



Ideas Changing the World

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Reforming the Criminal Defense System

Proposals for improvement of the criminal defense system commonly stress the need for more resources and, somewhat less often, the importance of giving indigent defense providers legal independence from the government that funds them. Yet virtually every suggestion for reform takes for granted the feature of the current American system that is most problematic and least defensible -- the fact that the indigent defendant is never permitted to select the attorney who will represent him, say Stephen J. Schulhofer, Robert B. McKay professor of law at New York University School of Law, and David D. Friedman, professor of law at Santa Clara University School of Law.

- In violation of free-market principles that are honored almost everywhere else, the person who has the most at stake is allowed no say in choosing the professional who will provide him one of the most important services he will ever need.
- The government's refusal to honor the defendant's own preferences is compounded by an acute conflict of interest: the official who selects his defense attorney is tied, directly or indirectly, to the same authority that is seeking to convict the defendant.

With pressure for reform rising and with unprecedented Justice Department interest in new initiatives, it would be a simple matter to institute a voucher plan on an experimental basis in a few federal districts. In particular, defense vouchers will improve the quality of legal representation for the poor. Better legal representation will, in turn, produce at least three benefits to the community, says Schulhofer and McKay:

- Reduce the likelihood of mistakes -- that is, it will be less likely that innocent persons will be wrongfully convicted of crimes.
- Minimize adverse consequences to the innocent persons who would have been acquitted under current systems of indigent defense.
- Bring more complete information to the sentencing phase of the criminal justice system -- making it more likely that just punishments will be imposed on those who are guilty of committing criminal offenses.

Source: Stephen J. Schulhofer and David Friedman, "Reforming Indigent Defense: How Free Market Principles Can Help to Fix a Broken System," Cato Institute, September 1, 2010.

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