspectives, hate crimes, and wrongful convictions. She has appeared as a frequent commentator on national television, radio, and in print media. Her areas of research include severe sentences (including the death penalty and life without parole), prisoner reentry, and hate crimes.