

Life, Liberty and Low-Bid Lawyers: The Defiling of *Gideon*

The Supreme Court left to the states the flexibility to create adequate methods for protecting an indigent's right to the effective assistance of counsel. I doubt the Court could have foreseen the poor choice of some county commissioners in one of our largest states. But you decide.

This particular county used to have a real public defender office. But then the commissioners decided they could save money by auctioning the work to low bidders.

Not surprisingly, costs won out over quality.

The county gave out two major contracts. This is a story about one of those firms selected. It is a story being repeated around the country. This contract paid a little more than \$400,000 to represent about one-half of the county's indigent defense caseload, 1523 felonies and 3587 misdemeanors — a total of 5110 cases. That's a lot of poor people. The numbers for 1997 were just as frightening.

To defend the liberty of some 5000 human beings per year the low-bid lawyer (we'll call him "Jones") employed two associates and himself. Jones got to keep whatever he didn't spend on salaries, costs of discovery, investigators, expert witnesses, lab tests, etc. Since all expenses came out of his pocket, Jones was highly motivated to keep expenses low.

56 Seconds Per Case

The firm occasionally used a private investigator — he worked about 10 hours per week — about 56 seconds per case.

One of the associates handled only misdemeanors. She had to close between 250 and 300 misdemeanors a month. Jones trained her how to handle that kind of caseload — just deal the case at first appearance; plead the case, move on. Nothing to slow the separation of clients from their rights, nothing to impede the cash flow to Jones. The judges went along with this. They tolerated, no, they participated in this parade of constitutional degradation.

If you're going to shove over 5000 souls through the judicial grinder on a budget of \$80 per case (fees and costs), you aren't going to have time for a lot of trials. In 1998, the firm tried only 12 cases, Jones tried none.

One Friday afternoon the misdemeanor associate, who had never tried a case, was given a felony trial set for the following Tuesday. She read the file: multiple felony and misdemeanor counts involving magic mushrooms. Five pages of police reports, no motions filed, no retesting of the drugs, no witness list, no expert witnesses endorsed, no one subpoenaed, no investigation, no one to help her with even the basics of her first jury trial. She recognized a warrantless search with strong sup-

pression issues. She told the judge she was not ready to proceed, that a continuance was necessary to preserve the defendant's Sixth Amendment right to counsel. Continuance denied. She refused to go forward. The judge was angry. And why shouldn't he be? The right to effective assistance of counsel had not mattered before. Why was it coming up now?

The other associate came to the rescue. He pled the client guilty to all charges. The female associate was fired. Her boss told her she had "failed the gut test." She later got an outside attorney to help her withdraw the defendant's plea based on the failure of the firm to file a suppression motion and more generally on ineffective assistance of counsel. The defendant eventually pled guilty to a misdemeanor. What happened to Jones' 5000 other 1997 cases or the next 5000 in 1998, I do not know.

But I have a pretty good idea.

There are various standards on how many misdemeanors a public defender should handle in a year — anywhere from 250 to 400. The woman was working on an assembly line scheduled to send past her ten times that amount annually.

Felonies are another matter. How do two lawyers handle over 1500 cases per year? I don't know how many were homicides, or armed robberies, or burglaries, or assaults. I'm not sure I want to know — I'm not sure I have the stomach. But Jones did. It didn't take guts, all it took was greed. Greed, a law license and a low-bid contract. The commissioners provided the contract. The judges let him use his law license to profit on the bodies of the poor. Jones provided the greed.



LARRY S. POZNER

Four Conspirators

Low-bid contracts are daily gaining momentum. It takes four parties of conspirators to perpetuate such judicial atrocities. First, the government must decide to wreck one of the foundations of America: a fair trial. The prosecutors would gladly accept a warm body with a law license to stand next to an essentially *pro se* client. The judges who occupy the bench without any dignity and watch while the Constitution is butchered. Finally, the State Bar which looks the other way. If Jones stole his client's money, they would disbar him. Instead, he stole their rights. He's stealing their rights today. The government set it up that way.

The fired employee is suing the county and Jones. I don't know if what they did is actionable. I am here to say it was despicable.

Authors Note: This is my last column. When I graduated law school I never envisioned becoming President of NACDL. I wanted to be a criminal defense lawyer. I can think of no higher calling. POZ. n