

BELDEN RUSSONELLO & STEWART
RESEARCH AND COMMUNICATIONS

Americans Consider Indigent Defense: Analysis of a National Study of Public Opinion

January 2002

Introduction

This report summarizes the findings of a national research project on public opinions about due process and the representation of indigent criminal defendants.

The research conducted by Belden Russonello & Stewart consisted of eight focus groups conducted across the country and a national survey among 1,500 adults living in the U.S. Interviewing took place from July 10 to August 3, 2001. The margin of sampling error for the survey is ± 2.5 percentage points. BRS is a national, independent public opinion research company.

The research reveals four main points on Americans' attitudes toward indigent defense:

- 1) A majority of Americans believes that, as a society, we should provide legal help to people who need it but cannot afford it. Americans consider the right to an attorney a fundamental part of due process in our country.
- 2) Support for indigent defense is rooted in the American value of fairness, specifically concerns about the disparities of treatment between rich and poor, due mainly to different levels of legal representation and the potential effect of disparities - for example, that innocent individuals could be wrongfully imprisoned.
- 3) Americans support a strong system of public defenders in each state, as well as favor reforms to ensure individuals accused of a crime receive competent representation.
- 4) The public defines competent representation as lawyers having necessary resources to defend their clients and a reasonable caseload.

Findings

1. The context for indigent defense

The public is aware that the country has a system of indigent defense. Two-thirds of Americans (68%) believe that their state provides a lawyer if a criminal defendant cannot afford one.

The public's opinion of public defenders is mostly of professionals who are overburdened (66%), and adequate lawyers (57%).

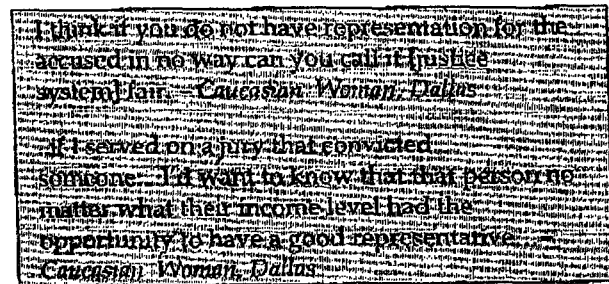
Clients of public defenders – those accused of crimes – are presumed guilty by most Americans (54%), but the public acknowledges the rights of these individuals. Large majorities identify each of the following as a right for individuals arrested for a crime:

- being informed of the charges (97%);
- having a lawyer (95%);
- having a lawyer appointed and paid for if they cannot afford one (88%);
- speedy trial (85%); and
- remaining silent (81%).

2. Support for indigent defense

The American public supports a system of indigent defense.

- Two-thirds of Americans (64%) support using taxpayer dollars to provide lawyers for people accused of crimes "who cannot afford a lawyer," and a third of them (32%) *strongly* supports this government-funded legal defense.



- The value of fairness drives attitudes toward indigent defense. This value is expressed by the public in focus groups as:

Fairness and equality: ensuring everyone has access to justice, which includes the basic tools to defend himself or herself;
 Responsibility to ensure that the innocent do not go to jail; and
 Ensuring a fair and just society, with a legal system that has integrity.

3. Defining competent counsel

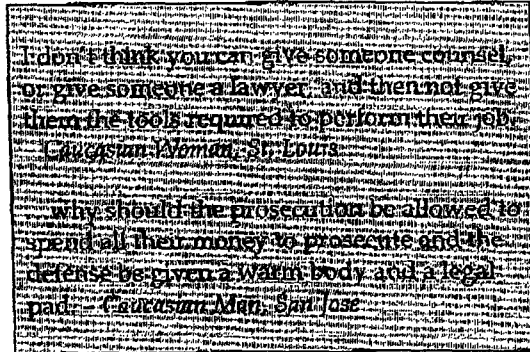
Americans believe it is not enough simply to provide counsel to those who cannot afford a lawyer. The legal representation should be "competent." Competent representation, according to the public, includes the resources necessary for conducting lab tests and investigations; as well as having a lawyer with a small enough caseload to provide adequate time to work on each case.

Almost all Americans believe the following items are important and majorities of Americans believe that a low-income person accused of a crime should be *guaranteed*:

- Resources to obtain DNA testing and other laboratory services (94% important; 68% *guaranteed*);
- A lawyer with a small enough caseload to provide the time necessary to prepare a defense for each person (94% important; 57% *guaranteed*); and
- Resources to hire investigators to check on evidence and find witnesses (91% important; 55% *guaranteed*).

Also considered important is having:

- A lawyer with experience in defending people accused of similar crimes (89% important; 48% *guaranteed*); and
- Resources to hire expert witnesses (83% important; 43% *guaranteed*).



4. Strong support for system of public defenders and other reforms

Americans broadly support a number of reforms to ensure that individuals accused of a crime receive competent counsel. Majorities support proposals that would:

- Establish a public defenders' office in each state with full-time professional staff lawyers to represent individuals accused of crimes (71%) rather than a system of court-appointed private lawyers to represent people accused of crimes (21%).
- Require states to provide representation to at least people below the poverty line (83%); only 15% believe states should be able to decide for themselves who is eligible for a court-appointed attorney.
- Give public defenders and prosecutors the same resources per case, with nearly two-thirds (64%) favoring this proposal *strongly* (88% support overall).
- Create local oversight commissions to ensure that there is competent counsel with adequate resources (87% favor; 60% *strongly*).
- Establish national standards on qualifications for public defenders and court-appointed lawyers (78% favor; 54% *strongly*).
- Also, half (50%) reject the idea of judges and local governments appointing counsel based on which lawyer cost the least.

5. Reasons for public support

The reasons Americans find most persuasive in considering why the country should devote more resources to defend poor people accused of crimes, who cannot afford counsel, are about fairness.

Fairness, economic equity, and criminal justice:

- "The quality of justice a person receives should not be determined by how much money a person has" (88% saying this is a convincing reason to increase money spent on public defense; 74% *very convincing*).

Protecting the innocent:

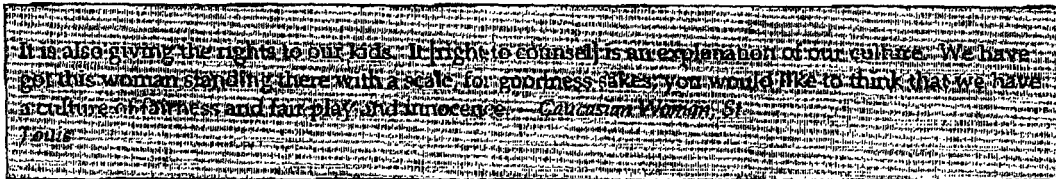
- "Providing competent legal representation is necessary to prevent innocent people from going to jail" (93% convincing; 72% very convincing).

Ensuring rights and a fair society:

- "Providing competent legal representation is one of our most fundamental rights in the U.S." (88% convincing; 65% very convincing).
- "Ensuring competent legal representation for all is necessary for our legal system to function" (89% convincing; 60% very convincing).

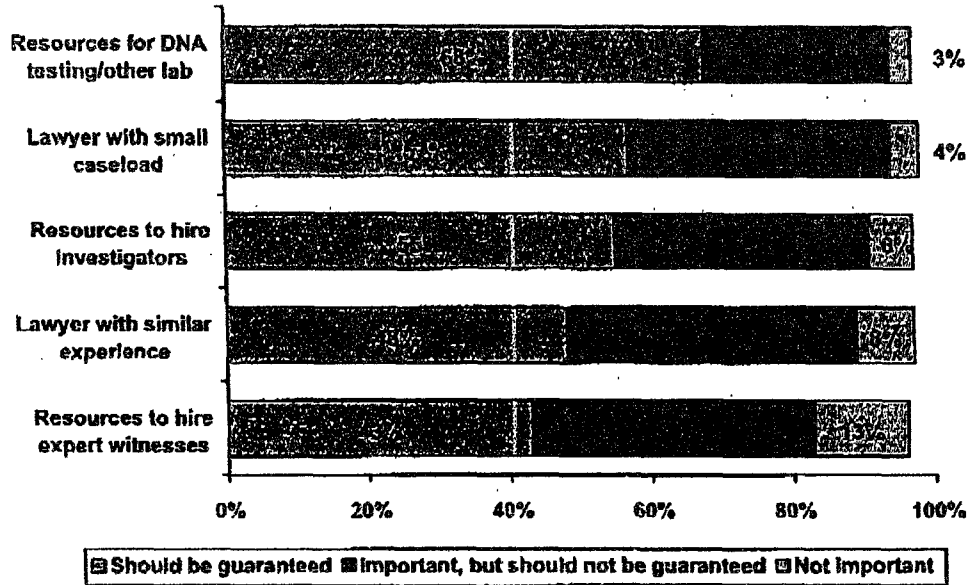
Another reason that a majority found convincing communicates the value of self-preservation:

- "Some day you or someone you know may need the help of a public defender" (76% convincing; 49% very convincing).



Appendix A: Key Charts

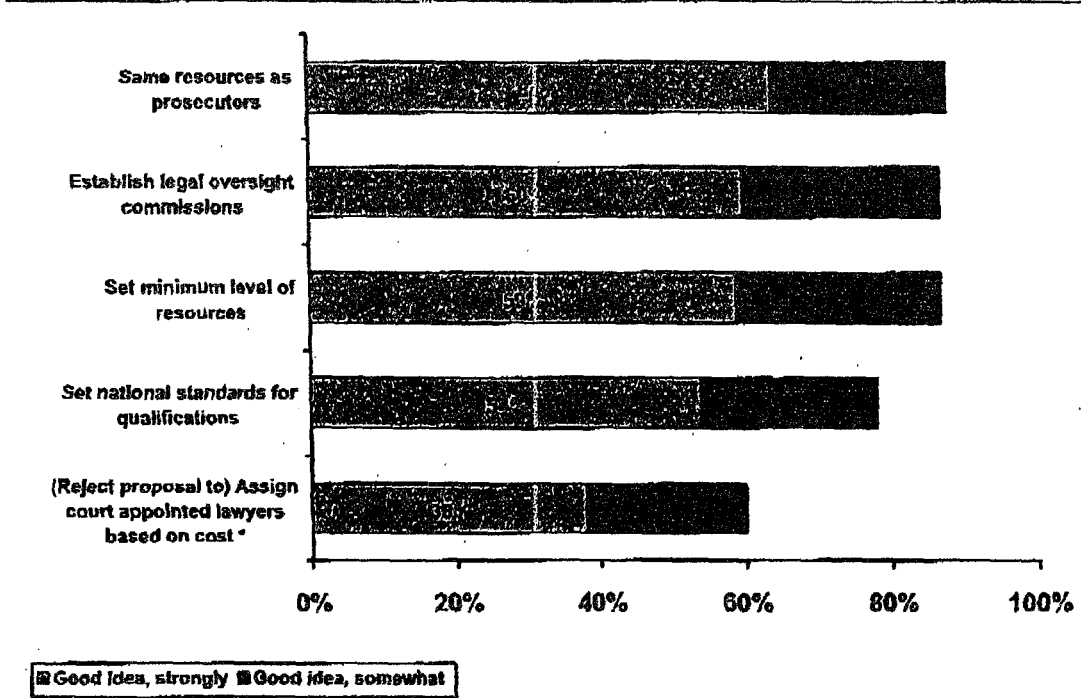
Guarantees to Defendants



Please tell me if you think each of the things in this list should be guaranteed by the government to low-income people accused of a crime, is important but should not be guaranteed, is not very important, or is not at all important for someone accused of a crime?

- Q20. Resources to obtain DNA testing and other laboratory services.
- Q21. A lawyer with a small case load to provide the time necessary to prepare a defense for each person.
- Q18. Resources to hire investigators to check on evidence and find witnesses.
- Q17. A lawyer with experience in defending people accused of similar crimes.
- Q19. Resources to hire expert witnesses.

Proposals for Reform



There are a number of proposals to change how the system of public defenders and court-appointed lawyers works in this country. Please tell me if you think each of the following is a good idea or not good idea. Is that strongly or somewhat?

- Q27. Public defenders and court-appointed lawyers should have the same resources per case as prosecutors to spend on things such as expert witnesses, investigators, and lab tests.
- Q26. Establish local legal oversight commissions to make sure that low-income people accused of a crime are receiving competent lawyers with adequate resources to represent them.
- Q25. Set national standards for a minimum level of resources that should be available to all public defenders and court-appointed lawyers, such as access to expert witnesses, investigators, and DNA testing when appropriate.
- Q24. Set national standards for the qualifications for public defenders and court-appointed lawyers instead of letting qualifications vary from state to state and county to county.
- Q23. (* percent saying "bad idea") When a low-income person is accused of a crime, allow judges and local governments to assign court-appointed private lawyers based on which lawyers cost the least.

Appendix B:
**Questionnaire with
response totals**

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National Survey on Indigent Defense
August 2001

Interviewing conducted from July 10 to August 3, 2001.
N=1,500 adults 18 years old or older.
Data have been weighted by race and age.
Margin of sampling error is ± 2.5 percentage points.
Percents may add to 99% or 101% due to rounding.
indicates less than 1%, - indicates zero.

1. Do you think things in the country are generally going in the right direction or are they headed off on the wrong track?	RIGHT TRACK44% WRONG TRACK.....42 DK/REF14
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(Based on 750 respondents)

2. Given everything we must do in society, do you favor or oppose the government using taxpayer dollars to provide lawyers to represent low-income people accused of crimes? Do you favor/oppose strongly or somewhat?	STRONGLY FAVOR27% SOMEWHAT FAVOR.....32 SOMEWHAT OPPOSE.....15 STRONGLY OPPOSE.....18 DK/REFUSE.....7
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(Based on 750 respondents)

2b. Given everything we must do in society, do you favor or oppose the government using taxpayer dollars to provide lawyers to represent people accused of crimes who cannot afford a lawyer? Do you favor/oppose strongly or somewhat?	STRONGLY FAVOR32% SOMEWHAT FAVOR.....32 SOMEWHAT OPPOSE.....14 STRONGLY OPPOSE.....18 DK/REFUSE.....5
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(Based on 750 respondents)

3. In general, would you say that people accused of crimes in this country are: almost always guilty, are frequently guilty, or guilty only some of the times for the crimes they are accused of?	ALWAYS GUILTY17% FREQUENTLY GUILTY37 GUILTY ONLY SOMETIMES37 DK/REFUSE.....9
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(Based on 750 respondents)

3b. In general, would you say that people arrested for crimes in this country are: almost always guilty, are frequently guilty, or guilty only some of the times for the crimes they are arrested for?	ALWAYS GUILTY22% FREQUENTLY GUILTY41 GUILTY ONLY SOMETIMES30 DK.....7
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Topline Results from
National Survey on Indigent Defense

Please tell me if you think each of the following is a right for individuals arrested for a crime in the U.S. [ROTATE 4-8]

	Yes, is a right	No, not a right	DK/REF
4. having a lawyer to represent them	95%	3	1
5. having a lawyer appointed and paid for by the court if they cannot afford one	88%	9	3
6. speedy trial	85%	10	5
7. remaining silent	81%	15	3
8. being told what the charges against them are	97%	2	1

9. If a person is arrested for a crime in your state, as far as you know, which of the following best describes what the court does: a) provide a lawyer if the person is low-income and below the poverty line, b) provide a lawyer if the person cannot afford one, regardless of his income, or c) does the court in your state not provide lawyers for people accused of crimes, or d) are you not sure.

PROVIDE LAWYER IF PERSON IS LOW-INCOME.....	22%
PROVIDE LAWYER IF PERSON CANNOT AFFORD ONE.....	46
COURT DOES NOT PROVIDE LAWYERS.....	2
NOT SURE.....	28
DK /REFUSE.....	1

10. Most states across the country have a public defense system whereby the government pays lawyers to represent people arrested for crimes who cannot afford legal help on their own. In some places the lawyers work in a public defender's office and other places the court appoints and pays private lawyers to represent low-income people accused of crimes. In your state, do you think the government should be spending more or spending less on legal defense for people who cannot afford a lawyer, or should the government keep the funding about where it is now?

SPEND MORE.....	17%
SPEND LESS.....	14
KEEP FUNDING THE SAME.....	57
DK/REFUSE.....	12

ROTATE BLOCKS [Q11 - Q15 AND Q16]

11. Thinking now just about public defenders, do you think public defenders who represent low-income people accused of a crime are generally good lawyers, just o.k. lawyers, or generally not good lawyers?

GENERALLY GOOD LAWYERS.....	14%
JUST OK LAWYERS.....	50
GENERALLY NOT GOOD LAWYERS.....	28
NOT SURE.....	7
DK/REFUSE.....	*

Generally speaking, which of the following characteristics do you think best describes public defenders?
[ROTATE 12-15]

12. Able to handle their cases or overburdened	ABLE TO HANDLE22% OVERBURDENED66 DK/REFUSE.....11
13. Experienced or inexperienced	EXPERIENCED46% INEXPERIENCED41 DK/REFUSE.....13
14. Dedicated or not taking much interest in their clients	DEDICATED48% NOT TAKING MUCH INTEREST.....36 DK/REFUSE.....16
15. Generally provide adequate legal representation or generally provide inadequate legal representation	GENERALLY PROVIDE ADEQUATE REP57% GENERALLY PROVIDE INADEQUATE REP 30 DK/REFUSE..... 13
16. Thinking about court-appointed lawyers, do you think court-appointed private lawyers who represent low-income people accused of a crime are generally good lawyers, just o.k. lawyers, or generally not good lawyers?	GOOD LAWYERS10% JUST O.K. LAWYERS.....48 NOT GOOD LAWYERS30 DK /REFUSE..... 11

Please tell if you think each of the things in this list should be guaranteed by the government to low-income people accused of a crime, is important but should not be guaranteed, is not very important, or is not at all important for someone accused of a crime. [ROTATE Q17-21]

	SHOULD BE GUAR.	IMP, NOT GUARNTD	NOT VERY IMP	NOT AT ALL IMP	DK/ RF
17. a lawyer with experience in defending people accused of similar crimes	48%	41	6	2	3
18. resources to hire investigators to check on evidence and find witnesses	55%	36	4	2	3
19. resources to hire expert witnesses	43%	40	9	4	4
20. resources to obtain DNA testing and other laboratory services	68%	26	2	1	2
21. a lawyer with a small enough case load to provide the time necessary to prepare a defense for each person	57%	37	3	1	2

Topline Results from
National Survey on Indigent Defense

22. Which do you think is a better system to provide legal help to low-income people accused of a crime: 1) have courts appoint private lawyers to represent the individuals accused of crime or 2) establish a public defenders office in each state with full-time professional staff lawyers to represent individuals accused of crimes? [VOLUNTEER CODE: neither/ don't have a system]

HAVE COURT-APPOINTED PRIVATE LAWYERS..... 21%
ESTABLISH PUBLIC DEFENDERS OFFICE..... 71
NEITHER (VOL)..... 1
DK/REFUSE..... 7

There are a number of proposals to change how the system of public defenders and court-appointed lawyers works in this country. Please tell me if you think each of the following is a good idea or a not a good idea [strongly or somewhat?]: [ROTATE Q23-Q27]

	Good		Not good		DK/ REF
	Strng	Smwt	Smwt	Strng	
23. When a low-income person is accused of a crime, allow judges and local governments to assign court-appointed private lawyers based on which lawyers cost the least.	17%	19	22	38	4
24. Set national standards for the qualifications for public defenders and court-appointed lawyers instead of letting qualifications vary from state to state and county to county.	54%	24	8	10	4
25. Set national standards for a minimum level of resources that should be available to all public defenders and court-appointed lawyers, such as access to expert witnesses, investigators and DNA testing when appropriate.	59%	28	4	7	2
26. Establish local, legal oversight commissions to make sure that low-income people accused of a crime are receiving competent lawyers with adequate resources to represent them.	60%	27	5	6	2
27. Public defenders and court-appointed private lawyers should have the same resources per case as prosecutors to spend on things such as expert witnesses, investigators, and lab tests.	64%	24	5	5	3

28. Here are two statements. Tell me which one you agree with more: a) States should have the freedom to decide for themselves who is eligible to receive a public defender or court-appointed lawyer, even if this means some states will decide NOT to cover many very poor people accused of a crime, or b) States should be required to provide public defenders or court-appointed lawyers at least to people below the poverty level who are accused of a crime.

STATES SHOULD DECIDE 15%
STATES SHOULD PROVIDE 83
DK/REFUSE..... 2

The following are some reasons people have given for why we should NOT increase the amount of money that we spend on public defense of low-income people accused of crimes. Please tell me if you find each statement a very convincing, somewhat convincing, not very convincing, or not at all convincing reason NOT to spend more money on public defense. [ROTATE Q29-Q33]

	Convincing		Not Convincing		DK/ REF
	VERY	SMWT	NOT VERY	NOT AT ALL	
29. The burden of proof is on the prosecutor during a trial. Therefore, it is only right that the prosecution has more resources than the defense.	13%	20	26	38	3
30. The police do not arrest people for crimes unless they have a lot of evidence, so most people who are arrested and charged with crimes are guilty.	14%	22	25	37	2
31. If we give the public defenders and court-appointed private lawyers more resources the result will be more stalling tactics by defendants and justice will suffer.	19%	28	24	25	4
32. We need to spend more resources on catching and punishing criminals, not on trying to help them escape punishment.	39%	24	15	19	3
33. Public defenders and court-appointed private lawyers are not very good lawyers. Why should we pay more for bad services?	15%	22	29	32	4

Topline Results from
National Survey on Indigent Defense

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Now here are some reasons that people have given for why we SHOULD increase the amount of money that we spend on public defense of low-income people accused of crimes. Please tell me if you find each statement a very convincing, somewhat convincing, not very convincing, or not at all convincing reason to spend more money on public defense. [ROTATE Q34-Q39]

	<u>Convincing</u>		<u>Not Convincing</u>		DK/ REF
	VERY	SMWT	NOT VERY	NOT AT ALL	
34. Ensuring competent legal representation for all is necessary for our legal system to function.	60%	29	7	4	1
35. Providing competent legal representation is necessary to prevent innocent people from going to jail	72%	21	4	3	1
36. Providing competent legal representation is one of our most fundamental rights in the U.S.	65%	23	7	4	1
37. The quality of justice a person receives should not be determined by how much money a person has.	74%	14	5	6	1
38. Some day you or someone you know may need the help of a public defender.	49%	27	13	9	2
39. Our criminal justice system would not be fair if we did not provide competent legal representation to those who cannot afford it.	67%	23	5	4	1

Here are some other reasons...[ROTATE Q40-46]

	<u>Convincing</u>		<u>Not Convincing</u>		DK/ REF
	VERY	SMWT	NOT VERY	NOT AT ALL	
40. With sufficient resources public defenders and court-appointed private lawyers could help their clients become productive members of society by helping them to get the drug treatment, counseling or job training they may need.	44%	30	14	10	1
41. Public defenders and court-appointed private lawyers provide a check on police brutality or misconduct, misconduct by prosecutors, police, or lab technicians, or other abuses.	32%	34	17	9	7
42. In most states, there are no restrictions on the number of cases private lawyers appointed by the courts or public defenders can take. Many times these lawyers are overworked, representing thousands of people a year. Often public defenders or court-appointed private lawyers meet their clients in the courtroom for only a few minutes before their trial starts.	55%	27	8	6	5

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Topline Results from
National Survey on Indigent Defense

	<u>Convincing</u>		<u>Not Convincing</u>		DK/ REF
	VERY	SMWT	NOT VERY	NOT AT ALL	
43. Lawyers defending those accused of crimes receive inadequate resources from the court and local governments to put on a defense. In most cases, they do not have enough money to hire an investigator, expert witnesses, or to conduct DNA testing.	46%	33	10	6	6
44. Prosecutors have an unfair advantage because they have the resources of the police, government crime lab, and are better paid lawyers.	42%	30	13	9	5
45. Defendants who can afford expensive legal representation don't usually get the death penalty. Most people now on death row are poor and are there because they were represented by inexperienced, public defenders or court-appointed lawyers.	31%	27	18	16	7
46. The current system cannot meet the need. In some places, defendants may wait months in jail before being appointed a lawyer and getting a hearing.	51%	28	9	7	5
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47. Sometimes people change their opinions in a survey. Let me ask you again, in your state, do you think the government should be spending more or spending less on legal defense for people accused of a crime who cannot afford a lawyer, or should the government keep the funding about where it is now?	SPEND MORE.....		33%		
	SPEND LESS		6		
	KEEP FUNDING THE SAME.....		49		
	DK/REFUSE.....		11		
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48. If a person is arrested for a crime in your state which of the following best describes what you think the court should do: a) provide a lawyer if the person is low-income and below the poverty line, b) provide a lawyer if the person cannot afford one, regardless of his income, or c) not provide lawyers for people accused of crimes.	PROVIDE LAWYER IF PERSON IS LOW-INCOME.....		32%		
	PROVIDE LAWYER IF PERSON CANNOT AFFORD ONE.....		62		
	NOT PROVIDE LAWYER.....		3		
	DK/REFUSE.....		2		

Topline Results from
National Survey on Indigent Defense

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Now, I have some questions for statistical purposes only.

49. Are you currently registered to vote at your current address?	YES.....	78%
	NO.....	20
	DK/REFUSE.....	1

50. In terms of your political outlook, do you usually think of yourself as: very conservative, somewhat conservative, middle of the road, somewhat liberal, or very liberal?	VERY CONSERVATIVE.....	14%
	SOMEWHAT CONSERVATIVE.....	24
	MIDDLE OF THE ROAD.....	31
	SOMEWHAT LIBERAL.....	17
	VERY LIBERAL.....	8
	DK/REFUSE.....	7

51. Do you consider yourself to be a Democrat, a Republican, an independent, or something else?	DEMOCRAT.....	34%
	REPUBLICAN.....	25
	INDEPENDENT.....	31
	DK/REFUSE.....	9

52. Did you happen to have a chance to vote in the 2000 elections for President and Congress?	YES.....	71%
	NO.....	27
	REFUSE.....	2

53. Are you married, divorced, separated, widowed, or single that is never been married?	MARRIED.....	54%
	DIVORCED.....	11
	SEPARATED.....	2
	WIDOWED.....	6
	SINGLE.....	25
	DK/REFUSE.....	2

54. What was the last grade of school you completed?	LESS THAN HIGH SCHOOL.....	7%
	HIGH SCHOOL GRAD.....	35
	SOME COLLEGE.....	26
	4-YR COLLEGE.....	17
	POST GRADUATE.....	12
	DK/REFUSE.....	2

55. How often would you say you attend formal religious services -- at least once a week, at least once a month, a few times a year, less often than that, or never?	AT LEAST ONCE A WEEK.....	37%
	AT LEAST ONCE A MONTH.....	17
	A FEW TIMES A YEAR.....	21
	LESS OFTEN.....	9
	NEVER.....	12
	DK/REFUSE.....	2

Topline Results from
National Survey on Indigent Defense

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56. In what year were you born?	18-24	13%
IF REFUSE: Well, are you between:	25-34	18
	35-44	22
	45-54	18
	55-64	12
	65+	16
	DK/REFUSE	*

57. Would you say you are white, black or African American, Hispanic, Asian or Pacific Islander, Native American, or something else?	WHITE	73%
	BLACK	11
	HISPANIC	11
	ASIAN	3
	NATIVE AMERICAN/OTHER	1
	DK/REFUSE	*

58. Stop me when I come to the category in which your total HOUSEHOLD INCOME fell before taxes in 2000. Your best estimate is fine. [READ CATEGORIES]	LESS THAN \$25,000	21%
	\$25,000-\$49,000	31
	\$50,000-\$74,000	19
	\$75,000-\$99,000	8
	OVER \$100,000	9
	DK/REFUSE	12

SEX	MALE	49%
	FEMALE	51

REGION (FROM FIPS)	NORTHEAST	18%
	MIDWEST	23
	SOUTH ATLANTIC	16
	SOUTH	18
	WEST	23

AREA:	URBAN	28%
	SUBURBAN	48
	RURAL	24