

"A wonderful book . . . gripping . . . and profound."

—Anthony Lewis, author of *Gideon's Trumpet*

FIFTY YEARS OF TRYING TO MAKE GOOD  
ON THE PROMISE OF INDIGENT DEFENSE IN  
*GIDEON V. WAINWRIGHT*

# CHASING GIDEON

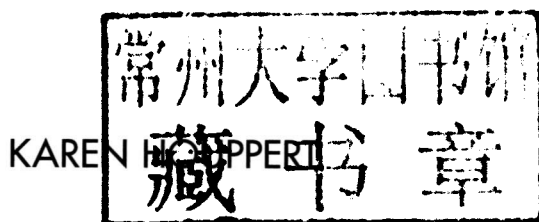
THE ELUSIVE QUEST FOR  
POOR PEOPLE'S JUSTICE



KAREN HOUPPERT

# CHASING GIDEON

The Elusive Quest  
for  
Poor People's Justice



NEW YORK  
LONDON

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Earlier and shorter versions of the chapters "A Perfect Storm" and "Death in Georgia" were first published in *The Nation*.

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Published in the United States by The New Press, New York, 2013

Distributed by Perseus Distribution

LIBRARY OF CONGRESS CATALOGING-IN-PUBLICATION DATA

Houppert, Karen, 1962-

Chasing Gideon : the elusive quest for poor people's justice / Karen Houppert.

pages cm

"Earlier and shorter versions of the chapters "A Perfect Storm" and "Death in Georgia" were first published in *The Nation*."

Includes bibliographical references.

ISBN 978-1-59558-869-2 (hardcover : alk. paper) -- ISBN 978-1-59558-892-0

(e-book) 1. Legal assistance to the poor--United States. 2. Right to counsel--United States. I. Title.

KF336.H68 2013

345.73'056--dc23

2012047464

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[www.thenewpress.com](http://www.thenewpress.com)

Book design by Bookbright Media

Composition by Bookbright Media

This book was set in Adobe Caslon

Printed in the United States of America

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# CHASING GIDEON

For Zack Houppert-Nunns

## INTRODUCTION

**M**arch 2013 marks the fiftieth anniversary of the landmark U.S. Supreme Court decision *Gideon v. Wainwright*, which established the constitutional right to free counsel for the poor. Most Americans have a glancing knowledge of this basic right from popular TV shows such as *Law and Order* or *CSI*. We recognize it from the arresting officer who announces as he snaps on the handcuffs, “You have a right to an attorney. If you cannot afford an attorney, one will be provided for you.”

A half century has passed since the Supreme Court ruled in the *Gideon* case and since *New York Times* reporter Anthony Lewis penned his award-winning book recounting Clarence Earl Gideon’s request for a lawyer to help him fight his burglary charge. Lewis’s book, *Gideon’s Trumpet*, was hopeful and optimistic about a future where effective legal assistance is provided for all criminal defendants, regardless of their ability to afford it. But a look at the state of indigent defense today reveals instead a situation in which citizens are routinely being denied their basic constitutional rights.

Enormous changes have taken place in the U.S. criminal justice system since the Supreme Court ruled in the *Gideon* case, including an explosion in the number of prosecutions, and in particular drug arrests, which swelled from fewer than 50 per 100,000 people in 1963 to 750 per 100,000 people by 2000.<sup>1</sup> The advent of mandatory minimum sentences and other harsher approaches to law enforcement,

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applied broadly through the so-called War on Drugs, have raised the stakes and changed the dynamics of criminal defense. Plea bargaining, which now resolves more than 90 percent of all cases, positions the lawyer in particular constraints, as does the overwhelming caseload that so many criminal defense lawyers carry.<sup>2</sup>

This book focuses on the stories of four defendants in four states—Washington, Florida, Louisiana, and Georgia—that are emblematic of contemporary problems with providing lawyers to poor people throughout the country. In Washington, where teenager Sean Replogle hit another car and the driver later died, crushing caseloads in the public defender's office regularly compromise the quality of representation that poor and working-class defendants receive—with devastating consequences for the accused. In Florida, where Clarence Earl Gideon brought his original case and where Miami-Dade County's chief public defender for thirty-two years, Bennett Brummer, appealed to the courts themselves for relief from accepting more clients and providing inadequate representation a new chapter in the Gideon case unfolds. In Louisiana, Gregory Bright served twenty-seven years for a crime he didn't commit and Clarence Jones has sat in jail for more than sixteen months on a burglary charge, waiting for a lawyer to be appointed to him; here, the interplay of race, poverty, cronyism, high incarceration rates, and antiquated funding mechanisms create a dysfunctional indigent defense system in which innocent people are routinely jailed and denied basic access to an attorney. And in Georgia, where a jury sentenced Rodney Young to death in 2012 as valiant but underfunded defenders explained his mental retardation, disparate funding levels for prosecutors and public defenders can tip the balance between life and death.

Taken together, these four stories point to fundamental flaws in the way we provide legal representation to the poor in America. They also hint at solutions for reform, and this book documents some creative efforts to fix a broken system, as well as telling the stories of committed lawyers steadily working to deliver on the promise of *Gideon*.

These cases raise questions about how we as a nation will choose to define "justice." By justice, do we mean that we will pay lip ser-

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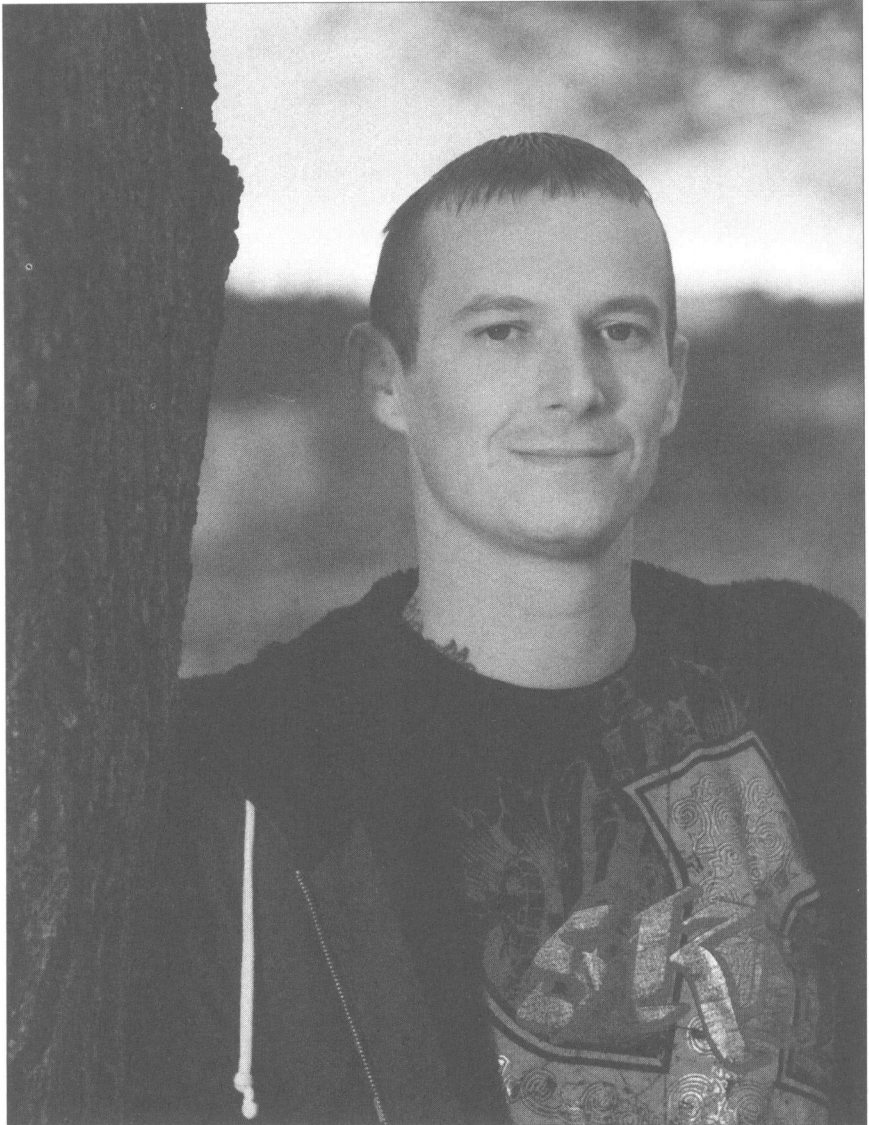
vice to the notion that everyone has a lawyer to represent them in court? That we will provide a warm body in a suit and tie to stand next to a defendant? Or do we mean to equate justice with fairness—and actually provide folks who are accused of crimes with meaningful representation? Are we, in fact, committed to a level playing field, the adversarial system of justice in which both sides are properly armed to argue and from which truth emerges? Are we committed to making the system work as it is designed to? Back in the 1800s, Mark Twain joked that “the law is a system that protects everybody who can afford a good lawyer.” In many ways, that remains true.



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## CHAPTER 1



Sean Replogle in 2012. He is now twenty-nine, works in a fast-food restaurant, and recently served the cop who testified against him: “You tried to put me in prison at eighteen and sat next to me for eight days of a trial and you don’t even recognize me?” Photo by Barbara Smith.



## DUE PROCESS THEATER:

### A CASE OF VEHICULAR HOMICIDE

Sean Replogle was a blond, rail-thin senior in high school when he turned eighteen on September 16, 2001. He describes himself as a “happy-go-lucky kid” with a lot of friends. Aside from catching it for occasionally skipping, he had never been in trouble at school. He’d certainly never been in trouble with the law. Indeed, it had been his wish since childhood to work in law enforcement; he hoped to be a cop someday. For now, though, he was flipping burgers at McDonald’s after school. He worked hard and saved his wages. A few weeks after his eighteenth birthday, he used the \$1,700 he had accumulated to buy a thirteen-year-old red Mustang.

His dad, Chuck Replogle, was proud of the fact that Sean had earned the money for his own car. And, in any case, he could not have helped. Chuck Replogle was a widower barely scraping by financially. He taught in a before- and after-school program at a local public elementary school. By working an early morning shift at the school, doing some carpentry in the afternoons, and then returning for a second shift at the school in the afternoons, he had been able to support Sean and his younger sister. Years ago, he made better money as a journeyman carpenter. But his wife took ill when Sean was very young. Disease sucked the life out of her; the hospitals sucked the savings out of the family’s bank account. She died when Sean was a preschooler. Then Chuck was injured on the job and

had to find new, less physically demanding work. He loved his work with children, but his meager salary certainly precluded buying a car for his teenage son.

He couldn't even afford to help Sean cover insurance costs for the car. In fact, when Chuck took his son to the insurance office shortly after Sean bought the car and the agent changed the quote he'd given over the phone—upping the amount by \$40 due to Chuck's credit rating—they were stuck.<sup>1</sup> Sean was paying for the insurance from his McDonald's earnings and he didn't have the extra money either. He would get his paycheck the next day, Sean told the agent, and come back to settle things.

That, anyway, was the plan.

McDonald's paid Sean on Friday. On Saturday, the boy drove his new Mustang with a friend to the Moneytree to cash their respective checks. On the way home, Sean traveled the same route he had taken to his house hundreds of times before, driving his father's car. He turned onto Garland, a two-way street that ran ruler straight through a mixed-use neighborhood. It cut past a post office, past a slew of squat, sixties-era single-story ranches with flat green patches of lawn and cement drives, past the campers and faux-barn sheds and misshapen shrubs that distinguished the otherwise identical homes, past the Garland Avenue Alliance Church, past the low-slung brick Spokane Guild School & Neuromuscular Center. As Sean approached a cross street, he noticed a Toyota inching out beyond the stop sign to make a left turn. Sean had the right of way and, he says, assumed that the car would see him and brake. It did not.

Sean tried to stop. As the Toyota slid into the intersection directly in front of him, Sean slammed on the brakes. His friend yelled. Both wrenched the wheel. The brakes froze. Tires screeched. Time slowed—the sound of metal eating metal—and then sped. After clipping the end of the Toyota, the Mustang careened away. The two cars came to a stop on opposite sides of the street. Clambering out, Sean tore across Garland and found himself staring into the 1997 Toyota Camry at a woman whose head had shattered the window and was covered in blood.

Sean couldn't think. "Oh, my God. Oh, my God. Oh, my God," he moaned.

The woman, Judy Rodeen, was unconscious. . . . Or dead.

Life changes in an instant. For Sean Replogle, Judy Rodeen, and Spokane public defender Carol Dee Huneke, that moment occurred at 3:51 P.M. on October 20, 2001, when their lives inexplicably converged on the corner of the city's Garland and Belt streets. The consequences of the car crash and the ensuing trial would spin out over the decade, coincidentally paralleling the story of another local boy in trouble with the law, a twelve-year-old accused of sexually molesting a neighbor child, whose overworked lawyer would make decisions about the nature of the boy's representation that would spark radical reforms in the way public defenders work in the state of Washington. Sean's careening car set in motion a series of events that would unfurl over many years: one person died; a teen's life was ruined; a lawyer was radicalized and her career was destroyed; a working family was pushed deep into \$450,000 debt; taxpayers footed tens of thousands of dollars in court-affiliated costs; and a victim's family was shattered, with a trial bringing little consolation. Meanwhile, justice for the poor in Spokane County, Grant County, Washington State, and the nation was put under the microscope.

On this fine October day in 2001, Judy Rodeen had been sipping a cup of coffee with her elderly parents at the Starbucks in Spokane's Five Mile Shopping Center as she had done every Saturday afternoon at 3 o'clock for the past four years. Her mother and father were getting up in years—her dad, Lowell Stack, was 85; her mom, Frances Stack, was 83 and had Alzheimer's. Judy, who lived just up the street, kept a close eye on them.<sup>2</sup>

After coffee, the three of them climbed back into Lowell Stack's 1997 Toyota Camry and started home, taking a route that Lowell Stack, too, had driven hundreds of times before as he returned from the shopping center. He traveled down North Belt Street, past Shadle Park, past the ball fields, past the Messiah Lutheran Church, past the Second Church of Christ, Scientists, past the brown-, tan-, and white-brick ranch homes. As they approached Garland Street, Judy recalls, her parents looked to the right and left in unison. "That was just something they had done all their time

together when riding in a car,” she says. “And then we proceeded straight across Garland onto Belt.”<sup>3</sup>

That much, Judy remembers. After that, things get blurry.

“The only part in my mind that I thought I saw was the two headlights on the car [coming toward us]. And I don’t remember anything from then on. I don’t even know if that was real or in my mind or not. It . . . I can’t recall it.”

Four months after the accident, an insurance investigator would push her: “Do you have any recollection of seeing the Mustang as it was maybe a block away or half a block away?” the investigator pushed.

“No, I really can’t say that. I just can’t bring anything . . .”

“Do you have any recollection as to the speed of the Mustang?”

“No.”

“Did you hear any sound of the engine of the other vehicle, the Mustang?”

“No, I don’t even remember the crash. . . . My first recollection was when the ambulance were [sic] there and they were. . . . I was on the board. They evidently had gotten me out of the car. That was my first recollection, of coming to.”

“Did you hear anything said by the driver of the Mustang at any time?”

“No.”

“I want to also ask you if you have any recollection at the impact. Were you belted in?”

“No.”

A senior in high school, money in his pocket, a new Mustang, cruising the streets of Spokane, Sean Repogle, like all eighteen-year-olds, believed himself so invincible that he didn’t even wear a seatbelt that afternoon in October 2001.

Since then, he has parsed this moment over and over, trying to make sense of it—possibly trying to alter the course of events. “Me and Chuck weren’t buckled up,” Sean says today, toggling between past and present tense, between putting this behind him and re-living it. “We’re stupid eighteen-year-olds.” The old man driving the Toyota heads right into the intersection. “He never looks over,” Sean says. “I look over at Chuck for a split second and say to him,

‘Do they not see me?’ I slam on the brakes. At the last second I see them notice me.” But it is too late.

After the crash, Sean couldn’t get out of his wrecked car. “I panicked, trying to open the door and I couldn’t.” He yelled at his friend Chuck to get out and then clambered over the passenger seat. “I get out, run over to their car. It was like something out of a horror scene. The driver was dazed and confused. I say, ‘Are you okay?’ He wouldn’t answer. Couldn’t answer.”

Then Sean saw the woman in the backseat with her head through the glass. “I thought she was dead.”

Someone called an ambulance—no one recalls who it was. EMTs arrived within minutes. They moved the elderly driver of the Toyota, Lowell Stack, from the car. Stack, according to witnesses, was bleeding from the head and excoriated himself, repeating “Oh, my God. Oh, my God. What have I done?”<sup>4</sup> Asked if he was okay, he nodded. “I think I’m alright.” But he was worried about his daughter in the backseat: “How’s Judy?”

Officer Erin Raleigh, one of the first cops on the scene, spoke to Sean. “Sean appeared to have been crying and was currently teary eyed and very upset at the time,” Raleigh wrote in a contemporaneous report.<sup>5</sup> “Sean told me he was driving his Mustang when the collision occurred. Sean explained to me he was driving westbound on Garland and was travelling ‘a little fast,’ but stated he never made it out of second gear. . . . Sean told me he was just worried about the other people involved in the collision, to make sure they were ok.” Another officer on the scene, Bryan Grenon, put it differently in his report: “Replogle appeared to be distraught and somewhat distant.”<sup>6</sup> Another witness, Yvonne Belcourt, who’d been driving the car behind him and was furious at “the speed of this child,” ascribed different motives: “After the wreck, the only thing I remember is jumping out of the car, screaming at the kid. . . . And then I remember him jumping up and down screaming, ‘Oh, God, oh, God,’ and I swore at him. I said, ‘What the f— do you think you’re doing?’ Only I didn’t say ‘F,’ I said the bad word. I’m not normally a swearer. . . . I don’t remember what else he said. I wasn’t concerned about him. I was concerned about the old people in the car.” (With echoes of Albert Camus’s *L’Étranger*, in which the protagonist’s



behavior after his mother's death was studied and recast as indicative of his guilty conscience, Sean's affect at the scene would later be dissected, analyzed, characterized, and re-characterized as lawyers and witnesses searched for telltale signs of guilt or innocence.)

Officer Raleigh asked about insurance and Sean admitted he had none. Raleigh went to speak with Officer Grenon about the folks in the other car. "Officer Grenon stated that all three motorists were going to be transported to Providence Holy Family Hospital Emergency to be treated for their injuries. Grenon stated none of the parties in the vehicle had sustained life-threatening injuries, but did need to be viewed by the medical staff at the hospital to be treated." Another cop measured skid marks from both vehicles and took photographs of the scene.

Sean was "pretty freaked out" but remembers a cop comforting him, assuring him that the family in the Toyota was okay. He went home thinking the others would be all right, that he himself was "stupid for speeding," and that cops would be ticketing the Toyota's driver "for blowing a stop sign." Sean found out the Stack family's address and sent a Hallmark card, telling them how sorry he was.

Later that evening, at 9:30 P.M., Officer Raleigh noted in his written report that the cop measuring skid marks had done his calculations and determined the speed; Sean had been going 45 mph prior to impact, he said. The speed limit was 30 mph.

The next day, Officer Raleigh went by the Replogles' house and gave Sean a ticket for reckless driving and issued a Notice of Infraction for Liability Insurance Required. "I released Sean on his signature promising to contact the court within 15 days," Officer Raleigh noted.

On Monday, Sean went to school but felt terrible. Judy Rodeen, the woman in the backseat of the car, turned out to be the office manager at his high school. "She was the main office lady, so the office people all hated me after that," Sean said. Everyone at school knew what had happened. He walked down the halls. People stared. Pointed. He was a monster.

Doctors put fifteen staples in Judy Rodeen's left ear and head, five stitches near her left eye, and treated her for pain in the left side of her body.<sup>7</sup> Judy's mother, Frances Stack, suffered cervical inju-