

# The Shameful State of Indigent Defense

By C.C. Simmons, JD Correspondent

In April 2005, relying on the state constitution's provision that defense lawyers must be provided to defendants who were too poor to pay for counsel, the Louisiana Supreme Court ruled that judges can halt the prosecution of defendants until money is available to pay for their defense.<sup>1</sup>

In a similar action, the Supreme Judicial Court of Massachusetts ruled in 2004 that an indigent criminal defendant must be released from custody within 7 days and the charges dismissed within 45 days if an attorney is not available to represent the defendant.<sup>2</sup>

These recent actions by the Louisiana and Massachusetts high courts illuminate the shameful and deteriorating state of our nation's indigent defense system. Today, thousands of persons charged with a criminal offense are processed through our state and federal courts with no lawyer at all or with a lawyer who lacks the time, resources, and/or inclination to provide effective criminal defense counsel.

Forty years ago, the U.S. Supreme Court handed down its landmark decision in *Gideon v. Wainwright*,<sup>3</sup> a ruling which established the right to counsel in state court proceedings for indigent defendants accused of any crime. The high court explained that persons cannot be deprived of their liberty in state criminal or juvenile courts unless counsel has represented them or unless they have knowingly and intelligently waived their right to legal representation. The lower courts that have interpreted *Gideon* have held that if a person charged with a crime lacked the resources to retain counsel, it was incumbent upon the charging jurisdiction to appoint and pay for defense counsel. Alas, if only it were so.

Last year, the American Bar Association (ABA)<sup>4</sup> held a series of public hearings to determine if the right embodied in *Gideon* was being evenly and fairly applied among indigent defendants who were caught up in our criminal justice system. The ABA heard extensive testimony from thirty-two expert witnesses, analyzed data from twenty-two large and small states, and compiled hundreds of pages of transcripts which described the delivery (or lack) of indigent defense services in multiple jurisdictions across this nation. The ABA concluded that our nation's indigent defense system is in shambles and in need of immediate and extensive repair.

The flood of wrongfully convicted defendants over the past decade stands as damning evidence of the failure of our indigent defense system, said the ABA. There is little doubt that one of the most effective barriers against wrongful convictions is the availability of effective, experienced, and well-trained defense attorneys who will vigorously represent their clients without regard for their ability to pay.

The ABA found that barrier is in tatters. The indigent defense system in almost all U.S. jurisdictions is hampered by a lack of funds. Those funds are necessary to attract and compensate attorneys, to pay for training of counsel, to hire and pay for experts, to pay for investigators and other support services, to increase attorney-client contact, and to reduce increasingly burdensome caseloads. Specifically the ABA found:

- Funding for indigent defense services is woefully inadequate.
- Some lawyers who represent indigent defendants violate their professional duties by failing to provide competent representation.
- Prosecutors too often seek waivers of counsel and guilty pleas from unrepresented defendants.
- Judges knowingly accept and sometimes encourage waivers of counsel that are not knowing, voluntary, intelligent, and on the record.
- State and county bar associations often fail to provide leadership of indigent defense services.
- The uneven availability of effective indigent defense programs across our nation yields a system that lacks fundamental fairness and places poor persons at constant risk of wrongful conviction.
- Judges, politicians, and elected officials often exercise undue influence over indigent defense attorneys.

There is no "quick fix" for the shameful state of our country's indigent defense system. While the ABA put forth numerous recommendations for improvement, each and every recommendation will cost money to implement, and it failed to identify the source of funds needed to make the improvements. Nevertheless, among the most critical and urgently needed repairs are:

- Funding for indigent systems should be at par with funding for the prosecution systems in the same jurisdiction.
- State and local bar associations should become vigorously involved with efforts to ensure an effective indigent system exists in their community.
- Indigent defense programs should refuse to accept new cases when, to do so, would

create a workload so excessive that effective representation would be impaired.

- State governments should establish oversight organizations to ensure a high quality of indigent defense services.
- Judges should be encouraged to report defense lawyers who violate their ethical duties to their clients.
- Judges should also be encouraged to report prosecutors who encourage unrepresented defendants to waive their right to counsel and to enter uncounseled guilty pleas.

While noble in spirit, and virtuous in intent, the ABA's recommendations ring hollow without a source and continuing supply of money and independent oversight to ensure they are being faithfully implemented. Until adequate funding is available, the shameful state of our indigent defense system will only worsen until it becomes an indelible blot on the legacy of *Gideon* and a mockery to the Constitution's guarantee to legal counsel.

## Endnotes:

1. *Louisiana v. Adrian Citizen*, 2004-KA-1841.
2. *Lavalee v. Justices of the Hampden Superior Court*, 812 NE2d 895 (Mass 2004).
3. *Gideon v. Wainwright*, 372 U.S. 335, 83 S.Ct. 792 (1963).
4. The American Bar Association Standing Committee on Legal Aid and Indigent Defendants, 321 North Clark Street, Chicago, Illinois 60610; 312 988 5765. [www.indigentdefense.org](http://www.indigentdefense.org)

JD Note: The full ABA report is available on Justice Denied's website at [http://justicedenied.org/legal/aba\\_indigent.htm](http://justicedenied.org/legal/aba_indigent.htm)



## Indigent Defense in the Land of Compassionate Conservatism

By C.C. Simmons, JD Correspondent

Texas - home of the nation's busiest death chamber - scores embarrassingly low on the national raking of indigent defense systems.

During its public hearings in 2004, the American Bar Association (ABA) heard testimony from witnesses who described the indigent defense system in the Lone Star state. Some excerpts:

- There is no provision for formal, systematic training of indigent defense attorneys or their support staff.
- Only seven of the 254 counties in Texas have either a partial or a full-time public defender office. The other counties rely on an

Indigent continued on page 19

# Veronica Mars

UPN Television Network  
Weekly Series 2004-2005  
Starring Kristen Bell as Veronica Mars

Review by Hans Sherrer

*Veronica Mars* is a one-hour weekly series that premiered in the fall of 2004 on the UPN television network. It is also the name of the lead character. Veronica is a spunky, hyper-inquisitive, resourceful and persistent student at Neptune High School located in a trendy Southern California beach town. Need it be said that she is blond?

In her spare time Veronica helps her dad with his one-man private investigation firm. She also conducts her own investigations, solving situations involving classmates and other people she knows ranging from the theft of thousands of dollars during a friendly poker game, to the electronic rigging of the student elections, to threats to bomb Neptune High, to finding her missing next-door neighbor.

As she goes about solving mysteries in her everyday life, Veronica is on the look-out for information to solve a big mystery: What were the circumstances of the death of the pre-

vious year of her best friend, Lilly Kane? A former business partner of Lilly's father was convicted and sentenced to death after confessing to her murder. Veronica, however, has assembled enough facts to become convinced the man didn't kill Lilly. Among other things, she learns he has an airtight alibi that wasn't disclosed at his trial: He was with his girlfriend far from the crime scene at the time of Lilly's death.

The challenge Veronica has set for herself is to find proof of who killed Lilly. Her pursuit of the truth about her friend's death is personal for another reason: Her dad lost his job as sheriff after refusing to rule-out Lilly's wealthy and politically powerful dad as a suspect.

While it may sound improbable that a high school student could keep her grades up, work on the school newspaper, and be a super-sleuth in her spare time, the program works. It is somewhat believable because Veronica, played by Kristen Bell, primarily gathers information to solve a mystery by relying on her wits and hands-on techniques that include taking photographs, examining records, and interviewing people. Veronica is a cross between Sherlock Holmes and Erin Brockovich.

A person who has done something wrong or is involved in something nefarious most definitely doesn't want Veronica methodically tracking him or her like a bloodhound. Especially because she has a finely-tuned sense of handling things herself. At the end of one episode, for example, a young thief gleefully made his getaway with his girlfriend and what he thought was a bag of stolen steroids. However his mood most likely changed after discovering that Veronica switched his bag of steroids for one containing lots of saltwater taffy. Heh, the gal's got a sense of humor to go with being an ace investigator.


The episode broadcast on April 12, 2005 is an example of how Veronica solves puzzling situations. While working on an article for the school newspaper about an unusual number of fire drills - Veronica discovers they are actually being triggered by bomb threats phoned into the school. Veronica starts snooping around and discovers that a loner male Neptune High student appears to be tied to a website that has a clock counting down to an apocalyptic event predicted to occur in a few days. After Veronica sees the loner with another student who looks like a thug, she tails the thuggish guy to a store. Using a tele-photo lens, she takes pictures of him loading four bags of fertilizer in his trunk, in which a semi-automatic rifle is also visible. Veron-

ica soon finds out the "thug" is a BATF undercover agent who brags to her about his high number of arrests. A day or so later, as the website's clock is winding down to zero, a Swat team descends on the loner in Neptune High's parking lot. When the Swat team opens his trunk, Veronica sees and photographs the fertilizer and rifle that she had seen and photographed the day before in the BATF agent's trunk!

With photographic proof the loner had been framed as a terrorist bomber by the BATF, Veronica wrote an article for the school paper. The article generated enough negative publicity about the government's mishandling of the loner's case that all the charges were dropped against him. It is left for the viewer to infer that the BATF agent built his impressive arrest record by planting evidence - such as the fake apocalyptic website, fertilizer and weapons - against innocent people who were "frameable" because they could be considered on the fringe of society.


Veronica solved the mystery of Lilly's murder in the season finale. After figuring out where Lilly hid her personal items, Veronica found three sexually explicit video tapes showing Lilly in bed with a middle-aged movie actor. Lilly took the tapes, and when she told the man she was going to turn them over to a TV tabloid program he hit her in anger. Falling from the blow, she was killed when her head hit a concrete pool deck. The killer found out the hard way that his desperate efforts to conceal the truth of Lilly's death were no match for Veronica's sleuthing and survival skills. By solving her friend's murder, Veronica also sprung an innocent man from death row who police, prosecutors, judges, jurors and the press had all mistakenly been convinced was Lilly's killer.

*Veronica Mars* is a fresh and bold program featuring a smart and earnest young woman who gains the respect of her peers and adults because of her investigative skills, and also because she is willing to put herself on the line to rectify a wrong or help a person in need.

The second season of *Veronica Mars* begins on September 28 on the UPN television network. It is not known if it will continue with the first season's themes of innocent people being framed and imprisoned, but it will be worth checking out to see how the writers follow up on the first season's success. 

## Indigent continued from page 18

- assigned counsel system controlled by judges.
- As to why 247 Texas counties don't use a public defender office, a witness testified, "We have to overcome judicial fear about their loss of control over attorneys [and] we have to overcome the private defense lawyers' fear that a public defender office will result in a loss of business."
  - In a substantial number of Texas counties, defendants who are released on bond are presumed not to be indigent and either are denied appointed counsel or strenuously pressured to retain counsel in direct violation of state law. "In some cases, appointed counsel is withdrawn once a defendant posts bond," said one witness.
  - Witnesses testified that "judges in Texas sometimes improperly encourage prosecutors to seek waivers of counsel and subsequent pleas of guilty from unrepresented indigent defendants."

In 2000, the Texas Fair Defense Coalition issued a comprehensive report about indigent defense in Texas and made 48 recommendations for change. Very few of those recommendations have been implemented and compliance has been spotty at best. 

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