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Foreword: Symposium: a Right to Counsel in Civil Cases: Civil Gideon in Maryland & Beyond

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FOREWORD

Leigh Goodmark†

SYMPOSIUM

*A Right to Counsel in Civil Cases:
Civil Gideon in Maryland & Beyond*

While I certainly cannot speak for the individual judges of this Court, it is my belief that there is no judge on this Court that believes in his or her heart or mind, that justice is equal between the poor and the rich—even in the tradition hallowed halls of our appellate courts. Each of us knows, I believe, that an unrepresented parent involved in the appellate process in respect to custody, visitation, or parental termination issues, when opposed by competent counsel for the opposing party (sometimes opposed by an organ of the State with its legions of lawyers), is normally not afforded the equal protection of the laws, *i.e.*, an equal access to justice to which all citizens are entitled—in spite of the efforts of this Court to afford that equality. With the constraints of the adversarial court system, and the prohibitions it (and our cases) place upon judges not to assist either side, the poor, unrepresented parent faced with experienced counsel on the other side is at a great, system-built-in, disadvantage.¹

On Thursday, April 5, 2007, the *University of Baltimore Law Review* held its inaugural symposium, entitled *A Right to Counsel in Civil Cases: Civil Gideon in Maryland & Beyond*. The topic is a particularly apt one for our *Law Review*, given the leading role that advocates in Maryland have played in the fight to establish a right to counsel for indigent parties in cases involving the most basic of human rights—the rights to safety, to shelter, to parent children. First in *Frase v. Barnhart*² and again in *Touzeau v. Deffinbaugh*,³

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1. *Frase v. Barnhart*, 379 Md. 100, 134–35, 840 A.2d 114, 134 (2003) (Cathell, J., concurring).
2. *Id.* at 126, 840 A.2d at 129 (majority opinion).
3. 394 Md. 654, 666, 907 A.2d 807, 814 (2006).

advocates have asked the Court of Appeals of Maryland to find a constitutional right to counsel in civil matters involving fundamental rights. And although a majority of the Court of Appeals of Maryland has not yet been willing to do so, Chief Judge Bell and Judges Cathell and Greene have stated that they believe the Constitution of Maryland confers such rights.⁴

Among the advocates at the forefront of these efforts are former Maryland Attorney General Stephen H. Sachs and Debra Gardner, the Legal Director of the Public Justice Center, an organization dedicated to giving voice to the disempowered through the legal system. In his keynote address, reproduced in this issue, Sachs introduces Deborah Frase, the plaintiff in *Frase v. Barnhart*,⁵ and describes the uphill battle she faced as she fought her custody battle without the assistance of counsel.⁶ Sachs also explains how Maryland's constitutional provisions should operate to guarantee a civil right to counsel.⁷ Gardner's article offers a historical perspective on the right to counsel, tracing the right from the 15th century's Act to Admit Such Persons As Are Poor to Sue in Forma Pauperis to the American Bar Association's recent call for the provision of civil counsel in matters where basic human needs are at stake, and projects the future of the struggle for Civil Gideon.⁸

Maryland is far from the only jurisdiction in which such work is being done. At the symposium, John Ebbott, the Executive Director of Legal Action of Wisconsin, described his work on Civil Gideon in Wisconsin. Ebbott used a transcript from a custody case in Wisconsin to graphically illustrate the barriers that parents without counsel confront in such cases. Hearing the story of Ebbott's client, bullied by opposing counsel, belittled by the judge, and confounded by the legal jargon used by the parties in the matter, brought home for many participants just how terrifying these proceedings can be for litigants who appear unrepresented and face the loss of a child.

Advocates are using a variety of strategies to attempt to secure the right to counsel in civil cases. Professor Steven D. Schwinn, another leader in the national movement to develop a Civil Gideon, outlines

4. See *id.* at 687–89, 907 A.2d at 827–28 (Bell, C.J., dissenting); see also *Frase*, 379 Md. at 133–42, 840 A.2d at 133–39 (Cathell, J., concurring).

5. 379 Md. 100, 840 A.2d 114 (2003).

6. See Stephen H. Sachs, *Seeking a Right to Appointed Counsel in Civil Cases in Maryland*, 37 U. BALT. L. REV. 5 (2007).

7. See *id.*

8. See Debra Gardner, *Justice Delayed is, Once Again, Justice Denied: The Overdue Right to Counsel in Civil Cases*, 37 U. BALT. L. REV. 59 (2007).

these alternatives in his article and argues that state “open courts” provisions may provide a promising route.⁹

Developing a symposium takes a tremendous amount of effort. This inaugural symposium could not have happened without the dedication and tireless work of the Symposium Editor, Erin Brady, and the unstinting support of the Editor in Chief, Joseph S. Johnston. Professor Jane Murphy provided both the original idea for the symposium and her time and assistance to make it a success.

Since the symposium, there has been progress in the fight for Civil Gideon. In the Third Judicial District of the Superior Court for the State of Alaska, a custody battle involving Randall Gordanier and Siv Jonsson rages.¹⁰ Mr. Gordanier is represented by counsel; Ms. Jonsson is not and has been unable to find free representation.¹¹ In its decision to find that The Constitution of the State of Alaska required that Ms. Jonsson be appointed counsel, the court held, “[T]he right implicated in Ms. Jonsson’s case is a fundamental right—the right to the care, custody and control of her child. No state interest is compelling enough to outweigh the harm to a litigant such as Ms. Jonsson.”¹² Our hope is that the ideas presented in this symposium issue will both provide food for thought and a source of support to those engaged in the fight to establish a civil right to counsel in cases implicating fundamental rights.

9. See Steven D. Schwinn, *Faces of Open Courts and the Civil Right to Counsel*, 37 U. BALT. L. REV. 21 (2007).

10. *Gordanier v. Jonsson*, Case No. 3AN-06-8887 CI, slip op. at 1 (3d D. Alaska Super. Ct. Aug. 14, 2007).

11. *Id.* at 2.

12. *Id.* at 15.