The Revolution Will be Televised: Popular Culture and the American Criminal Justice Narrative

Jonathan A. Rapping*

I. INTRODUCTION

“What is your favorite movie?” I remember the question vividly.¹ I was a third year law student interviewing for a position with a public defender office. The questioner obviously thought the answer was relevant. I did not see the point at first. I said, “Butch Cassidy and the Sundance Kid.” The senior defender smiled. I immediately understood why. The question was meant to provide insight into how I saw the world. Who do I root for? Who do I identify with? Through what lens do I understand the concept of justice? It was the first time I remember being in a movie theater. I was six

* Associate Professor and Founding Director of the Honors Program in Criminal Justice at Atlanta’s John Marshall Law School and President and Founder of Gideon’s Promise. Special thanks to Elayne Rapping for her editorial advice and for raising me to appreciate the importance of popular culture in shaping the world within which we live and the way we see it.

¹ Having grown up with a mother who studied, taught, and wrote about popular culture and its influence on public assumptions and attitudes, I want to be clear that I have tremendous respect for popular culture and believe that scholars who minimize its impact do so at the risk of limiting the reach of their work. As a trial lawyer I am keenly aware of the way that popular culture influences the way the public thinks about criminal justice and I recognize that the best lawyers effectively use popular culture to communicate with jurors. Therefore, when I refer to popular culture in this article I do so with respect, as I believe that the most effective and influential storytellers (this includes trial lawyers and film makers) are those who understand how to communicate important ideas through storytelling that resonates with a broad populace. The article discusses the impact of the film Gideon’s Army, and in doing so suggests it is an important story in the battle to shape popular culture. Again, I refer to the film with admiration when I describe its impact on popular culture and give great credit to the filmmaker, Dawn Porter, for working with Home Box Office to give the film a broad, popular audience. As an activist who now works on broad criminal justice reform, I appreciate that only by influencing large audiences can we drive movements and impact transformational change.
years old. I left that theater wanting to be Butch Cassidy when I grew up. He was an outlaw at a time in our nation’s history when we saw the tremendous power of the government as an obvious antagonist. We believed in the individual and rooted for him even when he broke the rules. It was a culture shaped by our country’s most fundamental ideals. It reflected our sympathy for those who stood up against the long reach of those in power.

I later added to my collection of favorites: The Sting, Cool Hand Luke, Bonnie and Clyde, and The Godfather. All of my favorite movies had one thing in common. I had not even considered it until that day. The protagonists were all people who found themselves outside the law. They were played by the era’s biggest stars. They certainly had their flaws, but one could not help but admire, and even cheer for, them.

Upon reflection, it is clear to me that I am a product of my times. These movies influenced my understanding of what justice means and how I viewed the people who make up the justice system. I grew up rooting for the underdog and admiring those who would stand up for the accused in a battle against the state. I learned that it was noble to push back against government, which was prone to overreach if allowed to go unchecked. My becoming a defense lawyer was perhaps predictable and my value system was certainly shaped by the popular culture of the times.

If Gideon’s Army, the award-winning documentary about three young defense lawyers representing poor people in a cold and unjust criminal justice system, had been released when I was growing up I surely would have counted it among my favorites. These lawyers fight against a system that does not care for the lives of the people caught in it. They make great personal sacrifices to do the noblest work. The film follows a criminal justice narrative in which the heroes are those who battle mightily against a cor-

2. BUTCH CASSIDY AND THE SUNDANCE KID (Twentieth Century Fox Film Corp. 1969) (portraying the character of Butch Cassidy); see generally TERRY GOLWAY, THE NEW YORK TIMES GUIDE TO ESSENTIAL KNOWLEDGE 580 (John W. Wright et al. eds., 2d ed. 2007) (discussing the public’s attitude towards the United States during the late 1960s into the 1970s).


4. In addition to movies, the popular culture that helped shape my world view included television shows like Good Times, that showed good people struggling against a government that cared little for the poor; children’s movies like The Point, a cartoon about a child who was prosecuted and banished from his community for being different only to return to show the town that being different is good; and musical artists like Bob Dylan and Marvin Gaye who wrote about justice in ways that were sympathetic to the underdog.

5. GIDEON’S ARMY (HBO Documentary Films 2013) (currently available on iTunes and Netflix).
rupt and dehumanizing system. They do not often win, but they always try their hardest.

Sadly, messages about justice and who we should root for have changed over the past three decades. The misunderstood underdog is now cast as the demonized “other” who threatens our safety. The appropriate response to his transgressions is no longer merciful and compassionate, but harsh and punitive. Unlike popular culture in the middle of the Twentieth century, the hero is no longer the defender of the marginalized; it is the law enforcement apparatus designed to protect us from them. In fact, the public defender is disrespected and villainized for his allegiance to the criminally accused in today’s criminal justice narrative.

In this sense Gideon’s Army is a throwback to a day when we believed in justice and rooted for the lawyers who fought for it. It is a movie about public defenders, and the sacrifices they make to try to achieve justice for the people they represent. It is an uncomfortable reminder that we have lost sight of justice, and that our hope lies in the commitment of a small army of overworked, under-resourced, and unappreciated defenders. Standing alone, it is an important film that raises our awareness of a critically important and often ignored issue. But understood in the context of the evolution of the American story of criminal justice, its significance is even weightier. It throws a bright and shining light on the dark road we have travelled away from our most important ideals and values when it comes to justice. It tells us to stop, to turnaround, and to head in another direction. We must heed its warning.

The film casts the public defender in a Sisyphean role, heroically pushing forward, only to slip back under the crushing weight of the system.6 We admire the defenders but do not see them moving to the top of the mountain. While they occasionally win a battle, they seem to be fighting in an unwinnable war, but it is obvious that the war is unjust and that these soldiers are noble in their struggle. This renders the film a crucial first step in raising public awareness of this critical issue, and the response to Gideon’s Army proves that popular film is a powerful medium through which to continue this discussion.

We must build on this awareness to mobilize our nation to want to move in a different direction and to help it see the new path forward. Gideon’s Army provides an opening to begin to help the public understand not only that we must shift course, but to provide a strategy for how we do so.7 But we must take advantage of that opening to show audiences what that strategy looks like and how they can support it. Otherwise the important message

7. Id.
of this film will soon be forgotten as viewers see the issue as simply one more crisis they are powerless to impact.

I begin this essay by exploring how popular culture has helped shape our national attitudes about justice. I argue that the driver behind our assumptions about who commits crimes and how they should be treated, and therefore our criminal justice policies, is how we collectively view the accused. In short, our views about justice are formed by our perception of those who are seen as operating outside the law. We do not root for advocates to fight for people we fear will harm us; we cheer the lawyers who are seen as protecting those we identify with and who stand up for values we embrace. We may admire individual lawyers in relation to individual cases, but to truly move the nation to respect the right to counsel we must inspire it to believe not only in a single defendant but in the values these lawyers uphold and the humanity of all the people they represent. I argue that popular culture shapes how we as a nation view the role of defense counsel—and how we view every other player in the criminal justice system—by influencing our perception of the values at stake and the people who rely on the protection of the system.

I then introduce Gideon’s Promise, the organization that inspired Gideon’s Army and produced the three protagonists in the film, and the movement it is building to help transform indigent defense. I describe how Gideon’s Promise is more than a program that trains and supports individual lawyers, the narrow role of the organization that is illustrated in the film. As a movement that seeks to transform assumptions about the accused and the role of the public defender, Gideon’s Promise has introduced and engineered a strategy that is critical to any larger effort to change reform criminal justice policy.

I finally examine the role Gideon’s Army plays in raising public awareness about the indigent defense crisis and offer ways that popular culture can build on this work to provide a strategy for driving a reform agenda. I argue that this film should be seen for what it is—an important first step—but that it is just a component of a much larger story that must be told if we are to shift societal attitudes about criminal justice and galvanize a movement to push for reform.

II. POPULAR CULTURE AND CRIMINAL JUSTICE

The popular culture that influenced my outlook about criminal justice was borne out of the times in which I grew up. We rooted for the underdog against the long reach of the law. Our own history taught us of the havoc our government could wreak on our most vulnerable citizens if left unchecked.8 We understood that communities whose members did not enjoy...
the protection afforded through majority status could receive unequal
treatment at the hands of our elected officials. It was a generation that wit-
nessed cruel discrimination against people branded as “others” in the areas
of education, commerce, and politics. But, arguably, nowhere did our
government’s callousness towards civil rights result in more shocking sto-
ries of injustice than in our criminal justice system.

As the nation began to appreciate the injustices suffered by our most
vulnerable citizens, and the inconsistencies between our criminal justice
reality and rhetoric, we were in search of heroes to level the playing field.
In the decade leading up to the Supreme Court’s seminal right to counsel
case, Gideon v. Wainwright, public defenders were lionized in television
shows, comic books, and movies. As the 1950s came to an end, and the
1960s approached, the era’s biggest stars played the Hollywood defense
lawyer hero, including James Stewart as Paul Biegler in Anatomy of a
Murder and Gregory Peck as Atticus Finch in To Kill a Mockingbird.

Prosecutor Came to Devour Those He is Sworn to Protect, 51 WASHBURN L.J. 513, 523-58
(2012) (describing the forces that shaped our founding fathers views of the relationship
between the individual and the government in the context of criminal justice).

9. See id. at 524-25.

10. There are innumerable writings about the struggle to secure civil rights in the
1950s and 60s, for a comprehensive account of this struggle during these times, see TAYLOR
BRANCH, AT CANAAN’S EDGE: AMERICA IN THE KING YEARS (1965-68) (2006); TAYLOR
BRANCH, PILLAR OF FIRE: AMERICA IN THE KING YEARS (1963-65) (1998); TAYLOR BRANCH,

11. Perhaps no case raised our national consciousness about the inequities in our crim-
inal justice system more than the infamous Scottsboro Boys. See Michael J. Klarman,
Powell v. Alabama: The Supreme Court Confronts “Legal Lynchings,” in CRIMINAL PROCEDURE
STORIES 1, 2 (Carol S. Steiker ed., Found. Press 2006). See generally GILBERT KING, DEVIL
IN THE GROVE (2012) (providing an excellent account of how America continued to struggle
to come to grips with the injustice in our criminal courts, so anathema to our deepest ideals,
in the decades leading up to Gideon v. Wainwright).

12. See Jonathan A. Rapping, Keynote Address: Reclaiming Our Rightful Place: Re-
viving the Hero Image of the Public Defender, 99 IOWA L. REV. 1893, 1894-96 (2014) (dis-
cussing the parallel paths taken during the Twentieth century between the way our nation
viewed justice and the predominant popular culture narratives).

13. For a season and a half beginning in 1954, Reed Hadley starred as a public de-
defender on The Public Defender. The Public Defender (CBS television broadcast 1954-1955,
Hal Roach Studios). Starting in 1954, NBC aired Justice, a series about Legal Aid society

14. From 1956 to 1957, Charlton Comics published a comic book called Public De-
defender in Action in which the court-appointed lawyer was the hero. See Public Defender in

15. ANATOMY OF A MURDER (Carlyle Productions 1959).

16. TO KILL A MOCKINGBIRD (Universal International Pictures 1962).
These characters represented our deep-seated belief in standing up for the underdog, with the latter dramatically illustrating the perils that await the most vulnerable among us in our criminal courts.\textsuperscript{17} In fact, Atticus Finch symbolized the quintessential public defender, agreeing to represent Tom Robinson, a poor (and sympathetic), black man, accused of raping a white woman, in a small Southern town.\textsuperscript{18} Perhaps more than any other film, To Kill a Mockingbird was a product of a period that raised our national consciousness about civil right abuses against our own citizens in American courtrooms.\textsuperscript{19} To Kill a Mockingbird resonated with an obvious message: while a lawyer can’t guarantee that injustice will not occur, the accused has no shot at justice without an advocate in his corner. This message was at the core of what we believe as Americans, but it was a lesson not practiced in American Courts. A year after To Kill a Mockingbird, the \textit{Gideon} Court finally did address the disconnect between our ideals and our reality.\textsuperscript{20} It was a proud moment in American jurisprudence.

In \textit{Gideon v. Wainwright},\textsuperscript{21} the Court took on state criminal justice systems that only offered a pretense of justice in their criminal courts.\textsuperscript{22} For the first time the Court did more than pay lip service to the ideal that justice cannot depend on one’s station in life. Clearly addressing state courts that placed little value on the lives of the poor and African Americans, the Court took the opportunity \textit{Gideon} provided to demand that our criminal justice system live up to its constitutional ideals.\textsuperscript{23} Seven years earlier the Court said “there can be no equal justice where the kind of trial a man gets depends on the amount of money he has.”\textsuperscript{24} In \textit{Gideon} the Court made clear that the quality of the trial, and therefore justice, depends on the defendant having a lawyer.\textsuperscript{25} The lawyer is thus the vehicle necessary to ensure equal justice; the one actor in the criminal justice system indispensable to ensuring our promise of justice is carried out.

We were primed to accept a robust right to counsel as a nation because we saw the individual caught up in the system as worthy of protection. We understood the injustice that could be meted out at the hands of a callous, uncaring government. We surely had the Scottsboro Boys and Tom Robinson in mind when we cheered for the holding in \textit{Gideon}.

\textsuperscript{17} See \textit{Anatomy of a Murder}, supra note 15; see also \textit{To Kill a Mockingbird}, supra note 16.
\textsuperscript{18} \textit{To Kill a Mockingbird}, supra note 16.
\textsuperscript{19} Id.
\textsuperscript{21} Id.
\textsuperscript{22} See \textit{id.} at 344.
\textsuperscript{23} See \textit{id}.
\textsuperscript{24} \textit{Griffin v. Illinois}, 351 U.S. 12, 19 (1956).
\textsuperscript{25} \textit{Gideon}, 372 U.S. at 335.
And so, in the wake of *Gideon*, we continued to cheer for the defender of the downtrodden in shows like *Perry Mason* and *The Defenders*. But we did not love defense lawyers in the abstract. We loved them because we sympathized with the individuals they represented. Our values were reflected in the fact that we rooted for the accused, and the lawyers who defended them.

This was the climate into which I was born and raised. The predominant values of the late 1960s and early 1970s were both shaped by and reflected in the popular culture that influenced my outlook on life. The movies I grew up watching – not to mention the popular television and music of the times - could not be understood without appreciating our nation’s struggle to realize basic civil rights for all Americans and the troubled history of injustice that fueled this movement.

But that started to change by the last quarter of the twentieth century. As black Americans began to make progress in the effort to secure their civil rights, Southern politicians used civil unrest to gain political advantage with working-class, white voters. These politicians began a campaign that divided the population along racial lines. Branding blacks as un-American, criminal, and self-destructive, the process of demonizing the black community was used to galvanize white support. Politicians sought to change the narrative of the black American from that of a victim of unjust government policies worthy of protection to that of a threat to our wholesome, peaceful way of life. Stirring public fear of the black community, and promising the public protection from it, turned out to be an effective political strategy that helped launch a climate of fear that took hold and spread beyond the South.


29. See Rapping, supra note 8, at 529-32.


32. See generally Rapping, supra note 8, at 529-32.
For example, in California, then-governor Ronald Reagan used racially-charged rhetoric to rally his white voting base, and President Nixon, with an eye towards drug use in poor communities of color, ushered in the War on Drugs, labeling illegal narcotics “public enemy number one.” As crack cocaine became popular in the 1980s, and the narrative of violence was built around it, the War on Drugs became a driving influence on America’s perception of crime. With the help of the media to promote the image of the inner-city criminal as a threat to our social fabric, the criminal defendant morphed from an underdog individual worthy of protection into a menacing force in otherwise lawful communities. The image of the accused became a demonized outsider that society was told it must fear. As they fueled the image of the defendant as a demon, politicians would gain public support by promising protection to the public. It was a climate in which anyone running for office had to ensure that s/he was committed to “locking up the bad guys.” It shaped political strategies of politicians in both major parties, illustrated by the fact that both George H.W. Bush and Bill Clinton used tough on criminal defendants posturing to win primary elections. But this posturing came at a great cost. We lost sight of the humanity of the people accused of crimes, and, in doing so, we lost respect.

35. See Michelle Alexander, The New Jim Crow: Mass Incarceration in the Age of Colorblindness (2010) (providing a comprehensive discussion of the War on Drugs and how it has influenced criminal justice in America).
36. See Craig Haney, Politicizing Crime and Punishment: Redefining “Justice” to Fight the “War on Prisoners,” 114 W. Va. L. Rev. 373, 407 (2012); see also Elayne Rapping, Law and Justice as Seen on TV (2003) (identifying a shift in “TV series about crime and justice” in which the “defense-attorney hero” has slowly been replaced by “heroic policemen and D.A.s”).
38. Id. at 407.
39. Bush’s notorious use of Willie Horton, the furloughed Massachusetts inmate who raped and murdered a woman in her home, to defeat Michael Dukakis in the 1988 presidential election is one of the most infamous examples of this strategy. See Stuntz, supra note 33, at 240; see also Alexander, supra note 35, at 53.
40. Then Governor Bill Clinton made the decision, during the 1992 Democratic primaries, to go back to Arkansas and oversee the execution of a mentally disabled black man named Ricky Ray Rector. Rector had so little understanding of what was happening to him, that he requested that he be allowed to save his dessert until a later time, not understanding that there would not be another opportunity to eat. See Stuntz, supra note 34, at 240.
41. Id.
for the process our founding fathers put in place to protect liberty.

The new image of the criminal defendant could be seen in revamped popular criminal justice narratives. The outlaw began to look less like Butch Cassidy and more like the young toughs portrayed in movies like Menace II Society and Juice—young “super-predators” who threaten the well-being of law-abiding citizens. The new criminal was no longer worthy of procedural protections, and as we lost respect for the process, the valued right to counsel was no longer so popular. The public lost interest in cheering for a lawyer viewed as protecting the enemy. As we stopped rooting for the accused and began rooting for the government, the image of the defense lawyer became less heroic. Atticus Finch was replaced by the bumbling court-appointed lawyer in My Cousin Vinny as the symbol of the public defender.

The role of the public defender was also revamped for television, as illustrated by the intro to Law and Order, the longest running crime drama in American television history: “In the criminal justice system, the people are represented by two separate, yet equally important groups; the police who investigate crime and the District Attorneys who prosecute the offenders.”

In this most revered and influential of TV series, defense attorneys are less than incompetent. They are rendered completely irrelevant to the criminal justice story, left out of the narrative altogether.

As the media fuels the public image of the defense lawyer unworthy of respect, the tough-on-crime posturing in the political arena has evolved to directly attack a candidate for his or her past representation of anyone accused of a crime. The politician who dares to espouse respect for our

42. See, e.g., JUICE (Island World 1992); see also, e.g., MENACE II SOCIETY (New Line Cinema 1993) (showing change in the image of the criminal defendant).

43. See MENACE II SOCIETY, supra note 42.

44. See JUICE, supra note 42.


46. See MY COUSIN VINNY (Twentieth Century Fox Film Corp. 1993).


50. See Ruth Marcus, Blocking the Nomination of Debo Adegbile is a ‘travesty’ in the Senate, WASH. POST, (March 7, 2014), http://www.washingtonpost.com/opinions/ruth-
most sacred criminal justice ideals is at risk of being branded as unfit to govern, and the promulgation of policies that undermine these values becomes inevitable.\textsuperscript{51} The new criminal justice narrative no longer respects the one individual essential to protecting the individual from the government: the defense lawyer.

As we lost respect for the public defender, our expectations for them dropped. Public defenders today, as Gideon’s Army attests, are expected to work with crushing caseloads, lack of resources, and disrespect that makes it impossible to provide every client the representation they deserve.\textsuperscript{52} But as our expectations of the public defender drop, this embarrassingly low standard of justice has become the accepted norm.\textsuperscript{53}

The driving force behind our collective lack of respect for the role of the defense lawyer is the dehumanization of those accused of crimes. We rail against any effort to slow the incarceration of a demonized population and welcome the explosion of criminal justice policies that criminalize more behavior, enact harsher sentences, and undermine the ability of the accused to have his day in court.\textsuperscript{54} As we no longer view the defendant as human, we lose respect for a value-set designed to promote equal justice for, and respect the dignity of, those who are accused. Because they are not seen as part of a common community, the principles that protect them are not valuable.\textsuperscript{55}

Any effort to reform criminal justice and revive respect for the lawyers

\textsuperscript{51}. \textit{Id.}

\textsuperscript{52}. \textit{GIDEON’S ARMY, supra note 5.}

\textsuperscript{53}. \textit{See generally AMY BACH, ORDINARY INJUSTICE: HOW AMERICA HOLDS COURT (2009) (describing how professionals in the criminal justice system have come to accept and perpetuate a substandard level of criminal justice); see also Jonathan A. Rapping, \textit{You Can’t Build on Shaky Ground: Laying the Foundation For Indigent Defense Reform Through Values-Based Recruitment, Training, and Mentoring}, 3 HARV. L. & POL’Y REV. 161, 168 (2009) (describing how a criminal justice culture that expects injustice has shaped those in the system).}

\textsuperscript{54}. \textit{See Rapping, supra note 8, at 543-53.}

\textsuperscript{55}. \textit{See id. at 559-61.}
who represent the accused must flow from a transformation of the image of the accused and an accompanying respect for the process that protects the individual from the government. Gideon’s Army, to its great credit, revives the image of the defender as hero. It is an inspiring and heart-felt return to the older template of earlier more progressive films. Ultimately it cries out for a new view of the justice system itself; one where lawyers are noble and defendants are seen as worth defending. But to save the story of Gideon’s Army from one of hopelessness and despair, we now need to tell the next stage of the story: building a movement to reform the system. The larger story of Gideon’s Promise itself.

III. BEYOND GIDEON’S ARMY TO GIDEON’S PROMISE: A MOVEMENT TO RECLAIM AMERICA’S CRIMINAL JUSTICE VALUES

Gideon’s Army is again an important first step in drawing awareness to this unfortunate situation, but it will certainly take more than a single film about a few individual defenders to inspire the public will necessary to change the entire system. We will need to rally people around a movement to address the problem. Lawyers for the poor must be at the core of this movement.

Having spent the majority of the past two decades training young lawyers and law students as a public defender trainer; a supervising attorney to new attorneys and law school interns; and a law professor, I have gained much insight into where we fall short in preparing lawyers to transform broken legal systems. The best prepared public defenders learn to provide a high level of representation to individual clients in existing systems, but are never taught how they can help foster systemic change and stimulate the system to live up to its noblest principles.

Our nation’s law schools focus on teaching legal theory using the casebook method of instruction. Most provide optional skills training, offered as electives, taught in isolation from the doctrinal courses. Some schools have clinics which teach students how to effectively represent a handful of clients, provided with all necessary resources and insulated from the greatest everyday challenges facing lawyers for the poor. Even at their best, law schools teach graduates how to effectively practice in an imaginary ideal world. They do not attempt to teach graduates how far most of our legal system falls short of the ideal, let alone provide graduates strategies for promoting reform. As a result, the best law graduates are prepared to become part of the existing system, rather than to drive it closer to the ideal.

Once a lawyer joins a public defender office, there are limited opportuni-

56. See id. at 561-63.
57. GIDEON’S ARMY, supra note 5.
58. See Rapping, supra note 8, at 177.
ties to receive continued training and support. To the extent that training programs are available to public defenders, they tend to focus almost exclusively on teaching trial skills. Some programs teach specialized legal topics such as immigration law, forensic sciences, or recent developments in the law. But, again, at their best these programs teach defenders to be as effective as possible in the existing legal environment. None of these programs focus on teaching defenders to transform the systems in which they practice.

As I transitioned from serving as the Training Director in a well-resourced, high-quality public defender program to training and mentoring public defenders in some of our nation’s most challenging systems, I came to understand that these dysfunctional systems shape the professionals who work in them. Changing these systems requires much more than teaching defenders about law and procedure or helping them to be better able to cross examine a witness or make a closing argument. To become change agents, these lawyers must be helped to understand the systemic obstacles to effective advocacy and taught strategies for overcoming those challenges. They must be provided continuous mentorship and support as they work to break down the barriers to equal justice. They need to be part of a community that reinforces a value set to which the system may be hostile. When defenders return from a training program to an environment that neither respects nor accepts a high level of practice, without continuous reinforcement and support, the systemic expectations are too powerful to

59. Some programs provide in house training that is very good. But these tend to be in systems with better structure, and largely focus on teaching jurisdictional law and procedure and trial skills.

60. Many of these programs are excellent, with great curricula and instruction. However, they almost never seek to teach lawyering outside the context of trial advocacy.


overcome.65 A short-lived training experience in isolation, which focuses on teaching legal knowledge and trial skills, will not be sufficient to prepare the lawyer to push back against systemic pressures to process clients efficiently.66 Public defenders in our nation’s broken criminal justice systems are up against a set of challenges far greater than I understood from either my law school experience or a decade working in a model defender program. To meet these challenges, these defenders needed a different regimen of training and support than they were being provided, and a like-minded community of colleagues to reinforce these lessons against systemic pressures to accept the status quo.

So, in 2007, my wife and I founded Gideon’s Promise.67 The goal of the organization is to build a community of public defenders—and the young lawyers in Gideon’s Army were a part of this community—who will help to drive criminal justice reform in our nation’s most dysfunctional systems.68 To do this we certainly teach our lawyers to be more effective advocates for their clients in existing systems, but we also understand that driving reform will take much more than good advocacy on an individual basis. It will take a movement of defenders equipped with strategies to transform the system’s assumptions about the people they represent and the meaning of justice.69 We therefore teach our lawyers to practice consistently with a forgotten value-set critical to realizing our system’s highest ideals, and provide them strategies to begin to infuse the system with these


fundamental precepts.70 We do this by partnering with public defender offices that embrace our vision and working with staff at all levels to collectively embrace and promote a common set of values. We work with defender organizations nationally that are interested in embracing the Gideons Promise model. And we collaborate with law schools and law students to prepare and inspire the next generation of defenders to join this movement where the need is the greatest.

At the heart of this reform model is a three-year “Core Program” designed to recruit, train, and support a generation of new public defenders to resist systemic pressures to process people through the system and to raise the standard of representation for their clients immediately.71 Developed for new public defenders, throughout the three-years of this program, participants receive continuous training and mentorship as part of a community bonded by a shared value-set.72 It is through the Core Program that we begin to reinforce the ranks of our nation’s public defenders with lawyers who see their role as much more than simply being great trial attorneys.73 These defenders see themselves as part of an important movement and focus on strategies to redefine systemic values and assumptions so essential to reform.74 Collectively, these lawyers are raising expectations about the

72. Id.
73. Id.
74. While these defenders work in dozens of offices in several states, they gather twice a year, are connected by a web-based community in between meetings, and are provided formal and informal mentors. Through each of these vehicles, they are encouraged to discuss the challenges that threaten their ability to be excellent advocates for each client, both external and internal, and to work through strategies with the community to overcome these obstacles. In this process they remain acutely aware of what each client deserves, how far they fall short of living up to this ideal, the challenges that make it hard to close this gap, and how they can move closer to providing the representation their clients deserve. They simultaneously must gain inspiration and support to avoid getting discouraged when they cannot give each client what they deserve. This focus makes the Gideon’s Promise model unique among programs for public defenders. While this is the most important aspect of the model, it is also the most difficult to appreciate. The complexity of this process explains why viewers of Gideon’s Army, who are only given a glimpse of what happens at these gatherings, might conclude that when the defenders convene it is to merely “air their frustrations and share their war stories.” See Stephen Holden, Foot Soldiers in a Battle For a Fair Shake: Defending the Underclass, in Gideon’s Army, N.Y. TIMES, (June 27, 2013), http://www.nytimes.com/2013/06/28/movies/defending-the-underclass-in-gideon’s-army.html?_r=1 (showing these segments are just a snippet of the process that enables these lawyers to identify the pressures that desensitize so many lawyers to the injustices
role of the public defender and what poor people accused of crimes deserve.\textsuperscript{75}

Through the “Graduate” program, graduates of the Core Program are able to: 1) continue their development as advocates; 2) learn to serve as trainers and mentors for the newer lawyers joining the community; and 3) begin their transition into future leaders of the indigent defense reform movement.\textsuperscript{76} Through this program, graduates of our Core program become an integral part of our reform model as they support the newer lawyers and prepare to lead the effort to realize justice for indigent defendants.\textsuperscript{77}

The “Leadership” program is designed to add further support from the top because through it we are building a community of reform-minded public defender leaders to both develop strategies to begin changing the criminal justice culture and to support the development of the novice defenders as they mature into agents of change.\textsuperscript{78} By adding this component of the model, we have been able to develop strong partnerships with our public defender offices and work together to infuse our shared value set across their staffs.\textsuperscript{79}

We further increase our capacity for growth through our Trainer Development Program, where we teach our vision and curriculum to senior staff in our partner-offices, public defender trainers in other jurisdictions engaged in reform, and law school clinicians responsible for inspiring and training future public defenders.\textsuperscript{80} By working with the first group we have been able to help forge a shared vision across partner-office management teams and provide partner-office supervisors with skills and techniques for supporting the new lawyers in the program. By working with the second group we have been able to partner with jurisdictions interested in reform across the country and export our reform model nationally.\textsuperscript{81} And by working with the third group we can help law school clinicians think about how to inspire their students to consider careers as public defenders in places most in need of reform and to help prepare them to undertake this mission.

Finally, through a robust recruitment initiative that includes a summer
law clerk program and cutting edge post-graduate opportunities,\textsuperscript{82} we are able to provide opportunities for the most committed law graduates to join our movement to reform indigent defense in regions where opportunities for employment did not previously exist.\textsuperscript{83}

While the Gideon’s Promise agenda is ambitious, it has seen remarkable results as an army of lawyers, including the three defenders in Gideon’s Army, collectively push back against a system that has abandoned basic precepts of justice.

In short, Gideon’s Promise is a comprehensive reform movement that uses recruitment, training, mentorship, and community building to develop a generation of public defenders to transform the way we think about criminal justice.\textsuperscript{84} An important piece of this mission is to train and support public defenders to provide excellent representation to their clients in the most challenging environments and to equip them with strategies to overcome pressures to succumb to the status quo.\textsuperscript{85} But, more broadly, Gideon’s Promise partners with public defender offices to collectively consider how to change systemic assumptions about the people and communities they serve and the quality of justice to which they are entitled.\textsuperscript{86} In this sense, Gideon’s Promise works to improve the quality of justice immediately by building an army of defenders who can provide better representation to their clients.\textsuperscript{87} This, alone, is a mission that has tremendous impact on our nation’s criminal justice systems.\textsuperscript{88} But we also recognize that long term, sustainable change is a function of our collective attitudes about what

\textsuperscript{82} In early 2014, Gideon’s Promise launched The Law School Partnership Project, a collaborative effort between the Department of Justice, law schools across the country, and southern public defender offices to recruit, train, and support recent law graduates interested in becoming part of our effort to transform indigent defense. To learn more visit http://gideonspromise.org/law-schools/law-school-partnership-project/. In 2010, in conjunction with Equal Justice Works, Gideon’s Promise launched a two-year, Department of Justice funded initiative called The Public Defender Corps to recruit law students to offices in areas in need of reform and to join the Gideon’s Promise movement. See Jonathan Rapping, \textit{National Crisis, National Neglect: Realizing Justice Through Transformative Change}, 13 U. PA. J.L. & SOC. CHANGE 331, 353-54 (2009–2010). Jointly, these two initiatives will account for several dozen recent law graduates to be placed in under-resourced public defender offices as they join the Gideon’s Promise movement.

\textsuperscript{83} Gideon’s Promise, \textit{Meet Gideon’s Promise, the Organization Behind Gideon’s Army}, YOUTUBE (May 21, 2014), https://www.youtube.com/watch?v=cLTx8rlcqWw.

\textsuperscript{84} \textit{Id.}

\textsuperscript{85} \textit{Id.}

\textsuperscript{86} \textit{What is a Gideon Office?}, GIDEON OFFICE (Sept. 24, 2014, 7:51 PM), http://gideonspromise.org/gideon-office/.


\textsuperscript{88} \textit{Id.}
justice means and how worthy those accused of crimes are of receiving it.\textsuperscript{89} Therefore, changing the perception of who our clients are and what justice in America means is a broader, and necessary, piece of our movement that is being accomplished through the comprehensive model described above.

When Gideon’s Promise is understood as not only an organization that trains and supports public defenders to raise the standard of representation immediately, but also as a defender-driven movement dedicated to changing systemic assumptions that underlie criminal justice policy and behavior, its transformative power becomes clearer. It is properly seen as driving an effort critical to a national criminal justice reform strategy. While the comprehensive approach Gideon’s Promise takes to transforming criminal justice was not the focus of the film, when seen in this context, it is a movement worthy of the support of anyone who wants to help tackle the challenges highlighted in Gideon’s Army.

IV. NO MOVEMENT CAN SUCCEED AS A WELL KEPT SECRET

As the son of a professor of Media Studies who was a pioneer in the study of the interplay between popular culture and social and political life, including, prominently, the representations of criminal justice issues in popular culture, I was raised with an appreciation of the interaction between the two.\textsuperscript{90} As a long time trial lawyer, and public defender trainer, I understand the importance storytelling plays in shaping how people view the world. As an activist who has been involved in indigent defense reform and movement-building, I have come to understand the power that a comprehensive, defender-driven movement can play in transforming systemic assumptions about the values that shape the quality of justice we have come to accept—a critical, and often overlooked, component of criminal justice reform. And as a law professor and long-time public defender trainer, it is clear to me that the way we train lawyers in this country leaves them ill-prepared to live up to their critical role in improving the quality of justice in our nation’s courts.

I understand the role popular culture plays in simultaneously reflecting and influencing the values we embrace about criminal justice and our perception of the people involved. I believe that storytellers who contribute to our popular culture have an important role to play in the larger effort to re-shape public views about crime and punishment and, therefore, the policies that drive our criminal justice system. And so, in 2009, my wife and I were looking for a storyteller to tell the public about the movement we were building and its potential to transform our broken criminal justice system.

\textsuperscript{89} Id.

Not only did we hope to raise awareness about the crisis in indigent defense, but we wanted the world to meet our amazing collection of public defenders, and the overwhelming challenges they face as they fight to reform criminal justice.91 We were looking for a vehicle to introduce a broad audience to the supportive community that provides these lawyers the training and support they need to continue to stand up to this system of injustice. We were certain that when the public saw the depth and complexity of this powerful movement we are building, they would immediately understand its potential and rally behind our efforts.

It was at this time that I was introduced to Dawn Porter. She was at the beginning of what was certainly to become a celebrated career as a filmmaker. She exuded passion for justice. And after one visit with our community of defenders, she fell in love with what we were building. Dawn agreed to work with us to make a film about the movement being forged through Gideon’s Promise and its transformative potential.

Dawn started to piece together compelling footage of our work, and as she began screening clips, the responses were overwhelmingly enthusiastic. People were drawn in by the issue, inspired by the work of this community, and captivated by the individual stories of the lawyers involved. Dawn found herself with several opportunities to work with television networks on this project. The most compelling came from Home Box Office. But they were interested in a film that focused on a few individual public defenders rather than on a broader movement. As a result, the focus of the project shifted to a story about one piece of our movement, albeit a critically important piece, in a way that promised to get this component of our message out to millions of viewers. The story of the broader movement, and its potential to address the problems in the criminal justice system, was left for another day. But the opportunity offered by HBO to reach such a broad audience was more than any of us imagined when we first embarked on this project. The result was a wildly successful, award-winning documentary, Gideon’s Army. This partnership promised to get the film’s message out to popular audience, but it also necessitated that the story be narrower than we originally envisioned when we reached out to Dawn. Therefore the message, while critically important, is incomplete.

V. GIDEON’S ARMY

Gideon’s Army introduces us to three members of the Gideon’s Promise community—Brandy, June, and Travis—fighting for poor people accused of crimes in some of our nation’s most challenging criminal justice sys-

tems. The film helps the audience see how difficult their jobs are, how important their work is, and how much they sacrifice to do this work. While Gideon’s Army shows the people caught up in the system as, for the most part, sympathetic and human, a critically important counter-narrative to a popular culture that has come to demonize people accused of crime, the film’s focus is on the lawyers who represent them. The film shows these defenders as heroic, also an important message within a popular culture that has evolved to disrespect lawyers who fight for the criminally accused. The audience is left admiring the individual public defenders, and feeling thankful a few people like these protagonists exist, while probably simultaneously feeling they could never do the work themselves.

But, by concentrating on the daily struggles of three lawyers, the film de-emphasizes the transformative power of the amazing community to which they belong. While the movie leaves no doubt in the audience’s

93. See id.
94. While the movie focuses on the lawyers, for the most part it does an excellent job humanizing the accused through her depiction of Brandon and Demontes, the two clients featured in the film. However, because the film is about the challenging work facing defenders, at times it risks inadvertently reinforcing a pernicious stereotype of the criminal defendant that can undermine the larger effort to support public defenders in its efforts to show challenges a lawyer may have with representing a client. For example, after speculating that “public defenders know . . . most of their clients are guilty,” one reviewer latches onto a small part of the movie, which is not representative of the experience of most defenders, that paints a troubling view of the client. The New York Times reviewer writes, “[Brandy] recalls that one [client] threatened to kill her if she lost the case. Another bragged about raping his 12-year-old daughter. She muses out loud that some people seem to be born bad.” See Holden, supra note 74. Despite having worked with hundreds of public defenders who have represented hundreds of thousands of clients, it is the first time I have ever heard of a client planning the murder of a lawyer. Yet it merits a disproportionate place in the review and, likely, in the minds of many viewers. To the extent that this part of the film suggests this to be a more common occurrence than it is, it is potentially dangerous. While the story certainly makes Brandy’s struggle more dramatic, it risks reinforcing a pernicious stereotype about people accused of crimes. To the extent that this story may cause viewers to see criminal defendants as inhumane or monstrous, it perpetuates a view of the accused that can make it more challenging to build support for the defender. For, while the audience may like Brandy, it will be harder to build support for her work if it views those she represents as reprehensible. These rare occurrences may be seen as commonplace, creating in the audience’s mind the impression that there exists a misleadingly large population of offenders perhaps unworthy of zealous advocacy. In addition, to the extent that the audience may conclude that a lawyer feeling this way about her clients is the norm, it is misleading. While many defenders struggle to connect with the occasional client, and we encourage them to share such feelings and work through them with their peers and mentors, the broader view of most clients as evil is contrary to the way our defenders see those they represent.
95. See generally GIDEON’S ARMY, supra note 5 (showing that one cannot appreciate
mind about the importance of the work of these lawyers, it also leaves the audience wondering if they can ever make a difference. They heroically struggle to rescue their clients from a system that has lost sight of justice for the poor. They occasionally succeed, as Brandy does when she secures an acquittal for a young client at the end of the film.\textsuperscript{96} But they have far too many cases for these victories to be commonplace.\textsuperscript{97} Mostly they are pleading clients out to lengthy sentences and heading back to their offices to prepare to do the same tomorrow.\textsuperscript{98} They are running on a treadmill of injustice, periodically having a moment to stop and savor a short-lived victory, but mostly sprinting along and not getting closer to a world enshrined in equal justice as promised by our Constitution.

By framing these lawyers as the heroes, the film is a critically important piece of a badly needed effort to recast the American criminal justice story. For this we owe Dawn Porter a huge debt of gratitude. But this movie is only the opening chapter to a more comprehensive story that must be told if we are to help Americans understand how these public defenders are a critical component to a much larger effort to realize the promise of equal justice. While the movie certainly leaves the audience thinking, “I love those public defenders,” it is equally likely to add, “but I don’t see how they will affect systemic change.” It is obvious how these lawyers matter for the individuals they represent, but with all the challenges they face, how will they make a broad impact? They are cast in the image of the Little Dutch Boy, holding his finger in the dike hoping reinforcements come to keep the dam from breaking open.

But the criminal justice dike has millions of leaks each year.\textsuperscript{99} For every

\begin{itemize}
\item from the film either the number of lawyers who are part of this movement or the cohesiveness of the Gideon’s Promise community each of these lawyers relies upon for support. In fact, as of this summer we will have welcomed over 300 new public defenders into Gideon’s Promise and a host of public defender leaders, supervisors, and trainers. While the film does show the mentorship relationship between me and Brandy, it is not explicit that every one of our over seventy faculty members also serves as mentors. To the extent that a viewer is left with the impression that I am the primary source of support for this community, an impossible role for so many lawyers with such great challenges, it is important to understand that we have a powerful community of support that is being reinforced each year as more graduates sign up, and more faculty are trained, to serve as mentors).
\item \textsuperscript{97} See generally \textit{To Plead or Not to Plead? Reviewing a Decade of Criminal Antitrust Trials} (July 2006), available at http://www.gibsondunn.com/publications/Documents/Warin-Burns-Chesley-ToPleadorNot-toPlead.pdf.
\item \textsuperscript{98} See generally id.
\item \textsuperscript{99} See generally \textit{The United States Justice System: Cycle of Poverty and

hole a committed public defender plugs, there are countless other fissures left unattended.\textsuperscript{100} As our criminal justice system grows increasingly overburdened, the dam of justice threatens to come crashing down.\textsuperscript{101} Gideon’s Army shows three lawyers who appear to run from leak to leak hoping to stop as many as possible and the audience may well leave the film seeing these lawyers as foot soldiers in an unwinnable campaign. While they may win the occasional battle, the film does not reveal a strategy for winning the war.\textsuperscript{102}

VI. FROM ARMY TO MOVEMENT: A DEFENDER DRIVEN SOLUTION TO THE CRISIS AND THE OPPORTUNITY TO TELL A BROADER STORY

In order to win the battle at hand, this Army will need to be forged into a movement; a community of public defenders, not only representing individual people one case at a time, but also working collectively, with a shared vision, to transform our criminal justice system. While individually plugging leaks today, this army of defenders must simultaneously work to rebuild our criminal justice dam for tomorrow. For only a brand new, better built, dike will ensure the justice consistent with our constitutional promise. This is exactly what is being built by Gideon’s Promise, the organization behind the film. It is the organization that trained and supported the three defenders featured in the movie, and over three hundred like them at the time this article is published, to continue fighting against great pressure to simply give in. Gideon’s Promise is grooming a generation of public defenders to lead this charge. Understanding the foot-soldier is important. Understanding that these soldiers are part of a larger Army is also necessary. But until we appreciate the comprehensive movement these lawyers are driving, we will remain unable to see how transformation is possible. The story of the movement is therefore the necessary sequel to Gideon’s Army.

Gideon’s Army is evidence of the power of popular media to engage a national audience about important social issues. And while the focus of this

\textsuperscript{100} See generally id.

\textsuperscript{101} See generally id.

\textsuperscript{102} In fact, the film may inadvertently reinforce a perception some have that public defenders do not make a difference in the broader struggle for criminal justice reform. This view envisions public defenders who are admirable for their work in individual cases but ineffective in addressing broader problems in the system. For example in his essay arguing that the right to counsel guaranteed in \textit{Gideon} has made things worse for poor people accused of crimes, Professor Paul Butler suggests that whatever their value to an individual client, public defenders are not part of the larger solution to the criminal justice crisis. See Paul D. Butler, \textit{Poor People Lose: Gideon and the Critique of Rights}, 122 YALE L.J. 2176 (2013).
film is to raise awareness of important injustices, popular culture can just as effectively build consensus around how to support an effort to address these challenges. In fact, it is a critical component of any change strategy. For without this next piece, concern will soon dissipate as the problem appears intractable.

So hopefully, Gideon’s Army will be the first in a wave of media aimed at mobilizing support to address this modern civil and human rights issue. If additional socially-conscious artists and storytellers take the baton from Dawn Porter, and join reformers in their effort to recast the American criminal justice narrative, there is hope to change public assumptions about crime and how to address it. As a critical first step in galvanizing public will to address this problem, our effort to finally realize equal justice depends on it.

VII. CONCLUSION

If we hope to understand the evolving attitudes about justice in America, we must appreciate the role that storytelling plays in shaping our attitudes about criminal justice and how popular culture has both influenced and reinforced the way we view people accused of crime and the appropriate response to criminal behavior. We must appreciate how popular culture reflects a shift in our assumptions about crime; that we have gone from a society that respects individual liberty, and is empathetic towards the accused, to one that demonizes the criminal and lionizes law enforcement. In turn, because our respect for the right to counsel is tethered to our larger views about criminal justice, the image of the defense lawyer has devolved from champion to anti-hero.

If we want to reform our justice system, we must then understand how these attitudes have infected the criminal process. As players within the criminal justice system see the criminally accused as monsters, and their role as protecting society from them at all costs, respect for the right to counsel disintegrates. The defense lawyer is seen as an obstacle to justice, rather than an essential component of it. Because of the link between respect for the defender and compassion for those they defend, we cannot realize the promise of Gideon—equal justice guaranteed through a meaningful right to counsel—without transforming our attitudes about the criminally accused. As the voice within the criminal justice system for the vast majority of people accused of crime, the public defender is uniquely positioned to redefine this narrative.

The public defender is therefore a critical force in our efforts to transform criminal justice in America. But that potential is hampered by a limited view of his/her role. When narrowly seen as a vehicle to ensure equal

103. See generally GIDEON’S ARMY, supra note 5.
justice is delivered on an individual basis, the public defender will be viewed as impotent to address systemic challenges. While this role of the public defender is certainly critical, as a movement these advocates have potential to transform our assumptions, which must be at the core of any effort to realize change. Gideon’s Army shows the public defender in this traditionally understood, narrow perspective; as a valiant defender fighting in isolation to try to secure justice for the accused one at a time. But, while it introduces Gideon’s Promise as a unique program that provides support to public defenders, it stops short of illustrating how it provides a model for developing this badly-needed, comprehensive, public defender movement.

Popular culture must play an important role in educating the public about this movement and rallying support for it. Gideon’s Army introduces the crisis and helps to garner respect for the individual lawyer. In doing so, it serves as a critical building block for a broader story that helps audiences understand how this movement is capable of leading the charge in this important civil rights struggle, and how they can support this effort. But storytellers concerned about this crisis must supplement this important film by giving audiences engaged by it a path towards a new era in criminal justice.

104. See generally id.
105. See generally id.