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Defense Lawyers

Low pay buys only injustice for poor defendants

November 12, 2002

Scandalously low pay for court-appointed attorneys in Michigan is making a sham of the constitutional right to legal counsel.

The criminal justice system works when truth emerges from the adversarial efforts of a competent prosecutor and a vigorous defense attorney. It doesn't work when an outgunned and underpaid defender is effectively encouraged to cut corners and coax guilty pleas from poor defendants.

The recent reversal of the conviction of Eddie Joe Lloyd, a Detroitier who spent 17 years in prison for a rape and murder he didn't commit, dramatically shows what an ineffective defense can do to an innocent person.

Part of the problem is that defense lawyers simply aren't paid enough. In Wayne County, where fees for court-appointed attorneys have been essentially frozen since 1982, court-appointed defense lawyers in many cases make what amounts to \$6-\$12 an hour. These are discount-store wages that yield discount justice -- cheap, but suspect in quality.

The problem is national in scope. Around the country, counties and states are unwilling to spend more for defending those who are least able to defend themselves. Some counties actually contract with the lowest-bidding attorney for all their indigent cases.

Even in this sorry national picture, Michigan ranks near the bottom of the 50 states in spending to defend the poor, and Wayne County is among Michigan's worst.

Wayne County pays court-appointed attorneys

by event. That means attorneys are paid set amounts, regardless of how many hours are spent, for work on preliminary exams, pleas, motions, investigative work and other legal tasks. The fees are so low that attorneys often must choose between donating their time or taking more cases than they can handle.

That's why the Wayne County Criminal Defense Bar Association and the Criminal Defense Attorneys of Michigan, in a lawsuit, are asking the Michigan Supreme Court to authorize payments of \$90 an hour -- the amount attorneys get in the federal system -- to Wayne County defense attorneys, or to adjust the fee schedule accordingly. Defense attorneys argue that Wayne County Circuit Court is violating state law by not paying a reasonable fee.

That \$90 figure might sound excessive, but consider two things: Overhead costs -- office rent, copying fees and cell phone charges -- run attorneys about \$50 an hour; and trial attorneys typically earn \$150-\$200 an hour or more.

Attorneys estimate the boost in fees would raise Wayne County's costs for indigent defense from \$16 million to \$27 million a year.

Such action would fix some of the problems, but only in Wayne County. The Legislature should appoint a task force to study how best to get more money to all Michigan counties for criminal defense. Some states have created statewide Public Defender commissions or offices. In Michigan, local control with a mixture of local and state funding would probably work best.

The task won't be easy, because state and local governments have hit tough times. And paying for criminal defense for the poor has always been more about politics than money; during the boom 1990s, the problem just got worse.

Criminal defense attorneys and accused felons are simply not a public priority. But upholding everyone's constitutional rights and keeping innocent people out of prison certainly ought to be.

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