

Droit - Economie - Sciences Sociales

Session : Septembre 2019
Année d'étude : Troisième année de Licence Droit
Discipline : Anglais premier semestre (Unité d'enseignements complémentaires 1)
Durée : 1h30
Titulaires du cours : Mme Marie BERNÈS-CABANNE, Mme Louise JACOB

Les documents et les appareils électroniques ne sont pas autorisés.

I. Complete the following sentences, adding between 15 and 30 words. Do not start a new sentence. (20 points)

1. Whenever one cannot afford bail,...
2. Unless a police officer has a reasonable...
3. The fruit of...
4. Pursuant to the Fourteenth Amendment...
5. Unlike hate speech,...

II. Read the text. Answer each of the questions in your own words (approximately ten lines/100 words for each question). DO NOT QUOTE FROM THE TEXT. (30 points)

His Clients Weren't Complaining. But the Judge Said This Lawyer Worked Too Hard.

By RICHARD A. OPPEL Jr, *The New York Times*, March 29, 2018

Can a lawyer work too hard to defend a client? That all depends on who is paying the bill, a new lawsuit argues. A criminal defense lawyer in Galveston, Tex., says he was pulled off cases defending poor clients because he spent too much time on them and requested funds to have their charges investigated.

Needless to say, his clients were not the ones complaining. Instead, it was the judge, Jack Ewing, who appoints lawyers for those in his courtroom who cannot afford them. "You overwork cases," Judge Ewing told the lawyer, Drew Willey, according to excerpts from a recorded conversation cited in the lawsuit.

Though an estimated four of every five criminal defendants in the United States use court-appointed lawyers or public defenders, many of the nation's indigent defense systems have been criticized as desperately inadequate, leading to false guilty pleas and overincarceration. Lawyers who represent the poor can be required to juggle hundreds of cases at a time, accept pay far lower than the market rate, or take cases for which they have little experience. This new case, though, exposes another potential problem: Indigent defense lawyers often get their assignments from the judges in whose courtroom they appear. This discourages a robust defense, experts say, and leads to an emphasis on resolving cases quickly.

The tensions may be familiar to lawyers, but they are rarely so candidly aired as in this lawsuit, filed in federal court last week and bolstered¹ by parts of a recorded conversation with the judge. (...)

The lawsuit contends that Judge Ewing took away some of Mr. Willey's poor clients and refused to appoint him new ones because "he sought to provide a vigorous legal and factual defense for his clients."

Mr. Willey said he has been appointed to only one case before Judge Ewing since May 2016, and that appointment was effectively made by another judge. The lawsuit asks for him to be reinstated and for Judge Ewing to be barred from retaliating against him.

¹ To bolster = to support, to strengthen

In an interview, Judge Ewing denied the allegations, saying he assigned some cases to another lawyer because many of Mr. Willey's cases were unresolved and Mr. Willey seemed overwhelmed. He also said that, as far as he knows, Mr. Willey's eligibility to represent indigent defendants has never changed.

But according to the lawsuit, Judge Ewing told Mr. Willey that he spent too much time defending individual clients. "You are the only attorney" to routinely ask for a paid investigator, the judge said. He also complained that cases resulting in guilty pleas generally should not take more than three hours of work, but Mr. Willey sometimes took longer. Relatively few criminal cases ever go to trial; most end instead in guilty pleas. But that does not mean that time and money is spent on them in vain. The length of the sentence offered in a plea bargain can hinge on the strength of the prosecution's case, and a thorough evaluation of the evidence can put defense lawyers in a stronger negotiating position.

Mr. Willey's lawsuit offered the example of a client charged with breaking into a car. The client faced up to a year in jail, but Mr. Willey found "blatant inconsistencies" in police statements. When prosecutors declined to reduce the charge, he hired an investigator, the lawsuit says.

Ultimately the client was allowed to plead guilty to criminal mischief, the lowest class of misdemeanor, which carried no possible jail time and was eligible for expungement² from his record, Mr. Willey said.

Yet Judge Ewing cut Mr. Willey's request for \$1,320 in pay on the case to \$511, citing "excessive out-of-court hours," according to the lawsuit. After Mr. Willey appealed, another judge approved the full amount.

A 2011 RAND Corporation study of more than 3,000 Philadelphia murder cases found that clients fared better when they were represented by a lawyer from an independent public defender organization than if they had one appointed by a judge: Their conviction rate was 19 percent lower; the chances that they would serve a life sentence were reduced by 62 percent; and their expected sentence length was 24 percent shorter.

"Judges have incentives to appoint counsel who file fewer pretrial motions, ask fewer questions during voir dire, raise fewer objections, and present fewer witnesses," the study said.

And, experts say, that gives lawyers reason to push for a fast resolution, skipping thorough investigations or motions that might slow the docket or displease the judge. Some defense lawyers also fear that if they object too strenuously, their clients will be penalized. "Public defense providers internalize, and try to figure out what it takes to get the next contract," said David Carroll, executive director of the Sixth Amendment Center, a nonpartisan group that provides technical assistance on criminal justice matters to state and local policymakers. "A judge doesn't actually have to say, 'Don't file any motions in my courtroom.'" (...)

1) What are the options for providing representation to indigent defendants? What issues exist around those various options?

2) What broader issues does this case raise?

3) Discuss the underlined sentences.

III. Choose one of the following topics and write an answer in approximately 250 words (+/- 10%). (50 points)

1. How has the Supreme Court protected the rights of juvenile suspects/defendants? To what extent do you think they should be treated differently than adults?

2. An artist was commissioned to paint a mural on the theme of traditional American values. The artist, a fervent Christian, decided to depict Moses receiving the Ten Commandments. Some citizens complained that this violated the Constitution and the government asked the artist to remove all controversial references. The government then painted over the whole mural and the artist then sued them for discrimination. ***Discuss the legal implications raised by these facts.***

² Expungement = action of completely removing something, of obliterating something