

Public Defenders Do More For January 6 Suspects Than Trump Ever Will

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January 6, 2021 Capitol rioters

Sixty years ago, on March 18, 1963, the Supreme Court of the United States issued its opinion in *Gideon v. Wainwright*, the seminal holding that all defendants in criminal cases are entitled to a lawyer even if they can't afford one.

Clarence Gideon, after being denied a lawyer in a trial over whether he stole from a Florida pool hall — an offense of which he was innocent yet sentenced to five years in prison — scrawled out a *pro se* petition to the country's highest court. The justices accepted Gideon's bid to overturn his conviction and eventually reversed it with instructions that he couldn't be convicted unless he had counsel.

About five months later, on the day after a jury acquitted Gideon in his second trial — one where he had the assistance of a flamboyant and effective local criminal defense attorney — the United States Senate voted on the Criminal Justice Act. The federal statute would require states and the federal government to provide counsel to defendants in criminal cases who couldn't otherwise afford representation. The House of Representatives passed the bill months later, in 1964. As soon as it was passed the Criminal Justice Act backed up Supreme Court precedent with a statute that defendants could cite in order to secure themselves representation they couldn't otherwise afford.

Since then, however, indigent defense has redeemed neither the promise of the Supreme Court decision nor the federal statute, at least not in the public's eyes. For instance, in a [public opinion poll](#) conducted by American University, only 47 percent of respondents believed that public defenders provide adequate legal representation; a full half think they don't. Only 45 percent are convinced that public defenders care about their clients. Fifty-three percent assume they aren't very invested at all.

It's not like public defenders can afford a public relations campaign. Since the Supreme Court held that defendants had a right to effective assistance under the Sixth Amendment and since Congress said that means someone else has to pay for an attorney when the accused can't, the funding has never matched the need.

One of the reasons why funding for indigent defense is so inadequate is that there's no specific way for the federal government to direct funds to indigent defense specifically. The Justice Department's discretionary grant programs simply make money available to state and local public safety agencies each year.

But they're just that: discretionary. Which means none of the states or municipalities are required to use the money for criminal defense. Most use it for local and state police agencies and, by strengthening the adversaries of public defenders, the funding mechanism ends up inadvertently weakening legal assistance for poor criminal defendants.

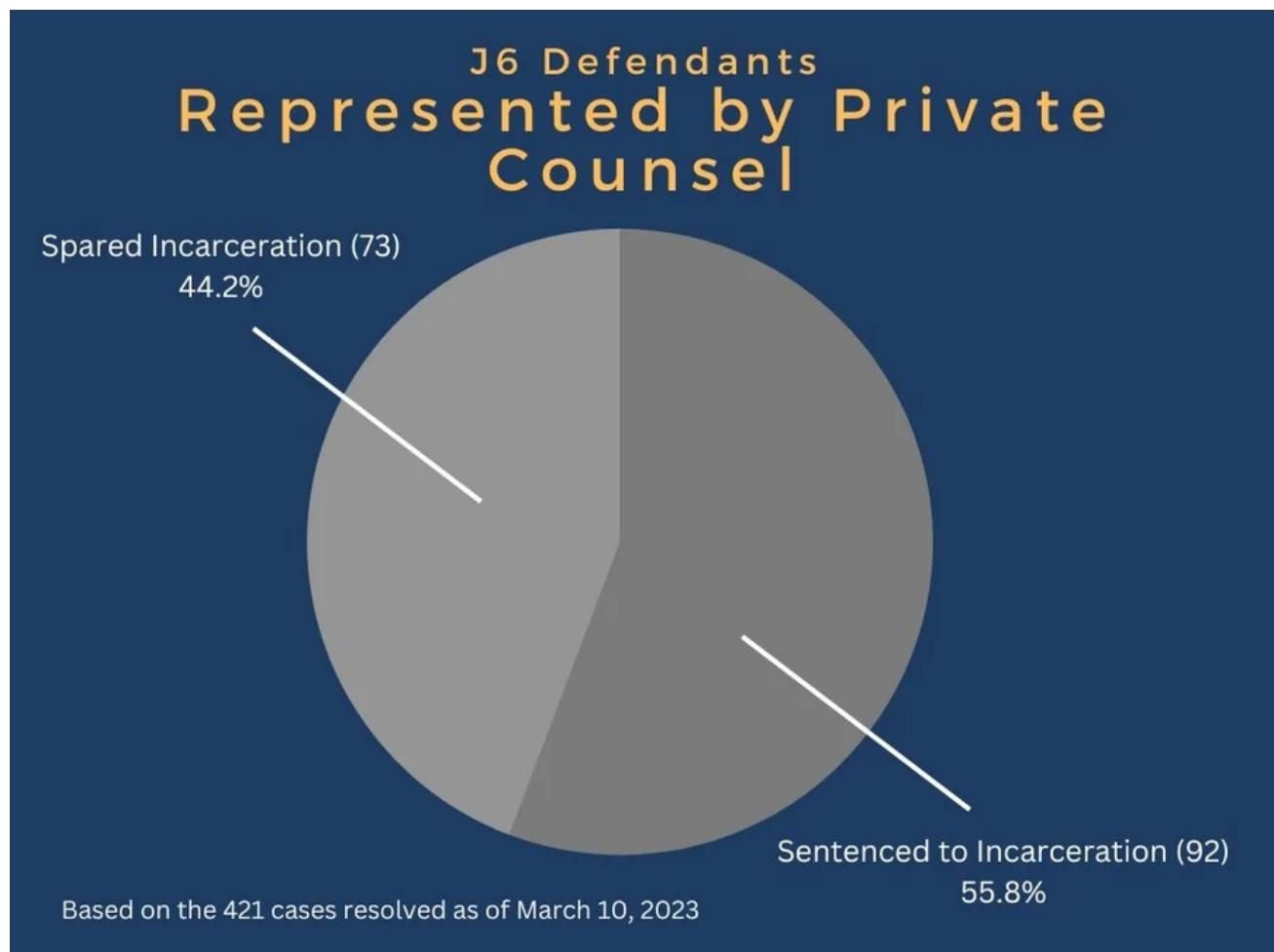
The problem here isn't merely that the federal government isn't assisting states to protect the constitutional rights of defendants; that's a persistent failing for sure. The problem is that there are easy ways for presidential administrations to assure that public defense agencies don't even get the few crumbs they might catch and not be identified for being as anti-*Gideon* as they are.

President Donald Trump wanted to reduce the discretionary grant money provided by the Edward Byrne Memorial Justice Assistance Grant (JAG) Program by \$300 million. His administration never made many comments about indigent defense at all — former Deputy Attorney General Rod Rosenstein made remarks about the Right to Counsel National

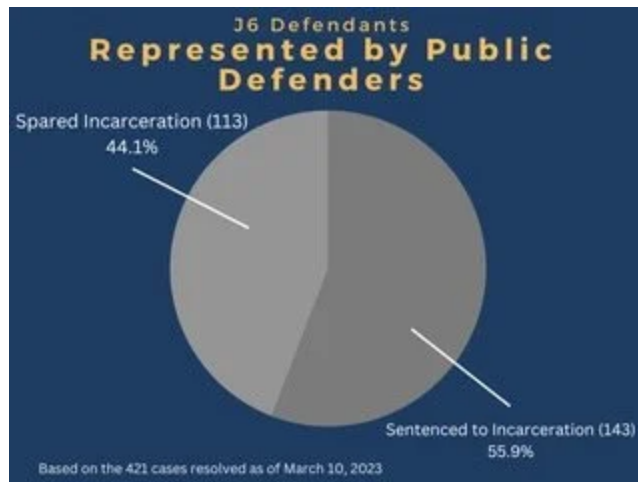
Campaign and said he was proud the Justice Department started it — although it was the Bureau of Justice Assistance under the Obama administration and the Justice Programs Office at American University that actually did the work on it in 2015.

For the most part, the Trump administration never mentioned public defense during its four years, except when the ex-president lamented a terrorism suspect being able to access “an outstanding lawyer” because of the country’s indigent defense infrastructure.

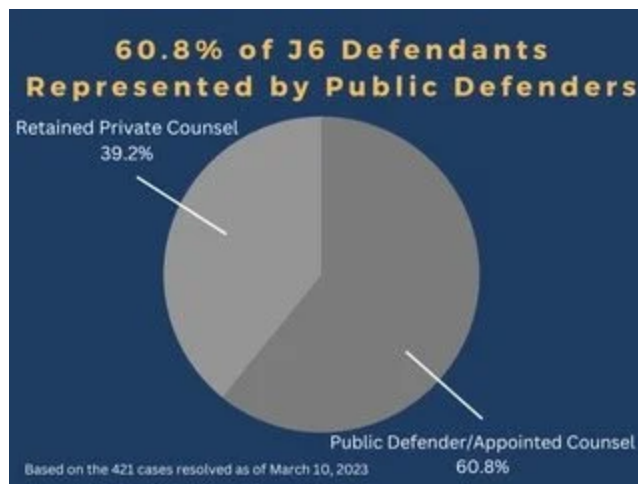
Ironically, there’s no greater experiment testing the value and worthiness of public defense than the Justice Department’s January 6 dragnet. As of February 16, 2023, 1003 people have been charged with crimes related to the events at the Capitol that day; 421 of those criminal cases have been terminated or resolved as of March 10, 2023. Federal public defenders represent 256 defendants whose cases have been adjudicated as of March 10, 2023. Another 165 defendants retained their own attorneys.



The public defenders performed better than the privately retained attorneys. Of those who avoided jail, a total of 186, 113 of them, or 60 percent, had counsel provided for them. Forty percent of those who received sentences of home confinement or probation had shelled out for an attorney.



Comparing the populations side-by-side, the same percentage of clients represented by counsel they paid had to report to a federal prison as those who had counsel we all paid for.



Fifty-six percent of clients went to prison and 44 percent stayed home, no matter who represented them, which shows that Public defenders have helped Trump's followers more than he ever did. Or ever will.

But they'll continue to struggle to get the funding they deserve to cover salaries and the cost of investigations into the allegations against their clients. It's hardly the anniversary gift they deserve.

While inside she became the first incarcerated person with a regular byline in a publication outside of the facility. Her "Prison Diaries" column ran in The New Haven Independent, and she later established a blog under the same name that earned several professional awards. Her columns now appear regularly in The National Memo.