James Howaniec: Get politics out of Maine's indigent defense system

SJ sunjournal.com/2021/03/07/james-howaniec-get-politics-out-of-maines-indigent-defense-system

March 7, 2021



James Howaniec

I have been practicing criminal law in Androscoggin County for some 35 years. During that time, other criminal defense lawyers and I have represented thousands of Maine's most desperately poor in local courts. We have done our job exceedingly well — perhaps too well, as powers that be in Augusta and Portland, year after year, unconstitutionally attempt to defund our small budget.

We have an outstanding, experienced criminal defense bar here in Androscoggin County that has litigated hundreds of criminal jury trials over the years. Some of us have acquittal success rates of over 75%. (The national average is about 15%.) The local defense bar includes some of the best lawyers in the state, including Verne Paradie, Allan Lobozzo, George Hess, Donald Hornblower, Justin Leary, Henry Griffin, Nicholas Worden, Adam Sherman and Kelly McMorran.

We take on some of the toughest cases in society in the trenches of Lewiston District Court and Androscoggin County Superior Court, including homicides, sexual assaults, drug trafficking, and other serious felonies.

Many of these cases involve very complicated issues like DNA science, forensic evidence collection, ballistics, and fingerprint evidence. Our job is not always the most popular among the public, but the rights of everyone to the presumption of innocence and to counsel — even the most poor and desperate — is fundamental to a free society. Each year around state budget time, that right comes under political attack. This year has been no different.

The Maine Commission on Indigent Legal Services in Augusta has some 375 defense lawyers rostered across the state. The commission's budget is about $17.6 million annually. That may sound like a lot, but it is a drop in the bucket of the state's biennial $8.4 billion budget, and is dwarfed by the hundreds of millions spent annually on the law enforcement side in district attorney and attorney general offices, and state, county, and local police departments. The playing field in Maine's criminal courts is skewed grossly in favor of the prosecution.

In recent years, ivory tower groups like the American Civil Liberties Union have called for the end to our current system of indigent criminal defense. These are lawyers who sit in their offices and read U.S. Supreme Court decisions all day long, but who we never see in our local district courts. They want to double the indigent defense budget from its current $17.6 million to over $35 million, with the goal of creating a state public defender's office.

Their proposal is the worst of both worlds: not only do they want to double the cost of indigent defense to state taxpayers, their plan calls for pay scales that will ensure that the state's best criminal defense lawyers won't join in. It will result in a public defender's office composed of lawyers with limited experience, a streamlining of defense services for those in generational poverty.

A couple years ago the politicians in Augusta restructured MCILS so that it is now composed of members who are on record publicly in support of the creation of a new public defender's office. In other words, the commissioners oppose the interests of the very lawyers who they represent. This was a political hit job against Maine's indigent defense lawyers by the governor, Legislature and, sadly, the former chief justice of the Maine Supreme Court.

The state's criminal court system is in crisis. Legislators focus on "tough on crime" efforts that disproportionately impact the poor, mentally ill, minorities, and those with severe substance abuse problems. They thrive on creating arbitrary mandatory

minimum sentences and putting people in jail because it makes them look tough to their constituents, without providing the resources for anything but basic warehousing.

And yet, bizarrely, the politicians focus their angst each budget season on the criminal defense lawyers, who earn hourly rates that barely pay for office overhead. The politicians should focus their energies instead on taxpayer waste in the enormous budgets of prosecutors and state and local police, and on sentencing options that are alternative to mass incarceration of the poor.

It is time to get politics out of the constitutional right of everyone — especially the poor — to an attorney when charged with a crime. It is one of the most basic rights afforded to citizens in a society that endeavors to call itself free.

Jim Howaniec is a local criminal defense lawyer and former mayor of Lewiston.

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