

We must begin to talk about whether poor people get fair defense

"In all criminal prosecutions," says the Sixth Amendment to the U. S. Constitution, "the accused shall enjoy the right to ... the assistance of counsel for his defense."

Though "guaranteed" under the Bill of Rights more than 200 years ago, it wasn't until 1963 that the U.S. Supreme Court ruled in *Gideon v. Wainwright* that "the assistance of counsel" is a fundamental constitutional right essential to a fair trial for indigent defendants in state court. Toward that end, the Missouri State Public Defender System came into being in 1972. Its stated mission is "to provide high quality, zealous advocacy for indigent people who are accused of crime in the State of Missouri."

High quality, zealous advocacy for the poor is a noble objective, however there may be many a slip 'twixt cup and lip. The United States has less than 5 percent of the world's population, but more than 20 percent of the world's incarcerated population. We have the largest inmate population in the world, with more than 2.5 million adults in prison or jail. It's a good bet that most of those people are poor.

Interesting, too, are data suggesting that incarceration rates are significantly higher for indigent defendants with publicly provided attorneys versus those with their own attorneys — even though conviction rates for both groups are roughly the same. In federal courts, the poor are incarcerated at a rate 11 percent higher than defendants with their own attorneys. In some more populous counties, incarceration rates for the poor are 17 percent higher.

Does this simply reflect a disproportionate number of "hopeless" cases falling to public defenders? How do Missouri's data compare with national data? Do we need more zealous public defenders? Is a bigger role for private attorneys feasible? These are just a few of the questions that need to be answered.

This debate must be moved to the front burner. Public scrutiny and awareness can help to ensure that our poor get equal justice and "the assistance of counsel" promised them under the U.S. Constitution.

Lou Horwitz • St. Peters

St. Louis Post-Dispatch

9/26/09

ALS