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Justice delayed and denied

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WASHINGTON -- Forty years ago, the Supreme Court established the right of criminal defendants to legal representation, either private or court-appointed. Since then, not much has happened to change the course of criminal justice, it seems.

What most of us take for granted, according to the American Bar Association and other legal groups, is not a reality in practice despite the landmark Gideon v. Wainwright ruling, and there is dramatic evidence to support the view that thousands upon thousands of defendants get shortchanged when it comes to justice.

For instance, at age 50, Gail Chester was arrested on a shoplifting charge and sent to the Harrison County, Miss., jail where she sat for 11 months before a lawyer was appointed to look into the facts. It was another month before she ever talked to him _ in court on the day her case was supposed to go to trial. Nearly 14 months after her arrest, Chester pleaded guilty to a misdemeanor and was released from jail.

In Pittsburgh, an innocent 19-year-old man sat in jail for 15 months because the public defender had neither the time nor the resources to visit him. In the state of Wisconsin, more than 11,000 accused people a year plead guilty without ever talking to a lawyer because they can't afford one. Criminal defendants who can't afford an attorney in Lake Charles, La., have to wait an average of nine months before first meeting their public defender.

These and numerous other horror stories are cited by the ABA in a new campaign called "No Exceptions" that aims to "guarantee a fair justice system for all." Other organizations supporting the campaign include the National Association of Criminal Defense Lawyers and the National Legal Aid and Defender Association. The ABA sets down 10 principles for a public-defender delivery system that it says states should adopt immediately to increase public confidence that the system is fair.

The points include an independent public-defender system; full participation by the private bar; prompt provision of an attorney for indigent clients; confidential access to clients; controlled and reduced workloads; training and continuing education for public defenders; supervision based on national and local standards; attorney continuity throughout the case, and workloads, salary and resources that are at parity with those of prosecutors.

Interestingly, the new campaign to clean up a system sorely in need of overhaul comes as Attorney General John Ashcroft has ordered U.S. attorneys to keep tabs on federal jurists he thinks too often sentence below the mandatory minimum guidelines. Critics see Ashcroft's move as a blatant attempt to intimidate jurists. It also sets up a constitutional confrontation with the judicial branch.

If that is indeed what Ashcroft was after, it was quick in coming. Supreme Court Justice Anthony Kennedy, in an address to the ABA over the weekend, said prison terms are too long, adding that he favors scrapping the mandatory minimums for some federal crimes.

"Our resources are misspent, our punishments too severe, our sentences too long," Kennedy said. "I can accept neither the necessity nor the wisdom of federal mandatory minimum sentences," Kennedy told delegates to the ABA's annual convention. He asked delegates to lobby Congress to end the minimum sentences on certain crimes.

The main culprit in the failure of the public-defense system is the workload. ABA guidelines call for such attorneys to handle no more than 150 felonies, 400 misdemeanors or 200 juvenile cases in a year, a target that most systems come nowhere near. The contrast between the guidelines and the reality is enormous. In Bucks County, Pa., for example, the public-defender office's caseload went from 4,173

in 1980 to 8,000 in 2000. Public defenders in Clark County, Nev., handle over 1,400 juvenile cases per year _ seven times the national standard. In Shasta County, Calif., a private lawyer with two young attorneys on his staff won a public-defense contract by underpricing everyone else. They handle more than 6,000 cases annually.

With these kinds of statistics it is no wonder that so many cases are overturned on appeal on the basis of sloppy or even incompetent legal representation, and a whole lot that aren't should be. The ABA's reforms unfortunately come at a time when budgets at every level of the system _ local, state and federal _ are strained. Yet, if the system is to live up to the promise of Gideon, that every defendant receives adequate and fair representation, we can ill afford not to spend the money.

(Dan K. Thomasson is former editor of the Scripps Howard News Service.)

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