

Alabama gives poor performance in indigent defense (759 words)

By Stephen Stetson

He's not a lawyer, but he skills for one on TV.

The Associated Press recently reported that television ads for an Alabama attorney may soon be banned by the Alabama Bar Association. The otherwise unremarkable lawyer commercials feature William Shatner, Captain Kirk of "Star Trek" fame, who now plays an attorney on "Boston Legal."

The Alabama Bar Association has evidently decided that the image of Shatner promoting an Alabama lawyer is cheapening the legal profession. Mark White, the head of the association, told the AP that a new rule banning the use of actors in lawyer commercials would help to maintain the professionalism of attorney advertising.

The controversy over paid thespians in lawyer ads has involved charges of crass commercialism and exploitation of vulnerable low-income Alabamians. But where is the outrage over the real scandal in legal representation for the poor?

Alabama ranks fifth nationally in the percentage of its population that resides behind bars. Many of the incarcerated are among Alabama's poorest citizens, people unable to hire the attorneys who clog the airwaves with clever commercials.

Federal law requires the states to provide attorneys for the poor, but it doesn't specify how. This basic protection was firmly established in a 45-year-old Supreme Court case called Gideon v. Wainwright. Henry Fonda starred in a movie about the landmark case, which held that the Sixth Amendment establishes a right to counsel for criminal defendants. In the years since that vital decision, there has been no national uniformity about the procedure for providing lawyers for those unable to afford them. Alabama essentially sets the bar as low as possible.

Stephen Bright of the Southern Center for Human Rights has been one of the leading voices in the national dialogue about indigent defense. He is a passionate advocate of the public defender system, in which the government hires full-time attorneys to handle the cases of the indigent accused. Most jurisdictions use this approach for ensuring that even the least wealthy are afforded their basic right to counsel.

However, virtually every county in Alabama uses the appointment system, in which judges select lawyers from a list and assign them to indigent defendants. Some of the lawyers on the lists have considerable criminal justice experience. Others are relatively green or specialize in areas other than criminal defense. It is unconscionable that a defendant facing serious criminal charges can get stuck with a tax or real estate lawyer. Worse, appointed lawyers may take on clients begrudgingly, setting aside potentially lucrative work to defend often unpopular clients at rates capped by the state.

Sue Bell Cobb, the Chief Justice of the Alabama Supreme Court, seems to agree with the problems with Alabama's appointment system. She has been a leading voice in pushing for reforms, including oversight for indigent defense. Alabama is one of only a handful of states with no such supervision.

More than just a supervisory commission is required. Alabama needs the kind of reliable public defender system that other states employ. Dedicated attorneys in each jurisdiction would provide valuable expertise to those facing serious criminal charges. This is the surest way to meet the constitutional requirements of Gideon. It is wrong to deny someone a strong defense, including competent investigation and research, simply because they are unable to hire one of the attorneys advertising on television.

There may be hostility to creating a public defender system in Alabama. Some attorneys have gotten accustomed to the steady if minimal fees that come from being on the appointment list. They will likely oppose creating a system of criminal defense professionals to handle the cases of the poor. There may also be some anxiety over the catastrophe in Georgia, where a recently created defender system is now teetering on collapse because of funding problems.

However, those interested in fairness for the poor should not be deterred. A well-crafted system could avoid many of the problems plaguing Georgia. Such a system should also appeal to the pragmatists unpersuaded by the moral and constitutional arguments. Indigent defense has been calculated to cost Alabama as much as \$70 million this year. Tax dollars could be better spent by developing a public defender system staffed by expert criminal defense attorneys who could handle large caseloads and give taxpayers a better deal.

It is astounding that after all of our national and state progress toward equality, the public is willing to accept two separate and unequal systems of criminal defense. Alabama may soon stop cheesy actors from representing local lawyers on television. When will we do something about the state's lousy performance in indigent defense?

Stephen Stetson is a policy analyst at Alabama Arise, a coalition of 152 congregations and community groups that promote state policies to improve the lives of low-income Alabamians.