3Qs: The lasting impact of historic Gideon ruling

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Monday marks the 50th anniversary of the U.S. Supreme Court's historic ruling that indigent criminal defendants have a constitutional right to a court-appointed lawyer. Credit: Thinkstock

Monday marks the 50th anniversary of Gideon v. Wainwright, a landmark case in U.S. Supreme Court history, in which the court unanimously declared that indigent criminal defendants have a constitutional right to a court-appointed lawyer. Daniel Medwed, a professor of law and expert on wrongful convictions, hailed the decision

for acknowledging the rights of defendants, but also noted that overworked public defenders and a woefully underfunded public defense system have called into question whether fair-trial rights are more aspirational than operational. We asked Medwed to explain how this historic decision has affected the criminal court system over the last five decades.

A report published last year by the Brennan Center for Justice found that public defenders are often overworked and spend an average of only six minutes at arraignment, citing an underfunded public defense system. Why was this ruling so important, and yet why haven't Congress and state lawmakers adequately funded the office of public defenders?

Gideon v. Wainwright is considered a landmark ruling, and for good reason. The hallmark of a civilized society, in my view, is the extent to which we protect the interests of our most vulnerable and potentially despised members. Gideon acknowledged that one of the nation's most vulnerable populations, indigent criminal defendants, deserves protection against the awesome power of the state. Yet the promise of Gideon remains largely unfulfilled.

With regard to funding, criminal defense is not the most politically popular area of work. The natural proponents of robust funding for public defenders—indigent criminal defendants—are often not well positioned to wield clout in the corridors of Congress and statehouses. Many criminal defendants lack the basic right to vote if they have been convicted of a prior felony. As a result, there is little political incentive for legislators to reach beyond a very modest level of funding.

Second, the courts have contributed to the problem by crafting a low threshold for what constitutes adequate representation in a criminal case. Defense attorneys have not been deemed ineffective even in cases where they fell asleep during an actual trial or were under the influence of drugs or alcohol. The standard for effective assistance of counsel is so minimal that some observers call it the "foggy mirror" test—if you put a mirror before a lawyer's face and fog appears on the surface, then that is satisfactory in the eyes of the judiciary.

There are approximately 15,000 court-appointed defenders representing millions of defendants in the U.S., according to The Atlantic. This skewed ratio led one law expert to lament that public defenders "practice triage as they attempt to represent more people than is humanly—and ethically—possible" without adequate resources. How do public defenders decide what cases receive the majority of their attention?

I think triage is an apt analogy; like in an emergency room, a public defender must usually focus on the most serious cases on his or her roster—major felonies and/or situations where the client is facing a long sentence, e.g., three strikes laws. What this means, I fear, is that other, so-called "less serious" cases might not always receive the attention they deserve. Moreover, the decision to focus on a particular case over others may be driven more by happenstance than conscious choice. Case A is going to trial tomorrow, and the lawyer must direct his or her energies to that immediate task at the expense of other, perhaps even more pressing matters. This is deeply worrisome.

Only about 3 percent of money spent annually on criminal justice goes toward indigent defense, while criminal justice experts have argued that "judges sometimes overlook inadequate representation because it means more cases can be processed in a shorter time." Who is to blame for this injustice—and what should be done to prevent it from happening for the next 50 years?

Our criminal justice system is obsessed with outcomes. All too often, police are evaluated based on their "clearance rate" (percentage of open cases that result in arrests), prosecutors on their "conviction rate" (percentage of cases charged that culminate in convictions), and judges on their "disposition rate" (the percentage of cases on the docket that are resolved). Is criminal justice best measured by outcomes? I suspect not. What is most important in criminal justice may be process: Are the cases being properly vetted and analyzed at every stage? Did the defendant receive fair treatment at the hands of law enforcement and the judiciary? Did the defendant receive zealous and effective counsel? Did the victim feel as though her voice was heard? These process-oriented values are difficult to quantify—and adequate process often means a relatively lengthy process, which takes both time and money to achieve.

So, at bottom, I think we are all to blame: We want tidy resolutions to criminal cases but we also claim that we want an adequate process behind those resolutions. Adequate process is not always tidy and it costs money. Going forward, we have to recognize this and funnel more resources into the criminal justice system.

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