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Constitutional Issues In the New Millennium

Part II of IV

The Sixth Amendment Project

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Proverbs 12:15 (AMP)

¹⁵ The way of a fool is right in his own eyes,
but he who listens to counsel is wise.

Proverbs 11:14 (MSG)

¹⁴ Without good direction, people lose their way;
the more wise counsel you follow, the better your chances.

Introduction

The Indigent Defense Crisis In America

The Sixth Amendment to the United States Constitution reads:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

The Right to Counsel

A defendant unable to retain counsel has the right to appointed counsel at the government's expense. While the Supreme Court recognized this right gradually, it currently applies in all federal and state criminal proceedings where the defendant faces authorized imprisonment greater than one year (a "felony") or where the defendant is actually imprisoned. Gideon v. Wainwright, 372 U.S. 335 (1963).

And in Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), the Court held that, on collateral review, a defendant may obtain relief if the defendant demonstrates both (1) that defense counsel's performance fell below an objective standard of reasonableness (the "performance prong") and (2) that, but for the deficient performance, there is a reasonable probability that the result of the proceeding would have been different (the "prejudice prong").

Whether counsel is retained or appointed, the defendant has a right to counsel without a conflict of interest. If an actual conflict of interest is present, and that conflict results in any adverse effect on the representation, the result is automatic reversal.

And in Faretta v. California, 422 U.S. 806 (1975), the Court held that a criminal defendant has the right to knowingly and voluntarily opt for pro se representation at trial. This right is not per se violated by the appointment of standby counsel.

Plea Bargaining

A plea bargain allows both parties to avoid a lengthy criminal trial and may allow criminal defendants to avoid the risk of conviction at trial on a more serious charge. For example, in the U.S. legal system, a criminal defendant charged with a felony theft charge, the conviction of which would require imprisonment in state prison, may be offered the opportunity to plead guilty to a misdemeanor theft charge, which may not carry a custodial sentence.

Plea bargaining is criticized, particularly outside the United States, on the grounds that its close relationship with rewards, threats and coercion potentially endangers the correct legal outcome.

Author Martin Yant discusses the use of coercion in plea bargaining:

"Even when the charges are more serious, prosecutors often can still bluff defense attorneys and their clients into pleading guilty to a lesser offense. As a result, people who might have been acquitted because of lack of evidence, but also who are in fact truly innocent, will often plead guilty to the charge. Why? In a word, fear. And the more numerous and serious the charges, studies have shown, the greater the fear. That explains why prosecutors sometimes seem to file every charge imaginable against defendants."

This tactic is prohibited in some other countries like the United Kingdom, for example, under its Prosecutor's Code, in many instances.

Nearly ninety-five percent (95%) of all cases in the U.S. resulting in felony convictions never reach a jury.

Findings of the American Bar Association

"Overall, our hearings support the disturbing conclusion that thousands of persons are processed through America's courts every year either with no lawyer at all or with a lawyer who does not have the time, resources, or in some cases the inclination to provide effective representation. All too often, defendants plead guilty, even if they are innocent, without really understanding their legal rights or what is occurring. Sometimes the proceedings reflect little or no recognition that the accused is mentally ill or does not adequately understand English. The fundamental right to a lawyer that Americans assume apply to everyone accused of criminal conduct effectively does not exist in practice for countless people across the United States."

GIDEON'S BROKEN PROMISE:

AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE

A Report on the American Bar Association's Hearings
on the Right to Counsel in Criminal Proceedings

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Always feel welcome to contact me directly with any questions, comments, or great ideas!

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ADVOCACY



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Achieve Their Full Potential*

Our Mission

The Mission of The Advocacy Foundation
is Threefold:

To Rescue

Young persons from the prison pipeline
and help redirect and restore their lives;

To Teach

New and fledgling nonprofit organizations to become
fundable, to thrive, and to maintain compliance;

To Train

Qualified Juvenile Justice Professionals with a passion
for effective careers in the Juvenile Justice system.

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