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Cara H. Drinan

The Catholic University of America, Columbus School of Law

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Gideon's Army and the Central Theme of Poverty

Cara H. Drinan*

Gideon's Army, a powerful documentary film that follows the work of three public defenders in the South, provides a window into the well-documented dysfunction of most public defender offices across the country.¹ While following the life and work of these public defenders—Travis Williams, Brandy Alexander, and June Hardwick—the viewer sees what the academic literature has documented for decades: public defenders carry caseloads that are multiples of professional guidelines; compensation for public defenders is so paltry that many are barely making ends meet; the offices in which they work are resource-starved; guilty pleas are the default; and the public defenders' clients are poor, uneducated and often trapped in a cycle of meager alternatives.²

In this Essay, I want to focus on one particular issue that permeates the film and the public defender-client relationship: poverty. Eighty percent of the people who are prosecuted for a crime are poor and require representation at the state's expense.³ This reality—that the average criminal defendant is poor—alters the set of choices the public defender and her client have in the criminal justice system.⁴ In the film, this constrained set of client choices is visible on countless occasions. At the same time, public defenders are compensated so poorly that their own choices are limited. Again, the film reveals this tension: even the most committed public defender has

* Cara H. Drinan, Associate Professor of Law, Columbus School of Law, The Catholic University of America.

1. GIDEON'S ARMY (HBO Documentary Films 2013).

2. See generally Mary Sue Backus & Paul Marcus, *The Right to Counsel in Criminal Cases, a National Crisis*, HASTINGS L.J. 1031, 1031 (2006); Cara H. Drinan, *The National Right to Counsel Act: A Congressional Solution to the Nation's Indigent Defense Crisis*, 47 HARV. J. ON LEGIS. 487, 491-94 (2010); Jonathan Rapping, *Retuning Gideon's Trumpet: Telling the Story in the Context of Today's Criminal Justice Crisis*, 92 TEX. L. REV. 1225, 1225-26 (2014).

3. Backus & Marcus, *supra* note 2, at 1034.

4. GIDEON'S ARMY, *supra* note 1.

to pay her student loan bills, put gas in her car, and feed her child.⁵ Some leave the job because they cannot meet those basic needs.

This essay proceeds in three parts. In Part I of the Essay, I highlight portions of the film where the viewer sees the impoverished state of criminal defendants in the system and how that poverty constrains the client's choices. In Part II, I examine the other side of the attorney-client relationship and again highlight instances in the film where the attorney's own financial stress alters her set of professional choices. Part III argues that, while improving the state of indigent defense across the country requires a multi-faceted approach, there are immediate reform measures that would alleviate the impact of poverty upon clients and counsel today. In particular, I discuss the need for improved pre-trial release policies and support for entry-level public defenders. By way of conclusion, I note that, ironically, it is fiscal strain—the reality of states feeling impoverished by their own criminal laws—that may generate meaningful criminal justice reform nationwide.

I. PUBLIC DEFENDERS SERVE THE POOR

Because most criminal defendants are poor, they have limited choices in the criminal justice system. *Gideon's Army* starkly exposes this reality on countless occasions. I want to highlight three examples from the film. First, soon after the film introduces Brandy and her day-to-day routine, we see her go from being optimistic about her client being able to participate in a pre-trial diversion program to being dejected at his inability to do so because of money. After hearing that her client has been approved for the diversion program, Brandy is eager to call her client's mother and share the news. Brandy explains to her client's mother that, if her son participates in the program, the state will drop the charges pending against him, but they will need to post \$3000 bail. It quickly becomes apparent from Brandy's side of the conversation that \$3000 is an unattainable sum. The client's grandmother has \$500 she can contribute, but his mother has nothing. Brandy realizes that her client will have to choose between a trial and a plea because he and his family cannot afford bail. He enters a guilty plea.

Later in the film, the viewer learns about another one of Brandy's clients, Demontes Wright, in much greater detail. Charged with armed robbery at the age of sixteen, Demontes has been in adult jail since he turned seventeen. Brandy is attempting to negotiate his release on bond. The viewer learns that Brandy has been able to convince the prosecutor to release Demontes, but only with an even higher bond and a curfew. Once again, Brandy must make the phone call to the mother of a criminal defendant and explain that her son can be free today if they can gather suffi-

5. *Id.*

cient funds. When Brandy calls Demontes's mother, Ms. Wright explains that she is behind on all of her bills and that her car is about to be repossessed. Brandy seems to absorb the stress that her client's mother is experiencing, and as the viewer later learns, Brandy herself is operating under intense financial pressure.

Finally, later in the film, the viewer sees June Hardwick visit a client in jail to gather some basic information about her case. Her client, Sharon Lewis, has been charged with illegal possession of a handgun. June learns that Ms. Lewis has been a certified mechanic for fifteen years. June seems pleasantly surprised, no doubt because her client can be readily employed if she is released—something that will enhance her prospects of release. However, Ms. Lewis quickly tears up as she explains that she will have to start from scratch and live in a shelter if she is released. She tells June that, since she has been in jail, her home has been broken into; her tools have been stolen; and she has been evicted from her home because she was not able to appear in court for the eviction hearing. Several months later, June is able to get Ms. Lewis released on bail.

In all three of these examples, the viewer witnesses the blunt reality that a criminal defendant's freedom often hinges on access to money. In the first instance, a defendant must pass up the opportunity to have his charges dropped altogether because his family simply cannot afford bail. He pleads guilty instead of going to trial, and as a result, he will have a criminal record for the rest of his life because his family did not have the means to post \$3000 bail. In the second instance, Brandy's client, Demontes, is fortunate enough that his mother is involved and willing to do everything she can to secure his release. That said, Demontes waits months to be released on bond, and in the process, his mother cannot pay her bills. She goes further into poverty to keep her son from being incarcerated pre-trial. Finally, June's client, Ms. Lewis, presents the textbook example of the harms that can flow from harsh pre-trial detention policies. Ms. Lewis did not have great financial resources to begin with, but she had a skill with which to support herself and she had a home. As she awaits her bail hearing, she loses her home, loses all of her tools, and is facing the reality that she will have to rebuild her life from a shelter.

All three of these examples demonstrate the criminal justice system in action for the average criminal defendant—a poor criminal defendant. As one senior public defender in the film, Brett Willis, explains:

This is the way it really works. You go to jail. You're charged with an offense based upon what a police officer thinks you did. They set a bond, and if you're poor, and you can't make the bond, you don't get out. So you sit. And you sit. And you sit. You may have lost your house, your kids may be needing sustenance, you may have been taken out of high school. All the things that could happen if you were sum-

marily plucked from your life.⁶

As a result, Mr. Willis explains, the public defender's impoverished clients have few choices, if any: "The system is designed to force [clients] to plead guilty, and it punishes their failure to comply."⁷ "It's all about lessening the penalty."⁸

II. PUBLIC DEFENDERS BECOME THE POOR?

While public defenders are serving the poor, they are themselves often living on the edge of economic survival. The average debt load for law school graduates today exceeds \$100,000, and for some recent graduates the figure is more than \$150,000.⁹ On average, entry-level public defenders earn between \$29,000 and \$45,000.¹⁰ Despite a passion and commitment to public defense, this combination of salary and debt load constrains the lives and choices of public defenders. In the film, the viewer sees this play out for Travis, Brandy, and June.

To begin, all three are deeply committed to their work. Travis keeps the cases he wins on one office wall, while he has tattooed on his back the names of the clients whose cases he loses. Brandy is very emotional throughout the film about her clients, particularly Demontes Wright, whom she thinks is innocent, and yet she also explains that she was previously subject to a death threat by her own client. June says that defending her clients—all 150 of them—is "an honor."¹¹

Despite their passion, the financial stress associated with their job constrains their personal choices. Travis explains, "I have huge student loan debt. After I pay my student loans and my rent, I have probably three hundred dollars a month to pay extra bills like gas in the car, all that kind of stuff, groceries."¹² Similarly, in a later scene, Brandy is sifting through her mail and describes what is before her: "Student loans, Bank of America telling me that I overdrew, student loans . . . seriously most of these are

6. *Id.*

7. *Id.*

8. *Id.*

9. Adam Cohen, *Just How Bad Off Are Law School Graduates*, TIME (March 11, 2013), <http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates/>.

10. CAROL J. DEFANCES, U.S. D.O.J., ST. FUNDED INDIGENT DEF. SERV. (1999), available at <http://www.bjs.gov/content/pub/ascii/sfids99.txt>. There is great variety in the range of public defender salaries—where indigent defense services are provided by salaried employees, rather than flat fee or contract attorneys—and the range is largely tied to geography. In most instances, even where public defender salaries are relatively high, they are still less than what prosecutors in the same jurisdiction earn. Backus and Marcus, *supra* note 2, at 1062-63 (noting that prosecutors are often underpaid as well).

11. GIDEON'S ARMY, *supra* note 1.

12. *Id.*

student loan bills . . . and that is why I prefer not to look at them. It's depressing."¹³ She then counts out change and announces, "this is all the money I have in the world right now."¹⁴ She hopes that three dollars in gas will take her home, back to work, and back home again because she will not be paid for another day.¹⁵ June, a mother, ultimately leaves her public defender position and says, "the main reason was pay . . . I was struggling to take care of [my child] and myself."¹⁶ She recalls writing a check for groceries knowing she didn't have enough money in her checking account to cover the food. As senior public defender Mr. Willis explains, "Money pressure is like any other pressure. It takes something out of you to deal with it. And this job takes a lot out of you just to do the job."¹⁷

In these ways, *Gideon's Army* presents the central theme of poverty that permeates the indigent defense world. Not only are the clients poor and faced with limited choices as a result, but so too are their counsel. Despite public defenders' passion, fiscal strain forces many to leave the profession out of despair or necessity.

III. REFORM MEASURES TO ADDRESS POVERTY ON BOTH SIDES OF THE PUBLIC DEFENDER-CLIENT RELATIONSHIP

The poverty that *Gideon's Army* reveals is not news, though the film gives a human face to what academics have written about for years. Solving the indigent defense crisis requires a multi-faceted approach and efforts from both state and federal actors.¹⁸ A discussion of that literature is outside the scope of this essay. Instead, here, I want to briefly address two reform measures that would ameliorate the harsh effects of poverty on criminal defendants and their counsel: revamped pre-trial release policies and support for entry level public defenders.

A. Pre-Trial Detention

First, as *Gideon's Army* reveals numerous times, harsh pre-trial detention practices disproportionately and unfairly affect poor criminal defendants. In theory, in our criminal justice system, arrest is not designed to

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. See, e.g., Stephanos Bibanos, *Shrinking Gideon and Expanding Alternatives to Lawyers*, 70 WASH. & LEE L. REV. 1287, 1296-1307 (2013); Anthony C. Thompson, *The Promise Of Gideon: Providing High-Quality Public Defense in America*, 31 QUINNIPIAC L. REV. 713, 768-81 (2013).

equal detention.¹⁹ That is, one should be able to be free prior to trial—before one’s guilt has been proven—unless there is a risk that one will not appear to face the charges pending or unless one poses a risk to society.²⁰ In reality, however, as the senior public defender in the film explains, bail is set, and if one is too poor to afford bail, one sits in jail awaiting trial or until one decides to plead guilty.²¹

Several reform measures could change that reality. First, defendants must appear before a judicial officer within forty-eight hours of arrest,²² but in most cases they do not appear with counsel who can argue for their release.²³ Studies show that defendants who have representation at a bail hearing are more likely to secure release on their own recognizance, and, even when bail is set, it tends to be lower than in cases of unrepresented defendants.²⁴ If defendants were to have counsel at first-appearances, this would greatly improve the likelihood of them securing pre-trial release.²⁵

In addition to making counsel available at bail hearings, states should pursue better pre-trial decision making processes. Federal and state law dictates that bail should be based upon individual and varied circumstances—such as a defendant’s criminal history, family structure, history of substance abuse, employment status, ties to the community, risk to the community, and seriousness of charge.²⁶ But, in fact, most jurisdictions rely upon bail schedules.²⁷ With these schedules, those rendering bail decisions often set bail at a pre-determined amount based on the pending charge, rather than considering the individual defendant and his circumstances.²⁸

Ironically, many jurisdictions introduced these bail schedules with the

19. John Clark & D. Alan Henry, *The Pre-Trial Release Decision*, 81 JUDICATURE 76, 77 (1997).

20. *Id.*

21. GIDEON’S ARMY, *supra* note 1.

22. *See generally* Cnty. of Riverside v. McLaughlin, 500 U.S. 44 (1991) (holding that probable cause determination must happen within forty-eight hours of arrest); Gerstein v. Pugh, 420 U.S. 103 (1975) (requiring judicial determination of probable cause promptly after arrest).

23. Charlie Gerstein, Note, *Plea Bargaining and the Right to Counsel at Bail Hearings*, 111 MICH. L. REV. 1513, 1516 (2013) (noting that there is no federal constitutional requirement for defendant to have counsel at bail hearing and less than half of the states provide counsel for bail hearings).

24. *See generally* Douglas L. Colbert et al., *Do Attorneys Really Matter? The Empirical and Legal Case for the Right of Counsel at Bail*, 23 CARDOZO L. REV. 1719 (2002).

25. *Id.* at 1720.

26. Lindsey Carlson, *Bail Schedules: A Violation of Judicial Discretion?* 26-SPG CRIM. JUST. 12, 13 (2011) (discussing examples of factors relevant in state and federal court).

27. *Id.* at 14.

28. *Id.* at 13-14.

goal of setting low bail amounts for non-violent offenses, and yet the impoverished nature of the criminal defendant community has made even relatively low bail amounts unattainable for many.²⁹ In felony cases, the bail can be simply impossible for the average criminal defendant.³⁰ As Brandy notes in the film, in Clayton County, Georgia, the average bond on a theft by shoplifting charge is \$40,000.³¹ Because of a lack of representation at bail hearings, combined with the use of bail schedules and high bail amounts, most criminal defendants have no choice but to await trial in jail or enter a guilty plea to be released.

Gideon's Army presents how critical the pre-trial release decision can be. It can be the difference between a young man having the charges against him dropped or pleading guilty; it can be the difference between a single mother falling into financial ruin or not; and it can be the difference between a woman keeping her home and job or losing both and having to start over at a shelter. In short, a favorable pre-trial release decision can make all the difference.

Beyond the film, social scientists have demonstrated additional ways in which pre-trial detention can have a criminogenic effect on defendants.³² For example, a defendant may be awaiting indictment on a low-level offense, but while he is in jail he may develop a substance abuse problem, he may learn violent behaviors and he may develop a sense of desperation and resentment.³³ Further, a defendant who is detained on a pre-trial basis is more likely to be convicted and incarcerated than one who is released pre-trial.³⁴ Thus, pre-trial detention poses more than short-term financial challenges to defendants; it can alter the course of defendants' lives. Improving pre-trial detention policies will not solve all of the challenges for criminal defendants portrayed in *Gideon's Army*, but it is a step in the right direction.

B. Supporting New Public Defenders

At the same time, as *Gideon's Army* demonstrates, many young public defenders operate under acute financial stress, and this too needs to be addressed. While states should better compensate new public defenders and provide them better training,³⁵ in the current fiscal climate, such measures

29. *Id.* at 14-15.

30. *Id.*

31. GIDEON'S ARMY, *supra* note 1.

32. See, e.g., Samuel R. Wiseman, *Pretrial Detention and the Right to Be Monitored*, 123 YALE L.J. 1344, 1354-56 (2014).

33. *Id.*

34. *Id.* at 1355.

35. Again, a full discussion of what states can do to improve the delivery of public

may not be forthcoming. In the interim, law schools and state actors could do more to help usher in a generation of well-trained, committed, and adequately paid public defenders.³⁶

To begin, law schools need to explore ways to reduce the cost of a legal education—a step that would enable recent graduates to pursue lower paying public service positions like public defense work. Because of historically low employment prospects and the related drop in law school enrollment, some law schools have already reduced their tuition in an effort to recruit students.³⁷ Penn State, the University of Iowa, the University of Arizona and Roger Williams University have all implemented tuition reductions.³⁸ But even with reductions, a legal education can be a huge financial burden for someone interested in a public service career. For example, Brooklyn Law School announced this year a fifteen percent cut in its tuition to go into effect in the 2015-16 academic year.³⁹ That reduction may attract some additional students, but the school's current tuition is \$53,850,⁴⁰ so even after the reduction, the school's tuition alone will exceed \$45,000 a year.⁴¹ The American Bar Association's Task Force on Legal Education has recently called on law schools to contain the cost of a legal education and to work collectively to restructure the pricing of legal education.⁴² Reducing the cost of a legal education is a critical first step toward the goal of building a cadre of young, skilled public defenders who can commit to the public service field on a long-term basis.

But law schools and state actors can do more still to directly impact the creation of that cadre of new lawyers—or as the film refers to such a group, *Gideon's Army*. *Gideon's Promise*, the public defender training program on which the film is based, aims to train and develop new public defenders in

defense services, including better pay for defense counsel, is outside the scope of this essay. For a general discussion of and recommendation regarding defender compensation, see THE CONSTITUTION PROJECT, JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 194 (2009), available at <http://www.constitutionproject.org/pdf/139.pdf>.

36. *Id.* at 196.

37. Maya Itah, *Why Brooklyn Law Cut Its Tuition*, FORTUNE MAG. (Apr. 15, 2014), <http://fortune.com/2014/04/15/why-brooklyn-law-cut-its-tuition/>.

38. *Id.*

39. *Id.*

40. *Id.*

41. *Your Financial Aid*, BROOKLYN LAW SCHOOL (2014), <http://www.brooklynlaw.edu/Admissions/financingyoureducation/COA/JD%20Programs.aspx?>

42. See generally *Report and Recommendations, Task Force on Legal Education*, A.B.A. (Jan. 2014), available at http://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/report_and_recommendations_of_aba_task_force.authcheckdam.pdf.

areas of the country most in need of indigent defense reform.⁴³ The program provides not just skill development, but also leadership training and moral support to defenders in its partner offices.⁴⁴ Today a few top law schools have enrolled in the Gideon Promise Law School Partnership Project.⁴⁵ Under the Partnership terms, a law school subsidizes the employment of one or two of its graduates per year at a Gideon's Promise public defender office.⁴⁶ The new public defender is able to participate in the Gideon's Promise training program and is guaranteed a paid position as a public defender after their first year of work.⁴⁷ Currently, three law schools participate in the Partnership—NYU, UCLA, and American University—and Gideon's Promise hopes to expand the Partnership to include twenty law schools by 2016.⁴⁸ That should be an easily attainable goal for Gideon's Promise. There are more than 200 law schools in the United States.⁴⁹ If even a small fraction of those law schools could commit to subsidizing one public defender for one year with an organization like Gideon's Promise, that would make an enormous contribution.

Moreover, state law schools should consider special programs that align the state's obligation to provide indigent defense services with law school tuition. Under *Gideon v. Wainwright*, states have a constitutional obligation to provide legal representation to poor criminal defendants, and many state defender offices struggle to retain public defenders often because the pay is too low for debt-burdened law school graduates.⁵⁰ At the same time, many states have their own law schools and wish to recruit top-notch students,

43. See *Our Promise*, GIDEON'S PROMISE, <http://gideonspromise.org/our-solution> (last visited Feb. 13, 2015).

44. *Id.*

45. See *Law School Partnership Project*, GIDEON'S PROMISE, <http://gideonspromise.org/law-school-partnership-project/> (last visited Oct. 8, 2014).

46. *Id.*

47. See, e.g., *Law School Partnership Project at Gideon's Project*, Comment on *The Docket*, NYU LAW BLOG (Jan. 17, 2014), <http://blogs.law.nyu.edu/docket/pilc/law-school-partnership-project-at-gideons-project/11150/>.

48. See *Gideon's Promise Announces Law School Partnership Project with NYU Law*, NYU LAW (Dec. 3, 2013), <http://www.law.nyu.edu/news/gideons-promise-announces-law-school-partnership-project>.

49. *ABA-Approved Law Schools*, ABA, http://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools.html (last visited Oct. 9, 2014).

50. See *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963) (holding Sixth Amendment right to counsel applies to the states); ABA COMM'N ON LOAN REPAYMENT AND FORGIVENESS, *LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUB. SERV.* 10 (2003), *available at* <http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lrapfinalreport.authcheckdam.pdf>.

some of whom are interested in public service careers. States should seek to align both the goal of providing quality public defense and the goal of recruiting top students. For example, state law schools could offer reduced tuition, if not full scholarships, to applicants intending to pursue a career in public defense.⁵¹ There would need to be some kind of enforcement mechanism—such as tuition reimbursement if the student changed career plans mid-stream—but such a program would recognize that the state has its own interest in developing skilled public defenders who are committed to the profession on a long-term basis. Finally, states can follow the model of the federal government with its 2007 College Cost Reduction and Access Act and further incentivize public service careers through expanded loan forgiveness programs at the state level.⁵²

In these ways, law schools and state actors can encourage more graduates to enter public defense in the first instance, as well as free them to stay in the job for a greater length of time and allow them to live with some degree of economic security while doing so.

IV. CONCLUSION

Gideon's Army lays bare the reality that, in our criminal justice system, one's liberty often hinges exclusively on one's financial resources. It also portrays the commitment of public defenders who are paid so meagerly that they struggle to make ends meet.⁵³ Unfortunately, as upsetting as the film may be, what it documents is only a small window into the numerous ways in which our criminal justice system is broken.

In America today, too many people are prosecuted for too many crimes; our sentencing practices are draconian; and as a result, we have an enormous prison population.⁵⁴ With more than two million adults and children behind bars, the United States leads the world in its rate of incarceration.⁵⁵ In other terms, while the United States represents only five percent of the

51. See, e.g., *Public Interest Scholars*, B.U. SCH. OF LAW, http://www.bu.edu/law/prospective/financial_aid/scholarships/jd/public_interest/ (last visited Oct. 9, 2014); *Robina Public Interest Scholars Program and Scholarship*, UNIV. OF MINN. LAW SCH., <http://www.law.umn.edu/prospective/robina-public-interest-scholars-program-and-scholarship.html> (last visited Oct. 9, 2014).

52. See, e.g., Heather Rastorfer Vlieger, Daniel J. Brown, & Thomas Pryor, *Doing More With Less: How The Loan Repayment Assistance Program Of Minnesota Augments Federal Loan Repayment Assistance To Expand Legal Aid*, 39 WM. MITCHELL L. REV. 70 (2012).

53. DEFRANCES, *supra* note 10 and accompanying text; GIDEON'S ARMY, *supra* note 1.

54. Roy Walmsley, WORLD PRISON POPULATION LIST (10th ed.), INT'L CTR. FOR PRISON STU. (Oct. 9, 2014), available at http://www.prisonstudies.org/sites/prisonstudies.org/files/resources/downloads/wppl_10.pdf.

55. *Id.*

world's population, we account for twenty-five percent of the world's prison population.⁵⁶ And the last few decades of tough-on-crime policies, which generated this dynamic of mass incarceration, have had a disproportionate impact on the poor and on people of color.⁵⁷

There may be a silver lining, though. The fiscal strain of harsh criminal justice policies—the reality of states feeling impoverished by their own criminal laws—may be the catalyst for criminal justice reform nationwide. Several states, prompted by budget constraints, have undertaken sweeping criminal justice reform efforts in recent years.⁵⁸ With the Right on Crime movement, conservative politicians are leading the charge to reduce corrections expenditures at the state level.⁵⁹ California, under a Supreme Court order to reduce its bloated prison population, recently repealed its three-strikes law and a measure to repeal the death penalty was narrowly defeated in the state.⁶⁰ Thus, while poverty permeates the criminal justice system, it may be that fiscal strain is also what prompts holistic criminal justice reform. And this is a crucial first step, for only with such reform, can the promise of Gideon become a reality.

56. *Id.*

57. Lynn Adelman, *What The Sentencing Commission Ought To Be Doing: Reducing Mass Incarceration*, 18 MICH. J. RACE & L. 295, 307-10 (2013).

58. Mary D. Fan, *Beyond Budget-Cut Criminal Justice: The Future of Penal Law*, 90 N.C. L. REV. 581, 620-25 (2012).

59. *Conservative Case for Reform: Fighting Crime, Prioritizing Victims, and Protecting Taxpayers*, RIGHT ON CRIME (2010), <http://www.rightoncrime.com/the-conservative-case-for-reform/reduce-costs/>.

60. Howard Mintz, *Defeat of Proposition 34: California's Death Penalty Battle Will Continue*, MERCURY NEWS (Nov. 7, 2013), http://www.mercurynews.com/ci_21951068/defeat-proposition-34-californas-death-penalty-battle-will.