

My Turn: Attacking Public Defenders for doing their job is a disservice to all

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By CYNTHIA STROUT

FOR THE JUNEAU EMPIRE

In January, the Juneau Empire ran an editorial entitled: “No gray area for child predators.” The article comments on the sentencing of a defendant for possessing child pornography. That editorial rejected the longstanding, common-sense notion to “let the punishment fit the crime.” It then went on to personally and unfairly criticize a federal public defender for arguments she made in a sentencing memorandum.

The U.S. Constitution guarantees to the people of this country many freedoms to protect them from government overreach and abuse; none more important than the right to counsel for indigent defendants. We were disappointed to read an editorial that maligned a court-appointed attorney for fulfilling her ethical duties.

In the U.S., judges generally have discretion to impose a sentence within a designated range for each type of crime. That is because our society recognizes that not every violation of the same statute warrants the same punishment. Based on the facts of the particular offense and offender, the punishment is tailored to fit the crime. Comparing and contrasting a defendant’s crime with the crimes of other defendants in similar-type cases is a time-honored method of making sure the sentence is fair and just. Judges are compelled to make these comparisons and contrasts (called “findings”) by law. This is not “smoke and mirrors,” as the editorial described it, but a diligent effort to make sure the specific punishment fits the specific crime.

Criminal cases often involve a “gray area.” The sentence ultimately imposed by a judge depends heavily on the specific facts in each particular case as to the offense and the offender. The job of the prosecutor and the defense lawyer is to argue those facts to the best of their ability on behalf of the government and the defendant. A criminal defense attorney has an ethical duty to advocate for an appropriate sentence by examining both the unique features of the case at hand and the sentences that similarly-situated defendants have received in the past.

The Empire should not need to be reminded that defense attorneys are ethically bound to advocate zealously on behalf on their clients; anything less is malpractice. This is particularly true for public defenders, who have no choice of the persons they represent, no matter how shocking the case or serious the offense.

The Empire’s decision to single out the defense attorney personally by describing the diligent performance of her professional responsibilities as “shocking” is an affront to our constitutional system of justice. Slate magazine wrote: “It is the job of defense attorneys to do the best they can for the clients they have. Anything less — varying the quality of their work according to the caliber of their clients — is malpractice, to say nothing of its corrosive effect on the foundations of our legal system. A world where a lawyer’s reputation is ruined because of who she represented or because of how zealously she did her job is one where the worst of the accused have little recourse.”

As one court stated: “Public defenders stand alone, armed only with their wits, training, and dedication. Inspired by their clients’ hope, faith, and trust, they are the warriors and valkyries of those desperately in need of a champion. Public defenders, by protecting the downtrodden and poor, shield against infringement of our protections, and in reality, protect us all.”

We should respect the dedication that state and federal public defenders show in representing indigent criminal defendants. Their work helps assure that our criminal justice system avoids the temptation to paint every crime with the same brush.

- Cynthia Strout is president of the Alaska Association of Criminal Defense Lawyers.

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