



Public Defenders

by John D. Whitaker

Most of us have experienced times in our lives when we felt truly powerless. Some more than others perhaps, but the feeling of powerlessness is one we all know at some level. Feeling powerless in a courtroom can be especially terrifying to a person accused of a serious crime because the basic rights of life and liberty are on the line. Our country was founded on the basic truth that as citizens we are all equal under the law, and competent representation at a criminal trial is fundamental and essential to our system of government. But the reality is that most criminal defendants do not have the money to hire lawyers. If they can't afford a lawyer one must be provided because a lawyer is not a luxury in a criminal trial, it is a necessity.

Let me begin with a little Constitutional law. The Sixth Amendment to the United States Constitution provides, "In all criminal prosecutions, the accused shall enjoy the right *** to have the Assistance of Counsel for his defense." This provision initially related to federal prosecutions but in the famous case of Gideon v. Wainwright, decided by the U.S. Supreme Court in 1963, it was made applicable to state court prosecutions by the 14th Amendment. Later in the case of Strickland v. Washington, decided in 1984, the U.S. Supreme Court decided that a criminal defendant was entitled to the "reasonably effective assistance" of counsel.

In 1977, the State of Wyoming enacted the Wyoming Public Defender Act, which requires the appointment of an attorney for any needy person who is under arrest or charged with a serious crime. A "needy person" is defined as one who at the time of prosecution is unable to pay for full representation. A "serious crime" is defined by the Act as one in which incarceration is a practical possibility.

The Public Defender's office was created to satisfy the



Constitutional requirement that the state must provide attorneys for people who do not have the resources to hire private lawyers. All people. The Public Defender is required to provide a competent defense, even if the case seems hopeless or the defendant is accused of hideous behavior. The Public Defender's job is not to judge the defendant, but to competently represent him.

When I first got out of law school I worked part-time for the public defender's office, taking cases on a referral basis when the office was overloaded. I was proud to work with the people in the office at that time. Most could easily move to a more lucrative private practice, but chose instead to stay and fight for the rights of poor people. The present crop of young trial lawyers who work for the public defender's office are motivated by a sense of duty to the Constitution and the Rule of Law. They can't be in this line of work for the money because the pay is terrible. They often are required to fight losing battles for unpopular clients, but confidence in our judicial system would collapse without the dedication of these professionals. These lawyers are deserving of our admiration, because without them a vast number of our less fortunate citizens could never be assured that they were receiving a fair trial.

The government has huge resources available to prosecute cases, and it is not unreasonable to require that a person unable to hire private counsel be provided a competent attorney to make sure the process is conducted fairly.

I am not unmindful of the pain an aggressive defense can have on a victim of a crime, but both the United States and Wyoming Constitutions have placed important safeguards on the taking of life or liberty by the state. These procedural safeguards, including the right to the effective assistance of counsel, must be applied in a way where all are treated equally under the law, even needy people.

The Wyoming State Bar does not certify any lawyer as a specialist or expert. Anyone considering a lawyer should independently investigate the lawyer's credentials and ability, and not rely upon advertisements or self-proclaimed expertise. This informative column is brought to you by John Whitaker who practices personal injury and criminal law throughout Wyoming. He can be reached at JDWTL@aol.com or by calling his office in Casper at 265-6204.