

Equal justice takes fair funding

By David Raybin

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We value our liberty above all else. Our Constitution mandates that the liberty of the poor not be compromised for lack of counsel if a citizen is charged with a crime.

This noble ideal is not always honored when we allocate dollars to fund our judicial system that adjudicates our freedoms.

How many dollars do we spend to compensate lawyers who defend those who cannot afford private counsel? While the amount each lawyer receives per case is relatively small — far less than private-sector corporate lawyers — the total expense is staggering. This is so because so many folks need appointed attorneys.

The public defender system is budgeted at \$41 million this fiscal year. The separate indigent defense fund requires another \$25.5 million.

You may find it surprising that these numbers are the same or even higher than last year, so there is no apparent "cut" in the budget. Yet, increased demand in the coming months will certainly exhaust the funds well before the next appropriation.

Why has this happened? The largest factor is the economy. While the budgets remain flat, the public defender caseload has increased exponentially because many citizens can no longer afford private representation.

With unemployment now over 10 percent, the retained lawyer is rapidly becoming the exception, with the result that appointed lawyers make increasing demand on the indigent defense funds. There are only so many cases a lawyer can handle in a day. While few cases actually go to trial, that possibility compels a decent investigation, which cannot be accomplished with the ever-increasing numbers of defendants who show up in court with no lawyer.

The consequences of inadequate representation are enormous: a significantly higher chance of a more serious conviction and a much longer sentence. With a Tennessee Department of Correction budget now running at more than \$670 million, it makes no sense to trade \$10 for defense costs for \$50 of prison space.

A person accused of crime is constitutionally entitled to the effective assistance of counsel. If a court later determines the person was denied that right, the remedy is a new trial, which may occur years later when the witnesses are gone and the evidence has evaporated. The victim suffers because a new trial is impossible. This is a high price for society to pay because society was too frugal when it counted.

The most severe consequence of a defective defense is the increased probability of convicting the wrong person. Every month, we hear of some poor devil languishing in prison for decades who is later exonerated by DNA testing. The clients were certainly poor but, in retrospect, they were not devils. Who the heck were their lawyers at the original trial, and how much were they paid?

How could the innocent be wrongly convicted? We never ask that question, but we know the answer. The constitutional mandate for the effective assistance of a competent attorney requires that we pay the price for equal justice.