

Access to Justice Summit explores civil right to counsel

August 26, 2016

Mississippi Supreme Court Presiding Justice Jess Dickinson on Thursday challenged access to justice advocates to push for extension of right to counsel for the poor to the civil arena.



Justice Jess Dickinson, at left, talks to DOJ Office for Access to Justice Director Lisa Foster and Mississippi Access to Justice Co-Chair Rodger Wilder. A copy of the petition that led to the landmark *Gideon v. Wainwright* U.S. Supreme Court decision is in the background.

He recalled the late U.S. Supreme Court Justice Antonin Scalia's remarks two years ago at the celebration of the Legal Services Corporation's 50th anniversary in Washington. Justice Scalia said the right to counsel and to equal justice are among the most fundamental rights of Americans. Justice Dickinson said that he later got the opportunity to ask Scalia if a "fundamental" right meant a constitutional right. Scalia replied, "That's an interesting question." He never gave an answer.

Justice Dickinson recounted the history of right to counsel in criminal proceedings. Clarence Earl Gideon is among his heroes. Gideon, whose request for counsel was denied, represented himself at trial and was convicted of breaking and entering a Florida pool hall in 1961. Justice Dickinson showed the group a framed copy of the five-page hand-written petition that Gideon sent to the U.S. Supreme Court. The resulting landmark 1963 decision in *Gideon v. Wainwright* held that an indigent defendant in a criminal proceeding has a right to counsel.

"I don't think we should wait for another Clarence Earl Gideon to come along to make the argument that we should be making," Justice Dickinson said. "If we don't go out and push for it and believe in it, nobody will....I know that the odds are against us. In my view, the great tragedy is not so much to fail, but to fail without even trying."

Lisa Foster, director of the U.S. Department of Justice Office for Access to Justice, told the group that the public attention focused on justice and poverty and the dynamic of public protest have come together to create a moment in history when change can be accomplished. There hasn't been this much attention to poverty and justice since the Office of Economic Opportunity and the Legal Services Corporation were created.

"As advocates for access to justice, we have to take this opportunity," Foster said. "If we don't act boldly now, we may lose it for another 50 years."

The Mississippi Supreme Court created the Access to Justice Commission in 2006 to develop a unified strategy to improve access to the civil courts for the poor. Mississippi became the 23rd state in the country to appoint an Access to Justice Commission when the Supreme Court issued its order on June 28, 2006. Justice Dickinson served for 10 years as the court's liaison to the legal services community.

Hinds County Chancellor Denise Owens, who served as Commission co-chair for 10 years, said Justice Dickinson has been a catalyst. "He really helped to galvanize the Commission."

"The question we have to face is...what do you really believe in your heart about the constitutional right to counsel in civil cases," Justice Dickinson told about 50 people who gathered at the Supreme Court to observe the 10-year anniversary of the Mississippi Access to Justice Commission.

Justice Dickinson said that his personal belief is that when a person uses the law, the government, its facilities and its power in an attempt to take away an indigent person's life, liberty or property, including that person's children, home or livelihood, that indigent person is entitled to have a lawyer appointed to represent him, just as in a criminal case.

"When poor people do not stand equal to the rich in our courts, when poor people by the millions go unrepresented in court and their property and their liberty is taken away from them, we have not established justice," he said.

"My beliefs may not be in the majority," Justice Dickinson said. But the question is being discussed by justices in other states.